STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2266

September 27, 1977

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STATE OF NEW JERSEY
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September 27, 1977

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1. ADVISORY LETTER OF DIRECTOR - APPROVED DONATION OF BEER and/or GOLF PRIZES BY BREWERIES AT SOCIAL FUNCTIONS CONDUCTED BY ASSOCIATIONS OF RETAIL LICENSEES.

John W. McCaffrey, Vice President
United States Brewers Association
Cranford, N. J.

Dear Mr. McCaffrey:

I reply to your recent inquiry as to whether or not the members of the United States Brewers Association and other breweries may supply beer and/or golf prizes at social functions to be conducted by associations of retail licensees.

It has been the long-established policy of the Division of Alcoholic Beverage Control, which remains the present policy, to permit breweries to furnish beer and/or golf prizes to industry related organizations of retail associations.

Very truly yours,

JOSEPH H. LERNER
DIRECTOR

Dated: August 17, 1977

2. APPELLATE DECISIONS - PETER, SAUL and MARY, INC. v. POINT PLEASANT BEACH.

Peter, Saul and Mary, Inc., t/a The New Rip Tide, Appellants,	:	On Appeal
v.	:	
Mayor and Council of the Borough of Point Pleasant Beach, Respondents.	:	CONCLUSIONS and ORDER

Barrett, Jacobowitz & Bass, Esqs., by Peter B. Bass, Esq., Attorneys for Appellant
McGlynn, McGlynn & McCormack, Esqs., by Edward R. McGlynn, Esq. Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein.

Hearer's Report

This is an appeal from the action of the Mayor and Council of the Borough of Point Pleasant Beach (hereinafter Council) which imposed special conditions in granting renewal of Appellant's Plenary Retail Consumption License.

Upon the filing of this appeal, the Director of this Division, by Order dated July 30th 1976, stayed the imposition of the said special conditions, except as to those pertaining to the posting of security guards on the outside to maintain order, pending the determination of this appeal.

The appellant, in its petition of appeal, contends that the imposition of the special conditions was arbitrary, capricious and without foundation based upon legally insufficient evidence, was the result of discrimination, and was imposed to force appellant out of business.

In its answer, the Council denied the substantive allegations of the petition of appeal.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, at which the parties were permitted to introduce evidence and cross examine witnesses. In addition, a transcript of the proceedings before the Council was admitted into evidence, in accordance with Rule 8 of State Regulation No. 15.

The Resolution adopted by the Council on July 12, 1976 sets forth the following special conditions:

"1. Package liquor of any kind including beer shall not be sold after the hour of 10:00 P.M. for either off premises or on premises consumption.

2. The Ocean Avenue access to the building shall be closed at all times and used only for emergency purposes and no access shall be permitted directly into the building from the parking lot.

3. No music whether live or recorded and no live entertainment shall be permitted at anytime.

4. Ingress and egress shall be permitted solely from the Boardwalk side of the building and Central Avenue through existing doorways.

5. Security guards shall be posted at all entrances to check each and every patron for proper identification to insure they are of legal drinking age.

6. Two security guards shall patrol the outside of the premises and adjacent areas during the hours of 9:00 P.M. until closing to curtail vandalism, breaches of the peace, the use of obscene language, littering, loitering, indecent exposure and similar acts offending the public sensibilities.

7. Sufficient personnel shall be provided for the purpose of retreiving all litter and debris left by the patrons of the licensed premises within a three block radius in all directions of the licensed premises so that all litter and debris will be retreived by 9:00 A.M. of each morning following a day of operation.

8. Occupancy regulations as required by all applicable municipal ordinances shall be posted and strictly adhered to at all times.

9. A number of persons employed by the licensee equivilent to 1/2 of the number of bartenders on duty one hour prior to closing shall be posted outside of the licensed premises to assist in crowd dispersal for purposes of attempting to minimize the problems which were enumerated by the objectors.

10. All physical altercations or any other violations of the law on the licensed premises and the parking area must be reported to the police department within 15 minutes of the occurrance thereof.

Any violation of any of the conditions hereinabove set forth shall be grounds for a hearing to be held by the Mayor and Council for the purpose of considering suspension or revocation of this license."

Prior to the de novo hearing appellant's sole stockholder, Victor Merlo, indicated that he could continue to conduct his business under all of the imposed conditions, except No. 3 relating to the prohibition against live or recorded music, or entertainment of any kind.

The resolution was adopted after the Council heard the testimony of several nearby residents who graphically described the complained of conditions generated by the youthful patrons of licensed premises, within the immediate area.

Appellant's premises consist of a two-story building. The lower level contains an intimate lounge seating ten at electronic game tables, and twelve at the bar. There is a juke box providing current, popular "hit records" at a volume modulated to permit conversations at normal levels.

The upper floor contains a band stand for live entertainment and can comfortably accomodate 250-300 persons. The windows have been removed and glass bricks substituted; the walls are wood paneled; the ceiling is accoustical tile over foam, and the entire premises are airconditioned so that sound is now largely confined to the building.

Merlo admits that, prior to his acquiring the business in April 1976, the clientele was 18-22 years of age, rowdy, dirty and frequently engaged in fights. The establishment reeked of stale beer, was poorly managed, played acid rock at a high volume and had a well-earned bad reputation. No attempt was made to controvert the testimony of wrong doing by these youthful patrons, uncontrolled by the former management.

Upon taking possession, Merlo closed the facility for a few days for rehabilitation purposes. Using a steam jenny, he steam-cleaned every surface. Furniture was scrubbed and walls repainted. He replaced certain equipment and intends to replace more, as funds become available. His plans call for the eventual installation of a kitchen so that he will be able to function as a restaurant.

He immediately discharged the entire staff, replacing them with persons he felt would be able to properly operate the establishment under his direction.

Merlo ceased engaging those bands who played acid-rock which attracted the unruly 18-year old patronage. He engaged, instead, bands that played the so-called "Asbury Park sound", a softer variety of rock music currently featured on the various area radio stations.

The effect of this change in music was immediate. His 18-year old clientele vocally expressed dissatisfaction and mostly ceased to patronize his establishment. They have been replaced by a more stable crowd in their mid-twenties to thirties, who are more acceptably attired, quieter and, in general, better behaved.

Chief of Police Bertolatus testified that, since April 1976, the complaints are much fewer, and none could be attributed to dereliction of management of the licensed premises.

From the testimony, it is apparent that without live music the appellant would be soon forced into bankruptcy. Furthermore, since Merlo, the one hundred percent stockholder, signed certain financial committments

personally, he would be forced into personal bankruptcy as well, losing all he presently possesses.

Initially it should be noted that the decision whether or not a license should be issued rests within the sound discretion of the local issuing authority in the first instance. Blanck v. Magnolia, 38 N.J. 484, Fiory v. Ridgewood, Bulletin 1931, Item 1, (and cases cited therein).

It has long been held that a liquor license is merely a privilege and no one is entitled thereto as a matter of right. Paul v. Gloucester County, 50 N.J.L.585 (1888). However, an owner of a license or privilege acquires through his investment an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super 462 (App Div. 1955).

The application of fairness has long been a hallmark in the administration of this Division.

> "As with all administrative tribunals the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with fair recognition of the fact that justice to the litigant is always the polestar." Berelman v. Camden, Bulletin 1941, Item 1. Cf. Barbire v. Wry. 75 N.J. Super. 327 (App. Div. 1962). Martindell v. Martindell 21 N.J. 341 at 349 (1956).

It is a firmly settled principle that the Director's function on appeal is not to reverse the determination of the municipal issuing authority unless he finds, as a fact, that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1; Monteiro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

The burden of establishing that the Council acted erroneously and in an abuse of its discretion rests with Appellant. Rule 6 of State Regulation No. 15. The ultimate test in these matters is one of reasonableness on the part of the Council. Or, to put it another way: Could the members of the Council, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? Cf Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super 277, 282 (App.Div.1957); Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970).

I find, as a fact, that appellant has not met this burden and the action of the Council should be affirmed, and I so recommend.

However, it is recommended further that the objectionable condition (No. 3) respecting music and entertainment, have added to it a phrase "after midnight during week days and one A.M. on weekends", which addition, together with the other conditions in full force, would undoubtedly reduce the major problems complained of. This simple modification, substantially eliminating the bulk of the

complaints would not result in the total economic disaster Merlo feared would occur.

In sum, it is recommended that the action of the Council be affirmed, subject to the above modification, and the appeal herein be dismissed.

CONCLUSIONS AND ORDER

Written exceptions were filed to the Hearer's Report by both parties pursuant to Rule 14 of State Regulation No. 15. Thereafter, I held oral argument with respect to certain issues raised in this matter.

On the basis of exceptions filed and the matters raised in the oral argument, I have decided to reject portions of the Hearer's Report, which relate to certain conditions imposed upon renewal of the license, notwithstanding that the licensee had consented to their imposition.

This determination is based upon a review of the evidence adduced below which demonstrates that the incidents which caused the Council to impose conditions on renewal of the license occurred primarily under the former management of the premises and are not attributable to the dereliction of the present corporate licensee.

It is undisputed that, prior to Merlo's acquisition of the Corporate stock of the business in April 1976, there were numerous instances of misconduct by patrons of the premises, which the former management made little, if any, effort to control. The Council was clearly empowered, indeed duty-bound, to take action to eliminate the numerous violations occurring on and about the premises. See N.J.S.A. 33:1-24.

Generally, imposition of conditions on renewal of a license is an appropriate method of insuring compliance with the Alcoholic Beverage Laws. N.J.S.A. 33:1-32; Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958).

However, the record below demonstrates that the current management has made a concerted, good faith effort to upgrade the character of the establishment and to attract an older, less disruptive clientele. The success of these efforts is reflected in the fact that far fewer complaints have been received by local police since April 1976, and none could be attributed to the dereliction of the current licensee.

Given these facts, I find it inequitable and unreasonable to impose upon the transferee certain onerous conditions which were intended to remedy abuses which were caused by the prior owner, but which have since markedly decreased in frequency. Also, several of the conditions imposed do not reasonably serve to assist the Council's enforcement efforts and are disproportionately harsh in light of conditions prevailing at the time of the renewal applications.

The authority of the Director to modify conditions imposed by a local issuing authority is beyond dispute. N.J.S.A. 33:1-22; N.J.S.A. 33:1-32; Lyons Farms Tavern v. Mun. Bd. of A.B.C., 68 N.J. 44 (1975); Fanwood v. Rocco, 33 N.J. 404 (1960); Belmar v. Div. of Alcoholic Beverage Control, supra. The Director will 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. Margate Civil Assoc. v. Bd. of Comm'rs, Margate, 132 N.J. Super. 58 (App. Div. 1975). If, however, the Director determines that the municipality's discretion has been mistakenly or improperly exercised, he may grant such relief or take such action as is appropriate.

Accordingly, it is Ordered that the conditions imposed by the Council be and the same are hereby modified, as follows:

(a) The first special condition, prohibiting all package sales after 10:00 P.M., is eliminated.

(b) The second special condition shall remain in effect.

(c) The third special condition is modified to permit music and live entertainment until 1:00 A.M. weekdays, and 2:15 A.M. Saturday and Sunday.

(d) Special conditions 4, 5, and 6 shall remain in effect.

(e) Special condition 7 is modified to apply only to debris and litter in the immediate vicinity of the premises.

(f) Special condition 8 shall remain in effect.

(g) Special condition 9 is modified. The licensee shall remain under an obligation to assist in crowd dispersal and eliminate problems of the kind enumerated by objectors to renewal of the license. Failure to satisfy this obligation shall subject licensee to appropriate disciplinary action by the municipality. However, the licensee shall not be required to discharge this responsibility in the specific manner indicated by the Council.

(h) Special condition 10 is modified to apply only to such altercations or violations as are known to the licensee; and it is further

ORDERED that the said special conditions, as herein modified, shall take effect immediately; and it is further

ORDERED that with the conditions as so modified, the action of the Council herein be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner
Director

April 22, 1977

3. DISCIPLINARY PROCEEDINGS - RETAIL LICENSEE OBTAINING ALCOHOLIC BEVERAGES FROM IMPROPER SOURCE - LICENSE SUSPENDED FOR 30 DAYS EFFECTIVE UPON REMOVAL FROM NON-DELIVERY LIST.

In the Matter of Disciplinary Proceedings against

Irving Reingold
t/a The Bell
41 Route 4
Hackensack, N.J.

Holder of Plenary Retail Consumption License C-32, issued by the City Council of the City of Hackensack.

CONCLUSIONS
AND
ORDER

Rausch and Litt, Esqs., by Arnold D. Litt, Esq., Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appellant pleaded "not guilty" to the following charge:

> "On or about May 20, 1976, you purchased and obtained alcoholic beverages from other than the holder of a New Jersey manufacturer's or wholesaler's license and without having first obtained a special permit from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 15 of State Regulation No. 20."

The testimony of the Division's witnesses establish the following factual picture:

Licensee was placed on the Division's Non-Delivery List effective January 12, 1976, and continuing up to and including May 20, 1976, when ABC Agent O visited the premises pursuant to specific assignment.

In Reingold's office at the licensed premises, Agent O discovered two sealed cases of Bankers Club Silver Rum,quart sized, with a fill date indicating that it was bottled during the term of licensee's impediment. He then questioned licensee's employee, Ralph Neill, who stated that the two cases of rum had been left by a liquor salesman who would be back later that evening for payment. The two cases were seized and a receipt was issued.

On May 21, the licensee, upon instructions left at the licensed premises the previous day, visited the Division offices and produced an invoice from Fox's Wines and Liquors, 164 Belmont Avenue, Newark, License C-210 (hereinafter Fox). The invoice shows $59.88 (twice) and $12.00 tax

totaling $131.76 and bears a signature. Reingold stated that this invoice represents the purchase of the subject rum at retail, intended for personal, private use, not intended for use at his licensed establishment, as claimed by the Division.

The Division ascertained that this particular brand of rum was distributed in this area by Kasser Liquor Company of Philadelphia; and obtained a copy of its invoice #62660 dated May 20, 1976 billing Fox for two cases of Bankers Club Silver Rum, quart size.

On cross examination, Agent O asserted that he visited licensee's establishment in order to investigate an allegation that he was obtaining alcoholic beverages from unauthorized sources.

Leonard Rodburg, the manager of Fox, testified that someone, whom he was not able to positively identify, though possibly Reingold, came into the store and asked another salesman for cheap rum. The patron was sold the subject two cases at full retail, without being given the allowable ten percent case lot discount.

Rodburg admitted that a two case sale was unusual for the establishment considering the neighborhood in which it is located. He could not recall with certainty, but stated he doubted the store stocked Bankers Club Silver Rum, quarts, prior to this order for two cases; and it was his recollection that he ordered it "...to fill in our line of cheap rum, cheap tequila and cheap vodka, and I hadn't had the rum and that was one of the reasons that I ordered the rum which I bought afterwards, also."

The records of this Division and testimony at the hearing indicate that Fox is owned by the 164 Belmont Avenue Corporation, one-hundred percent of which capital stock is, in turn, owned by Richard Gruber, son of Irving Gruber, a solicitor for Kasser who regularly called upon the licensee's establishment to sell him among other things the "Bankers Club" line of inexpensive alcoholic beverages.

Reingold testified that he bought the rum for personal use, as will be explained hereinafter. Reingold maintains two homes; one in Belmar and the second in Teaneck, approximately fifteen blocks from subject licensed premises. It was his practice to alternate his time between the two homes, spending a few days at each.

Reingold spent the evening of May 19 through May 20 at the Belmar residence. On the afternoon of the 20th he departed for northern New Jersey in his station wagon. His first destination was his Hertz dealership located in Elizabeth, and he then intended to do some personal shopping at Alexander's and Bamberger's.

En route, he drove through a low economic area of Newark and saw a liquor store (Fox's), where he felt he could buy cheap rum for use as a mixer at his daughter's impending wedding anniversary party. He stopped, inquired of its availability, and bought the subject two cases, not even knowing he could legally be extended a ten percent case discount.

Thereafter, mindful that the two cases of rum were visible in the station wagon, that his vehicle had been broken into before, and fearful that another theft could occur again while he parked at the various shopping centers he intended to visit, he deemed it more prudent to stop at his licensed premises and leave the rum there where it would be safe. He intended to continue shopping without fear of loss thereof and then, on his return trip to Belmar, pick up the rum later in the evening.

Reingold denied that the liquor purchase was prearranged or that an order for it was placed prior to May 20th. He admitted handling this brand of rum in his licensed establishment prior to the subject purchase.

On cross examination, he admitted his Teaneck home was fifteen blocks distant from the tavern, but he selected the tavern as a temporary repository because, "when I came up the road it was easier to get to the Bell and I know I was going to leave from there that night." He denied knowing that Irving Gruber's son Richard was the sole stockholder of the corporation which owned Fox's, maintaining his purchase there was, in essence, sheer coincidence. He admitted knowing that his office was described as a part of the licensed premises on his license application.

Rule 15 of State Regulation No. 20, the alleged violation of which, spawned this action is clear and unambiguous. Evidently, by that rule, it is intended that retailers be limited to purchasing their (alcoholic) needs from manufacturers and wholesalers licensed to do business in New Jersey. It is equally obvious that it was intended to regulate only those purchases made for the licensed retail establishment, and was not in any way designed to limit or restrict a licensee's purchases made for truly personal, non-business use; at such times he is an ordinary citizen.

Violations of the subject rule, in the experience of the Division, often occur as a consequence of the licensee being placed upon the Non-Delivery List (Rule 4 (b) of State Regulation No. 39.)

The issue for determination is whether sufficient credible proofs support the Division or the licensee as to the intended and proposed use of the two cases of rum. A reiteration of the following uncontroverted facts, with the fair and rational inferences, and presumptions reasonalby deduced therefrom, plus the credibility of testimony, fully supports the conclusion that the Division has sustained its burden of proof.

(a) The licensee had been on the Non-Delivery List of the Division since January 12, 1976, over four (4) months, at the time of the alleged offense.

(b) Two cases of quart bottles of rum is a large quantity, not normally considered for personal use.

(c) The two cases of rum were found on the licensed premises.

(d) The licensee had purchased the alcoholic beverages at Fox's Store in Newark, N.J., at full price.

(e) Fox's Store is owned by 164 Belmont Avenue Corporation, the sole stockholder being Richard Gruber.

(f) Irving Gruber is the father of Richard Gruber, a salesman for Kasser Liquor Company of Philadelphia.

(g) Irving Gruber is the salesman of Kasser who serviced the licensee, when not on the prohibited list, and had in the past, sold and delivered Bankers Club Silver Rum to the licensee.

(h) Invoice No. 62660 from Kasser for two cases of this rum was dated May 20, 1976, the same date of purchase by the licensee.

(i) The licensee had never purchased alcoholic beverages at Fox's prior to May 20, 1976.

(j) The licensee's residence in Teaneck, New Jersey, was fifteen (15) blocks from the licensed premises.

Presented with such a detailed factual matrix the natural and logical inferences to be deduced from these facts create a presumption or inference of intended use by the licensee for his licensed premises, contra to Rule 15 of State Regulation No. 20, as charged. In re Blake's Will, 21 N.J. 50, 58 (1956).

The proceedings herein concern disciplinary matters and alleged infraction. Such measures are civil in nature, and not criminal. Kravis v. Hock, 137 N.J.L. 252, 254 (Sup. Ct. 1948). The Division need establish its case only by a fair preponderance of the believable evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super 242 (App. Div. 1960). Circumstantial evidence or presumptive evidence, as a basis for deductive reasoning, in determination of civil issues requires only a mere preponderance of probabilities to be shown to constitute a sufficient basis for decision. Yeomans v. Jersey City, 27 N.J. 496, 510 (1958); Ciuba v. Irvington Varnish & Insulator Co. 27 N.J. 127, 139 (1958). The preponderance of probabilities support the finding that the appellant made the prohibited purchase with the intent to use same at his licensed premises. The quantity, location and inter-relationship of parties at the purchase site, presence on licensed premise and purported explanation by appellant mandate such conclusion.

In a proceeding where opposing arguments are advanced as herein, much depends not only upon the credibility of witnesses, but the logic, the probability and credulity of the testimony itself.

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 the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The accepted standard of persuasion relating to the testimony is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Insurance Co., 129 N.J.L. 508, 511 (Sup. Ct. 1943). No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

Using the said principles as a guide, I have carefully evaluated the testimony produced both on behalf of the Division and of the licensee. Further, I have had ample opportunity to observe the demeanor of the witnesses as they testified.

In the interest of precision it is expedient to quote verbatim rather liberally from the testimony. Upon being questioned on direct examination, Reingold testified initially that he purchased the rum for a large party he was having down the shore for his daughter's anniversary and thereafter he testified on cross examination as follows:

"Q What is her wedding anniversary date?

A It wasn't a wedding anniversary actually. It was the party we were going to have for her prior to it.

Q What kind of party were you going to have?

A We were going to have a lot of people in from the shore that we know, a lot of people we know from Teaneck, and we were going to have a party.

THE HEARER: Mr. Reingold, didn't you say this was an anniversary?

THE WITNESS: It wasn't an anniversary party. It was prior to the anniversary party. The anniversary was later than that. The main party was prior to the anniversary.

Q When is her wedding anniversary?

A I don't recall now. It's in June, the early part of June.

Q You mean you dont know her --

A I don't know now.

Q The anniversary date?

A I'm sorry, I can't tell you. I just don't know.

Q You say you bought the rum for a party?

A That's right.

Q What was the occasion for the party?

A We were going to have a lot of people over and that was it. I have parties lots of times.

Q But it was no special occasion for this party?

A This was prior for the anniversary. It was really a preanniversary party.

Q A preanniversary party?

A The anniversary was about a week or two after the party we were going to have."

I find the testimony elicited from the licensee to be inconsistent, indefinite, absurd and, in sum, incredible and unworthy of belief. Witnesses do not have be be believed merely because no one takes the stand to dispute what they have said. In re Perrone's Estate, 5 N.J. 514, 521-522 (1950). Mere coincidence is not a permissible deduction in the face of evidence which, according to the teachings of long experience, demonstrates a casual relationship. Aromando v. Rubin Bros. Drug Sales Co., 47 N.J. Super. 286, 293, (App. Div. 1957).

The licensee admitted purchasing the rum from another retailer instead of from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of Alcoholic Beverage Control as provided in the Rule alleged to be violated. He asserts it is not required because he intended it for personal use. The question of intention is always a question of fact depending upon the particular facts and circumstances of a case. A given intent may be found even though a party may orally deny its existence. State Highway Dept. v. Civil Service Comm., 35 N.J. 320, 327 (1961). Upon considering the totality of the evidence, I find and conclude that the preponderance of probabilities support the finding that the beverages were purchased by appellant for use in his licensed premises.

Although this factor was not considered by me in arriving at my determination herein, I note that the Division agent testified, on cross examination, that he visited the licensed premises without prior notice given to the licensee in order to investigate an allegation that the licensee was obtaining alcoholic beverages from an unauthorized source.

After careful consideration of the entire record herein, I find that the charge has been established by a fair preponderance of the credible evidence, indeed by more than ample evidence, and I, therefore, recommend that the licensee be found guilty as charged.

Licensee has a prior record of suspension of license as follows: (1) by the Director for sixty days effective November 10, 1975, for lewd activity, Re Reingold & Brothers Two of Oradell, Inc., Bulletin 2212, Item 1, aff'd. App. Div. 1976, opinion not approved for publication; (2) by the Municipal Issuing Authority for two days, effective October 20, 1975 for violation of a Municipal ordinance; (3) by the Municipal Issuing Authority

for thirty days, effective May 3, 1976, for violation of a municipal ordinance, affirmed on appeal to this Division, see Bulletin 2231, Item 1.

It is, further, recommended that the licensee be suspended for fifteen days to which should be added fifteen days by reason of the record of suspension of license for three dissimilar violations which occurred during the past five years, making a total suspension of thirty days, effective upon the licensee being removed from the Non-Delivery List.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the licensee and answers thereto by the Division, pursuant to Rule 6 of State Regulation No. 16.

The first Exception argues that the Hearer's finding of violation of Rule 15 of State Regulation No. 20 did not comport with the weight of evidence. A careful review of the factual matrix established in the record sets forth detailed factual findings. The licensee's account of events is inconsistent, and is contrary to the natural and logical inferences to be deduced therefrom. In re Blake's Will, 21 N.J. 50, 58 (1956).

The rejection of testimony of the licensee is well-supported by an independent review of the transcript before this Division. The preponderance of probabilities, from all of the testimony, supports the Hearer's finding that the licensee made a prohibited purchase with intent to use same at his licensed premises. Yeomans v. Jersey City, 27 N.J. 496, 510 (1958).

I find that the Hearer correctly articulated the basis and reasoning process which impelled him to reject, as unworthy of belief, the licensee's purported explanation. Accordingly, this Exception is without merit.

The second Exception advanced, bias by the Hearer in favor of the Division, is without a scintilla of evidence to support it. This attempt to assail and impugn the integrity of the Hearer cannot negate the force and effect of the factual and legal bases upon which the Hearer reached his conclusions. Thus this exception similarly lacks merit.

Finally, the licensee alleges that consideration of the prior record of the licensee, and findings referrable to an interrelationship between the licensee and the source of subject alcoholic beverages, are evidence of bias by the Hearer, because these matters are extraneous to the issue.

In the first instance, the consideration of prior violations by the licensee, was done only after a determination on the merits. It was not a factor in the finding of violation of Rule 15 of State Regulation No. 20. Additionally, the prior record of a licensee is, indeed, relevant in determining an appropriate penalty, Butler Oak Tavern v. Div. of Alcoholic Bev. Control, 36 N.J. Super 512 (App. Div. 1955), aff'd 20 N.J. 373 (1956); Benedetti v. Bd. of Com'rs. of Trenton, 35 N.J. Super. 30 (App. Div. 1955).

The contention that the uncontroverted facts of the manner of purchase of the subject liquor and the business relationships between the licensee, the solicitor and the owner of Fox's Liquor Store are extraneous and warrant little attention, is devoid of merit. As the Hearer concluded, mere coincidence is not a permissible deduction in face of evidence which, according to established precedents, demonstrate a causal relationship. Aromando v. Rubin Bros. Drug Sales Co., 47 N.J. Super. 286, 293 (App. Div. 1957). This testimony gave rise to permissible inferences of intention of the licensee and served to impeach the licensee's account of the sale.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report, the written Exceptions thereto, and the answer to the said Exceptions, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 25th day of April 1977,

ORDERED that Plenary Retail Consumption License C-32, issued by the City Council of the City of Hackensack to Irving Reingold, t/a The Bell, for premises 41 Route 4, Hackensack, New Jersey be and the same is hereby suspended for thirty (30) days; the effective dates of which shall be set by further Order when the licensee is removed from the Non-Delivery List, pursuant to State Regulation No. 39; and it is further

ORDERED that any renewal of the said license for the 1977-78 licensing year, or any transfer thereof, which may be granted, shall be subject to the said suspension as hereinabove set forth when the said licensee, or any transferee of said licensee is removed from the Non-Delivery List.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATION FILED.

Jos. Schlitz Brewing Company
235 W. Galena Street
Milwaukee, Wisconsin

Application filed September 19, 1977 for place-to-place transfer of Additional Salesroom License AW-75 from 1200 Route 46, St. Phillips Drive, Clifton, New Jersey, to 30 Galesi Drive, Wayne, New Jersey.

Joseph H. Lerner
Director