

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

December 18, 1969

BULLETIN 1890

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1. APPELLATE DECISIONS - ASTOR LIQUOR MART, INC. v. NEWARK.

Astor Liquor Mart, Inc.,)

Appellant,)

v.)

On Appeal

Municipal Board of Alcoholic)
Beverage Control of the City)
of Newark,)

CONCLUSIONS
AND ORDER

Respondent.)

Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for
Appellant
Philip E. Gordon, Esq., by Ronald Owens, Esq., Attorney
For Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellant's license for twenty-five days effective June 16, 1969, after finding appellant guilty in disciplinary proceedings of a charge alleging that on July 15, 1968, it sold an alcoholic beverage to a minor, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 36 Astor Street, Newark.

Upon the filing of the appeal, an order dated June 2, 1969 was entered by the Director, staying the effect of respondent's order of suspension pending determination of the appeal.

Appellant, in substance, alleges in its petition of appeal that respondent's action was erroneous because (a) the finding of guilt was contrary to the evidence, (b) only two of the three members of respondent Board heard the matter and thus the hearing was illegal, and (c) the penalty imposed was excessive.

No answer was filed by respondent.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony under oath and cross-examine witnesses. The stenographic transcript of the proceedings before respondent was submitted into evidence, pursuant to Rule 8 of State Regulation No. 15, and additional testimony was presented on the part of the parties herein.

Raymond --- testified that he was born October 26, 1951, and that at about 9:15 or 9:20 p.m. on July 15, 1968 (then age 16), he visited appellant's licensed premises and purchased a quart bottle of Schaefer beer from Mrs. Diamond (Blanche Diamond), the proprietor of the store, for which he paid her 50¢. After leaving the store, he "walked down Wright Street to Pennsylvania Avenue" and "was standing by the truck and I was opening the beer on the doorknob of the truck. As soon as I finished opening it the cops pulled over and picked me up."

On cross examination, Raymond testified that on the corner where he was apprehended by the police is a licensed premises but that he did not purchase the beer there because he lives across the street from said premises and the proprietor thereof knows his parents. He further stated that he had been in that liquor establishment but had never purchased any alcoholic beverages there.

Police Officer Joseph Tedesco testified that on routine patrol at 9:36 p.m. on July 15, 1968, accompanied by Officer Freda, he saw Raymond with an alcoholic beverage as he was leaning against a building wherein a liquor store is located at the corner of Pennsylvania Avenue and Wright Street; that as a result of speaking to Raymond, who alleged he purchased a bottle of beer at appellant's liquor store, Officer Freda and Raymond went to appellant's establishment; that Officer Freda spoke to someone there and then the three went to the police station.

In answer to a question on cross examination whether he saw Officer Vincent Zito at the precinct, Tedesco said, "I believe so"; and when asked if Zito had not told him that he had put Raymond out of appellant's store some time previously, Tedesco said, "I believe he may have."

Blanche Diamond, president of appellant, testified that on several occasions prior to July 15, 1968, Raymond came into appellant's licensed premises and tried to induce her to sell him a bottle of beer; that when she refused to do so, he left. About a week before July 15, when Raymond came into the store, she asked John Howard, an employee, to call the police from their car parked at the firehouse across the street. A police officer entered the premises and requested that Raymond leave. After the officer had gone, Raymond opened the door to the premises and said, "I will get you." Mrs. Diamond denied that she had sold beer to Raymond on the occasion in question or at any other time.

John Howard testified that he is employed by appellant and about a week before July 15, 1968, Raymond came into the licensed premises and asked for a quart of Schaefer beer; that Mrs. Diamond said to Raymond that he was too young and refused to sell it to him; that on the next day Raymond again came into the premises, as well as on two occasions thereafter. On the last visit, Mrs. Diamond instructed Howard to call the police who were parked across the street. Officer Zito came into the establishment and requested Raymond to leave. About ten minutes after the police officer left, Raymond "came back and put his head in the door" and said, "I am going to get you."

Howard further testified that on a Sunday afternoon about two weeks after the hearing before respondent, while he was entering Gus's tavern on the corner of Sherman Avenue and Murray Street, Raymond beckoned to him to come outside. "He told me he didn't want to get me in trouble" and then remarked that "he didn't buy the beer in the store."

Police Officer Vincent J. Zito testified that in July

1968, he was seated in a police car parked at the firehouse when a man (whom he identified as John Howard) asked that he come into appellant's liquor store; that he spoke to Mrs. Diamond who told him Raymond "was giving her a hard time, annoying her, creating a disturbance." He took Raymond outside and "told him not to come back there and he left. I got back in the car, and we left." Officer Zito said that "approximately two weeks, a week and a half" later, he saw Mrs. Diamond and Raymond at the precinct and he told Mrs. Diamond that Raymond "was the same fellow I put out of the store two weeks ago."

Raymond, recalled by respondent, stated that although he sees John Howard sometimes, he denied he saw him at Gus's tavern after the hearing before respondent.

I have given in detail the pertinent testimony with reference to the matter herein. I have tried to evaluate the testimony of the various witnesses and to arrive at a logical result as to what actually occurred.

On the one hand, there is the testimony of Raymond that he purchased beer from Mrs. Diamond at appellant's liquor store on July 15, 1968, and went some distance away before he opened the bottle. He admitted that he was standing immediately adjacent to another liquor store when the police apprehended him.

On the other hand, there is the denial of Mrs. Diamond that she made the sale to the minor. In addition thereto, both Mrs. Diamond and John Howard testified to their version of an occurrence previous to July 15, 1968, when the police were called to eject Raymond from the premises. This testimony is corroborated by Officer Zito, who was the officer requesting Raymond to leave at the time in question. There is also testimony from Mrs. Diamond and Howard that Raymond thereafter made threats because the police were called. Furthermore, Howard related that after the hearing before respondent, Raymond called him out of a tavern and stated that he did not make the purchase of the beer in appellant's establishment.

The facts and circumstances as brought out in the testimony of appellant's witnesses concerning the incident in question, and what took place prior thereto, appears worthy of belief. In view of the fact that Mrs. Diamond had Raymond ejected by police shortly before July 15, I cannot believe that she would sell any alcoholic beverages to him, as alleged by him. I was not impressed with Raymond's demeanor on the stand when testifying in this matter.

The guilt of appellant must be established by substantial evidence. I do not believe Raymond's uncorroborated testimony, in the light of the defense testimony, meets this requirement.

It is axiomatic that in disciplinary proceedings a preponderance of the evidence is necessary to support and justify a finding of guilt, and doubtful questions of fact must be resolved in appellant's favor. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1.

In the case sub judice, the appeal to the Division constitutes a de novo hearing. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943); Fanwood v. Rocco, 33 N.J. 404 (1960).

The Director's review in a matter of this kind is plenary and may result in independent findings which supersede the action taken at the original hearing. Neiden Bar and Grill v. Newark, 40 N.J. Super. 24 (App. Div. 1956). See also Oak Inn Incorporated v. Division of Alcoholic Beverage Control, et al.

(App. Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2.

After careful consideration of all the testimony adduced herein, it is recommended that the action of respondent be reversed and that the charge be dismissed. In view of my recommendation based on the facts, it is unnecessary to consider the other grounds set forth in the petition of appeal.

Conclusion and Order

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

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

Accordingly, it is, on this 27th day of October, 1969,

ORDERED that the action of the respondent be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

Joseph M. Keegan
Director

2. APPELLATE DECISIONS - SNOVITCH v. PATERSON

#3393, #3424-)	
(Cases #1 and #2))	
Josephine Snovitch, t/a)	
Adam's Bar,)	
)	On Appeal
Appellant,)	
v.)	
)	CONCLUSIONS and ORDER
Board of Alcoholic Beverage)	
Control for the City of)	
Paterson,)	
Respondent.))	

William J. Rosenberg, Esq., Attorney for Appellant
Joseph A. Conn, Esq., by William A. Feldman, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

In Case #1, appellant appeals from the action of respondent (hereinafter Board) whereby on May 13, 1969 it revoked her 1968-69 plenary retail consumption license issued for premises 415 Totowa Avenue, Paterson, effective May 20, 1969, for employing a person convicted of crime involving moral turpitude. Upon the filing of the appeal, by order dated May 16, 1969 the Director stayed the revocation pending determination of the appeal therein.

In Case #2, appellant appeals from the Board's denial on June 25, 1969 of renewal of her license for the current licens-

ing year. Upon the filing of the appeal, an order was entered by the Director on July 3, 1969 extending the term of appellant's 1968-69 license until the determination of the appeal therein.

In Case #1, the resolution and order dated May 13, 1969, containing the charge and the disposition thereof, reads in pertinent part as follows:

"WHEREAS, charges having been preferred against the above named licensee, charging that:

* * * * *

On Wednesday, March 26, 1969, she employed and had connected with her in a business capacity, one Adam Dattola, a person who had been convicted on December 31, 1930, of a crime involving moral turpitude, viz., conspiracy; in violation of Rule 1 of State Regulation No. 13,

and at a hearing thereon, the evidence adduced indicates that the licensee ... is guilty

"ACCORDINGLY, it is on this 13th day of May, 1969, on motion duly made and seconded,

"RESOLVED AND ORDERED, the prior similar record of the licensee considered, that Plenary Retail Consumption License C-67, heretofore issued to Josephine Snovitch, t/a Adam's Bar, 415 Totowa Avenue, Paterson, New Jersey, be revoked, effective as of 3 A.M. May 20, 1969."

The motion made by Commissioner Cheevers and approved by the Board, among other things explaining the reasons for the revocation of appellant's license states:

"After reviewing all the evidence and all the testimony ... we feel there was enough evidence produced by the lady bartender that she was employed there. She was employed with the full knowledge and consent of one Adam Dattola. Also, in his testimony, he stated he and his sister had bought it, although he denied that testimony. Furthermore, there was conflicting testimony on the part of the owner as to the hours she started working, particularly the day in question. She was supposed to have taken over from her regular bartender. He himself stated he did not even work that day. Furthermore, at the last hearing, at the last hearing in 1968 when we closed this business up, we notified the owner that one Adam Dattola had been convicted of a crime involving moral turpitude. He was not permitted to work in the tavern; he was not permitted to be in the tavern. This is a State regulation. When any person that is known to have been convicted, that person is not permitted to be in a tavern. This was explained to us and to all the Commissioners on the Board. They were warned to stay away from the tavern.

However, based upon his own testimony, he still goes in there and drinks.

So, therefore, we find the defendant guilty"

The question to be resolved is whether Adam Dattola (hereinafter Dattola), who was convicted of a crime involving moral turpitude, had been employed by or connected with appellant in the liquor business at the time set forth in the charge.

The Board presented no testimony indicating that Dattola was an employee or associated in any capacity with appellant in

the operation of her tavern.

On the other hand, Jean Kelley testified that she occasionally helped appellant by tending bar for her without compensation, and that to her knowledge Dattola did not work for appellant.

Frank Fanelli, employed as part-time bartender, testified that to his knowledge Dattola did not work or tend bar at the licensed premises. Furthermore, appellant testified that, since her license was suspended by the Board for twenty-five days effective December 9, 1968, after her plea of non vult to two charges (one of which was a similar charge that she permitted Dattola to work for her on the licensed premises), she did not use his services on the licensed premises in any capacity and that he had no interest in the license. Dattola testified that he never worked since the appellant's previous trouble when she was charged with employing him.

Appellant produced cancelled checks representing liquor purchases, a lease entered into by her when she rented the licensed premises, a closing statement prepared when she obtained the license, and a copy of a retail licensee's beverage tax report, none of which in any way indicated that Dattola had an interest in the license in question.

It was necessary, in order to find appellant guilty of violation of Rule 1 of State Regulation No. 13, that there be sufficient proof that Dattola was employed by or associated with appellant in the liquor business. The evidence presented by respondent falls short of meeting this requirement. There is no denying that Dattola visited appellant's tavern on occasions to purchase a drink. Being seen in appellant's place of business may have created suspicion, but suspicion is never a substitute for proof properly presented.

Moreover, no finding of guilt in a disciplinary proceeding may be broader than the prohibition of the regulation which the licensee is alleged to have violated. Strashinsky v. Newark, Bulletin 1738, Item 1, and citations contained therein. And it should be noted that, contrary to the statement made in the Board's finding of guilt, neither the alcoholic beverage law nor the State Regulation allegedly violated prohibits the mere presence on licensed premises, as a customer or otherwise, of a person convicted of crime involving moral turpitude.

It is apparent from the evidence presented in this case that the action of the Board in adjudging appellant guilty of the charge in Case #1 cannot be sustained. Hence it is recommended that the action of the respondent be reversed and the charge be dismissed.

In Case #2, the resolution dated June 25, 1969, denying renewal of the license is as follows:

"WHEREAS, application has been made to this Board for the renewal of Plenary Retail Consumption License C-67, heretofore issued to Josephine Snovitch, t/a Adam's Bar, for premises situated at 415 Totowa Avenue, Paterson, New Jersey; and,

"WHEREAS, on May 13, 1969, this Board revoked the aforesaid license, effective as of 3 A.M., May 20, 1969; and,

"WHEREAS, there being no reason established why this license should be re-activated; NOW, THEREFORE,

"BE IT RESOLVED, that the renewal application submitted by Josephine Snovitch, be and the same is hereby denied."

It is apparent that the Board's denial of renewal of

appellant's license was based solely on its previous revocation of the license. In the event that the recommendation of reversal of the revocation is adopted by the Director, the stated basis for the denial of renewal would no longer exist.

Under the circumstances, I further recommend that the action of the Board in denying the renewal of appellant's license for 1969-70 be reversed, and that the Board be directed to grant the renewal of the license to appellant.

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 5th day of November 1969,

ORDERED that the action of respondent in Case #1 be and the same is hereby reversed and that the charge therein be and the same is hereby dismissed; and it is further

ORDERED that the action of respondent in Case #2 be and the same is hereby reversed, and respondent is directed to grant renewal of appellant's license for the 1969-70 licensing period, in accordance with the application heretofore filed.

Joseph M. Keegan,
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

Mildred Troiano)
t/a Six Corners Tavern)
7 Wheeler Point Rd.)
Newark, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-685, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----)
Elmer J. Herrmann, Jr., Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for the 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 October 11, 12, 15, 17, 18, 19 and 25, 1968, 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' on said dates of October 11, 12, 15, 17, 18 and 19, 1968, on horse races on said dates of October 11, 17, 18 and 19, 1968, and the payment of winnings on a horse race bet on said date of October 25, 1968, and further on October 29, 1968, 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 'numbers' gambling activity; in violation of Rule 7 of State Regulation No. 20.
- "2. On October 11, 12, 15, 17, 18 and 19, 1968, 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 further on October 29, 1968, 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 relied on the testimony of several ABC agents in substantiation of the charges.

Agent R (who possessed ample experience in gambling investigations, including horse race and numbers betting) testified that, accompanied by Division Agents S, G and Ga, he visited the licensed premises (characterized as a combination tavern and restaurant) on October 11, 1968 at 12:30 p.m. They positioned themselves at the center of the bar. Tending bar was a person referred to as Dominick (later identified as Dominick Marseglia). Sam Troiano (husband of the licensee) was tending bar at the rear and was also serving food. After ordering drinks and engaging in general conversation, including talk concerning betting, with Dominick, Agent R asked Dominick if he could get a horse bet in. Dominick replied, "No. I don't take horses; just numbers." Dominick proceeded to the rear of the bar, conferred with Sam and, upon returning, said "No, no good. No horse bets", whereupon Agent G said, "Let me have 879 for 50 and 50", Agent R said "Let me have 363 for 50 and 50", Agent Ga said "Let me have 318 for 50 and 50" and Agent S said "Let me have 317 for 50 and 50." Dominick replied, "Write your numbers on dollar bills and give me the bills." The agents wrote their respective numbers on dollar bills and each handed Dominick a dollar bill. Dominick placed the money in his right front pants pocket.

Continuing, the agent testified that at approximately 2:10 p.m. a male entered the tavern and took a seat to the left of the bar. After Dominick served the male a drink and conferred with him, he returned to where the agents were positioned and asked Agent R, "What was the horse you wanted to bet?" Agent R replied, "Rufus, the 5th at Belmont, ten dollars to win." Dominick returned to the male and conferred with him again. The male went to the telephone and, upon returning to the bar, he and Dominick engaged in further conversation. Agent R then testified as follows:

"Then Dominick returned to our position at the bar, and he said, 'That was Rufus you wanted; right? The 5th at Belmont; ten to win?' I said, 'That is right.' He said, 'O.K. Give me ten dollars. It is in.' I paid him for the horse bet."

Shortly thereafter the agents departed from the premises.

The aforesaid agents revisited the licensed premises on October 12, 1968 at noon and positioned themselves at the bar. Dominick was tending bar. Sam was again at the rear tending bar and serving food to patrons. After engaging in general conversation, G said to Dominick, "Give me 879 for 50 and 50" and R said to Dominick, "Give me 363 for 50 and 50." Upon being queried as to what Dominick did, the agent testified:

"Dominick then wrote the bets down on a slip, and he took a dollar from my money on the bar, and a dollar from G's money on the bar, and he placed the money and slip in his right front pants pocket."

The agents departed from the premises at 2:30 p.m.

Accompanied by Agents G and S, Agent R returned to the licensed premises on October 15, 1968 at 1 p.m. Again Dominick was tending bar and Sam was at the rear portion of the bar. Upon G mentioning that he wanted to get in a number bet, Dominick replied, "No. Watch yourself! There is that guy with the suit on I don't know. Be careful! Don't say anything." After the male referred to by Dominick departed, Dominick said, "O.K.", whereupon Agent G said, "Give me 879 for 50 and 50", Agent S said, "Give me 317 for 50 and 50" and Agent R bet 363 for 50¢ and 50¢. Dominick wrote on a slip of paper behind the bar and placed the slip and three one dollar bills given to him by agents in his front right pocket.

Agent R returned to the licensed premises on October 17, 1968 with Agents S, Ga and G at 1 p.m. Dominick was tending bar at the front, Sam was at the rear. Agent R departed from the barroom at 1:10 p.m. and re-entered at 1:30 p.m. Upon re-entering, Ga said to Dominick, "I just told Pete, Agent R I gave you"-- meaning Dominick -- "Pete's horse bet, Spring Sunshine, 5th at Belmont, two dollars to win and two dollars to place." Dominick repeated the bet, "Spring Sunshine, 5th at Belmont, \$2 to win and \$2 to place." Then Agent R said to Dominick, "Give me my number 363 for 50 cents and 50 cents;" G said, "879 for 50 cents and 50 cents;" Ga said, "318 for 50 cents and 50 cents" and S said, "317 for 50 cents and 50 cents." Dominick accepted a dollar bill from each of the agents and wrote the numbers on each bill. The agents departed from the premises at 2 p.m.

Accompanied by the same three Division Agents, Agent R revisited the licensed premises on October 18, 1968 at 12:30 p.m. They positioned themselves at the bar. Both Dominick and Sam were behind the bar. Immediately upon entry, Dominick greeted Agent R with this comment, "Your horse Spring Sunshine won yesterday. You have \$12 coming back." Agent R responded, "Yes. I know. I says, 'I want to bet 5, 5, and 2 on I'm your Boy, 5th at Belmont.'" Dominick handed Agent R a slip of paper and requested him to record his bet thereon. Agent R wrote the horse bet on a slip and returned it to Dominick. Agent G bet 879 for 50¢ and 50¢, Agent Ga bet 318 for 50¢ and 50¢ and Agent R bet 363 for 50¢ and 50¢. Dominick recorded the bets on dollar bills and placed the bills and the slip with the horse bet in his right front pants pocket.

The same four Division agents returned to the licensed premises on October 19, 1968 at 11:55 a.m. and positioned themselves at the bar. Again Dominick and Sam were tending bar, Dominick to the front, Sam at the rear. After ordering drinks from Dominick, Dominick informed Agent R, "Your horse I'm your Boy you played yesterday was scratched, so you still have \$12 coming back." Agent R

replied that he wanted to "bet 5, 5, and 2 on Loop the Loop, 4th at Belmont." Dominick wrote the bet on a slip of paper and asked Agent R, "Do you want your regular number for today, too?" The testimony then proceeded as follows:

"Q What did you reply?

A I said, 'Yes, I do.' I said, 'You know, I want 50 cents and 50 cents on 363, 50 and 50,' and S said he wanted 317, 50 cents and 50 cents, and G played 879 for 50 cents and 50 cents.

Q What did Dominick do?

A He wrote our numbers on dollar bills each agent paid him for the numbers bets. Then he placed the moneys and the bet slip on Loop the Loop, 4th at Belmont, 5, 5, and 2, in his right-hand front pants pocket."

After some general conversation the agents departed from the premises at 2:30 p.m.

Agent R returned to the licensed premises with Agent G on October 25, 1968 at 1:15 p.m. and sat towards the center of the bar. Dominick and Sam were tending bar at their usual positions. In response to the inquiry as to what happened, Agent R responded:

"When Dominick served us a drink I had asked him for forty dollars that I had won on the horse Loop the Loop on October 19. Dominick then said to me, 'Wait a minute', and he went to a male patron seated toward the front of the premises and had conversation with the male, unidentified male, and I observed the male to put some money on the bar, and I observed Dominick take the money off the bar and come to our position at the bar, and at that time he handed me forty dollars, and he says, 'Here is the money I owe you for the horse bet on Loop the Loop.'"

Upon being requested by Agent G to place a number bet, Dominick replied, "things are hot." The agents departed from the premises shortly thereafter.

Despite a lengthy cross examination, Agent R's testimony did not vary from the testimony adduced on direct examination. Additionally, Agent R asserted that he was acting pursuant to specific assignment to investigate gambling activity in the licensed premises. Although he conversed with Sam Troiano on a number of occasions, he never had any conversation with him involving gambling.

On both direct and on cross examination Agent S's testimony corroborated the salient features of the testimony offered by Agent R as to the matters relevant to the charges on the dates that he accompanied Agent R at the licensed premises, to wit: October 11, 12, 15, 17, 18 and 19, 1968.

It was stipulated that the testimony of ABC Agents G and Ga would be cumulative as to both direct and cross examination. Additionally, it was stipulated that Agent D's testimony would indicate that he participated in the raid of the licensed premises on October 29, 1968 with Prosecutor's detectives and a search of the entire premises and of the person of Dominick disclosed that a numbers lottery bet slip was found on the person of Dominick. The numbers bet slip was received in evidence.

In defense of the charges, Samuel Troiano (husband of the licensee) testified that he managed the business on a daily basis. He recalled seeing the several ABC agents visiting the

premises occasionally in October 1968 about noontime. He rarely served the agents, he was too busy working in the kitchen, taking care of tables and sweeping up. Dominick Marseglia worked "just lunch hour, a few hours." He helped out because his wife (Troiano's) was confined to her home due to a chronic illness. On one of the early visits he overheard one of the agents say, "What a score I made on a horse." Troiano said, "No gambling here, fellows." Dominick was present at that time. He never heard any other conversation involving gambling. He never heard Dominick involved in any conversation concerning gambling. He never observed Dominick or the agents write on dollar bills. He never observed Dominick accept numbers or horse bets from the agents or anyone else.

On cross examination Troiano asserted that Dominick accepted no money in return for his services. Dominick appreciated some favors bestowed on his family by Troiano. Dominick is "a fanatic" about playing numbers; however, he is not a writer or a bookmaker. He never heard Dominick mention horses. He never saw Dominick accept a numbers bet. Knowing that Dominick plays numbers, he cautioned him against gambling in the tavern.

Preliminarily, it should be observed that in matters of this nature 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. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein the credibility of witnesses must be weighed. 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 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.

The evidence is overwhelming that Dominick accepted numbers and horse race bets on the dates specified in the charges. The agents graphically depicted in their testimony the numbers and horse race betting engaged in by them with Dominick while on duty as a bartender in the licensed premises. My view is strongly buttressed by the finding of a numbers betting slip on Dominick's person on October 29. Furthermore, licensee's failure to call Dominick to the witness stand leads me to draw an inference that Dominick could not truthfully rebut the testimony offered by the agents in behalf of the Division.

The husband of the licensee testified that, although Dominick tended bar on recurring occasions part-time, he was not remunerated by nor "employed" by the licensee. Additionally, he testified that he was unaware of any gambling activity conducted by Dominick in the licensed premises, and that he had cautioned Dominick against engaging in gambling activities therein.

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

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

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

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

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

I conclude that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt of the charges alleged and I so find.

Licensee has no prior record of suspension of license. I recommend that the license be suspended for sixty days. Re Riley, Bulletin 1873, Item 7.

Conclusions and Order

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

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

Accordingly, it is, on this 27th day of October, 1969,

ORDERED that Plenary Retail Consumption License C-685, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mildred Troiano, t/a Six Corners Tavern, for premises 7 Wheeler Point Road, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, November 3, 1969, and terminating at 2:00 a.m. Friday, January 2, 1970.

Joseph M. Keegan
Director

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

In the Matter of Disciplinary Proceedings against Joseph Schneider t/a Schneider's Tavern 199 Grand Street Jersey City, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-465 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)

Leo S. Sullivan, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between May 16 and June 11, 1969, he 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 Zig E., Inc., Bulletin 1872, Item 4.

Accordingly, it is, on this 5th day of November, 1969,

ORDERED that Plenary Retail Consumption License C-465, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph Schneider, t/a Schneider's Tavern, for premises 199 Grand Street, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Wednesday, November 12, 1969, and terminating at 2:00 a.m. Tuesday, January 6, 1970.

Joseph M. Keegan
Director

5. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Joseph Small t/a Park West Lounge 525 Eighteenth Avenue Newark, N.J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-150 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between April 7 and August 1, 1969, he purchased alcoholic beverages from another retailer, in violation of Rule 15 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for twenty-five days effective April 7, 1969, for permitting a brawl and gambling on the licensed premises.

The license will be suspended for fifteen days (Re M.V. Patterson, Inc., Bulletin 1849, Item 5), to which will be added five days by reason of the record of suspension for dissimilar violation occurring within the past five years (Re Mugil, Bulletin 1867, Item 5), or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of October, 1969,

ORDERED that Plenary Retail Consumption License C-150, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph Small, t/a Park West Lounge, for premises 525 Eighteenth Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, November 5, 1969, and terminating at 2:00 a.m. Thursday, November 20, 1969.

Joseph M. Keegan Director

6. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE CHANGE OF FACT IN APPLICATION - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

Tony Pratts, Inc.)
t/a Tony's Palm Bar)
907 White Horse Pike)
Egg Harbor City, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Common Council of the City of Egg Harbor City.)

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Curcio, Donio & DeMarco, Esqs., by Mark A. DeMarco, Esq.,
Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to the following charges dates May 22, 1969:

- "1. You failed to file with the Common Council of the City of Egg Harbor City, within 10 days after the occurrence thereof, written notice of change in a fact set forth in answer to Question 33 of your license application dated June 3, 1968, upon which you obtained your current plenary retail consumption license, such change being that Antonio Pratts, also known as Tony Pratts, your secretary-treasurer and 99.8% stockholder, was convicted in the Atlantic County (New Jersey) Criminal Court on or about November 8, 1968, of the crime of possession of lottery paraphernalia, in violation of N.J.S. 2A:121-3; your failure to file such notice being in violation of R.S. 33:1-34.
- "2. On or about November 8, 1968, Antonio Pratts, also known as Tony Pratts, your secretary-treasurer and 99.8% stockholder, was convicted in the Atlantic County (New Jersey) Criminal Court of the crime of possession of lottery paraphernalia, in violation of N.J.S. 2A:121-3, a crime involving moral turpitude, such conviction being an act or happening occurring after the time of making application for your current license which, if it had occurred before said time would have prevented the issuance of the license since such issuance would have been contrary to R.S. 33:1-25."

The record herein establishes that Antonio Pratts (also known as Tony Pratts), hereinafter referred to as Tony Pratts, was the major stockholder and secretary-treasurer of the licensee

corporation on the date of the application for license, and that on November 8, 1968 he was convicted of crime as alleged.

However, the record herein also discloses that effective September 24, 1968 he resigned as secretary-treasurer of the licensee corporation and, according to the sworn testimony of Mark A. DeMarco, the attorney for the licensee herein, the shares of stock which Pratts had held in the licensee corporation were transferred to Angelica Pratts, his wife, on September 23, 1968. Thus he had divested himself of any interest in the licensee corporation prior to his conviction.

Although apparently no notice of the change in stockholdings and officers was given to the municipal issuing authority within ten days after the occurrence of such changes (such failure so to do having misled the Division as to the continued stockholding and office-holding of Tony Pratts in the licensee corporation, resulting in the preferring of the charges), the fact remains that, when Tony Pratts was convicted, he was no longer a stockholder or officer of the licensee corporation, in consequence of which no notice of his conviction was required to be given by the licensee to the municipal issuing authority, as alleged, as distinguished from its failure to give notice of the changes in stockholdings and officers as above indicated.

Since a finding of guilt may not be broader than the charge preferred, it is recommended that the licensee be found not guilty of the charges alleged and that the charges be dismissed, without prejudice to the preferment of such other charges as may be indicated, based upon the facts as may be developed and the applicable provisions of the law and regulations.

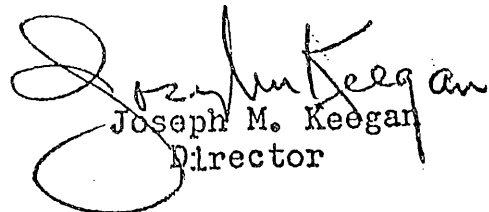
Conclusions and Order

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 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 18th day of November 1969,

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


Joseph M. Keegan
Director