

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

BULLETIN 1769

January 3, 1968

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1. COURT DECISIONS - QUAGLIA v. HIGHLANDS and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-1086-66

ANTHONY J. QUAGLIA,  
t/a WHY KNOT,

Appellant,

v.

BOROUGH COUNCIL OF THE BOROUGH  
OF HIGHLANDS and DIVISION OF  
ALCOHOLIC BEVERAGE CONTROL,

Respondents.

-----

Argued November 20, 1967 - Decided November 29, 1967

Before Judges Sullivan, Foley and Leonard

On appeal from Order of the Division of Alcoholic Beverage Control, Department of Law and Public Safety of the State of New Jersey

Mr. John W. O'Mara argued the cause for appellant, (Messrs. Saling, Bogioli & Moore, attorneys).

Mr. Benjamin Gruber argued the cause for respondent Borough Council of the Borough of Highlands.

Mr. Stephen G. Weiss, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney)

PER CURIAM

(Appeal from Director's decision in Quaglia v. Highlands, Bulletin 1736, Item 2. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

2. APPELLATE DECISIONS - PASCALE AND AIELLO v. HOBOKEN.

CONCETTA PASCALE AND JEAN AIELLO,	)	
	)	
Appellants,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY OF	)	
HOBOKEN,	)	
	)	
Respondent.	)	

-----  
 Andrew F. Batistich, Esq., Attorney for Appellants.  
 E. Norman Wilson, Esq., by William J. Miller, Esq., Attorney  
 for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants appeal from the action of respondent (hereinafter Board) whereby, by unanimous vote of its members, it denied the application of appellants for renewal of their plenary retail consumption license for the 1967-68 licensing year for premises 308 Park Avenue, Hoboken.

The Board based its action on the following reasons:

"Respondent was the recipient of a petition signed by over fifty (50) residents of the neighborhood objecting to the transfer; at the hearing several police officers and neighbors appeared, were heard, and all objected to the renewal for various reasons; no one spoke in favor of the renewal except appellant Concetta Pascale. Jean Aiello did not appear.

"Reasons given were the noise from the premises concerned on previous occasions, and the conduct of its patrons outside the premises; fights, shooting, parking, numerous police calls, and character of patrons, etc."

Appellants allege in their petition of appeal that the denial of renewal of their license was erroneous in that:

"(a) The verdict was contrary to the weight of the evidence.

(b) The evidence adduced at the hearing was wholly inadequate and insufficient in law.

(c) The testimony of witnesses was based upon hearsay.

(d) Incompetent, irrelevant and immaterial evidence of a nature to inflame and prejudice the Board was introduced.

(e) There were never any specific charges against the petitioners herein."

The Board's answer filed herein denies the aforesaid allegations contained in appellants' petition of appeal.

At the time of filing of this appeal an order dated June 30, 1967, was entered by the Director extending the term of the license then held by appellants pending determination of the appeal and entry of a further order herein.

This appeal is in the nature of a hearing de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before the Board was marked in evidence and testimony was given by appellant Jean Aiello pursuant to Rules 6 and 8 of said regulation.

At the outset of the hearing before the Board in the matter herein, appellants' attorney moved to dismiss the proceedings because the Board failed to apprise appellants of specific charges against them and thus appellants were not afforded the guarantee of due process.

This motion lacks merit. There is no requirement in the Alcoholic Beverage Law that a municipal issuing authority must prefer charges against a licensee prior to considering whether or not its liquor license should be renewed for the following licensing term. The identical question was raised, after denial of renewal of license, in Downie v. Somerdale, 44 N.J. Super. 84, wherein the court stated (at p. 87):

"Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort. Mr. Downie perhaps thinks that on a hearing before the borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing the burden of proof falls on the applicant for the renewal of the license. Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App.Div. 1957)."

The Board in the instant matter enumerated the reasons which prompted its determination to deny renewal of appellants' license.

Bernard J. Scrivani (a councilman-at-large in the municipality, residing at 321 Park Avenue) testified that in his opinion 95% of the buildings on Park Avenue between Third and Fourth Streets are used for residential purposes, the residents being "composed of families with three and four children. I would say there are possibly 90 children on the block;" that he has resided on Park Avenue for thirteen years and, although there are two other taverns on the block, "I don't remember ever having the police car on that block for any one of those taverns and that until a year ago, until 007 Club [appellants] opened up did we start to get the complaints and have police cars." Councilman Scrivani further testified that, prior to

the time he circulated a petition (Ex. R-2 in evidence), he received complaints about conditions in the area of the licensed premises and he saw fights taking place outside appellants' premises in which both men and women would engage "once a week at least;" that he called the police on three occasions; that the noise was loud, and obscene language was used by patrons at 2 a.m. when appellants' premises closed; and that appellants' patrons constantly parked their cars in driveways of residents in the area of the tavern.

Theodore Materek testified that for the past sixteen years he has lived at 327 Park Avenue, and objects to the renewal of the license in question because of noise in the immediate area of appellants' licensed premises, such noise consisting of "loud and profane language at closing time and before closing time."

Daniel Manobianco testified that he resides at 315 Park Avenue, which is directly across the street from appellants' premises, and has lived at that address since 1958; that shortly after appellants obtained the license, he spoke to "Etta" (appellant Pascale) and told her "she is on her way to a lot of trouble unless she can control some of the disturbances that her patrons make;" that approximately eight or ten times a month at two o'clock in the morning, when the place closes, the patrons "come out arguing with each other, cursing at each other, fighting with each other and throwing bottles at each other. Now I live directly across the street, and I can see just about everything that is going on."

Police Captain August Ricciardi (night commander of the Detective Bureau) testified that he visited appellants' tavern "every weekend;" that on October 17, 1966, he and three police officers went to appellants' premises in response to a call and that he spoke to appellant Pascale; that there were "broken bottles in front of the door and some in the doorway of the tavern;" that said appellant informed him that "there had been a fight, and they ran out of the tavern before the police got there;" that on March 5, 1967, a man named William Maxwell was assaulted in the tavern and also that another man named Stephen Brown was assaulted; that Brown was "detained at St. Mary's Hospital and treated for a laceration of the head requiring three stitches and a laceration of the back of the head requiring an additional six stitches;" that on March 26, 1967, "three men were in the tavern drinking and did take out weapons and fire them into the pool tables and in the floor;" that on "April 7, Joe Falco assaulted in tavern and treated at St. Mary's Hospital with laceration on left side of the face requiring four stitches and a contusion of the lip and a broken tooth;" that on May 13 "I received a call from my home. By the time I arrived at the tavern there was approximately 50 people in the street including neighbors and passers-by. This party had broken up the tavern and left. The owner subsequently stated she would get a warrant. She identified the man as Presiossi." Captain Ricciardi further testified, "I spoke to Etta at least five or six times regarding the annoyance to the neighbors, and I warned her that I would make recommendations through the ABC Board, and she promised to correct it each time. She did correct it for a while, and it would be quiet for a week or two and then it would start again."

On cross examination Captain Ricciardi testified that appellant Pascale cooperated with him to the best of her ability.

It was stipulated by the attorneys for the respective parties that the testimony of Police Detective Tortorella would corroborate the incidents about which Captain Ricciardi had testified.

Detective Tortorella testified in addition that the police were informed at 11 p.m. on March 26, 1967 that three men had fired weapons in the tavern; that, upon arrival at the tavern, the bartender was questioned and "said there were three patrons that came into the place. He first said that he didn't know who they were. They had been drinking wine from approximately 9:30 p.m. and refused to pay for their drinks and kept pulling their guns out and putting them on the bar, and finally after being there an hour and a half they shot up the place and fled from the tavern and then contacted the owner who was at another establishment; "that, when asked why the police were not notified sooner, the bartender "said he was frightened. He could not leave the bar;" that the bartender further stated there was a telephone in the tavern but, although "there were maybe eight, nine patrons in the place. No one made an attempt to call the police;" that, after the three men had left, the bartender notified the owner (appellant Pascale) who immediately contacted the police.

On cross examination Detective Tortorella testified that at 11:20 p.m., when he arrived at the licensed premises, appellant Pascale was there but his investigation disclosed that she had not been in the place at the time of the shooting incident. He further testified that, whenever any incident arose, appellant Pascale fully cooperated with the police.

Acting Chief Walter F. Fallon testified that there were numerous complaints regarding noise at appellants' licensed premises and "the carryings on and so forth going on in there" and, based on reports submitted by "Captain Ricciardi and Commander of the tavern squad", it was his opinion that appellants' tavern was operated so as to constitute a nuisance and thus he was opposed to renewal of the license. Chief Fallon further testified that it was appellants' responsibility to operate the business in a proper manner.

Appellant Concetta Pascale testified that she and Jean Aiello have been the holders of the liquor license in question since May 13, 1966, and that no charges have ever been preferred against the license; that during the past eight months the police were at the licensed premises "four or five times;" that the only explanation she could give for the trouble at appellants' tavern, compared to other licensed premises in the municipality, was, "Maybe I get a younger crowd than they get. The other taverns are older crowds" and "I am doing more business than the people were doing that had it before."

Appellant Pascale further testified that most of the calls made to the Police Department had been made by her.

Appellant Aiello testified at the hearing herein that, although she is part-owner of the business, she seldom goes to the licensed premises and has "very little" to do with the operation and management thereof.

I have recited somewhat in detail the testimony of the witnesses of the respective parties to this appeal in order to clear up any misunderstanding. It might be proper at

this juncture to reiterate the principle established by this Division from its very inception -- that a licensee is accountable for conditions both in and outside the licensed premises which result from actions of its patrons. Conte v. Princeton, Bulletin 139, Item 8. This principle has been consistently applied to date. Cf. Kaplan et als. v. Englewood, Bulletin 1745, Item 1.

It is apparent from the testimony of appellant Pascale that she was aware of the conditions in the area of the licensed premises and also the disturbances and incidents taking place inside the premises itself. When asked to make comparison with other licensed businesses which have not become trouble spots to the law enforcement authorities, her answer was that perhaps the patronage of the other establishments was older than those who visited appellants' premises. This is an unacceptable excuse for the conditions testified to, which have taken place both inside appellants' licensed premises and on the exterior thereof. A petition containing the signatures of fifty-one residents on Park Avenue objecting to the noise, the fights and the obscene language at all hours of the night is ample proof that the licensed premises have been operated in a negligent manner so as to constitute a nuisance to the residents in the area.

The fact that no disciplinary charges were filed against the licensees is understandable in that local issuing authorities hesitate to prefer charges, although they may be warranted, because they hope operators of licensed premises will improve existing conditions in order to protect their investment. The police officers were fair in their testimony in that they were of the opinion that appellants attempted to cooperate when told of the bad conditions resulting from their patrons' conduct. However, it appears that conditions had progressively worsened as time went by.

The issue to be resolved in the instant case is whether the evidence presented justifies the action of the Board in refusing to renew appellants' license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. It must be kept in mind that in all cases which involve discretionary matters, such as the application for renewal of a liquor license, the burden of proof falls upon appellants to show manifest error or an abuse of discretion by the issuing authority. As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is not inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id.

661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

See Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

It has been stated in Abad v. Newark, Bulletin 619, Item 8, by former Commissioner Driscoll that;

"The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant."

When considering the public interest with reference to renewal of a liquor license, I am aware that a licensee is entitled to fair play. Thus, failure to renew a license should not result from arbitrary action on the part of the licensing authority. When a licensed premises is operated without consideration for the rights of other persons residing in the area of the premises and the effect that such improper operation has on the lives of other persons, it appears sufficient proof that the licensee is unworthy to hold a liquor license.

It is significant, especially from the incident on March 26 when patrons wielded guns, that the police authorities were not notified of the situation until about an hour and a half had elapsed from the time this action occurred. The bartender, when questioned concerning the matter, stated to the police that he was frightened and could not leave the bar. However, there was a telephone in the establishment that might have been used to alert the police forthwith.

There is no evidence to indicate any improper motivation on the part of the members of the Board and there appears to be evidence to support their determination. 279 Club, Inc. v. Newark, Bulletin 1405, Item 2; Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its determination and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4.

I have examined the grounds of appeal set forth in appellants' petition of appeal and conclude that they lack sufficient merit.

After careful consideration of all of the evidence presented, I am satisfied that the Board exercised its discretion

properly, reasonably and in the best interests of the community in refusing to renew appellants' license for the current licensing year. I am satisfied that appellants have failed to sustain the burden of proof as required by Rule 6 of State Regulation No. 15. Thus it is therefore recommended that respondent's action in denying appellants' application for renewal be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and argument in substantiation thereof were filed by appellants' attorney pursuant to Rule 14 of State Regulation No. 15.

I have considered the exceptions taken on behalf of appellants and find that they have been answered by the Hearer or are without merit.

I have carefully considered the entire record herein, including the exceptions filed by appellants' attorney, the transcripts of the proceedings, 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 31st day of October 1967,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on June 30, 1967, extending the term of appellants' license pending determination of the appeal herein be and the same is hereby vacated, effective immediately.

JOSEPH P. LORDI  
DIRECTOR

3.

ACTIVITY REPORT FOR NOVEMBER 1967

<b>ARRESTS:</b>		
Total number of persons arrested	-----	10
Licensees and employees	----- 8	
Bootleggers	----- 2	
<b>SEIZURES:</b>		
Distilled alcoholic beverages - gallons	-----	.17
Brewed malt alcoholic beverages - gallons	-----	2.80
<b>RETAIL LICENSEES:</b>		
Premises inspected	-----	588
Premises where alcoholic beverages were gauged	-----	507
Bottles gauged	-----	7,794
Premises where violations were found	-----	191
Violations found	-----	145
No Form E-141-A on premises	----- 96	Disposal permit necessary ----- 5
Unqualified employees	----- 28	Prohibited signs & practice ----- 2
Application copy not available	----- 23	Improper beer taps ----- 1
Other mercantile business	----- 5	Other violations ----- 31
<b>STATE LICENSEES:</b>		
Premises inspected	-----	10
License applications investigated	-----	2
<b>COMPLAINTS:</b>		
Complaints assigned for investigation	-----	393
Investigations completed	-----	370
Investigations pending	-----	276
<b>LABORATORY:</b>		
Analyses made	-----	108
Refills from licensed premises - bottles	-----	77
Bottles from unlicensed premises	-----	19
<b>DENTIFICATION:</b>		
Criminal fingerprint identifications made	-----	2
Persons fingerprinted for non-criminal purposes	-----	258
Identification contacts made with other enforcement agencies	-----	213
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities	-----	4
Violations involved	-----	4
Sale during prohibited hours	----- 3	
Sale to minors	----- 1	
Cases instituted at Division	-----	17
Violations involved	-----	22
Beverage Tax Law non-compliance	----- 4	Permitting foul lang. on premises ----- 1
Sale to minors	----- 4	Acts of violence ----- 1
Permitting lottery acty. on premises	----- 3	Permitting gambling on premises ----- 1
Sale during prohibited hours	----- 2	Failure to close premises during prohibited hours ----- 1
Hindering investigation	----- 2	Permitting hostesses on premises ----- 1
Possessing liquor not truly labeled	----- 2	
Cases brought by municipalities on own initiative and reported to Division	-----	15
Violations involved	-----	28
Sale to minors	----- 10	Permitting narcotics on premises ----- 1
Permitting brawl on premises	----- 2	Permitting immoral activity on prem. ----- 1
Conducting business as a nuisance	----- 1	Permitting persons of ill repute on premises ----- 1
Permitting gambling on premises	----- 1	
Permitting prostitute on premises	----- 1	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held	-----	31
Appeals	----- 6	Seizures ----- 2
Disciplinary proceedings	----- 15	Tax revocations ----- 3
Eligibility	----- 5	
<b>STATE LICENSES AND PERMITS:</b>		
Total number issued	-----	1,588
Licensees	----- 4	Wine permits ----- 307
Solicitors' permits	----- 41	Miscellaneous permits ----- 223
Employment permits	----- 239	Transit insignia ----- 340
Disposal permits	----- 56	Transit certificates ----- 10
Social affair permits	----- 368	
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>		
Licenses issued	----- 5	
Enforcement files established	----- 12	

JOSEPH P. LORDI  
 DIRECTOR OF ALCOHOLIC BEVERAGE CONTROL  
 COMMISSIONER OF AMUSEMENT GAMES CONTROL

dated: December 6, 1967

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION  
NO. 38 - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE -  
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

MAESM, INC. )  
t/a MAESM TAVERN )  
258 Johnston Ave. )  
Jersey City, N. J. )

CONCLUSIONS )  
AND ORDER )

Holder of Plenary Retail Consumption )  
License C-431, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Jersey City. )

-----  
Stone & Weil, Esqs., by Howard R. Weil, Esq., Attorneys for )  
Licensee. )  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic )  
Beverage Control. )

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Sunday, February 19, 1967, at about 2:55 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12-ounce cans of Ballantine beer, at retail, in their original containers for consumption off your licensed premises, and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

Agent H testified that at approximately 2:20 p.m. on Sunday, February 19, 1967, he and Agent B entered the licensee's premises, while Agent D remained in a car parked across the street from the front entrance of the licensed premises; that the said premises are on "the ground floor in a two story frame dwelling, situated near a railroad over-pass. There is an empty lot or trestle abutment directly on the east side of the building;" that, in addition to the front entrance, the licensed premises has a rear exit at the right rear of the building leading to an alleyway; that Agent H and Agent B sat at the "first return of the bar near the entrance;" that shortly before 3 p.m. a man "approximately 30 years of age, approximately 5 feet 8, heavy set, stocky, I would say 180 pounds" (subsequently identified as Cleveland Williams) entered the premises and whispered to Samuel Petrick who was tending bar, and Petrick said, "Go around the back;" that this man handed Petrick a sum of money consisting of "a dollar bill or more" and then went out of the front entrance; that Agent H and Agent B immediately left the premises and went to their car where Agent D was seated; that he (Agent H) saw Petrick enter the street from the alleyway followed by Williams who carried a package; that Williams approached a parked car in which were another male, a female and two children; that Agent H and Agent B approached Williams and identified themselves to him as Williams stood beside his car; that Williams showed them "the contents of the package, six cold cans of Ballantine beer;" that, when Williams was asked if the purchase was made at the licensee's

premises, he answered, "I don't want to hurt anybody;" that thereafter Williams accompanied Agent H and Agent B to the licensed premises and, after identifying themselves to Petrick, Agent H informed him of the alleged violation, at which time Petrick said, "I didn't sell anybody anything. Do you think I am crazy? I just got a violation a couple of weeks ago." Agent H further testified that there are no licensed premises located within an area of two blocks in any direction.

Agent B, called as a witness for the Division, testified that, if the same questions were asked of him as were asked of Agent H on direct examination, his answers thereto would be substantially similar. On cross examination Agent B identified a man seated in the room at the hearing herein by the name of Girardo Ramos, who was also identified by Agent H as being present at the licensee's premises on February 19.

Agent D testified that she remained seated in the car when Agents H and B entered the front entrance of the licensee's premises; that, while seated there, she observed on three occasions cars pull up to the premises and a male alight from the respective cars carrying no package, enter the licensed premises through the front door and, after "a minute or a minute and a half," depart the premises, turn to their left and enter the alleyway alongside the building; that shortly thereafter she saw these men again, each carrying a package; that on two of these occasions she saw Mr. Petrick come out of the licensed premises, look up and down the street, go back into the alleyway from where males emerged with a package, and then these men entered their cars and drove away; that she observed Williams park his car diagonally across the street from the car in which she was seated and, empty-handed, enter the front door; that shortly thereafter he came out of the front entrance, turn to his left and go into the alleyway next to the building; that Petrick "came out, looked around, went back in the alleyway; and then Mr. Williams departed the alleyway carrying a package;" that Agents H and B approached Williams and, after identifying themselves to him, Williams gave them the package and the three went into the licensee's establishment.

Samuel Petrick, treasurer of the corporate licensee, testified that he was on duty as bartender between 2:00 and 3:00 p.m. on February 19, 1967; that Williams came into the licensed premises and asked for a bottle of whiskey and, in response thereto, was told by him, "We are not allowed to sell bottles on Sundays;" that there are, in addition to the front entrance, "a back entrance and side entrance;" that the side entrance leads directly into the kitchen; that he has "a habit of checking if there are any strange cars outside because in the past two years I was held up twice;" that he did not sell Williams a six-pack of beer on the day in question.

On cross examination Petrick testified that, between 1:30 and 3 o'clock, he went into the kitchen "about three or four times" and on two occasions went out through the kitchen door to take out the garbage and to see if there were "any strange cars outside." Petrick further testified that, when the agents accompanied by Williams came into the premises, Williams had a six-pack of beer but he did not "feel the package" to ascertain whether or not it was cold. When asked how much time elapsed between the time Williams left the premises and returned with the agents, Petrick said, "I would say 20 minutes. I didn't look at my watch when every customer walked out. I am a businessman." Petrick further testified that, when the agents

came into the premises with Williams, he (Petrick) did not say anything to Williams as "it was none of my business. He didn't get it off me."

Gerardo Ramos testified that he was in the licensee's establishment between 2 and 3 o'clock on February 19, 1967, and did not see Petrick sell any whiskey or beer for off-premises consumption. Ramos said he saw Williams in the licensed premises and heard Petrick refuse to sell him anything. Ramos further testified that he saw Petrick go into the back room on two occasions but he could not see nor did he know what Petrick did while there.

Antonio Lugo testified that he was with Ramos in the licensed premises between 2 and 3 p.m. on the day in question, and did not see anyone come in for beer or whiskey to take home. Lugo further testified that he heard Williams ask Petrick for whiskey and, when he was refused, Williams walked out of the premises.

On cross examination Lugo testified that on April 13, 1967 (the morning of the first day of the hearing herein), Ramos asked him to testify and both he and Ramos came from New York by train together but they did not discuss the instant case.

This proceeding presents a purely factual question and, pursuant thereto, I have set forth in detail the pertinent testimony presented by the witnesses in order to arrive at a just and proper conclusion.

Evidence to be believed must be credible in itself. Thus I have carefully observed the demeanor of the witnesses as they testified so that a proper evaluation of their respective testimony could be made. There is no doubt in my mind that the testimony of the agents is a true and accurate account of the events which occurred at the time alleged. On the other hand, the testimony of the licensee's witnesses had not impressed me with its authenticity and does not constitute a defense to the charge preferred. I am satisfied that the licensee made the sale of beer to Williams in original containers for off-premises consumption on a Sunday, as charged.

It is a basic principle of law that disciplinary proceedings against liquor licensees are civil in nature and not criminal and require proof by a preponderance of the believable evidence only. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud and Pittala v. Davis, 64 N.J. Super. 242 (App.Div. 1960).

A fair and impartial evaluation of the evidence clearly preponderates in favor of a finding of guilt, and I so recommend.

Licensee has a previous record of suspension of license by the Director for ten days effective July 26, 1965 and again for twenty-five days effective January 9, 1967, both for sale in violation of State Regulation No. 38. Re Maesm, Inc., Bulletin 1634, Item 2; Bulletin 1717, Item 7.

The prior record of two suspensions of license for similar violations within the past five years considered, I recommend suspension of the license for forty-five days (Re Club Ali-Baba, Inc., Bulletin 1749, Item 4), and an additional

fifteen days by reason of the aggravating circumstance of the occurrence of the instant violation on February 19, 1967, in close proximity to the expiration of the last previous suspension on February 3, 1967 (Re Russo, Bulletin 1636, Item 11), or a total of sixty days.

#### Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Attorneys for the licensee argue that, since the Division failed to produce Williams, who is claimed to be the person alleged to have purchased the beer on the day in question, and because the agents did not actually see the sale of alcoholic beverages to Williams, the finding of guilt on the charge recommended by the Hearer herein was based solely on circumstantial evidence.

Circumstantial evidence or presumptive evidence as a basis for deductive reasoning in the determination of civil cases is defined as "a mere preponderance of probabilities, and therefore a sufficient basis for decision." 1 Best Ev. 135.

It is sufficient if the evidence on the whole agrees with the supports the hypothesis which it is adduced to prove and a verdict may well be founded on circumstances alone which often lead to a more satisfactory conclusion than direct evidence can produce. 1 Greenl. Evid. sec. 13-a. See Jackson v. D., L. & W. R.R. Co., 111 N.J.L. 487, pp. 490-1; cf. Wyatt v. Curry, 77 N.J. Super. 1, pp. 6-7.

In the instant case Agents H and B testified that, when Williams entered the licensed premises, they saw him whisper to Petrick (who was tending bar) and heard Petrick tell Williams to "go around the back" and then said agents stated that they observed Williams hand Petrick a sum of money and then leave the licensed premises through the front door; that they (the agents) immediately left the premises and entered the car parked across the street from the licensee's premises in which Agent D sat; that Petrick entered the street from the alleyway followed by Williams who was carrying a package; that the agents approached Williams and, after identifying themselves, on inspection found that the package held by Williams contained six cans of cold beer. Agent D corroborated the other agent's testimony to the extent that Petrick came out of the alleyway, looked around, proceeded back into the alleyway and then Williams came out of the said alleyway carrying a package.

Thus it is obvious under the facts presented herein that the only inference that can properly be drawn is that Williams purchased the beer in licensee's premises. I so find.

In so far as the exception to the penalty recommended by the Hearer, it is the usual penalty consistently imposed for the type of violation committed and taking into consideration the past adjudicated record of the licensee.

I have carefully considered the entire record herein, including the exceptions filed by appellant's attorneys, the transcript of the proceedings, 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 6th day of November 1967,

ORDERED that Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Maesm, Inc., t/a Maesm Tavern, for premises 258 Johnston Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, November 13, 1967, and terminating at 2 a.m. Friday, January 12, 1968.

JOSEPH P. LORDI  
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - BOOKMAKING - CONDUCT WITHIN PAST 5 YEARS NOT DEEMED LAW-ABIDING - PETITION DENIED.

In the Matter of an Application to )  
Remove Disqualification Because of ) CONCLUSIONS  
a Conviction, Pursuant to R.S. 33:1-31.2 ) AND ORDER

Case No. 2154 )

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Salvatore J. Avena, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted in another state in 1948 for bookmaking and in 1959 for conspiracy to violate the Federal Internal Revenue Laws; that on his first conviction he was fined \$200.00 (a jail sentence suspended upon payment of fine) and on his last conviction he was sentenced to serve four years in prison (suspended) and placed on probation for five years.

It further appears that in addition to aforesaid convictions petitioner was involved with the law on ten occasions between 1948 and 1967:

April 28, 1948	arrested by vice squad for disorderly conduct (fined \$25.00)
May 6, 1948	arrested by vice squad for disorderly conduct (fined \$75.00)
October 1, 1949	arrested by vice squad for disorderly conduct (discharged)
January 23, 1955	arrested as a common gambler (discharged)
August 3, 1957	arrested for gambling, common gambler and breach of peace (discharged)
November 10, 1957	arrested for motor vehicle violation, (failing to stop after accident-discharged)
July 29, 1964	arrested for traffic in lottery tickets (discharged)
February 1, 1965	arrested for interfering with police officer and disorderly conduct (discharged)

February 11, 1966 arrested for illegal lottery,  
conspiracy (discharged)

December 9, 1966 arrested for atrocious assault and  
battery (no billed on June 8, 1967).

Since the crimes of which petitioner was convicted in 1948 and 1959 involve the element of moral turpitude, (Re Case No. 1996, Bulletin 1675, Item 8; Re Case No. 983, Bulletin 940, Item 12) he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (47 years old--a non-resident) testified that he is married and living with his wife; that he has resided at his present address for twenty-five years; that he had worked as a landscaper for about eight years; that he had been employed in licensed premises in this State for "a couple of months" prior to April, 1967; that until April aforesaid when the Division informed his employer of his ineligibility and his employment was terminated, he had no knowledge of his ineligibility, and that on July 21, 1967, he filed an application for an unlimited employment permit in which he admitted that he had been convicted of a crime but failed to disclose the offense. (It is also noted that in the petition filed herein, petitioner left blank the paragraph stating: "During the past five years I have not been arrested or otherwise involved with the law except:\_\_\_\_\_".)

Petitioner further testified that he has disassociated himself from all gambling activities; that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1959, he has not been convicted of any crime.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a real estate and insurance broker, a lawyer, and a physician) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

To afford petitioner the relief requested, it is necessary that I find that at least five years have elapsed from the date of his disqualifying conviction that he has been conducting himself in a law-abiding manner during such period, and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2.

While more than five years have elapsed since his conviction in 1959, I am not satisfied by reason of petitioner's hereinabove stated involvements with the law that his association with the alcoholic beverage industry will not be contrary to the public interest. The number and type of criminal charges preferred against petitioner, particularly those involving commercialized gambling, albeit most did not eventuate in convictions, bespeak a pattern of conduct by petitioner whereby he has placed himself in the position of being suspected of numerous criminal offenses by several law enforcement agencies. This may have been caused by his continued association with disreputable persons or his repeated presence at places where unlawful activities have taken place. Considering the totality of the record before me, I am not satisfied

that these brushes with the law were the result of mere happenstance.

In view thereof, I shall, in the exercise of my discretion, deny the petition.

Accordingly, it is, on this 13th day of November, 1967,

ORDERED that the petition herein be and the same is hereby denied.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Pete & Gene, Inc. )  
t/a Pete's Bar )  
398 Comstock Street )  
New Brunswick, N. J. )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-51 issued by the Board of Commissioners of the City of New Brunswick )  
----- )

Ralph Mayo, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 16, 1967, it permitted gambling (wagering on pool games) on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Jule's Bar, Inc., Bulletin 1752, Item 5.

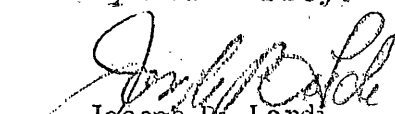
Accordingly, it is, on this 25th day of October, 1967,

ORDERED that Plenary Retail Consumption License C-51, issued by the Board of Commissioners of the City of New Brunswick to Pete & Gene, Inc., t/a Pete's Bar, for premises 398 Comstock Street, New Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a. m. Monday, October 30, 1967, and terminating at 2:00 a. m. Thursday, November 9, 1967.

JOSEPH P. LORDI  
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Ernest Del Guercio, t/a D & F Beverage Company  
195 N. Munn Avenue, East Orange, New Jersey  
Application filed December 21, 1967 for place-to-place transfer of State Beverage Distributor's License SBD-137 from 322-328 Broad Street, Newark, New Jersey.

  
Joseph P. Lordi  
Director