

V

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

BULLETIN 1595

January 7, 1965

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - KA ZAM BAR, INC., v. NEWARK.
2. APPELLATE DECISIONS - FEDERICI'S HIDEAWAY, INC. v. BELLEVILLE.
3. DISCIPLINARY PROCEEDINGS (Bridgewater Twosnhip) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (East Newark) - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1595

January 7, 1965

1. APPELLATE DECISIONS - KA ZAM BAR, INC., v. NEWARK.

KA ZAM BAR, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Irving J. Zwillman, Esq., Attorney for Appellant
Norman N. Schiff, Esq., by Paul E. Parker, 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 on June 17, 1964, it suspended appellant's license for a period of fifteen days, effective July 20, 1964, after finding appellant guilty of permitting and suffering a brawl and act of violence on its licensed premises, in violation of Rule 5 of State Regulation No. 20. Appellant's premises are located at 301 Peshine Avenue, Newark.

Upon the filing of the appeal, an order was entered by the Director on July 14, 1964, staying respondent's order of suspension until further order herein. R.S. 33:1-31.

Appellant, in its petition of appeal, alleges that the action of respondent was erroneous because the said judgment was against the weight of the evidence, and was made "as a result of abuse of discretion, and was arbitrary and capricious."

Respondent, in its answer, alleges that it acted within its sound discretion after full hearing on the charge preferred against appellant.

The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted on notice authorized by Rule 8 of State Regulation No. 15, which transcript was supplemented at this hearing by testimony of witnesses on behalf of appellant.

Contradictory versions of what is alleged to have happened on the date in question were presented at the hearing below by the witnesses for respondent and those for appellant. The transcript reflects the following: The alleged incident occurred on December 25, 1963 at approximately 8:00 p.m.

Mrs. Lucy Warren testified that she entered appellant's licensed premises in order to purchase six cans of beer. She was accompanied by her son, daughter-in-law and the mother-in-law of her son. When she sat down to have a drink of whiskey, a patron apparently took and consumed the drink served to her. She did not see who drank it but accused one of the male patrons seated nearby. The accused person thereupon struck her with a bottle. The manager immediately evicted her and her party; and she knocked on the door and requested that he "'call the cops' and he wouldn't call the cops." She directed her son to smash the window so that the manager would be compelled to call the police.

Asked on cross examination whether it was not a fact that her son had an argument in the tavern, she denied hearing any argument because "I was in my house. I know nothing about that." She was also asked whether it was not a fact that a police officer went to her home at about nine o'clock but she could not remember that visit. She insisted that she recognized the person who had struck her although she did not know his name. She also admitted that when this man asked her for a drink, her son said, "Why should my mother buy you a drink," which apparently precipitated the argument.

Mrs. Josephine Riker testified on behalf of respondent that she entered the tavern at approximately 7:00 p.m. and was there for about thirty minutes. She heard the argument between the man referred to by the previous witness and Mrs. Warren's son. She saw this man raise a bottle and Mrs. Warren acted to "help her son", saying "'You are not going to hit my son.' In so doing, the man swung it and hit her on the head." Immediately thereafter, the man left the premises and they were told by the manager of the premises to leave.

She saw Mrs. Warren knock on the door and heard her ask the manager "to call the cops. But he wouldn't do so. So then Mrs. Warren said to her son to break the glass. Who took the cane and broke it, I don't know." She denied seeing any broken beer bottle at any place that night. On cross examination, she admitted that after the party had been put out, the manager locked the door and Mrs. Warren tried to reenter the premises. This was during a period of forty-five minutes while they were outside the premises. She did not see anyone break the window. Asked whether she knew how long it was from the time of the altercation until the time when they were directed to leave the premises, she answered, "I don't know whether it was less than a minute or not. I couldn't say. It was soon after."

Officer Andrew B. King of the Newark Police Department testified that he responded to a police report that there was a fight on the street in front of appellant's premises and that someone was injured. When he arrived, he was told that the woman involved in the fracas was in her house, directly across the street from the licensed premises. He went to investigate and found Mrs. Warren bleeding, and there was much commotion in the house.

He proceeded to appellant's premises where the manager informed him that there had been an argument there and he ordered those involved to leave the premises. They continued the argument outside, got into a fight and "tried to get into the tavern again and he won't let them in. That is when the glass in the door was broken."

He further ascertained that the manager had called the police department as soon as this incident took place. He made observations both in and outside the premises and found nothing out of the ordinary inside the premises. Outside, however, he found the broken window pane and also a broken glass bottle "toward the end of the building, near the barber shop."

Detective George J. McDonald of the Newark Police Department testified that he was assigned to conduct a follow-up investigation with reference to this incident and, in pursuance thereof, visited the licensed premises. He spoke to the bartender and thereafter to Mrs. Warren. He noted that she had a bandage on her head, apparently the result of being struck with some object. When he asked her whether she had called the police, she stated that she did not know whether she had or not.

Officer Richard Sylla of the Newark Police Department testified that in response to a police call on the night in question, he examined the area outside appellant's licensed premises and found that "There was a 'busted' beer bottle outside, near the tavern, and glass. There was a woman's coat in the street, covered with blood, and blood on the ground, outside of the tavern."

Appellant called as its witness, both at the hearing below and at the hearing on appeal, Victor Cella, whose testimony may be summed up as follows: He is the manager of the licensed premises and was so employed on December 25, 1963. On the night in question, he was in the rear of the premises making sandwiches when he heard two men arguing. He immediately went to where they were seated and ordered them to leave the premises. As soon as they left, they "started to fight outside." When he saw them fight, he telephoned the police. As he was doing this, one of the participants ran across the street, came back with a steel rod, and returned to the tavern. He "yanked the steel rod out of his hand and I pushed him out the side door and I locked the door." He also immediately locked the front door.

He saw the argument continue outside and saw the woman hit in front of the barbershop which is located immediately adjacent to these premises. The woman, at that point, came and asked him to call the police and he said, "The police are called, they will be right here. Just wait outside." He refused, however, to open the door. He heard the woman shout, "Break the window" and her son smashed the front window of the door with a cane. His best estimate of the time elapsed between his telephone call and the arrival of the police was about ten to fifteen minutes. The witness insisted that he acted with reasonable dispatch, as soon as he heard the argument take place, in ejecting them from the premises and calling the police.

On cross examination, he stated that there were approximately twelve other persons in the tavern and that they all were directed to move to the back during and immediately following this incident. None of them left the premises before the police arrived. He insisted that Mrs. Warren was not struck by anyone on the premises. He further insisted that when he heard the argument, he said, "Go outside and fight and just leave the place," and immediately thereafter the persons involved left the premises. He asserted that the whole action was so fast that he had no time to do anything but what he had done, namely, eject the parties and call the police.

This witness further admitted that after the said incident occurred, one of the patrons informed him that there had been a previous argument between some of the participants and apparently latent animosity existed for some time between them. He insisted that Mrs. Warren was struck by her assailant on the outside of the premises, at least twenty-five feet from the entrance.

Officer King, recalled by appellant at the hearing before me, corroborated the fact that the broken bottle was found near the barber shop and that there was some evidence of blood on the outside of the premises. However, he saw no such evidence inside the premises.

The testimony, as I have indicated hereinabove, is so contradictory that the credibility of the witnesses becomes the sole criterion upon which to determine whether or not appellant was guilty of the charge preferred against it. The choice of accepting or rejecting the testimony of witnesses rests with this Division and the record herein has been carefully canvassed to determine whether the evidence, as presented, is reasonable and adequate to support the conclusion. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super 501 (1956).

I, of course, have had no opportunity to observe the demeanor of the witnesses other than the police officers upon whom respondent relied in reaching its determination. I have, however, had the opportunity to observe the demeanor of Cella and I was impressed with his forthright testimony.

A reading of Mrs. Warren's testimony impressed me with its contradictions and lack of honesty. She appeared to be completely confused as to what occurred, was contentious, argumentative and did not present a coherent narrative. She seemed to want to protect her son and her testimony was, therefore, colored in that respect. In addition, I was prejudiced by the fact that Mrs. Warren instigated and provoked a wanton act of lawlessness in urging her son to break the window of the front door of these premises. This attitude is not consistent with reasonable behavior and manifests a total lack of respect for property rights of the appellant.

I was singularly unimpressed with the testimony of Mrs. Riker, which was equally contradictory. She appeared to be emotionally involved.

The testimony of Cella stands in a better posture. He states that as soon as he heard the argument, he acted almost within seconds to eject the participants. When one of the persons returned to the tavern, he again ejected him and locked both doors. He immediately called the police and kept the premises locked until the police arrived.

The testimony of the police officers seems to support in large measure the version given by appellant.

The quintessential issue, in my view, is whether the evidence supports a finding by respondent that appellant "allowed, permitted and suffered" the violation to occur. In Conner v. Fogg, 75 N.J.L. 245, 247 (Sup. Ct. 1907), the court said:

"To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S. W. Rep. 4), but the term 'permit' has been often used synonymously with 'suffer', so that it may be said that one who

suffers the doing of a thing which he might have prevented permits it."

In Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947), the court said:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep.(2d) 140."

The common sense rule must be applied in each given situation, namely, whether the licensee, acting under the obligation of the tremendous responsibility which is reposed in him as the holder of a liquor license, exercises that degree of care consistent with such obligation in keeping the premises free from brawls and disturbances. A licensee is not an insurer, nor can he be expected to anticipate any sudden flare-up, but it is well settled that a licensee must keep his place and his patronage under his control and is responsible for conditions inside and outside his premises. Seidel v. Upper Freehold, Bulletin 1246, Item 1. The reason for the imposition of such a strict rule is that the liquor business is an exceptional one, and courts have always dealt with it exceptionally. See X-L Liquors v. Taylor, 17 N.J. 444 (1955); Mazza v. Cavicchia, 15 N.J. 498 (1954).

A licensee must assume full responsibility where he or his employees fail to take appropriate action to prevent the occurrence of a brawl or disturbance on the licensed premises. Re Johnson, Bulletin 603, Item 9.

My evaluation of the testimony in this case fails to convince me that the licensee permitted a brawl to take place on the premises. I am persuaded that the incident was a sudden flare-up and that the licensee's agent acted with reasonable dispatch to terminate the argument. This he did by compelling the participants to leave the premises and by locking them out of the premises. He also did the only thing he could have done, that is, immediately call for police assistance. It was very evident from the apparent emotion and heat engendered, which culminated in the assault on the woman outside the premises and the breaking of the glass window, that any further personal intervention on Cella's part would undoubtedly have resulted in personal injury to himself. It has been held that the strongly recommended course in these situations where patrons become obstreperous is to call the police Cf. Re Polster, Bulletin 388, Item 10.

The liability of licensees for disturbances which occur on licensed premises always presents serious problems. It would be unfair to hold a licensee liable where a disturbance occurs without warning and, under the circumstances of this case, the immediate action of Cella cannot be considered unreasonable. Cf. Woodland Rod & Gun Club v. Belleville, Bulletin 569, Item 3; Zicherman v. Newark, Bulletin 613, Item 5.

In view of the aforesaid, I find that respondent has failed to establish, by a fair preponderance of the believable evidence, that appellant allowed, permitted or suffered a brawl or act of violence in and upon its licensed premises. I, therefore, recommend that the action of respondent be reversed. Cf.

Ferdinand v. Newark, Bulletin 1084, Item 3; Kandell v. Newark, Bulletin 1091, Item 3; Schaeffer and Wyatt v. Newark, Bulletin 1140, Item 1.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by 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 his recommendation.

Accordingly, it is, on this 2d day of November, 1964,

ORDERED that the action of respondent be and the same is hereby reversed.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - FEDERICI'S HIDEAWAY, INC. v. BELLEVILLE.

FEDERICI'S HIDEAWAY, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	AND ORDER
BEVERAGE CONTROL OF THE TOWN)	
OF BELLEVILLE,)	
Respondent.)	

George R. Sommer, Esq., Attorney for Appellant.
Marinello, Henkel & Soriano, Esqs., by James N. Marinello, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This appeal challenges the action of respondent Municipal Board of Alcoholic Beverage Control of the Town of Belleville (hereinafter Board) wherein it denied appellant's application to renew its plenary retail consumption license for premises 146 Heckel Street, Belleville.

After an investigation and hearing upon the said application, respondent, by unanimous action of its members present, adopted the following resolution:

"WHEREAS, objections have been heretofore filed with this Board by way of petitions signed by twenty-eight (28) residents of the Town of Belleville, all residing in the immediate vicinity of premises known as No. 146 Heckel Street, which said premises are operated as Federici's Hideaway, Inc., the holder of Plenary Retail Consumption License No. C-24, objecting to the

renewal of said Plenary Retail Consumption License for the year commencing July 1st, 1964; and

"WHEREAS, a public hearing was held by this Board on June 29th, 1964, and witnesses for the objectors and for the said Licensee were duly sworn and heard by this Board on said date and decision having been reserved pending completion of the investigation of the facts surrounding said objections;

"IT IS, THEREFORE, on this thirtieth day of June, 1964, on motion duly made by Frank L. Bruno, seconded by Anthony Di Geronimo, unanimously

"RESOLVED and ordered, that application for the renewal of Plenary Retail Consumption License No. C-24, in the name of Federici's Hideaway, Inc., a corporation, trading as Federici's Hideaway, Inc., be and the same is hereby DENIED for the year commencing July 1st, 1964."

On June 30, 1964, the Board filed an opinion setting forth the basis for its determination as follows:

"It is the considered unanimous opinion of this Board that Federici's Hideaway Inc., of 146 Heckel Street, Belleville, New Jersey, the holder of Plenary Retail Consumption License C-24, issued by this Board, is and has been conducting its business in a manner so as to create a nuisance in its immediate location as well as to the Town of Belleville as a whole.

"There appeared before this Board five witnesses, representing 28 protestants, all of whom put in an appearance. All five testified under oath regarding continual loud and profane language during normal business hours, and especially between the hours of 12:00 midnight and 3:00 a.m. The same witnesses testified regarding certain indecent and immoral acts of patrons leaving the licensed premises.

"Witnesses further testified that the entire area in front and adjacent to licensed premises was the 'dumping place' for empty beer and liquor containers.

"Witnesses testified that approximately 55 telephone complaints were made to the Belleville Police Department during the past year.

"Belleville Police Department records reveal they dispatched radio patrol cars to the licensed premises 14 times during the period of July 1, 1963 to June 29, 1964. On one of these occasions a woman patron of the licensed premises inflicted bites on the person of three members of the Belleville Police Department, necessitating medical attention.

"Under date of April 2, 1963, the State Division of Alcoholic Beverage Control corresponded with this licensee under File X-39,503-B, reprimanding licensee for allowing a certain magazine and photographs considered by the State Inspector as being indecent in nature, on the licensed premises.

"Under date of September 9, 1963, the Belleville Municipal Board of Alcoholic Beverage Control suspended the license of this establishment for a period of 25 days for allowing gambling on the licensed premises, and on the same date the said license was suspended for a period of 10 days for allowing said premises to remain open after legal closing hour of 2:00 a.m. Both of said occurrences took place on June 29, 1963.

"Rebuttal to protestants' testimony was offered by five witnesses for the licensee. These included one of the partners, the husband of one of the stockholders and three patrons of the licensed premises. The majority stockholder, Philip Federici, testified he was doing everything in his power to control the situation that has existed at the licensed premises to the extent of attempting to hire Special Policemen for evening and weekend duties, but to date has found this impossible.

"Testimony of the other witnesses appearing for the licensee was general in character and in our opinion failed to refute the allegations of the protestants.

"It is, therefore, the unanimous opinion of this Board that the renewal of Plenary Retail Consumption License C-24, located at 146 Heckel Street, Belleville, New Jersey, be denied."

Appellant thereupon filed a petition of appeal alleging that the action of the Board was erroneous for reasons which may be summarized as follows:

- (a) The action was contrary to the evidence and the weight of the evidence;
- (b) The Board failed to consider the evidence and testimony of appellant's witnesses;
- (c) Such evidence showed that appellant was not guilty of violations of the Alcoholic Beverage Law;
- (d) Refusal to renew as too severe under the circumstances; and
- (e) The Board erred in judgment and "acted arbitrarily and capriciously in deciding against" appellant.

Respondent filed a general denial of the allegations of the petition of appeal.

Upon the filing of this appeal, an order was entered on July 1, 1964 by the Director, extending the term of the license then held by appellant, pending the determination of this appeal and until the entry of a further order herein. R.S. 33:1-22.

The hearing on this appeal was plenary de novo, and the crucial issue is whether the evidence before me justifies respondent's action in refusing to renew appellant's license. Downie v. Somerdale, 44 N.J. Super. 84; Blanck v. Magnolia, 38 N.J. 484. The burden of proof in these cases which involve discretionary matters where the applicant seeks a renewal of license falls upon the appellant to show manifest error, or that the local issuing authority abused its discretion. Nordco v. State,

43 N.J. Super 277; Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598; 279 Club, Inc. v. Newark, 73 N.J. Super. 15.

It is well established that there is no inherent right to renewal of a license. Bumball v. Burnett, 115 N.J.L. 254; Zicherman v. Driscoll, 133 N.J.L. 586; Kleinberg v. Harrison, Bulletin 984, Item 2. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

"There is no inherent right in a citizen to thus sell intoxicating liquors by retail...As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority."

The testimony herein was quite voluminous; a brief summary of the evidence presented discloses the following: This tavern has been operated at these premises since 1934. On June 8, 1964, the Board approved the transfer of the license from Philip J. Federici to Federici's Hideaway, Inc., which approval was made expressly subject to a hearing on objections to renewal of the said license. Philip J. Federici, who had been operating this tavern theretofore, became its president upon the licensee's incorporation. He is the manager and is in actual charge of the conduct of the business.

At this hearing, Federici denied that he had operated the tavern improperly and stated that only one person had ever complained to him about noise, profane language and other improper conditions. He stated that he has tried to eliminate the conditions complained of, both on the inside and outside of appellant's premises. In furtherance thereof, he "went down to the Belleville police headquarters to try to get a special cop on the week ends over there, and they said they had two of them but they're both working; and they were supposed to swear one in and they were supposed to let me know, but I never heard nothing about it." In any event, he has not, to date, hired any special police officer to patrol the premises. The only action he did take was to install a flood light in the rear of the premises.

On cross examination, Federici admitted that the police had spoken to him on a number of occasions with reference to complaints about loud noises emanating from the tavern, particularly with respect to the juke box. He was questioned concerning an incident which was alleged to have occurred on August 4, 1963, in which a woman was involved in a fight in the tavern, as a result of which several police officers were injured. He insisted that when the officers arrived, this woman was not in the tavern but was across the street from the tavern. The following questions were then asked:

"Q Isn't it a fact that she was in the tavern and then she went outside into her car?"

A Well, it could have been like that.

Q ...So you don't deny that it could have been that the officers arrived inside your tavern while the girl was still there?

A I don't remember. I know the incident that happened happened outside."

He admitted that he had pleaded non vult to charges alleging that on June 29, 1963, he violated a town ordinance by permitting the tavern to remain open after hours and that he permitted and suffered gambling in the said premises on the same date, for which the license was suspended by the Board for a period of 35 days.

Captain Harry F. Tepe of the Belleville Police Department, called by appellant, testified that he was familiar with the police records relating to this tavern only since May of 1964 until June 29; that during these two months, the police were summoned to the licensed premises on six occasions; that on most of these occasions, the police merely told the patrons to "quiet down and go into the tavern." The complaints seemed to involve loud noises and congregating on the outside of the tavern.

On cross examination, the officer stated that on May 19, 1964, a Mr. Saulino came to his office to complain to him personally about "patrons leaving their motor running, double parked, noise from the juke box, noise from the loud patrons and profanity." The police officer went to the licensed premises and spoke to Federici about these complaints.

Three patrons called by appellant testified that during the times they visited the tavern, they noticed nothing unusual, or any violation of the law, either inside or outside the licensed premises.

Detective Harry W. Winfield of the Belleville Police Department, testifying on behalf of respondent at this hearing, produced the official reports of the police department, which indicated that for the licensing year 1963-64 thirteen calls were received by the police relating to the tavern. However, the officer hastened to add that these reports may cover more than one call for any particular incident. His summary of the police reports reflected the following:

July 5, 1963, complaint about loud noise and patrons conducting themselves in a lewd manner outside the premises. Bartender was notified of the complaint.

July 13, 1963, complaint about loud noises. Officer responded and quieted patrons.

July 19, 1963, complaint about a fight at the licensed premises. When officers arrived, they were putting someone out who was apparently intoxicated.

August 4, 1963, several calls about a disturbance in front of the premises. A patron was arrested and charged with assault and disorderly conduct. Three of the responding officers were treated at a local hospital for bites and scratches. This incident happened inside the licensed premises and was carried on outside thereof.

September 4, 1963, a call about loud noise coming from the licensed premises. An officer was detailed to warn the licensee to correct the condition.

April 23, 1964, complaint about loud noise. Officers warned the licensee to quiet the music box and

correct the condition.

June 5, 1964, another complaint of loud noises. Again the licensee was warned to correct the condition.

Mary Alverso, a neighbor, testified that the licensee's patrons would congregate outside the premises around closing time and then enter their cars, where they could consume whiskey, beer and food. After they finished their drinks, they would throw the bottles and beer cans on the curb, the sidewalk, and other premises. They would accompany their drinking and eating with arguing, swearing and general profanity. They also would "use their cars as motel rooms or hotel rooms" and "use the streets or alleyways as public facilities." She made "dozens" of complaints to the police and also spoke to Ralph Federici, the brother of the manager. She stated that as a result of these conditions, her health has been impaired and she has been compelled to visit her physician for treatment every other week.

Mary Christiano repeated the same complaints and added that she actually witnessed a couple engaging in sexual intercourse immediately after leaving the licensed premises. She stated that because of the incidents complained of, her grandchildren were not permitted to play outside; that, in fact, her daughter was compelled to move from the neighborhood. She made complaints to the police and also to Ralph Federici, who advised her to call the police when these incidents occurred.

Arthur Saulino complained to the licensee's manager on a number of occasions about the loud noise and cursing which emanated from the tavern. He stated that both he and his brother had called these objectionable activities to the attention of the manager but that, when he got no results, he finally complained to the police. After the police responded, these conditions were somewhat alleviated. He stated that the noise and disturbances prevented him from sleeping at night and in the early hours of the morning.

Deanna LaConti offered the same complaints as the former witnesses and, in addition, said that she was unable to permit her children to play in the back yard because of the profane language used by patrons and the profusion of broken beer and whiskey bottles. She detailed an episode in which her son was awakened in the middle of the night because of the loud cursing and other noises. Her son was frequently awakened and had fits of crying. She finally decided to find other living quarters outside the neighborhood because of the conditions existing in and around her premises. She stated that she had called the police between ten and fifteen times and on one Sunday was required to call them four times in one day. When the police responded, they would find these objectionable conditions and would disperse appellant's patrons from the general area.

Raffaella Saulino corroborated her husband's testimony and added that she was subjected to lewd and obscene remarks from appellant's patrons while seated on her front porch. She estimated that she called the police department at least fifty times during the past few years.

It was stipulated that several other witnesses present at the hearing would, if called by counsel for the Board, corroborate the earlier testimony and testify to the same effect.

In rebuttal, appellant called William Roy Harris, who testified that when food is served, the patrons are requested to place the disposable plates and remains in the garbage containers; that when they did not do so, "we have tried to clean up some of the stuff." He denied that he heard constant loud and profane language.

My evaluation of the testimony presented and the record herein convinces me that appellant has operated its tavern in a manner far short of the standard reasonably required for such operation. I was particularly unimpressed with Federici's denial that these conditions were called to his attention except in one instance. The abundant testimony of respondent's witnesses, which was corroborated in large measure both by the official record of the police department and by the testimony of the police officers produced by both sides, argues strongly to the contrary.

The officers testified that on many of the occasions when they responded, they entered the premises and warned the manager or the bartender that the conditions must be corrected. Indeed, it appears that, at least temporarily, some effort was made to correct these objectionable conditions. However, I don't think the manager had his heart in it. Apparently convinced that greater vigilance and more policing were necessary, he admits that he consulted with police officials for the purpose of obtaining a special police officer, but was unable to obtain the same. If he were really earnest in this endeavor, he would have made it his business to see to it that adequate policing of these premises was obtained. There is no evidence that, as of the date of the hearing, any additional efforts were made in that direction.

Counsel for appellant argues that the Board's determination was not based on the evidence or on the weight of the evidence. Can this be persuasively supported? This argument is disintegrated by the testimony which shows (a) that the license was suspended for permitting gambling on the premises and remaining open after hours, (b) that during the licensing year, at least thirteen visits to the premises were made by the police, in one of which a violent assault took place upon police officers by a patron, (c) that calls were made to the police by various persons in the neighborhood, one person stating that she called the police at least fifty times, (d) the neighbors were constantly annoyed by the cursing, shouting, loud noise, and lewd and lascivious acts occurring outside the premises at all hours of the night, (e) that intoxicated or apparently intoxicated patrons were found in the premises and escorted by the police from the said premises.

In view of all of the above, it appears unarguable that the Board acted within the wide discretion given to it under the statute and the regulations of this Division and properly determined that the continued operation of these licensed premises at this location was inimical to the public interest.

A liquor license is a privilege. A renewal license is in the same category as an original license. No person is entitled as a matter of law to a liquor license. Bumball v. Burnett, supra; Meehan v. Jersey City, supra, aff'd 75 N.J.L. 557. The liquor business is one that must be carefully supervised and should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guidepost in the issuance and renewal of licenses. Zicherman v. Driscoll, supra; Freddie's Blue Room, Inc., v. Elizabeth, Bulletin 1422, Item 1.

The worthiness of persons applying for a license or for the renewal of a license is a matter which resides within the sound discretion of the issuing authority. It is proper for the municipal issuing authority, in passing upon applications for liquor license renewal, to take into account not only the conduct of licensees but also conditions not attributable to their conduct which render the continuance of a tavern in a particular location against the public interest. Oak Inn, Incorporated v. Div. of Alcoholic Beverage Control and Elizabeth, App. Div. 1963, not officially reported, reprinted in Bulletin 1523, Item 2; Nordco v. State, supra.

Where, as here, the proof is substantial that the licensed business was conducted in an unlawful and objectionable manner, both within and without the premises, and the evidence indicates violations of a municipal ordinance and Division rules and regulations, the totality of such conduct would be sufficient to warrant denial of renewal of the license. Zicherman v. Driscoll, supra; cf. Schwartz v. Paterson, Bulletin 1577, Item 2.

It is also clear from the evidence that the infractions of the law which resulted in suspensions of license were taken into consideration by the Board in its judgment. 279 Club, Inc. v. Newark, supra.

Counsel for appellant further argues that the refusal to renew was too severe a "penalty" on the facts and evidence presented. I think not. The Board has an obligation not only to the licensee but to the general public as well. If it, in its responsibility, has determined that this is not the kind of operation which will serve the best interests of the community, such determination should not be disturbed by the Director, in the absence of evidence which clearly indicates abuse or arbitrariness. In an appeal of this kind, it must be shown that such refusal was the result of intentional discrimination or other arbitrary action. Such was not established here. Cf. Camden County v. Pennsauken Sewerage Authority, 15 N.J. 456.

Indeed, there is not a scintilla of evidence to indicate any improper motivation on the part of the Board in the action thus taken and there appears to be substantial evidence to support its determination. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501; Paul v. Brass Rail Liquors, 31 N.J. Super. 211; Zicherman v. Driscoll, supra.

I conclude that, on the basis of all of the evidence presented, the exhibits and the oral summation of counsel, the Board exercised its discretion reasonably, circumspectly and in the best interest of the community in refusing to renew appellant's license for the current licensing period. Therefore, it is recommended that respondent's action in denying appellant's application for renewal of license be affirmed and the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's Report and argument thereto were filed with me by the attorney for appellant and answering argument to the said exceptions were filed by the attorneys for respondent within the time limited by Rule 14 of State Regulation No. 15.

I have carefully considered the entire record and the exhibits introduced into evidence at the hearing of this appeal,

the exceptions and supporting argument taken to the said Hearer's Report and the answering arguments thereto. A request was made for oral argument before me by the attorney for appellant. However, I do not conceive that under all the facts and circumstances herein, such further argument is necessary or warranted and said request is accordingly denied. I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 16th day of November, 1964,

ORDERED that the action of respondent Board in denying appellant's application for renewal of its license for the 1964-65 licensing year be and the same is hereby affirmed and that the appeal be and the same is hereby dismissed; and it is further

ORDERED that my order entered on July 1, 1964, extending the term of appellant's license, pending determination of the appeal herein, be and the same is hereby vacated.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Adam A. Sandusky t/a Mike Sandusky's 21 FINDERNE AVENUE BRIDGEWATER TOWNSHIP PO SOMERVILLE, NEW JERSEY, Holder of Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Bridgewater.

CONCLUSIONS and ORDER

Allgair, King & Kelleher, Esqs., Attorneys for Licensee
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 13, 1964, he possessed alcoholic beverages in seven bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective May 14, 1956, for sale in violation of State Regulation No. 38.

The prior record of suspension for dissimilar violation disregarded because occurring more than five years ago, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Black Horse Tavern, Inc., Bulletin 1549, Item 9.

Accordingly, it is, on this 2nd day of November 1964,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Bridgewater to Adam A. Sandusky, t/a Mike Sandusky's, for premises 21 Finderne Avenue, Bridgewater Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:30 a.m. Monday, November 9, 1964, and terminating at 2:30 a.m. Friday, December 4, 1964.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CHARLES R. MANDEL AND CEIL Z. MANDEL
t/a Imperial Bar & Grill
459 Ocean Avenue
Jersey City, N.J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holders of Plenary Retail Consumption License C-357, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Robert W. Wolfe, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on Sunday, October 25, 1964, they sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee's have a previous record of suspension of license by the Director for twenty days effective February 5, 1964, (Re Mandel, Bulletin 1553, Item 4) and for fifty-five days effective July 24, 1962 (Re Mandel, Bulletin 1472, Item 2), both for possession of alcoholic beverages not truly labeled. In addition, the license of Charles R. Mandel (then in partnership with Ely S. Mandel) for the same premises was suspended by the municipal issuing authority for five days effective October 1, 1951, for sale to minors and (then in partnership with Roslyn E. Mandel) by the Director for fifteen days effective July 14, 1958, for hours violation and permitting a punchboard on the licensed premises. Re Mandel, Bulletin 1238, Item 6. Again, in partnership with Ely S. Mandel and Roslyn E. Mandel, the license was suspended by the Director for thirty days effective November 12, 1958, for sale to a minor. Re Mandel, Bulletin 1254, Item 3.

The prior record of suspensions of license for dissimilar violation occurring more than five years ago disregarded but the prior record of two suspensions of license for dissimilar violation occurring within the past five years in 1964 and 1962 considered, as well as the record of suspension of license for similar hours violation in 1958 occurring more than five but less than ten years ago, the license will be suspended for thirty days (cf. Re Bozzone, Bulletin 1577, Item 8; Re Sports Bar & Grill, Inc., Bulletin 1540, Item 4), with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-357, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Charles R. Mandel and Ceil Z. Mandel, t/a Imperial Bar & Grill, for premises 459 Ocean Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, November 16, 1964, and terminating at 2:00 a.m. Friday, December 11, 1964.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLIE'S CAPRI, INC.)
t/a Charlie's Capri)
423 N. Third Street)
East Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of East Newark.)

Joseph A. D'Alessio, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

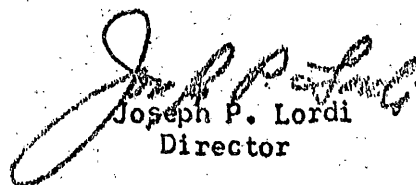
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 16, 1964, it sold mixed drinks of alcoholic beverages to a minor, age 18, in violation of Rule 1 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 Somerset Hills Elks Club, Inc., Bulletin 1587, Item 7.

Accordingly, it is, on this 25th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of East Newark to Charlie's Capri, Inc., t/a Charlie's Capri, for premises 423 N. Third Street, East Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, December 1, 1964, and terminating at 2:00 a.m. Friday, December 11, 1964.


Joseph P. Lordi
Director