

~~Ambrose~~ 29
Ambrose

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

BULLETIN 1981

June 22, 1971

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISION - HUDSON-BERGEN PACKAGE STORES ASSOCIATION v. NORTH BERGEN, ET AL.
2. DISCIPLINARY PROCEEDINGS (Trenton) - FALSE STATEMENT IN LICENSE APPLICATION - FRONT - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT UPON PROOF OF CORRECTION OF UNLAWFUL CONDITION.
3. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 90 DAYS.
4. ACTIVITY REPORT FOR APRIL 1971.
5. DISCIPLINARY PROCEEDINGS (West Long Branch) - GAMBLING (HORSE RACE BETTING) - LICENSE SUSPENDED FOR 60 DAYS, LESS FIVE FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Manville) - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1981

June 22, 1971

1. APPELLATE DECISION - HUDSON-BERGEN PACKAGE STORES ASSOCIATION
v. NORTH BERGEN, ET AL.

Hudson-Bergen Package Stores Association,)	
)	
Appellant,)	On Appeal
)	
v.)	
)	CONCLUSIONS
Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, and Bergenline Liquors (A corporation),)	and ORDER
)	
Respondents.)	

Samuel J. Davidson, Esq., Attorney for Appellant.
Joseph L. Freiman, Esq., Attorney for Respondent Municipal Board.
Daniels, Colello & Daniels, Esqs., by Emil Colello, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen (hereinafter Board) whereby it approved a place-to-place transfer of plenary retail distribution license issued to respondent Bergenline Liquors (hereinafter Bergenline) from premises known as 7804 Bergenline Avenue to 501 - 78th Street, North Bergen.

In its petition of appeal appellant alleges that the action of the Board was erroneous and an abuse of its discretion for reasons which may be summarized as follows:

- (a) Board "had no jurisdiction to hear" application for transfer in that plans and specifications as required under Rule 1, State Regulation No. 2, were not filed;
- (b) In prior renewal application Bergenline had misrepresented its factual position to the Board and had abandoned its license as a non-user for a long period;
- (c) Transfer to new premises was violative of local ordinance restriction 750 feet to existing license;
- (d) There is no public need or necessity for the transfer.

The Board and Bergenline have filed answers denying the allegations contained in the petition of appeal but admitting

that the applicant has no right to use the former location now occupied by other business.

By stipulation of facts pursuant to Rule 8 of State Regulation No. 15, it is agreed that:

- (a) Bergenline was a licensee of premises 7804 Bergenline Avenue;
- (b) Bergenline lost right to ownership or possession in 1967;
- (c) Thereafter and to date no business at any location has been conducted by Bergenline;
- (d) Bergenline purchased 501 - 78th St., to which transfer has been granted;
- (e) Application for transfer, above, has been granted upon condition that construction be completed based upon plans and specifications to be filed and approved;
- (f) Bergenline did not file a full set of plans and specifications, merely a sketch;
- (g) No construction has ever been begun;
- (h) Bergenline has paid annual renewal fees and filed monthly liquor reports for 501 - 78th Street.

The simple issue involved is whether or not the Board lost jurisdiction to approve transfer because of the long non-user status of the applicant as well as its failure to file detailed plans and specifications.

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its action and, if so, to affirm irrespective of his personal views. Somerset County Tavern Owners Association v. Bridgewater, et al., Bulletin 1653, Item 1. See also Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970) to the effect that the Director should not reverse if reasonable support for the Board's judgment can be found in the record. The decision as to whether or not a license shall be issued rests within the sound discretion of the municipal issuing authority in the first instance. Blanck v. Magnolia, 38 N.J. 484 (1962).

Generally mere non-use will not of itself void a license. However, a municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period unless convincing evidence in explanation and justification of non-user is adduced. Fiory v. Ridgewood, Bulletin 1932, Item 1.

"This practice of non-user over a substantial length of time does violence to the paramount principle underlying the issuance of licenses, to wit, that licenses shall be issued only in the interest of the public necessity and convenience." Re Smith, Bulletin 784, Item 5.

Hence the Board was not without its jurisdictional power to approve the transfer and may do so with conditions, Fiory v. Ridgewood, supra. However, the license has been renewed for a protracted period and should no longer be held in abeyance.

The failure of the applicant to file detailed plans and specifications in the accepted mode does not do injury to the rule. Rule 1 of State Regulation No. 2. If those that are filed are sufficient to apprise the Board and the public of the intendment to which premises are to be used, they in all likelihood should be sufficient. A front sketch of the proposed premises, as well as a floor plan showing entry, floor layout, lavatory and stock space, were submitted. While amateurish in drawing by professional comparison, the sketches were substantial enough to satisfy the Board. The requirement of filing specification and detailed plans is a means to give the Board, and public, adequate graphic of the proposals. This could be readily observed from the submission. The Board could, had it wished, have required the applicant to furnish full, complete and accurate plans and specifications. Bertelli v. Clifton et al., Bulletin 1275, Item 1.

The grounds of appeal are insubstantial when weighed against all of the facts as stipulated. The Board never lost jurisdiction to consider the application for reasons cited herein. There was no misrepresentation of facts by the applicant; the Board was kept aware of the problems presented by the applicant and its approval was based upon those facts. There were no facts stipulated that put into issue the approval of the new site to be within 750 feet of another license. The action of the Board, in absence of being shown to be arbitrary or capricious, is presumed to be predicated upon its determination of need and necessity based upon its requisite statutory investigation. Rule 1 of State Regulation No. 6.

It is therefore found that the Board acted reasonably in granting a place-to-place transfer of the license subject to the completion of necessary construction.

It is accordingly recommended that the action of the Board be affirmed with the limiting provision that, subsequent to the existing license period, the license not be renewed unless in the interim the business become fully active either in the present approved location or one subsequently to be approved. In short, the applicant will have until the end of the 1970-71 licensing period to complete approved construction on the site, or activate licensed business at another approved location.

Conclusions and Order

Written exceptions to the Hearer's report were filed by appellant and written answers to the said exceptions were filed by respondents pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the matters contained in the exceptions and find that they have either been considered by the Hearer in his report, or are without merit.

Therefore, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions with

supportive argument filed with reference thereto, and the answers to the said exceptions, I concur with his findings except that I shall modify the Hearer's recommendation with respect to the time limitation for reactivation by the licensee of the licensed business.

It is my opinion that appropriate relief may be granted herein by permitting the renewal of respondent Bergenline Liquors' license subject to the special condition that it shall not be issued or become effective unless and until said licensee or its transferee shall have licensed premises in such condition as is deemed by Board to be suitable for operation under the license; provided, however, that this shall not preclude the license upon appropriate future transfer or renewal application from being made effective at such time for the sole purpose of permitting transfer or renewal thereof. To this extent I will accept the Hearer's recommendations as hereinabove modified.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed, subject to the following special conditions:

That the said license shall not be issued or effective unless and until

- (1) Bergenline Liquors or its transferee shall have possession of premises approved by the Board and suitable for operation under the license, or
- (2) The license is transferred to other suitable premises approved by the Board.
- (3) Any renewal of said license shall be conditioned as hereinabove set forth.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - FRONT - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT UPON PROOF OF CORRECTION OF UNLAWFUL CONDITION.

In the Matter of Disciplinary Proceedings against)

Pine Tavern, Inc.)
t/a Pine Tavern)
156 South Olden Avenue)
Trenton, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-179, issued by the City Council of the City of Trenton.)

Gerald P. Higham, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. In your application dated May 28, 1970, filed with the City Council of the City of Trenton, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 29, which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly in the license applied for or in the business sought to be conducted under said license?_____ If so, state names, addresses and interest of such individuals, partnerships, corporations or associations' whereas in truth and fact Ronald Rocky DiNatale had such an interest in that he was the real and beneficial owner of the business conducted under said license; said false statement, misrepresentation, evasion and suppression of a material fact being in violation of R.S. 33:1-25.
- "2. From on or about October 1, 1968 until the present, you knowingly aided and abetted said Ronald Rocky DiNatale to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52."

At the outset of the hearing the Division moved to add the name of Rocco DiNatale to the complaint which, by colloquy that followed, revealed that there are two Rocky DiNatales: one Rocco DiNatale who goes by the nickname "Rocky" and is the father of Rocky Ronald DiNatale whose first and true name is Rocky. Ruling on the motion was reserved until this report, by which the motion is denied as the identity of the person named in the notice and complaint is vital in the preparation of the defense.

The Division then presented testimony of Agent H who testified that on January 22, 1970 he was assigned to investigate an alleged "front" in the operation of the license. Pursuant thereto he visited the office of the Clerk of the City of Trenton, obtained a copy of the license application and then visited the licensed premises where he talked to both Rocky DiNatales (father and son). He learned that they were associated with the premises since May 1968 and that Rocky Ronald DiNatale (the son) claimed to be the manager.

The agent was informed that, some time in March 1968 an agreement was entered into between Richard Crutchley (the then licensee) and one Makohuz whose interest was later transferred to the uncle of Rocky Ronald DiNatale. An attempt was then made to introduce an unsigned copy of a purported agreement naming Rocky Ronald DiNatale as assignee, which proffer was rejected because it was unsigned. The agent was advised that the purchase price was \$19,000 of which \$5,000 was paid by Makohuz. The difference or balance left was to be paid in instalments of \$100 weekly. Rental was \$150 per month. Rocky DiNatale took the place of Makohuz as purchaser according to Crutchley who suggested that the agent visit his attorney Mr. Watkins.

The agent then visited the attorney, Mr. Watkins, from whom he obtained photostatic copies of several agreements which, with the exception of the one unsigned purported agreement mentioned above, were admitted into evidence. The agent visited the Terminal Vending Company from whom he obtained another copy of an agreement together with copies of checks that company had paid Rocky DiNatale, allegedly for commissions. He examined financial records which initially were sparse but were later amplified by Crutchley. These records did disclose a very small profit for the period from May 1968 to April 1970. Income tax returns of the licensee were examined and revealed income from sale of stock and rental of premises. Crutchley did not work in the premises nor appear there with any regularity.

On cross examination the agent stated he was not shown any agreement between Crutchley and Joseph DiNatale (now deceased) by which the interest of Makohuz was replaced by that of Joseph DiNatale. He admitted Crutchley told him one share of licensee corporation was not owned by a member of his family. A statement made by Richard H. Crutchley (president) was admitted into evidence.

Robert Watkins (attorney for Crutchley) testified that ten days ago the Crutchleys signed over all of their stock and he now holds the certificates in escrow. However, he is not sure to whom such certificates will be assigned. He believed that on May 28, 1970 Rocky DiNatale owned one share of the corporate stock, and he thought that a contract existed between Rocky Ronald DiNatale (the son) and the Crutchleys, but he never saw a signed copy. He did not represent the DiNatale family. He prepared the offending applications for license and answered the questions based on prior applications with the exceptions of inclusion of the DiNatale name in answer to Question 22. Question 29 was answered in the negative as he thought that such question referred to persons other than those already named in the application, and that DiNatale was already named. He admitted an error in the first name of DiNatale, asserting that he was misinformed respecting the interest of the son; he should have named the father.

Rocky Ronald DiNatale (son of Rocco DiNatale) testified that his uncle Joseph DiNatale is deceased. Further, that this witness never agreed to buy Pine Tavern, Inc., and never had any stock. He recalled speaking to the agent in February 1970, but does not have a present recollection of the details as recounted by the agent. He has been the manager of the tavern, which was opened only in the evenings. When asked about the balance of monies due Crutchley as of May 1970, he referred to a mortgage-reduction schedule from his pocket. He admitted on cross examination that he is the manager and in fiscal control of the operation. He testified that he is owed \$5,690 by the corporation for back and unpaid wages.

The father (Rocco DiNatale) testified that in September 1968 he bought one share of stock in the corporation from Makohuz. He stated his desire was to buy the tavern for his son but his son expressed no interest in owning it. It was then that he induced his late brother Joseph to purchase the Makohuz interest. He acted as manager of the business, working in conjunction with his son. He stated his son invested about \$1,900 in the business from a loan that the son took out from a local bank. When his brother took over the Makohuz interest, all that was paid to Makohuz was a few hundred dollars. For the past few years the witness has been operating the business and Crutchley visited the premises only once or twice; and when he did come in he sat at the bar as a patron. The expected stock certificates, now fully paid, will be in the name of his son Rocky Ronald DiNatale.

The thrust of the complaint is that the application failed to reveal the true ownership of the corporate licensee. That application states that the stock of the corporation (that is, 99.2% of it) belongs to Richard H. Crutchley. His interest is 248 of 250 shares. His wife is listed as secretary-treasurer. The only interest in the corporation of Rocky Ronald DiNatale, as indicated, is by virtue of an agreement by Crutchleys to sell the stock to him or his assignee.

Testimony of the agent and attorney Watkins affirmed that Crutchley agreed to sell the stock to Makohuz on May 31, 1968, and a year later that agreement was replaced with one in favor of Joseph DiNatale. Testimony indicated that a subsequent agreement replacing the deceased Joseph DiNatale by Rocky Ronald DiNatale was never executed. Hence the payments made to the Crutchleys (and it is alleged by their attorney that they are now fully paid) were pursuant to some oral agreement.

It is thus apparent that, from the testimony and the documents offered into evidence, both father and son DiNatale bought the business from Crutchley, who for reasons of his own required that he be paid in full prior to assigning any of the shares of stock. While the weekly payments were being made, the shares were held to await full payment and transfer to the new owner who, paying the purchase price from receipts in the operation of the business, was in complete command of the establishment.

The evidence disclosed that the Crutchleys, as corporate owners, abandoned all interest in the management of the licensed premises in May or June 1968, save for receiving the balance of payment for the stock and the rent. They exercised no dominion or control of the business and, other than holding the shares themselves, took no interest in corporate activity.

For example, Crutchley did not know if the corporation had a bank account, when its income tax was last filed, or who keeps the records to date. He admitted that the corporation was formed only for the purpose of selling the corporate stock. In short, Crutchley was the owner of the premises and the actual licensee, using the corporate veil to conceal his actual interest therein. The corporate stock merely a vehicle for transfer and, not having been transferred, Crutchley was in fact a "front" for DiNatale (father and son).

Equitable ownership of over 1% of the stock was in Rocco DiNatale or Rocky Ronald DiNatale, as the case might be, and such interest, however viewed, was not disclosed in the application. The response to Question 22 is not dispositive as that answer would indicate an interest in futuro. At the time of the application the DiNatales were the equitable, beneficial and managerial owners of the business.

In defense, the attorney for the Crutchleys testified that the negative response to Question 29 was the result of his legal opinion. The question itself reads:

"Has any individual, partnership, corporation or association other than the applicant, any interest directly or indirectly in the license applied for or in the business to be conducted under said license?"

His opinion was that no one other than the corporate licensee (Crutchley or DiNatale) had any interest in the license and all three are mentioned in the application. This defense is spurious. A simple perusal of the application in its entirety would spell out that Richard and Josephine Crutchley are the true licensees operating under the corporate frame, and that they had agreed to sell their stock to Rocky Ronald DiNatale. That Rocky Ronald DiNatale was not the intended purchaser of the stock is unimportant as a defense. The owners of the stock were the Crutchleys; but Rocco DiNatale, whose interest in the business is not at all disclosed in the application acted in their behalf in such manner that the Crutchleys became a "front" for DiNatale. To have been truthful, Question 29 should have been answered affirmatively with the disclosure of the interest of the DiNatales in the business, namely, that their interest in the stock was held in escrow until they satisfied their indebtedness thereon to Crutchley.

The very nature and characteristic of a "front" is concealment and subterfuge. Very rarely is such proof buttressed with confessions and/or affirmative admissions. Thus the testimonial presentation must be largely circumstantial and documentary. Sharp's Lodge Inc. v. Lakewood, Bulletin 1842, Item 1.

A further defense was advanced that Rocky Ronald DiNatale was the manager under whose dominion the business was operated. A written statement under oath made by Rocky Ronald DiNatale admitted into evidence (under protest by counsel to the Division that the document is completely self-serving) indicating that there are accumulated unpaid wages of \$5,690 is valueless as proof of an employer-employee relationship. The witness to the document was alleged to be the accountant William J. Elmer. Significantly he was not called to testify as to the payment of wages. Where a party has a witness or

witnesses available and where they possess peculiar knowledge essential to the facts of a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to the said party. Jacoby v. Jacoby, 6 N.J. Misc. 86; Cork'n Bottle, Inc., Bulletin 1232, Item 3; Re Peppermint Twist, Bulletin 1558, Item 4.

An implied defense, advanced in periphery of other defenses, was that the DiNatales themselves have been forthright and had no understanding of the technical requirement surrounding the application. "... it is apparent that the licensee, while admitting the facts established by the Division, seeks dismissal of the charges because of her alleged unintentional wrongdoing which she contends resulted from her inexperience. One would have to be naïve to give credence to such pretensions..." Re Carlton, Bulletin 1535, Item 5. Such conclusions would apply equally to the case sub judice.

It is noteworthy that Richard H. Crutchley did not appear and testify with reference to his statement, made under oath, which is in challenge. It was he who declared that the responses to the application are absolutely true in all respects when there was such an apparent and glaring omission. "It is incomprehensible that such an important omission should be made in this application, where admittedly it was included in prior applications. Common working experience and practice would suggest that, when these applications are prepared, much of the information is obtained from prior applications. It is logical to assume that the application for the prior year was available to the person preparing this application. Such an important omission of this indispensable information would also seem to suggest that it was done accidentally -- on purpose. The proffered explanation would seek to make it appear that the Division is chasing the wrong chicken. Re Joe D's Blue Moon, Inc., Bulletin 1542, Item 1. Using the current application to determine identity of the owner would be chasing the wrong chicken.

In view of these considerations, I find the believable evidence more than preponderates against the licensee and, therefore, it is recommended that it be found guilty of the first charge preferred against it.

The evidence is insufficient, however, upon which to predicate a finding of guilt on the second charge and it is recommended that that charge be dismissed.

The licensee has a previous record of suspension of license as follows: by the Director for 65 days effective January 5, 1971 for permitting lewdness and females to accept drinks, etc. (Re Pine Tavern, Inc., Bulletin 1952, Item 6) and for 10 days effective December 9, 1969 for possessing alcoholic beverages in bottles not truly labeled (Re Pine Tavern, Inc., Bulletin 1893, Item 10).

The established minimum penalty for the said violation is suspension of license for thirty days (Re Reyes, Bulletin 1812, Item 9), to which should be added ten days by reason of the record of the two suspensions of license for dissimilar violations occurring within the past five years (Re Fortuna Club, Inc., Bulletin 1942, Item 7), or a total of forty days.

It is, accordingly, recommended that an order be entered suspending the license in question for the balance of its term, with leave given to the licensee to correct the application as shall reveal the true identity of the owners of the corporate stock, in accordance with requirements as set forth in R.S. 33:1-25, and then to apply to the Director to lift the suspension no sooner than forty days from the date of its commencement upon filing a verified petition showing that the unlawful situation has been corrected. Re Reyes, supra; Re Carlton, supra.

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 exhibits 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 April 1971,

ORDERED that Plenary Retail Consumption License C-179, issued by the City Council of the City of Trenton to Pine Tavern, Inc., t/a Pine Tavern, for premises 156 South Olden Avenue, Trenton, be and the same is hereby suspended for the balance of its term, effective 2:00 a.m. Wednesday, May 12, 1971, with leave given to the licensee or any bona fide transferee of the license to correct the application as shall reveal the true identity of the owners of the corporate stock in accordance with requirements as set forth in R.S. 33:1-25, and then to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 2:00 a.m. Monday, June 21, 1971.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against
 Hollander's Bar, Inc.
 t/a Hollander's Bar
 482 Jackson Avenue
 Jersey City, N. J.
 Holder of Plenary Retail Consumption License C-277, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS and ORDER

 Miller, Hochman, Meyerson & Miller, Esqs., by Gerald D. Miller, Esq., Attorneys for Licensee
 Francis P. Meehan, Jr., Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On July 15, 1970, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises tickets and participation rights in a lottery, commonly known as the 'numbers game'; in violation of Rule 6 of State Regulation No. 20."

The Division's case was presented through the testimony of Detective John McClellan of the Organized Crime Unit of the New Jersey State Police. This police officer has had a substantial background of experience in the investigations of illegal gambling and had investigated several hundred matters relating to bookmaking and lottery operations. He gave the following account: On Wednesday, July 15, 1970 at 4:50 p.m., fortified with a search warrant and accompanied by several other members of the State Police, he entered the subject premises, identified himself and executed the search warrant. He told all the patrons to stand where they were, and recovered a considerable quantity of numbers slips at the feet of some of the patrons. His search behind the bar revealed lottery paraphernalia at the feet of the bartender (identified as Walter T. Jeffries), as well as numbers slips which were on a shelf behind the bar near the cash register. He also obtained lottery paraphernalia from the top of the phone booth. A search of several of the patrons revealed lottery slips in the wallet of one of the patrons. The witness identified the slips (which were admitted into evidence) as slips denoting plays in the numbers game. Several of the slips were dated July 15, 1970, indicating plays on that particular day. The bartender and the patrons were thereupon arrested and were held in bail for arraignment in the Jersey City Municipal Court.

Benjamin Hollander (principal officer and stockholder of the corporate licensee) testified that he was not present on July 15 and had no knowledge of any of the alleged activities at that time.

Walter Jeffries (the bartender) categorically denied any knowledge of illegal numbers activity. He stated that he had just arrived on duty shortly before the police entered the premises and was unaware of any such illegal numbers activity. When he denied that he saw any slips, he was asked whether the detective showed him any slips, to which he answered, "I don't remember the detective showing them to me." He also had no knowledge of how the tally sheet which was found on the telephone in the premises got there, and he denied that the police officer showed him that item as well.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schreider, 12 N.J. Super. 449 (App. Div. 1951). Thus the Division is required to establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373. In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I have had an opportunity to observe the demeanor of the witnesses as they testified at this hearing and, from my evaluation and assessment of the testimony, I am persuaded that the version given by the State Police officer on behalf of the Division was credible and accurately depicted what occurred on the date in question. I find totally unbelievable the testimony of the bartender who insisted that he neither saw nor was shown any of the numbers slips or the tally sheets. His testimony strains credulity because it is more consistent with common experience that, with the large number of slips which were found on the premises upon the search, the police officers would surely have shown the bartender the impiric evidence upon which the arrests were based.

Hollander (the licensee's principal officer) acknowledges that he knows nothing of the activities on that date since he was not present. The licensee is, of course, responsible for the actions of its agents, servants and employees during the course of their duties. Rule 33 of State Regulation No. 20; Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); cf. Mazza v. Cavicchia, 28 N.J. Super. 288, reversed on other grounds 15 N.J. 498 (1954).

I therefore conclude that the charge herein has been established by a fair preponderance of the credible evidence. It is accordingly recommended that the licensee be found guilty of the said charge.

Absent prior record, it is further recommended that the license be suspended for ninety days. Re Arnone, Bulletin 1971, Item 3.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the

Hearer's report, and the exceptions filed thereto which I find lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 27th day of April 1971,

ORDERED that Plenary Retail Consumption License C-277, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Hollander's Bar, Inc., t/a Hollander's Bar, for premises 482 Jackson Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, commencing at 2 a.m. Wednesday, May 11, 1971; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Monday, August 9, 1971.

RICHARD C. McDONOUGH
DIRECTOR

*By Amended Order dated April 28, 1971 the suspension was reduced from 90 days to 60 days because the violation charged herein preceded the establishment of new policy of increased penalties for such violation.

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

4.

ACTIVITY REPORT FOR APRIL 1971

ARRESTS:			
Total number of persons arrested - - - - -			34
Licensees and employes - - - - -	15		
Bootleggers - - - - -	14		
Minors - - - - -	5		
SEIZURES:			
Still - 50 gallons or under - - - - -			1
Alcohol - gallons - - - - -			75
Mash - gallons - - - - -			65
Distilled alcoholic beverages - gallons - - - - -			27.93
Wine - gallons - - - - -			12.59
Brewed malt alcoholic beverages - gallons - - - - -			43.942
RETAIL LICENSEES:			
Premises inspected - - - - -			797
Premises where alcoholic beverages were gauged - - - - -			658
Bottles gauged - - - - -			10,014
Premises where violations were found - - - - -			211
Violations found - - - - -			322
Unqualified employees - - - - -	84	No disposal permit - - - - -	16
No Form E-141-A on premises - - - - -	51	Other mercantile business - - - - -	3
Form E-141-A incomplete - - - - -	48	Prohibited signs & practices - - - - -	2
Application copy not available - - - - -	33	Other violations - - - - -	85
STATE LICENSEES:			
Premises inspected - - - - -			13
License applications investigated - - - - -			5
COMPLAINTS:			
Complaints assigned for investigation - - - - -			413
Investigations completed - - - - -			419
Investigations pending - - - - -			305
LABORATORY:			
Analyses made - - - - -			111
Refills from licensed premises - bottles - - - - -			88
Bottles from unlicensed premises - - - - -			5
IDENTIFICATION:			
Criminal fingerprint identifications made - - - - -			17
Persons fingerprinted for non-criminal purposes - - - - -			490
Identification contacts made with other enforcement agencies - - - - -			383
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities - - - - -			5
Violations involved - - - - -			8
Sale during prohibited hours - - - - -	3	Failure to close premises during prohibited hours - - - - -	2
Sale to minors - - - - -	3		
Cases instituted at Division - - - - -			51
Violations involved - - - - -			59
Beverage Tax Law non-compliance - - - - -	17	Purchase from improper source - - - - -	1
Sale to minors - - - - -	11	Fraud and front - - - - -	1
Sale during prohibited hours - - - - -	8	Solicitor aiding & abetting unauthorized sale - - - - -	1
Possessing liquor not truly labeled - - - - -	7	Unauthorized sale by solicitor - - - - -	1
Permitting immoral act. on premises - - - - -	3	Permitting foul language on prem. - - - - -	1
Unauthorized transportation - - - - -	2	Failure to close premises during prohibited hours - - - - -	1
Possessing indecent matter - - - - -	2		
No Form E-141-A on premises - - - - -	2		
Hindering investigation - - - - -	1		
Cases brought by municipalities on own initiative and reported to Division - - - - -			32
Violations involved - - - - -			39
Sale during prohibited hours - - - - -	11	Failure to close premises during prohibited hours - - - - -	3
Sale to minors - - - - -	9	Permitting illegal act. on prem. - - - - -	2
Permitting brawl on premises - - - - -	5	Hindering investigation - - - - -	2
Permitting gambling on premises - - - - -	3	Employment w/o I.D. card (local reg.) - - - - -	1
Conducting business as a nuisance - - - - -	3		
HEARINGS HELD AT DIVISION:			
Total number of hearings held - - - - -			42
Appeals - - - - -	1	Eligibility - - - - -	9
Disciplinary proceedings - - - - -	25	Tax revocations - - - - -	7
STATE LICENSES AND PERMITS:			
Total number issued - - - - -			4,161
Licensees - - - - -	1	Social affair permits - - - - -	453
Solicitors' permits - - - - -	58	Wine permits - - - - -	4
Employment permits - - - - -	3,203	Transit certificates - - - - -	6
Disposal permits - - - - -	32	Miscellaneous permits - - - - -	404
OFFICE OF AMUSEMENT GAMES CONTROL:			
Licenses issued - - - - -	86		
Enforcement files established - - - - -	1		

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: May 11, 1971

5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETTING) -
LICENSE SUSPENDED FOR 60 DAYS, LESS FIVE FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ANTHONY De FILIPPO)
t/a "The Larchwood")
140 Wall Street)
West Long Branch, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-1, issued by the Mayor and)
Council of the Borough of West Long)
Branch.)

Chamlin and Schottland, Esqs., by Ronald B. Rosen, Esq., Attorneys
for the Licensee.

Walter H. Cleaver, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that, on
December 6, 1970, he permitted the acceptance of bets on a "sport
event" (football game) and possessed slips and tickets pertaining
to that gambling activity and to other gambling activity, viz.,
bets on horse races, on the licensed premises, in violation of
Rule 7 of State Regulation No. 20.

Absent prior record and since the violation occurred pre-
vious to my notice to all licensees in order entered March 13, 1971
in Re Arnone, Bulletin 1971, Item 3, announcing increased penalties
to be imposed in bookmaking and numbers gambling cases, in fair-
ness, the then existing minimum penalty will be imposed in this
case, viz., a suspension of the license for sixty days, with
remission of five days for the plea entered, leaving a net
suspension of fifty-five days. Re Mercurio, Bulletin 1798, Item 3;
Re Town Tavern of Bd. Brook, Inc., Bulletin 1913, Item 2; Re Watson
Enterprises, Inc., Bulletin 1925, Item 5.

Accordingly, it is on this 28th day of April, 1971,

ORDERED that Plenary Retail Consumption License C-1, issued
by the Mayor and Council of the Borough of West Long Branch to
Anthony De Filippo, t/a "The Larchwood", for premises 140 Wall
Street, West Long Branch, be and the same is hereby suspended for
the balance of its term, viz., 12 p.m. midnight June 30, 1971,
effective at 2 a.m. Thursday, May 13, 1971; and it is further

ORDERED that any renewal license that may be granted shall
be and the same is hereby suspended until 2 a.m. Wednesday,
July 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 VETERANS OF MANVILLE, INC.)
 600 Washington Avenue)
 PO Box 858)
 Manville, N. J.)
 Holder of Club License CB-2,)
 issued by the Borough Council)
 of the Borough of Manville.)

CONCLUSIONS AND ORDER

 Ozzard, Rizzolo, Klein, Mauro & Savo, Esqs., by Victor A. Rizzolo, Esq., Attorneys for the Licensee.
 Walter H. Cleaver, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that, on February 20, 1971, it sold drinks of alcoholic beverages to non-members, in violation of Rule 8 of State Regulation No. 7.

Licensee has a previous record of suspension of license by the municipal license issuing authority for five days, effective March 23, 1964, for permitting alcoholic beverage activity on the licensed premises during hours prohibited by local ordinance.

The prior record of suspension for dissimilar violation occurring more than five years ago disregarded, 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 Italian American Social Club, Inc., Bulletin 1941, Item 7.

Accordingly, it is, on this 28th day of April, 1971,

ORDERED that Club License CB-2, issued by the Borough Council of the Borough of Manville to Veterans of Manville, Inc., for premises 600 Washington Avenue, PO Box 858, Manville, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, May 17, 1971, and terminating at 2:00 a.m. Thursday, May 27, 1971.

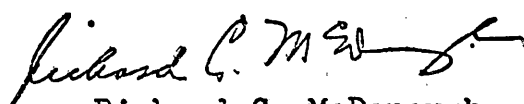
RICHARD C. McDONOUGH
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Trentacoste Bros. Inc.
 t/a Carabelli Beverage Co.
 320-328 Stokes Ave., Ewing Twp.
 Trenton, New Jersey

Application filed June 15, 1971 for place-to-place transfer of Additional Warehouse and Salesroom License AW-31 from 926 Haddonfield Road, Cherry Hill, New Jersey, to 100 Maine Street (Cor. Lakewood Ave.), Hainesport, N. J.

Dobbs Vintners, 20 Bleeker St., Millsburn, N. J.
 Application filed June 21, 1971 for wine wholesale license.



Richard C. McDonough
Director