

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2377

November 24, 1980

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - EL MESON ESPANOL, INC. v. UNION CITY.
2. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2377

November 24, 1980

1. APPELLATE DECISIONS - EL MESON ESPANOL, INC. v. UNION CITY.

#4392

El Meson Espanol, Inc.,

Appellant,

v.

Board of Commissioners of the
City of Union City,

Respondent.

CONCLUSIONS

AND

ORDER

Jose M. Franco, Esq., Attorney for Appellant.
Edward J. Lynch, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: December 27, 1979 - Received: December 31, 1979

BY THE DIRECTOR:

No written exceptions to the Hearer's Report were filed by the parties hereto pursuant to the provisions of N.J.A.C. 13:2-17.13.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision, I concur with the findings and conclusions of the Administrative Law Judge, except as hereinbelow noted.

The evidence in the first charge is clear and convincing that the 17 year old minor was served an alcoholic beverage on the date alleged, in the said licensed premises. No credible testimony was adduced to the contrary. I, therefore, agree with the finding of the Administrative Law Judge that this charge was established by a fair preponderance of the credible evidence.

I similarly agree with the finding on the second charge that there was lacking a preponderance of the credible evidence to support a finding of guilty. There is no doubt that a brawl and acts of violence did occur at the time and place charged therein. However, the testimony, while considerably contradictory in many aspects clearly

shows that the initial act of violence which precipitated the brawl occurred suddenly so that the licensee's employee could not prevent the said violence act. See Ka Zam Bar, Inc. v. Newark, Bulletin 1595, Item 1.

As the then Director stated in Bulletin 1425, Item 1, "It would be unfair to hold the licensee liable where a disturbance occurs as a sudden flareup without warning, or whether there is an occurrence of an event which could reasonably be construed as a warning." . . .

"Sudden flareups cannot, of course, be either prophesied or anticipated by licensees and where the evidence preponderates in support thereof, the licensee will not be held responsible. Zicherman v. Newark, Bulletin 613, Item 5; Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3."

The common sense rule must be applied in each given situation, i.e., whether the licensee, acting under the obligation and 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 flareup, 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).

Although I agree that the incident here was initially a sudden flareup, there was a broken bottle wielded by one of the patrons, which became a dangerous instrument; and, indeed, was used to inflict wounds upon another patron. As was pointed out in Lonzie B. & Ruby P. Jackson, t/a Jackson's Lounge v. Newark, Bulletin 1600, Item 2, where a dangerous weapon (such as a knife in that case) had been wielded by a participant in a fight on licensed premises, a licensee or his employee, upon becoming aware of same should exercise proper judgment by notifying police of such fact. Indeed, where a licensee or his employee becomes aware of the apparent commission of any crime in connection with the licensed business, he should notify the police. The

Director then advised, "I am taking this opportunity to impress this point upon licensees on order that they, as citizens with a strong stake in proper law enforcement may assume a leading position in cooperating with law enforcement agencies."

In the matter sub judice, although the licensee's employee did not personally notify the police, there is some testimony that she requested a patron who did in fact summon the police to the premises.

The Administrative Law Judge concluded that the charge with respect to the brawl be dismissed, and that the charge with respect to the service to the minor be affirmed. He further recommends that the appellant be suspended "for a period of time to be determined by the Director of the Division of Alcoholic Beverage Control." This is an improper and unaccessable recommendation. The Administrative Law Judge is mandated to recommend a specific term of suspension. The period of suspension for sale to a 17 year old minor has, to this date, been precedentially set by the Director at 15 days, absent mitigating or aggravating circumstances (not present here).

I shall, therefore, affirm the action of the respondent with respect to the first charge and impose a suspension of fifteen (15) days thereon; and I shall reverse respondent's action with respect to the second charge.

Accordingly, it is, on this 8th day of February, 1980,

ORDERED that the action of the respondent Board of Commissioners of the City of Union City with respect to the first charge set forth in the Initial Decision herein be and the same is hereby affirmed; and its action with respect to the second charge as set forth in the Initial Decision herein be and the same is hereby reversed, and the said second charge is hereby dismissed; and it is further

ORDERED that my Order dated August 9, 1979 staying the suspension herein pending the determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License No. 0910-33-055-001 issued by the Board of Commissioners of Union City to El Meson Espanol, Inc. for premises 4018 Bergenline Avenue, Union City be and the same is hereby suspended for fifteen (15) days commencing 3:00 a.m. Wednesday, February 20, 1980 and terminating 3:00 a.m. Thursday, March 6, 1980.

JOSEPH H. LERNER
DIRECTOR

APPENDIX

Initial Decision Below

EL MESON ESPANOL, INC.,)	<u>INITIAL DECISION</u>
PETITIONER,)	OAL. DKT. NO. ABC 4275-79
V.)	APPEAL NO. 4392
THE BOARD OF COMMISSIONERS OF THE)	
CITY OF UNION CITY,)	
RESPONDENT)	

APPEARANCES:

Jose M. Franco, Esq., for Petitioner
Edward J. Lynch, Esq., for Respondent

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On November 19, 1979 a hearing was held on the appeal of El Meson Espanol, Inc. from a resolution and order of The Board of Commissioners of the City of Union City dated July 18, 1979 which suspended for 45 days its plenary retail consumption license number 0910-33-055-001 after it had been found guilty of the following violations:

1. That on April 28th, 1979 you did allow, permit and/or suffer the sale, service and/or delivery of Alcoholic Beverages to a person under the age of eighteen (18) years, namely to ZILPA ALVAREZ of 811 Sip Street, Union City, N.J., born January 22nd, 1962, in or upon the licensed premises, all in violation of N.J.A.C. 13:2-23.1(a) and Section 8-4.4 of the "Revised General Ordinances of the City of Union City, 1975, as amended."

2. That on April 28, 1979 you did allow, permit and/or suffer in or upon the licensed premises a brawl or act of violence involving

O.A.L. DKT. NO. ABC 4275-79

LILIA CRUZ of 821-27th Street, Union City, N.J.; MERCEDES CORRAL of 811 Sip Street, Union City, N.J.; and ARMANDO PEREZ of 303-33rd Street, Union City, N.J., all in violation of N.J.A.C. 13:2-23.6(a)2.

The resolution and order indicated that a hearing was held on June 20, 1979, that the licensee was not present nor was it represented by anyone. There is no transcript of the hearing.

The Director of the Division of Alcoholic Beverage Control ordered on August 9, 1979 that the order of suspension be stayed pending the determination of the appeal. The matter was filed as a contested case on October 1, 1979.

At the hearing the following exhibits were marked into evidence:

1. J-1, Subpoena Ad Testificandum to Carmen Mojica
2. J-2, Subpoena Ad Testificandum to Lilia Cruz
3. J-3, Subpoena Ad Testificandum to Luis Hernandez
4. R-1, Statement of Zilpa Alvarez
5. R-2, Statement of Lilia Cruz
6. R-3, Statement of Luis Hernandez
7. R-4, Statement of Armando Perez
8. R-5, Statement of Mirta Rodriguez
9. R-6, Statement of Carmen Mojica
10. R-7, Statement of Jack Rizzo
11. R-8, Incident Report

O.A.L. DKT. NO. ABC 4275-79

The following facts were stipulated:

1. A brawl took place.
2. There were two stabbings and one person was scratched.

The respondent, in support of the action of the municipal issuing authority, called Detective Robert M. Flemen. He testified he is a detective with the Union City Police Department and that he was on duty on April 28, 1979. He said he took a statement from Zilpa Alvarez "earlier in the morning." Two detectives working on the incident brought to his attention the fact that Zilpa Alvarez was 17 years of age. He told them that Ms. Alvarez's parents should be present when her statement was taken. Her father agreed and the witness took the statement. He testified that Ms. Alvarez and her father indicated to him that she was 17 and she gave him her date of birth. He said he believed she stated that she was served a screwdriver. She told him that an altercation occurred in the Sevilla, licensed as El Meson Espanol, as they were standing at the bar.

The witness said both Alvarez and her father signed the statement. At this point R-1 was marked into evidence. From my review of it, it is a statement of Zilpa Alvarez taken at 8:00 A.M. on April 28, 1979. In it she said she was 17 years old, born on January 22, 1962. The statement is signed by Ms. Alvarez and her father Anselmo Alvarez. After her signature on page two, age 17 appears as it does at the top of both pages. Alvarez stated at about 2:24 A.M. on April 28, 1979 she was standing at the bar of the Sevilla Tavern with her sister, Mercedes, Jack Rizzo and Armando Cruz. She said a Lilia came up to her sister, called her a name and stabbed her with a knife.

Ms. Alvarez stated, while in the tavern, that she was served an alcoholic drink but that she did not get to drink it because they were only there for five minutes. She did not remember who bought the drink for her but the girl behind the bar gave the drink to her. This girl was behind the bar giving out drinks. No one asked her for any identification to show her age. Cross-examination elicited nothing significant.

Samuel C. Stephens testified that he was on duty on April 28, 1979 and that he took three statements, from Lilia Cruz, Luis Hernandez, and Armando Perez.

R-2, a signed statement of Lilia Cruz, was admitted into evidence. This was taken at 5:10 A.M. on April 28, 1979. In it she stated that she and friends arrived at the bar about midnight. She was talking with a man she had just met and she saw a crowd of

O.A.L. DKT. NO. ABC 4275-79

people coming into the bar, one of whom was the father of her child. She went outside so he would see her. She went back inside and sat next to the man she had met. She heard a bottle break and saw Armando Perez coming toward her with a broken bottle. She started to run behind the bar and he ran after her behind the bar. The barmaid kept saying, "don't, don't." Perez was swinging the bottle at her and calling her a whore. When she put up her arms to protect her face that is when he cut her with the bottle. She received an approximate one inch laceration on her left forearm.

Witness Stephens was next shown a signed statement of Luis Hernandez which was marked R-3 in evidence. It was taken at 3:45 A.M. on April 28, 1979. Hernandez stated he was sitting at the bar at about 2:26 A.M. when a fight broke out between two men. It appears that the letters W and O have been X'd out. He looked for the owner of the bar but he was not around so he broke up the fight. He observed no women fighting inside the lounge at anytime while he was there.

The witness said he also took a statement from Armando Perez. It was marked R-4 in evidence. Perez, in his signed statement which was taken at 6:40 A.M. on April 28, 1979, stated that he went into the bar at 2:00 A.M. with Mercedes Corral, her sister and the latter's boyfriend, Jack. He went to speak with his cousin and as he was talking to her, he heard a commotion. Mercedes screamed that she had been stabbed. She was bleeding a lot. The police came and asked him if he saw who stabbed her. He said it was Lilia Cruz. Lilia could not be found in the bar. She was eventually brought from the bar.

Perez said he saw Cruz stab Corral. She threw what appeared to be a punch and Perez saw a knife in Lilia's right hand. He denied striking Cruz.

Dennis C. Kohrherr testified he is a police officer in Union City and that he was on duty on April 28, 1979. He had occasion to go to the El Meson Tavern where he observed three people in the street, Jack Rizzo, Mercedes Corral and Zilpa Alvarez. He stated Zilpa gave her age as 18. Mercedes was stabbed once about four inches above the navel and one inch deep. Her wound required five stitches. Alvarez had some scratches on her left wrist and complained of pain in her upper back. He transported the victims to the hospital. Alvarez told him that Cruz stabbed Corral and that she, Alvarez, was injured during the scuffle. She was pushed into a wall and hurt her back.

On cross-examination the witness said he did not go inside the premises.

O.A.L. DKT. NO. ABC 4275-79

Mirta Rodriguez testified and was shown her signed statement which was taken at 5:30 A.M. on April 28, 1979. She testified she was tending bar and two girls were involved in a fight. She said she saw a girl fight with a guy. One was Lilia, the other Armando. She did not see Armando with a broken bottle. He was talking very, very bad because he came in with another woman. He went and punched her. The woman came inside the bar and asked the witness, who was inside the bar, for help. She tried to push him and he had nothing in his hand. Her husband came behind the bar, pushed him and the altercation stopped. Her husband stopped Perez from attacking Cruz.

The witness said Cruz called Perez a bitch and then she saw Perez hit her. Two women with Perez were cursing at Cruz in English.

In her signed statement, R-5 in evidence, Rodriguez stated she was employed by the Sevilla Tavern as a barmaid. She had been so employed for nine months. She said she was working on April 28, 1979 at 2:24 A.M. She was serving drinks behind the bar and she saw an argument at the bar near the door of the tavern. She saw Cruz and Perez start to fight. She saw and heard Cruz call Perez a bitch and then she saw Perez hit Cruz. Two women with Perez cursed at Cruz in English and the two women tried to break up the fight. Rodriguez asked a customer to call the police.

She saw Perez chase Cruz behind the bar. Perez had nothing in his hands nor did he do anything to Cruz. She saw no one get stabbed nor did she see Perez break a bottle. She saw him punch Cruz on one occasion. Perez, Cruz and the two women with Perez were fighting. The others tried to stop it.

On cross-examination the witness said only she was working at the time of the incident. A lot of people were sitting in the bar. She was in the back serving. Perez's group sat in the front. She came into the front to serve and Lilia and Armando were talking very bad. She did not serve anyone. She said she did not have time to prevent this kind of fight. First, Cruz and the husband were talking, then that other woman talked with Cruz and then the fight between Cruz and her husband started. Everybody tried to stop it.

When she saw the fight, she went to the back because her pregnant friend was in there and she was scared. She did not call the police, a male customer did.

When the fight started she served no one any liquor. Before the fight, she served liquor to everybody.

O.A.L. DKT. NO. ABC 4275-79

The witness denied knowing Alvarez. She never saw her before. She said she did not serve liquor to a minor. She said she did not serve her the liquor. She knew the girl when she went to the police but she did not serve the drink. Nobody else served the drink because she was alone in the bar. She said she did not serve to her before the fight because she was busy in the back. She was sure that she did not serve liquor to this girl.

On redirect examination the witness said she served nothing to Perez, Rizzo, Alvarez and Corral. She did not have time to serve the drink because the fight had started.

Cruz was arguing with Perez. Cruz came behind the bar and asked the witness to help. Perez punched Cruz after she got to the witness. She was not able to keep Perez from punching Cruz. He was punching and punching and her husband came and separated Perez and Cruz.

Carmen Mojica who was pregnant was bleeding in the arm. R-6, a statement signed by Carmen Mojica at 4:35 A.M. on April 28, 1979 was admitted into evidence. She said she was sitting at the end of the bar in the rear of the tavern when a group of people came into the bar. Then she saw and heard an argument and she went to the front of the bar. She saw Perez hit Cruz and she tried to push Perez away from her. Perez pushed her away and Cruz ran to the back of the bar and Perez ran after her. She saw Perez grab a bottle, break it and run after Cruz with the broken bottle. Cruz ran behind the bar, Perez ran after her and chased her from the rear to the front of the tavern where Cruz fell on the floor. She saw Perez swinging his fist at Cruz while she was on the ground and she tried unsuccessfully to pull Perez away from Cruz. Cruz yelled for help and Perez jumped over the bar and stood there for a minute. He then left the tavern.

Mojica stated she saw no one get stabbed during the fight.

On recross-examination Rodriguez said she was not able to do anything to prevent the fight. She said she was serving in the back when the fight started. The bar was very long.

On redirect, referring to Mojica's statement, the witness said that Mojica did not try to get Perez to go outside the bar. The witness said she did not see Perez with something in his hand. She saw him try to punch Cruz. She said she did not remember Cruz on the floor. "She fell down." Cruz was bleeding from her arm.

O.A.L. DKT. NO. ABC 4275-79

Jack Rizzo identified his signed statement taken at 7:00 A.M. on April 28, 1979. It was marked into evidence as R-7. He stated he was in the Sevilla Tavern at about 2:24 A.M. on April 28, 1979 with Alvarez, Corral and Perez. He said they arrived around 2:15 A.M. and some guy offered to buy a drink for him and Alvarez. The barmaid came over to them and he ordered the drinks. The drinks came and he had his back to the bar with Alvarez facing him. The next thing he heard was a commotion to his left by the bar where Cruz, Corral and Perez were. People got between Corral and Cruz. Alvarez went to help Corral and he stopped her. He saw Corral coming toward him and she said Cruz stabbed her. He said he did not see Corral get stabbed nor did he see a knife. He stated he knew Alvarez for two years and that she was 17 years old. He said she received a screwdriver from the barmaid in the Sevilla Tavern and he had a rum and coke.

On cross-examination Rizzo said his back was to the bar and he did not see the drinks being brought to the counter. They were there two or three minutes and that was when all the fighting occurred. He did not even get his drink. He never saw the drink on the bar. The witness told me that the altercation was quick, very quick.

Mercedes Corral testified she gave the police a statement about what occurred at the Sevilla, El Meson, on April 28, 1979. She was with Perez but no drinks were ordered. She said her sister, Zilpa Alvarez, was seventeen. She said her sister did not have a screwdriver nor did she order any drinks. There were drinks in front of them but they did not ask for drinks. They had no time to ask for drinks. She believed the drinks in front of them were those of other people as the bar was filled. They were there just a few minutes before the incident happened. She did not see how it happened. She believed Cruz came up to her and she felt, like, a push, a punch. She had been stabbed and was bleeding. She did not see the blade that stabbed her nor did she see Perez punch Cruz. She ran after Cruz after she had been punched in the stomach. People held both she and Cruz back. She then pulled some other girl to the floor by grabbing her head. She did not stab Cruz. She said there was no time for her to get to Cruz because she was a pretty far distance away.

Alvarez, in the commotion, was hit in the arm. The witness said she lost consciousness. She bled a lot and three stitches were needed to sew up her stomach.

On cross-examination the witness said she was positive her sister did not drink anything. She did not remember seeing the bartender at all. It was a fight that started suddenly and without too much time.

O.A.L. DKT. NO. ABC 4275-79

Armando Perez identified his signature on R-4 in evidence. He said he did not see anything as he was talking to his cousin. He could not remember if he saw Cruz stab Corral. Counsel for the respondent reviewed with the witness his statement. He denied chasing Cruz and he said he did not touch anybody. He did not know how Cruz got cut up.

Steven Chapman, a patrolman, stated he was on duty on April 28, 1979 and that he responded to the El Meson on a report of a disturbance. Upon arriving, he and his partner, Dennis Kohrherr, found a Spanish female standing in the street who had been stabbed in the abdomen. A female who was arrested inside the tavern had a five or six inch gash on a forearm and numerous scratches and contusions on her stomach. He thought there were one or two on her face but he was not sure. He did not see Alvarez.

The witness said he prepared a report of the incident. It was marked R-8 in evidence. It contained Perez's report to Chapman that Cruz stabbed Corral in the chest and was still inside the tavern. The police report listed two victims of stabbing to be Corral and Alvarez. The latter stated that Cruz attacked both herself and Corral in the bar and that her injury resulted from the scuffle. The report indicates that Alvarez had two scratches on her left wrist and that she complained of pain in her upper back.

The respondent rested. The petitioner offered no witnesses.

Procedurally, in a case such as this, the respondent first presents evidence in support of the action of the municipal issuing authority. However, the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed, rests with the appellant. N.J.A.C. 13:2-17.6

My function is to conduct a de novo hearing of the appeal and make the necessary factual and legal determinations on the record before me. I abide by the municipality's ruling so long as its exercise of judgment and discretion was reasonable. However, where the municipal action was unreasonable or improperly grounded, I will grant such relief or take such action as is appropriate, Fanwood v. Rocco, 33 N.J. 404, 414 (1960).

In this matter, numerous statements were admitted into evidence. As to hearsay, not objected to, the Court in Murphy v. Division of Pensions, 117 N.J. Super. 206, 214 (App. Div. 1971) stated: "In such a case a quasi-judicial tribunal, particularly an administrative body, should give such evidence its natural probative weight and effect without regard to its technical incompetency."

O.A.L. DKT. NO. ABC 4275-79

I have listened to the testimony of the witnesses, observed their demeanor, assessed their credibility, reviewed the transcript of the proceedings and the exhibits admitted into evidence. In my judgment, the Board of Commissioners of the City of Union City exercised its judgment and discretion in a reasonable manner in finding El Meson Espanol, Inc. guilty of the charge that it, on April 28, 1979 allowed, permitted and/or suffered the sale, service, and/or delivery of alcoholic beverages to a person under the age of eighteen (18) years, namely to Zilpa Alvarez, born January 22, 1962, in or upon the licensed premises.

I further conclude, however, that the Board of Commissioners of the City of Union City acted unreasonably and on improper legal grounds in adjudging El Meson Espanol, Inc. guilty of the charge that it, on April 28, 1979 allowed, permitted and/or suffered in or upon the licensed premises a brawl or act of violence involving Cruz, Corral and Perez. I find in this manner notwithstanding appellant El Meson Espanol, Inc. offered no witnesses to establish that the action of the Board was erroneous. That the action was erroneous is found within the very evidence presented by the respondent Board to support its action.

Factually, I FIND that:

1. On April 28, 1979 Zilpa Alvarez, who was born on January 22, 1962, was seventeen years of age.
2. At approximately 2:24 A.M. on April 28, 1979, Zilpa Alvarez, was a patron in the Sevilla Tavern whose corporate name is El Meson Espanol, Inc.
3. Mirta Rodriguez, the barmaid employed by the El Meson Espanol, Inc. served Zilpa Alvarez a screwdriver, an alcoholic beverage, on April 28, 1979 at approximately 2:24 A.M.
4. Neither Mirta Rodriguez nor anyone asked Zilpa Alvarez for any identification to show her age.
5. On April 28, 1979, Perez, Corral, Alvarez and Rizzo entered the El Meson Espanol, Inc. at approximately 2:15 A.M. and sat in the front of the tavern.

O.A.L. DKT. NO. ABC 4275-79

6. On April 28, 1979 at approximately 2:24 A.M. a brawl and acts of violence erupted suddenly at the El Meson Espanol, Inc. The principal combatants were Perez, Cruz and Corral, although Alvarez was injured during a scuffle. Corral was stabbed once by Cruz, approximately four inches above her navel. The wound was about one inch deep. Cruz sustained a laceration of about one inch on her left forearm as the result of Perez chasing her and cutting her with a broken bottle. Alvarez received two scratches on her left wrist and had pain in her upper back.
7. The period of time that elapsed between the entrance to the tavern of Perez, Corral, Alvarez and Rizzo and the brawl in the tavern among Corral, Cruz and Perez was brief, approximately five to eleven minutes.
8. The brawl and acts of violence erupted suddenly and without any indication to Mirta Rodriguez, the barmaid, that trouble was brewing. Mirta Rodriguez did not have time to take measures to prevent the brawl and acts of violence from occurring.

As to the first charge, N.J.A.C. 13:2-23.1(a) states that no licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of 18 years, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

Additionally, N.J.S.A. 33:1-7 states that anyone who sells any alcoholic beverage to a minor is a disorderly person. The statute then discusses how the person making the sale may establish a defense to the prosecution. Suffice it to say that the record in the instant matter is devoid of any of the facts which the licensee would be required to establish in order to have a valid defense to the charge. Alvarez was not even asked for identification to show her age by Rodriguez and, being seventeen years of age at the time, the violation was complete. I find therefore that the Board exercised its judgment and discretion in a reasonable manner in finding that El Meson Espanol, Inc., through Mirta Rodriguez, its barmaid, served and delivered a screwdriver, an alcoholic beverage, directly to Zilpa Alvarez who was seventeen years of age at the time.

O.A.L. DKT. NO. ABC 4275-79

The second charge is that El Meson Espanol, Inc., on April 28, 1979 allowed, permitted and/or suffered in or upon the licensed premises a brawl or act of violence involving Cruz, Corral and Perez, in violation of N.J.A.C. 13:2-23.6(a) 2. N.J.A.C. 13:2-23.6(a) 2 states that no licensee shall engage in or allow, permit or suffer in or upon the licensed premises any brawl, act of violence, disturbance, or unnecessary noise.

In my judgment, the municipality's case against El Meson Espanol, Inc. was insufficient to establish that the licensee allowed, permitted or suffered a brawl or an act of violence. There is no doubt that a violent brawl occurred. It was stipulated that a brawl occurred. Three women were injured. There was a stabbing and the wielding of a broken bottle that culminated in Cruz being cut. It was a wild melee. But the respondent's evidence was such that the brawl erupted suddenly and without warning so as to create an obligation on the part of Rodriguez to take steps and measures to prevent it. A review of the statements and the testimony will reveal many conflicts. However, in my judgment, one fact is constant and that is that the brawl began within minutes after Perez, Corral, Alvarez and Rizzo entered the tavern and the record is devoid of evidence that would indicate to Rodriguez that danger was lurking and that she had therefore better act quickly to prevent it.

I am aware that a license to sell intoxicating liquor is not a contract nor is it a property right. I know it is a temporary permit or privilege to pursue an occupation which is otherwise illegal. From the earliest history of our State the sale of intoxicating liquors has been treated in an exceptional manner by the Legislature. It has been written that it is a subject by itself, to the treatment of which all the analogies of the law appropriate to other topics cannot be applied. It has also been written that the sale of intoxicating liquor is in a class by itself, Mazza v. Cavicchia, 15 N.J. 498, 505 (1954).

Despite the foregoing I cannot attribute a strict or absolute liability to a tavern merely because a brawl occurs on the licensed premises. The licensee must have sufficient notice and warning that trouble is brewing. Once the licensee has such notice and warning, he must act with dispatch to prevent an eruption into violence. In the instant matter, the record is barren of evidence that Rodriguez was aware that trouble was festering among Perez, Corral and Cruz. The brawl was a sudden eruption that she was powerless to prevent.

O.A.L. DKT. NO. ABC 4275-79

Finally, Webster's Third New International Dictionary (1976) defines "allow" as follows:

"to permit by neglecting to restrain or prevent; to make a possibility: provide opportunity or basis."

"Permit" is defined as "to consent to expressly or formally, to make possible, to give an opportunity."

"Suffer" is defined as "not to forbid or hinder."

I therefore **CONCLUDE** that the Board acted unreasonably in adjudging that El Meson Espanol, Inc., allowed, permitted and/or suffered in or upon its licensed premises a brawl or act of violence among Cruz, Corral and Perez on April 28, 1979 and I **ORDER** a dismissal of that charge.

I **CONCLUDE**, however, that the Board acted reasonably in adjudging that on April 28, 1979 El Meson Espanol, Inc., through its barmaid, Mirta Rodriguez, served in the licensed premises an alcoholic beverage to Zilpa Alvarez, who was seventeen years of age at the time. I therefore **ORDER** that the Director's order of stay of August 9, 1979 be dissolved and I further **ORDER** that plenary retail consumption license number 0910-33-055-001 of El Meson Espanol, Inc. be suspended for a period of time to be determined by the Director of the Division of Alcoholic Beverage Control.

This recommended decision may be affirmed, modified or rejected by the head of agency, the **Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner**, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the **Director of Alcoholic Beverage Control, Joseph H. Lerner**, my Initial Decision in this matter and the record in these proceedings.

