

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

Director

BULLETIN 1937

October 21, 1970

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STATE OF NEW JERSEY
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1100 Raymond Blvd. Newark, N.J. 07102

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1. APPELLATE DECISIONS - CORCORAN v. MANASQUAN.

EDWARD R. CORCORAN)	
t/a MANASQUAN INN,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
MAYOR AND COUNCIL OF THE)	
BOROUGH OF MANASQUAN,)	
)	
Respondent.)	

Kannen, Starkey, Turnbach & White, Esqs., by Harold C. White,
Esq., Attorneys for Appellant
John D. Wooley, 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 Mayor and Council whereby it refused to delete one of the special conditions on appellant's plenary retail consumption license for the 1968-69 licensing period, the condition in question being that "There shall not be more than one public bar on the licensed premises and such a bar shall not be more than sixteen (16) feet in length."

Appellant's petition of appeal alleges that respondent's action was erroneous for the following reasons:

"a. It was an unreasonable exercise of the respondent's power to issue licenses subject to conditions.

b. It unlawfully discriminated against appellant in relation to other licensed premises within the municipality.

c. It was neither necessary nor proper to accomplish the objects of the ABC Law.

d. It was arbitrary, capricious and confiscatory and deprived appellant of his property without due process of law."

Respondent's answer denies the aforesaid allegations and avers that, when the license was originally issued in 1958, the restriction was inserted after obtaining approval of the Division of Alcoholic Beverage Control. Moreover, respondent contends that the appellant was aware of the said condition when the license was transferred to him.

Appellant testified that his business has increased and stated that, if permission were granted to him, what he intends to do is "to build a bar in this large room off the barroom, which I now call the lounge, which would add approximately 14 or 15 stools

to my present 9-stool bar that I have, and obviously this is my intent, to better service the customers that come in, and lessen the crowded conditions around this little, small bar."

Appellant further testified that there are six other plenary retail consumption licenses issued to premises in the municipality wherein there are no restrictions concerning the size of the respective bars.

On cross examination appellant said that he has held the license for two years and at the time he obtained the license had knowledge of the limitation placed on the size of the bar which was permitted in the premises. Appellant also stated he is familiar with the area wherein the licensed premises are located, and that within three blocks of appellant's hotel it is surrounded by a residence area and uses. The appellant agreed that all of the other hotels containing liquor licenses in the area are zoned for business purposes. Appellant said that, when he purchased the hotel, the exterior thereof was run down and an eyesore. He further stated that, although the lawn was seeded, "a tremendous barn" was removed and he "cut down a veritable jungle that was behind the hotel." Appellant agreed that nothing was done to improve the appearance of the exterior of the building. Appellant also stated that the larger bar "would obviously generate more business."

Raymond Baker (councilman) testified that he was a councilman in 1958 when the liquor license was originally issued to the hotel and (according to the resolution in evidence) voted in favor of the issuance. Councilman Baker also stated that he was not on the Borough Council in 1967 when the zoning for the hotel site was changed from the nonconforming use to a hotel zone.

Police Chief Willard Nock testified that from 1958 to 1968 the appellant's premises were primarily a "hotel and restaurant" business and presented no problems. He further testified that, since appellant became proprietor of the place, there was an "increase of business, increase of traffic in that area, and tremendous complaints from the neighbors in that area." Moreover, the Chief stated that "there was noise from music, noise from people leaving in and out, and being a business in a residential zone, tremendous noises at two to three in the morning when they were leaving the hotel." He further testified that appellant employed a special policeman and, although this had an appreciable effect, "the officer couldn't cover the two-block area that they park for the hotel in."

Councilman Breck Jones (chairman of the police committee) testified that appellant had a conference with the Mayor and Council prior to obtaining the license and it was explicitly explained to him about the limitations on the license. Councilman Jones also stated that at the time the building was "very rundown. It being in a residential area, all the homes in that area, the people kept their homes in very nice conditions, and this place was an eyesore;" that the "building hasn't changed any; the property has." Councilman Jones further stated appellant had "added an exit door on the front, on the front of the building, from one of the lounge rooms to the porch. I think he renewed some steps."

On cross examination Councilman Jones said that appellant improved the grounds and provided a paved parking space for approximately forty or fifty cars.

Anthony DeLuca testified that he resides across the street from appellant's premises and is annoyed by patrons coming from appellant's hotel because of the noise and traffic and the strewing of bottles and cans on his lawn.

Petitions containing three hundred sixteen signatures of persons residing in the Borough of Manasquan objecting to increased facilities for dispensing alcoholic beverages were filed in the matter.

The question to be resolved is whether respondent abused its discretion by denying the request of appellant to remove the special condition in question from his liquor license. Initially it must be recognized that, although the side on which the hotel is located has been zoned for a hotel use, the rest of the area for a distance of at least three blocks is a residential zone and that there are no mercantile or business establishments located therein. The record indicates that the liquor license was issued in 1958 for the purpose of providing alcoholic beverages to those who rented quarters in the hotel or made use of its residential facilities. The testimony of the two councilmen and the Chief of Police is to the effect that there was no problem for the operation of the business before appellant obtained the license in 1968. It appears that from then on the conditions outside of appellant's premises became progressively worse. Complaints because of noise and traffic congestion, including parking of cars of appellant's patrons, became a constant source of annoyance to the people residing in the area. Although there appears to be no contemplation by appellant that the building containing the licensed premises will be changed on the exterior thereof, the appellant is now requesting that he be granted approval to increase the facilities for the sale of alcoholic beverages in order to expand his present business. It is reasonable to believe that expansion of the business, with the increased facilities, would lead to greater annoyances to the residents in the area.

As was stated by Justice Francis, speaking for the Supreme Court of New Jersey in the case of Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark et al., 55 N.J. 292, at p. 306:

"... Service of the public interest in licensing, in transferring of licenses and in controlling this exceptional business requires an attentive and sympathetic attitude toward the sentiments of substantial numbers of persons in the locality, whether they be residents, commercial operators, or representatives of a nearby church, school or hospital. When their views are hostile to a licensee's request for enlargement of his existing business, and the views are reasonably associated with dangers to the public health, safety, morals and general welfare commonly recognized as incidents of the sale and consumption of alcohol, the local regulatory body does not act arbitrarily in honoring them...."

The question to be resolved in the instant appeal is whether the action of the Mayor and Council was unreasonable in inserting a special condition in appellant's license that there be not more than one public bar and that such bar shall not be more than sixteen feet in length.

We cannot lose sight of the fact that appellant's premises, although zoned for a hotel, are in the center of and surrounded by a zone for residential purposes for a considerable distance. Thus the location of his premises is not comparable to the location of the other hotels in business zones.

The objections to any change in the physical make-up within the premises so as to delete the special condition must be recognized. It appears that the appellant's only concern is the expansion of his business by having greater facilities to dispense alcoholic beverages to his patrons. However, according to the record, especially the testimony of Chief Nock, conditions now are not good in the vicinity of appellant's licensed premises. In a case such as that now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. How far a local issuing authority may go in attempting to adjust the question as to what action should be taken to protect the rights of objecting neighbors is largely a matter of discretion. Thus the restriction as to the number or size of a bar must not be disturbed unless it appears to be wholly unreasonable.

No evidence has been presented of improper motives on the part of the Mayor and Council of the Borough, and there is nothing to indicate that the respondent acted arbitrarily, unreasonably, or abused its discretion in the case.

After examination of the entire record herein, it is apparent that appellant has failed to sustain the burden of proof that the action of the respondent was erroneous. Cf. Erin Hotel Ltd. v. Belmar, Bulletin 1894, Item 4. It is recommended that the action of the respondent be affirmed and that the appeal herein be dismissed.

Conclusions and Order

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

After careful consideration of the entire record herein, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of September 1970,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - FRED GEIGER BAR, INC. v. NEWARK.

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

 Leon Sachs, Esq., Attorney for Appellant.
 Anthony J. Iuliani, Esq., by Ronald Owens, 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 the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which by resolution dated February 4, 1970 suspended appellant's Plenary Retail Consumption License for premises 63-65 Stuyvesant Avenue, Newark, for twenty days, effective March 2, 1970, after finding appellant guilty in disciplinary proceedings of failing to keep its entire premises closed on Thursday, October 30, 1969 between the hours of 2:00 A.M. and 7:00 A.M. and failing to draw and remove, during the said hours, all screens, curtains and obstructions so as to provide a clear and unobstructed view of the interior of appellant's licensed premises from the street, in violation of the local ordinance.

Appellant, in its petition of appeal, alleges that the action of the Board was erroneous because its determination was "against the weight of the evidence" and was "arbitrary, capricious, and an abuse of discretion". The answer of Board admits the jurisdictional facts and defends that its decision was based upon the factual testimony, from which it "in its sound discretion, concluded that the penalty imposed sustained such action".

Upon the filing of this appeal, an Order was entered by the Director on February 26, 1970 staying the Board's Order of suspension until the entry of a further Order herein.

This matter was presented on appeal upon the stenographic transcript of the proceedings held before the Board and supplemented by additional testimony on behalf of the appellant, pursuant to Rules 6 and 8 of State Regulation No. 15.

From my examination of the transcript of the testimony herein, I make the following findings of fact: At about 2:30 A.M. on October 30, 1969 local police officers, on routine patrol, observed that the curtains on the outside window of the appellant's tavern were closed. They investigated and found that the door was closed and in looking through a peephole in the door, Police Officer Sica saw that there were three males and one female in

the premises, one of whom was behind the bar. The bartender then opened the door in response to his summons and the officer questioned him about the three persons on the premises. The bartender admitted that they were not employees but one is "Gail, my girl, and two friends of mine that came to pick me up".

The female was sitting at the far end of the bar and the other two males were seated in front of the bartender. There were empty glasses on the bar. The officers then questioned him about the closed curtains and the bartender said that he had forgotten to open them at the time of closing. The officers informed the bartender, (later identified as John Michael Wade, the manager of the said premises), that the presence on licensed premises of non-employees after the 2:00 A.M. closing time, and the failure to open the curtains so as to afford an unobstructed view from the outside of the premises, constituted violations of the local ordinance.

John Michael Wade who testified both before the local Board and at this plenary de novo hearing, admitted that the friends of his were not employees of the licensee, and were in the premises until 2:30 A.M., but asserted that the officers actually arrived at the premises at 2:15 A.M. He denied that the curtains were closed, and insisted that there was an unobstructed view of the interior from the outside of the premises.

From my evaluation of the testimony, I conclude that these violations were established, and that the Board could reasonably have reached its determination after assessing the credible evidence presented.

The burden of establishing that the Board acted erroneously and arbitrarily, is upon the appellant. The ultimate test in these matters, is one of reasonableness on the part of the Board, or to put it another way; could the members of the Board, as reasonable men, acting reasonably, have come to this determination based upon the credible evidence presented? The Director should not reverse unless he finds that "...the act of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen, &c., Assn. v. Hoboken, 135 N.J.L. 502, 511; cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957).

As noted above, the witnesses for the appellant frankly admit that non-employees were in the premises during the prohibited hours. Licensees must understand that it is their duty and responsibility to clear out of the premises all unauthorized persons at the closing hour.

With respect to the alleged failure to keep an unobstructed view of the interior from the outside of the premises, it is more realistic to believe that the officers' attention were attracted, as they drove past the premises by the fact that the curtains were closed so as to obstruct the interior view from the exterior. The members of the Board who had the opportunity to observe the demeanor of Officer Sica as he testified, chose to believe and accept as credible his testimony with respect to the condition that existed at the time that he approached the premises.

My examination of the facts and the applicable law generates no doubt that these charges were established by a preponderance of the credible evidence. Accordingly, I conclude that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is, therefore, recommended that an Order be entered affirming the Board's action, dismissing the appeal, vacating the Order staying the Board's Order of suspension, and fixing the effective dates for the suspension of the license imposed by the Board.

Conclusions and Order

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

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

Accordingly, it is on this 12th day of August, 1970

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

ORDERED that Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Fred Geiger Bar, Inc. for premises 63-65 Stuyvesant Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Thursday, August 27, 1970 and terminating at 2 a.m. Wednesday, September 16, 1970.

RICHARD C. McDONOUGH
DIRECTOR

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

In the Matter of Disciplinary
Proceedings against

ROMANO, INC.
56-58 Fourteenth St.
Hoboken, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-112 for the year 1969-70 and
Plenary Retail Consumption License C-116
for the year 1970-71 issued by the
Municipal Board of Alcoholic Beverage
Control of the City of Hoboken

Patrick DiMartini, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On November 25, 26, December 2, 3, 6 and 12, 1969, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On November 25, 26, December 2, 3, 6 and 12, 1969, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The Division offered the testimony of several ABC agents in substantiation of the charges.

Agent S, who possessed sufficient experience in investigating gambling, including numbers and bookmaking activities, in his capacity as an agent of the Division testified that he was assigned to investigate a specific complaint of gambling at the licensed premises. In furtherance of his investigation, he visited the licensed premises on November 25 at 11:00 a.m. accompanied by Agent R. They took seats at the bar near the front door. Two bartenders, Theodore J. Schmidt (Ted) and Michael J. Romano (Mike), a minority stockholder of the corporate licensee, were on duty. The agents were served drinks by Ted. Upon inquiry, Agent S learned from Ted that Tom Dolan (Tom) was the individual who accepted "numbers" bets at the premises. At that time Tom had not yet arrived. Shortly thereafter, Tom entered the premises and Ted announced his arrival and pointed him out as the individual standing near a table at the extreme front end of the bar about eight feet from the agents.

Continuing, Agent S testified that he and Agent R approached Tom and Agent R placed a "numbers" bet with him for one dollar. Tom drew a small pad from his pocket upon which he recorded the bet and on which pad the agent observed numerous "other digits and numbers bets." Returning to the bar, Agent R informed Ted of the bet he had placed with Tom and inquired of him whether Tom was reliable. Ted replied, "If you hit, you'll get paid. Come in the first thing in the morning and he'll pay you. He is good. He is no problem. He pays."

Agents S and R left the premises about 11:45 a.m.

Accompanied by Agents G and R, Agent S returned to the licensed premises on November 26 at about 11:00 a.m. They took seats at the front end of the bar tended by Ted. Mike was tending bar at the other end of the bar.

Agent S asked Ted, "Has the bookie, Tom, been in yet?" Ted answered, "No, he is not in yet. He should be in though." Tom arrived about thirty minutes later and stationed himself in the immediate area of the aforesaid table. The agent observed Tom accept money from three males, following which Tom made notations in the same book used by him on the preceding day. Agents S and R went to Tom and placed "numbers" bets of \$1 each with him. Tom recorded the same on his pad and put the money in his pocket. Agents S and R rejoined Agent G at the bar where they were served drinks by Ted. Upon inquiry, Ted again assured Agent S of Tom's reliability.

Accompanied by Agent R, Agent S revisited the licensed premises on December 2 at approximately 11:30 a.m. They positioned themselves at the front end of the bar and were again served by Ted. Upon their inquiry, Ted stated, "He [Tom] should be in any minute now." Shortly thereafter Tom entered the premises and approached the agents at the bar. Tom asked them, "What do you want for today?" Ted was serving them beer at the time. The two agents placed numbers bets with Tom, who accepted their money and noted their bets as on previous occasions. Ted stood behind the bar opposite them while the bets were being made.

Tom proceeded along the bar, spoke with three or four patrons, and the agents observed Tom in quick fashion accept money from each of said patrons, make notations on his pad and leave the premises. In a conversation with Ted prior to leaving the premises, the agents informed him of their gambling activities with Tom during the past week. Ted stated that he places a weekly numbers bet with Tom, and again he assured them that if they were successful, Tom would pay them without fail.

Agents S and R returned to the premises on December 3 at 11:40 a.m. and again took seats at the bar in the same area as heretofore. Agent S asked for Tom. Tom entered the premises at approximately 11:55 a.m. and positioned himself near the front entrance of the premises. Again, the agents placed numbers bets with Tom. Tom accepted their money and noted their bets on his pad. The agents, accompanied by Tom, returned to the bar. Agent S ordered a drink for Tom. Tom refused the offer and, in Ted's immediate presence, said, "You can't drink and take numbers. It's like drinking and driving...You can't do both." Continuing, he stated that his predecessor who had taken numbers bets at the premises "used to drink, and he ruined it...When I took over this thing, I was getting 500 a week in action. Now, I have raised it, brought it all the way up to a thousand." At 12:15 p.m., Agent S and Agent R left the premises.

Agent S, accompanied by Agents R, G and Ga, entered the premises on December 6 at about 1:30 p.m. and took positions at the far end of the bar, near the kitchen, where Mike Romano was tending bar. Fifteen minutes later Tom came into the premises and handed a scratch sheet to two males seated at the front end of the bar. The two males placed the sheet on the bar and examined it, had conversation with Tom, following which Tom accepted money from them and made a notation on his pad. Agent S did not overhear the conversation.

Tom approached patrons at the bar, accepted money from them and made recordings in his book. Tom came to where the agents were seated at the bar and Agents S and R placed numbers bets with him as heretofore. Tom noted their bets in his book. Tom left the premises, re-entered the same about ten minutes later and proceeded to where the agents were positioned. Agent Ga said aloud to Tom, "Give me 318 for a dollar straight." Tom accepted a dollar from Ga and made a notation on a pad. At about 3:45 p.m. as the agents were leaving the premises, Agent S informed Ted of their gambling transaction with Tom.

Accompanied by Agent G, Agent S entered the premises on December 12 at 1:35 p.m. He had in his possession five "marked" one-dollar bills. The agents positioned themselves at the rear section of the bar in the area where Mike was tending bar. Ted was having lunch at a table in their immediate vicinity. Upon inquiry, Ted informed Agent S that Tom had been in and would return shortly. At 2:00 p.m. Ted relieved Mike tending bar. By pre-arrangement, at approximately 2:10 p.m. a State Police Task Force detective positioned himself next to the agents at the bar. Ted served a drink to the detective. Tom entered the premises immediately thereafter and approached the agents. He cautioned them not to discuss any business with him because a police lieutenant was in the front part of the premises. Upon advice of Tom, Agent S, Agent G, a kitchen employee and Tom met in the men's room. Agent S placed five numbers bets with Tom, prepared a slip for the same and gave it to Tom with the five "marked" one-dollar bills. Tom, followed by the State detective, left the premises.

Continuing, Agent S testified that at about 3:00 p.m.

he and Agent G identified themselves to Mr. Romano and advised him of their gambling activities with Tom. Romano stated that he had requested Tom not to come into the premises. Agent S requested Ted to join him and Agent G and Romano at a table. Ted admitted that he was aware of Tom's bookmaking activities on the premises, and also the aforesaid employee of the licensee informed Romano that he had placed a numbers bet with Tom in the men's room.

Agent S joined the State detective and local police in a raided store wherein Tom was arrested. The State detective had recovered the five "marked" one-dollar bills which had been given to Tom as outlined above.

Despite an exhaustive cross examination, Agent S's testimony did not vary from the testimony adduced on direct examination. Additionally, he conceded that he had no personal knowledge of Ted's numbers betting with Tom. Tom had volunteered this information. He had not spoken with Mike Romano about his numbers betting with Tom until his final visit on December 12, aforesaid.

Agent R testified that he had accompanied Agent S to the licensed premises on November 25, 26, December 2, 3 and 6. Agent G joined them on their second visit and Agent Ga was with them on December 6.

The attorneys for the Division and the licensee stipulated that Agent R, if questioned, would corroborate the testimony of Agent S with respect to his visits to the premises.

On cross examination, Agent R testified that the conversation with Ted on their first visit to the premises was between Agent S and Ted and that he sat alongside Agent S on the visits to the premises.

Agent Ga testified that on December 6, he accompanied Agents S, R and G to the licensed premises, following which it was stipulated by the licensee's attorney that, if questioned, his testimony would be corroborative of Agents S and R.

On cross examination, Agent Ga testified that he and the other agents were seated at the far end of the bar where Romano was on duty; that he placed a numbers bet with Tom, but had no conversation with Romano relative to his bet with Tom.

In defense of the charges, Michael J. Romano, secretary of the corporate licensee, testified that he had no knowledge of Tom's gambling activities on the licensed premises. He denied hearing Ted state (in Agent S's presence) that he knew Tom was taking numbers bets on the premises. He denied hearing his kitchen employee state that he had given a numbers bet to Tom and testified that he had left the table when the said employee was being questioned with respect thereto.

He described the premises as containing a straight bar about forty feet long, with an L-shaped return of six feet. There is an opening at the other end of the bar with a ten-foot counter. Ten tables in the premises are used by patrons who

serve themselves with food and beverages.

He stated that between 10:45 a.m. and 2:00 p.m. two bartenders are on duty and the patronage varies in this period of time between ten and fifty patrons. The bartenders serve food from the counter to patrons seated at the tables.

Continuing, Romano testified that he had seen the agents in the premises on December 6 and 12. He stated that he is acquainted with Tom Dolan and that on December 6 Dolan was in the premises attending a party and about 2:00 p.m. he spoke with him in the kitchen, but he did not observe him in conversation with the agents.

He further testified that he did not know if Tom had visited the premises on December 12. About 3:00 p.m. the agents invited him to their table and identified themselves and informed him of the arrest of Dolan and the gambling activities on the premises. He told the agents that he has known Dolan for many years, that he had been a railway employee and had retired about two years ago, and that he was a frequent visitor on the premises.

Theodore Schmidt denied having conversations with the agents relative to gambling activities by Dolan on the licensed premises. He denied seeing Dolan take numbers bets from patrons at the bar. He conceded that on the agents' second or third visit to the premises, Agent S asked for Dolan. On one of such visits, he pointed out Dolan to Agent S, but had no further conversation with Agent S on that day. Between forty and fifty patrons were at the bar and he was very busy and paid no further attention to the agents or Dolan. On subsequent visits to the premises, Agent S inquired whether Dolan was in the tavern. On one occasion, Agent S asked him what success he was having with his numbers bets. He informed Agent S that he placed a weekly numbers bet but that he did not betting with Dolan. He had no knowledge of Dolan's gambling activities and he had never observed the agents in conversation with Dolan. On December 12 he joined Agents S and G and Mr. Romano at a table, where Agent S informed him of the arrest of Tom for taking numbers bets.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

I am imperatively persuaded that the version given by Agent S as to the occurrences to which he testified in so direct a manner is credible, factual and a true version. It is obvious that he was not improperly motivated in testifying as he did, nor did he have any personal animus against the licensee. The testimony as to the numbers betting activity engaged in by Tom Dolan upon the licensed premises on the dates charged was clear and convincing. On the other hand, I was totally unimpressed by the testimony of the witnesses for the licensee because it lacked candor.

Agent S's testimony, corroborated by the other agents, graphically described the betting activities at the bar and amply justifies the conclusion that the proscribed activities were carried on in such an open manner that the licensee and its employees could have, or should have, observed such activity.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

An additional basic principle is worthy of emphasis. In disciplinary proceedings a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

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

Licensee has no prior adjudicated record of suspension of license. I recommend that the license be suspended for sixty days. Re Bonanni, Bulletin 1893, Item 1.

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 3rd day of September 1970,

ORDERED that Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Romano, Inc., for premises 56-58 Fourteenth Street, Hoboken, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, September 21, 1970, and terminating at 2 a.m. Friday, November 20, 1970.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

BENJAMIN COHEN
t/a "CHESILHURST LIQUOR STORE"
White Horse Pike
Chesilhurst, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution
License D-1 (for 1969-70 and 1970-71
license periods), issued by the Mayor
and Borough Council of the Borough of
Chesilhurst.

Licensee, Pro se

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

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On March 30, 1970, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Richard ---, age 16; in violation of Rule 1 of State Regulation No. 20."

The investigation in this matter was prompted by a complaint made by the father of a minor who was one of a group of minors who consumed a quantity of alcoholic beverages which were allegedly purchased at the subject licensed premises.

The Division's presentation was developed through the testimony of an ABC agent specifically assigned to investigate the alleged ABC violation at the subject premises and three minors.

Richard --- (a 16-year-old minor) gave the following account: On March 30, 1970 he was a passenger in a motor vehicle driven by a friend of his and, together with four other minors, they purchased alcoholic beverages in another liquor store earlier that day. After consuming the same at the sand pit in that municipality, they then decided to purchase additional alcoholic beverages. They drove to the subject licensed premises and, while the five other minors remained in the motor vehicle, Richard, fortified with a driver's license and a certification card for one Robert Dale Andre (which this witness claims was given to him by one of the other boys), entered the premises. He asked for two six-packs of beer and handed the clerk (later identified as Benjamin Cohen, the licensee herein) who examined the identification and asked him how old he was. He falsely stated that he was twenty-three years of age. Cohen then sold him the two packs of Schmidt's beer and a half-pint of ginger-flavored brandy. He was not requested or required to sign any written representation with respect to his age. He stated that he paid about \$4 for

these purchases. Upon leaving the premises he re-entered the motor vehicle and the youths drove back to the sand pit where they consumed the said alcoholic beverages.

About three weeks after this incident he was summoned to police headquarters and questioned by Captain O'Rourke. After signing a statement with respect to the alleged purchase, he revisited the premises with O'Rourke and an ABC agent.

David --- (a 17-year-old minor) testified that he operated the motor vehicle in which Richard was a passenger on the date alleged herein, and corroborated the testimony of Richard with respect to his entering the liquor store empty-handed and returning to the motor vehicle with a package containing the alcoholic beverages. He positively identified the premises at which the purchase was allegedly made and stated that he is very familiar with these premises because he lives in the general area and has "passed there enough times."

Charles --- (another passenger of this motor vehicle) similarly corroborated the testimony of Richard and was positive that the alcoholic beverages were purchased by Richard at these premises. He admitted that, while he had been drinking, he was not drunk and stated that the brand name of the beer purchased was Schmidt's. He too was familiar with the premises because he has occasion to pass those premises every day.

ABC Agent D testified that, pursuant to a specific assignment, he, accompanied by Captain O'Rourke and Richard, went to the premises on Tuesday, April 21, 1970 and questioned the licensee. The licensee denied that he had ever seen the minor before that time or that he had ever sold him any alcoholic beverages.

Benjamin Cohen (the licensee) categorically denied that he had ever made any sales to this minor or that he had ever seen him prior to the date of confrontation. However, he admitted that the total sales did amount to approximately \$4 and that this facility does sell Schmidt's beer.

In adjudicating this matter we are guided by the long established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960). Since there is a sharp conflict in the testimony herein, it became necessary to evaluate the testimony after observing the demeanor of the witnesses and giving weight to such testimony as was found to be credible. The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Since the minor obviously perpetrated an evil scheme by presenting false identification, his testimony was scrutinized very carefully. Nevertheless, from my evaluation of the testimony I am persuaded that the evidence given by the minor had the ring of truth. Richard gave a forthright and credible account in support of the said charge and his testimony was corroborated by the other two minors. Thus the evidence produced by the Division was of such probative force that it engendered that feeling of

reasonable probability under these circumstances. It is of significance that the investigation which lead to the preferment of this charge had its genesis in a complaint by the father of one of these youths that his son was drunk on the date of the alleged occurrence.

Licensees must be held strictly accountable for violations of the statute and the rules with respect to sales to minors. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947); In re Schneider, 12 N.J. Super. 449, 456.

After carefully considering all of the testimony with respect to the said charge, the conclusion is inescapable that this charge has been established by a fair preponderance of the believable evidence, indeed by substantial evidence. Accordingly, I recommend that the licensee be found guilty of the charge.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for twenty-five days. Re Chip's Bar, Inc., Bulletin 1896, Item 7.

Conclusions and Order

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

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

Accordingly, it is on this 11th day of September, 1970

ORDERED that Plenary Retail Distribution License D-1 for the 1970-1971 licensing period issued by the Mayor and Borough Council of the Borough of Chesilhurst to Benjamin Cohen, t/a "Chesilhurst Liquor Store" for premises White Horse Pike, Chesilhurst be and the same is hereby suspended for twenty-five (25) days commencing at 7 a.m. Monday, September 28, 1970 and terminating at 7 a.m. Friday, October 23, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING, HORSE RACE BETS, and
NUMBERS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MICHAEL COSTELLO
t/a Port Hole Tavern
501 Garden St.
Hoboken, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-29 (for 1969-70 license
period) and C-26 (for 1970-71 license
period), issued by the Municipal Board
of Alcoholic Beverage Control of the
City of Hoboken.

Andrew F. Batistich, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

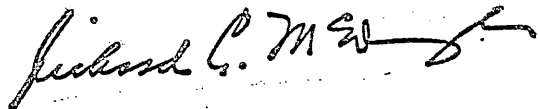
BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on
May 13, 14, 19 and 27, 1970 he variously permitted gambling,
viz., the acceptance of numbers and horse race bets on the
licensed premises, in violation of Rules 6 and 7 of State
Regulation No. 20.

Absent prior record, the license will be suspended for
sixty days, with remission of five days for the plea entered,
leaving a net suspension of fifty-five days, Re Heineke,
Bulletin 1899, Item 11.

Accordingly, it is, on this 15th day of September 1970,

ORDERED that Plenary Retail Consumption License C-26,
issued by the Municipal Board of Alcoholic Beverage Control of
the City of Hoboken to Michael Costello, t/a Port Hole Tavern,
for premises 501 Garden Street, Hoboken, be and the same is hereby
suspended for fifty-five (55) days, commencing at 2 a.m. Monday,
September 28, 1970, and terminating at 2 a.m. Sunday, November
22, 1970.



Richard C. McDonough
Director