

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

BULLETIN 1916

July 9, 1970

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - REMLEY & SIANO v. PATERSON.
2. DISCIPLINARY PROCEEDINGS -(Denville) ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS - (West New York) - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED IN VIOLATION OF LOCAL ORDINANCE - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
4. SALE TO MINOR - (Pennsauken) - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS - (Tabernacle Twp.) - GAMBLING (SPORTS EVENTS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.
6. DISQUALIFICATION REMOVAL PROCEEDINGS - FALSE INFORMATION TO A POLICE OFFICER - ORDER REMOVING DISQUALIFICATION.
7. DISCIPLINARY PROCEEDINGS - (Atlantic City) - LEWDNESS AND IMMORAL ACTIVITY - LICENSE SUSPENDED FOR 45 DAYS.
8. DISCIPLINARY PROCEEDINGS - (Burlington City) - GAMBLING (SLOT MACHINES) - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS - (Passaic) - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.
10. STATE LICENSE - 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

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July 9, 1970

1. APPELLATE DECISIONS - REMLEY & SIANO v. PATERSON.

Leroy Remley & Tony Siano, a partnership)	
t/a Red's Bar & Grill)	
Appellants,)	On Appeal
V.)	
Board of Alcoholic Beverage Control)	CONCLUSIONS
for the City of Paterson,)	and
Respondent.)	ORDER

Goodman Singer, Esq., Attorney for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants, holders of Plenary Retail Consumption License C-254 for premises 157 Third Avenue, Paterson, was found guilty by respondent for violation of Rule 35 of State Regulation No. 20 in that they did hinder or delay or caused the hindrance or delay of a police officer in the performance of his duty, and their license was suspended for a period of fifteen days effective September 15, 1969. Parenthetically, it might be stated that appellants were found not guilty of permitting a member of the licensee partnership of working in the licensed premises while actually or apparently intoxicated in violation of Rule 24 of State Regulation No. 20.

Appellants filed this appeal challenging the said conviction, alleging that respondent's action was contrary to the weight of evidence.

This matter was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

Respondent denied the substantive contentions contained in the petition of appeal. An order was entered on September 12, 1969 staying respondent's order of suspension until further order of the Director.

The stenographic transcript of the hearing below was submitted pursuant to Rule 8 of State Regulation No. 15, and was supplemented at this hearing by testimony of witnesses produced on behalf of both appellants and respondent.

At the hearing below, Sergeant Stanley Neeson of the local police department testified that on August 6, 1969 he was dispatched to answer a call that a woman had been assaulted at the licensed premises. He met Alice Remley (wife of the co-appellant, Leroy Remley) in front of the licensed premises and was informed by her that her husband, who was in the tavern at the time, had assaulted her. The police sergeant entered the tavern and found Remley

standing at the patron's side of the bar. His testimony then reflected the following:

"So I had told him that his wife said that she had been assaulted, and he said he did not assault her. And I talked to the woman. She had been very upset, and Mr. Remley started getting upset also, and I told her this is only a family problem. You ought to go home and talk it over; you're man and wife. You're no children. Go home and straighten it up amongst yourselves. You don't need the police. Then Mr. Remley had told me, well, he didn't call me. I said, 'That's right. Your wife did. I am here on a complaint of your wife.' And he kept interfering with the conversation. I told him to be quiet; he would have his say. And he asked me again, by what right I had to be in his tavern. I says, 'I have every right. I am acting on a complaint.' With that he again started raising his voice, and there was a few minutes passed by and I placed the man under arrest as being drunk and disorderly."

The appellants were not represented by counsel at the hearing below. At that hearing the co-appellant, Tony Siano, testified that he was tending bar on the night in question. Remley did not tend bar that night. The Board then questioned him principally concerning the occurrence which led to the police being called.

In his sworn oral statement given in lieu of formal testimony Remley conceded that he might have gotten upset with the officer. Upon being questioned by the Board, he admitted that it was possible that he used profanity to the officer.

At this hearing, the respondent Board offered in evidence the transcript of the proceedings before the Board and certain exhibits.

Leroy Remley testified that, upon being confronted by the police officer in the tavern on the night in question, he did inquire of him as to why he was there. He admitted arguing with the officer that night; however, he asserted that the argument took place in the street and not in the tavern. He was placed under arrest outside the tavern.

Alice Remley testified that she and her husband had engage in a dispute in the licensed premises and as a result thereof she called the local police department from a point outside the tavern. Three police officers including Lieutenant Neeson responded to the call. Only Lieutenant Neeson entered the tavern, the other two officers remained outside. Finally, the witness testified, as follows:

"Q Now, while you were in the tavern at the same time as the police were there did Mr. Remley interfere with the police?

A Not inside the tavern, but he did get aggressive on the outside.

Q He what?

A He was, I'd say, aggressive. He wanted to know why he was--why all the fuss was. And the exact words I couldn't tell you because I broke down, to tell you the truth. But--and then when he was being arrested I asked him not to and they

said, well, he was a little out of order and that they'd talk to him downtown.

* * * * *

"BY THE HEARER:

"Q Madam, were you inside the tavern at all times when your husband was talking with Sergeant Neeson?

A Yes, sir, I was. He was talking outside, also, to Sergeant Neeson quite awhile."

Concisely stated, respondent argued that the obligation of an owner of a licensed premises to abide by rules and regulations of this Division is not limited to the confines of the licensed premises but extends to the sidewalk adjacent to the licensed premises.

In determining the factual complex herein, the guiding rule 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 the fair consideration of the evidence. 34A C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504-06 (1956). Cf. Walter v. Alt, 152 S.W.2d 135, 141.

After fully considering all of the testimony, I find that, although the police officer may have been fully justified in arresting the co-licensee Remley for abusive or disorderly conduct, I find as a fact that the abusive conduct occurred on the sidewalk adjacent to the licensed premises and not within the confines thereof.

I further find that the police investigation was directed to the settlement of a domestic dispute and not the investigation of a possible violation of the rules, regulations, laws or ordinances pertaining to the subject of alcoholic beverage control. Thus, there was no hindrance or delay of an officer in the pursuit of an investigation or inspection of a licensed premises or of any search thereof in violation of Rule 35 of State Regulation No. 20, as charged. No conviction may be broader than the charge upon which it is based.

Accordingly, it is, recommended that the action of the Board be reversed, and that the charge herein be dismissed.

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, including the testimony and argument of the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 14th day of May 1970,

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

Richard C. McDonough
Director

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
 LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

Beeson's, Inc.
 t/a Beeson's Tavern
 75 Bloomfield Avenue
 Denville, N. J.,

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption)
 License C-4, issued by the Township)
 Committee of the Township of)
 Denville.)

-----)
 Skoloff & Wolfe, Esqs., Attorneys for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on March 3, 1970, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective April 9, 1962, for sale of alcoholic beverages during prohibited hours in violation of Rule 1 of State Regulation No. 38.

The previous 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 Mazda-brook Farms and Country Club, Bulletin 1904, Item 8.

Accordingly, it is, on this 14th day of May, 1970,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Denville, to Beeson's Inc., t/a Beeson's Tavern, for premises 75 Bloomfield Avenue, Denville, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, June 2, 1970, and terminating 3:00 a.m. Friday, June 12, 1970.

Richard C. McDonough
 Director

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND
 FAILURE TO HAVE LICENSED PREMISES CLOSED IN VIOLATION OF LOCAL
 ORDINANCE - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR
 SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

We-Six, Inc.
 t/a Headquarters Tavern
 6615 Hudson Avenue
 West New York, N. J.,

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption)
 License C-59, issued by the Board)
 of Commissioners of the Town of)
 West New York.)

-----)

Capone, Gittleman & Anastasi, Esqs., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) and (2) it allowed the consumption of alcoholic beverages on the licensed premises and permitted unauthorized persons thereon on Saturday, March 7, 1970, after 3 a.m., during hours prohibited by municipal ordinance, and (3) in its application for current license failed to disclose record of a prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective September 11, 1967, for sale of alcoholic beverages during hours prohibited by municipal ordinance, the subject of the third charge herein.

The prior record of suspension of license for similar violation occurring within the past five years considered, the license will be suspended on the first and second charges for thirty days (Re Khanka, Bulletin 1867, Item 4) and on the third charge for ten days (Re Caled Corporation, Bulletin 1899, Item 5), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 19th day of May 1970,

ORDERED That Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the Town of West New York to We-Six, Inc., t/a Headquarters Tavern, for premises 6615 Hudson Avenue, West New York, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 3 a.m. Wednesday, June 3, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Wednesday, July 8, 1970.

Richard C. McDonough
Director

4. SALE TO MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Lajar Corporation
t/a "Dio's Lounge"
3905 Federal Street
Pennsauken, N. J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-25, issued by the Township
Committee of the Township of
Pennsauken.

Piarulli and Vittori, Esqs., Attorneys for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on October 29, 1969, it sold a drink of beer to a minor, age 19, in

violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension of license by the municipal issuing authority for ten days, effective August 25, 1969, for sale to a minor.

The prior record of suspension for similar violation within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Pollack, Bulletin 1883, Item 7.

Accordingly, it is, on this 19th day of May 1970,

ORDERED that Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Pennsauken to Lajar Corporation, t/a "Dio's Lounge", for premises 3905 Federal Street, Pennsauken, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Wednesday, June 3, 1970, and terminating at 3:00 a.m. Tuesday, June 23, 1970.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - GAMBLING (SPORTS EVENTS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Villa Tavern, Inc.
t/a Villa Tavern
#206 & Medford Lakes Rd.
Tabernacle Township
PO Vincentown, N. J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-2, issued by the Township
Committee of the Township of
Tabernacle.

Licensee, by Lottie V. Ryba, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on January 12, 18, 19 and 22, 1970, it permitted the acceptance on the licensed premises of bets on football and basketball games, in violation of Rule 7 of State Regulation No. 20.

Although this corporate licensee has no previous record of suspension of license, a license held for the same premises by Ronald S. Ryba, 98% stockholder of the corporate licensee at the time of the alleged violation herein, was suspended by the Director for ten days, effective October 31, 1966, for sale of alcoholic beverages on a Sunday in violation of Rule 1 of State Regulation No. 38. Re Ryba, Bulletin 1706, Item 6.

Sports events gambling of the kind herein is conducted by a person selecting one of the teams as his choice to win, at a stated number of units at Five (\$5.00) Dollars a unit, with point spread, referred to as the line, and at a rate of return or odds, fixed for the event by an organization known as "the book". I consider this kind and type of betting on sports events

to be equivalent to the acceptance of horse race or numbers bets. Cf. Re Garwood House, Inc., Bulletin 1839, Item 2. Hence, I shall suspend the license for sixty days (cf. Re Garwood House, Inc., supra), to which will be added five days by reason of the prior record of suspension of license of Ronald Ryba for dissimilar violation within the past five years (Re Club 339, Inc., Bulletin 1881, Item 11), or a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 21st day of May 1970,

ORDERED that Plenary Retail Consumption License C-2 issued by the Township Committee of the Township of Tabernacle to Villa Tavern, Inc., t/a Villa Tavern, for premises #206 & Medford Lakes Rd., Tabernacle Township, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2:00 a.m. Monday, May 25, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Friday, July 24, 1970.

Richard C. McDonough
Director

6. DISQUALIFICATION REMOVAL PROCEEDINGS - FALSE INFORMATION TO A POLICE OFFICER - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)	
to Remove Disqualification be-	
cause of a Conviction, Pursuant)	CONCLUSIONS
to R.S. 33:1-31.2.)	and
	ORDER
Case No. 2412	
- - - - -)	

BY THE DIRECTOR:

Petitioner's criminal record discloses that on November 15, 1963, he was convicted in the Morris County Court of knowingly and willfully giving false information to a police officer in violation of NJS 2A:148-22.1 and as a result thereof was sentenced to serve six months in the County jail.

Aforesaid conviction may or may not involve the element of moral turpitude depending upon the surrounding facts and circumstances.

A report received by the Division discloses that petitioner was alleged to have stolen a sum of money and alcoholic beverages from his employer, a licensee, and falsely accused another of the offense, resulting in the latter's arrest and incarceration. Upon determining that said individual was falsely accused, he was released from jail and petitioner was charged with the crime. Thereafter petitioner again accused aforesaid individual of a theft (fictitious) for purpose of discrediting him as witness at petitioner's trial.

At the hearing held herin, petitioner (43 years old) substantially verified aforesaid report.

Based on the charge, judgment of conviction, and the background facts in the case, it is my opinion the crime of which petitioner was convicted on November 15, 1963 involves the element

of moral turpitude. (Cf. Re Case No. 1809, Bulletin 1561, Item 5), and he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25,26.

Petitioner further testified that he is married and living with his wife; that for the past thirty years he has resided in the municipality where he presently resides; that since 1963 he has been employed as a laborer and as a part time bartender from April 1969; and that until recently, when notified by a member of my staff, he had no knowledge that he was ineligible for employment in the alcoholic beverage industry in this State.

Petitioner is asking for the removal of his disqualification to be free to continue to be engaged in the alcoholic beverage industry in this State and that ever since his conviction on November 15, 1963 he has not been convicted of any crime or arrested.

Petitioner produced three character witnesses (a manager of an automobile sales agency, an officer of a garden supply company and a retired custodian of an automobile agency) who testified that they have known petitioner for more than five years last past and that in their opinion he is now an honest, law-abiding person with a good reputation.

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

The only reservation I have in granting the relief sought herein is based on the fact that the petitioner, although disqualified, worked on licensed premises in this State. I am, however, favorably influenced by four factors, viz.: (a) the testimony of his character witnesses, (b) petitioner's criminal record discloses one conviction which took place over six years ago, (c) a favorable report from the Morris County Probation Office and (d) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 6th day of May 1970,

ORDERED that petitioner's statutory disqualification, because of the conviction described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY -
 LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary)
 Proceedings against)

Ceill's Ltd.)
 t/a Ceill's Saratoga)
 203-205 South New York Avenue)
 Atlantic City, N. J.,)

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption)
 License C-102, issued by the Board
 of Commissioners of the City of)
 Atlantic City.)

- - - - -)
 Blatt, Blatt & Consalvo, Esqs., by Martin L. Blatt, Esq.,
 Attorneys for Licensee
 Edward F. Ambrose, 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:

"During the early morning hours of Saturday, June 21, 1969, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy, indecent and obscene conduct by male and female customers and/ or patrons in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The Division bottomed its case upon the testimony of ABC agents C and D, who were specifically assigned to the investigation of alleged misconduct of patrons at the licensed premises. They gave the following account:

On Saturday, June 21, 1969 at approximately 2:20 a.m., accompanied by three other ABC agents, they entered the premises and seated themselves at the bar. At that time there were approximately fifty male and six female patrons, all of whom attracted the attention of these agents because most of the males were apparent homosexuals and the females were apparent lesbians. The patrons were generally paired up as couples male with male, female with female.

Several of the couples occupied the same stool; that is, one would be seated on the lap of the other. It was clear to the agents that this was obviously a "gay" bar, catering to this type of patronage, and that there were few, if any, patrons other than apparent homosexuals and lesbians. The male couples at the bar usually had their arms about each other, kissing and petting on the neck and freely touching each other's "buttocks and privates." This type of petting on the privates and stomach area and the buttocks characterized the behavior of many of the couples during the entire period of this visit.

There was a band playing, and about five of the couples, male with male and female with female, were dancing. As they danced, they held their arms tightly wrapped about each other, petted and fondled the buttocks and back of the neck and hair.

Several of the couples freely engaged in kissing and "actually exchanged their tongues in each other's mouth." The number of couples on the floor varied from three couples to five couples during the period of the agents' visit.

Agent C called the attention of the bartender to the intimate dancing and activity of a particular couple on the dance floor, and commented, "Boy! They really have it bad for each other!"; the bartender replied "Oh, yes. They are having fun."

The couples danced to slow music and rubbed their bodies against each other, and continued to pet and caress as hereinabove described. After they completed the dancing the couples returned to the bar and continued to kiss and caress all parts of the body, the thighs, buttocks and privates of their partners.

The nature of the caressing and petting was the same with respect to both the male and female couples. They accentuated their motions by being very close to one another "They rubbed, you know, kind of gyrated against each other." One female couple at the bar was engaged in petting and kissing on the neck; their arms around each other's waists; and one female reached her hand inside the other's blouse and fondled her breast while she was kissing her on the neck. This was done right in the presence of one of the bartenders. He made no attempt to interfere with any of this activity.

About 3:15 a.m. the agents identified themselves to Norman Sidlow, the president of the corporate license who ushered them into the kitchen of the restaurant. Sidlow asserted that this was a "gay" bar and he felt that it was better to keep it confined to this type of patronage. Sidlow insisted, however, that he did not observe the kissing or the activities as hereinabove delineated. When it was pointed out to him that numerous couples were standing along the wall and along the bar embracing, petting each other on the privates and thighs, he denied witnessing any such activity.

Norman Sidlow, testifying in behalf of the licensee stated that the stage area where the go-go dancer performs is illuminated by two spotlights but that there are no lights in the barroom except for a small light on the register and one in the window. There is also a small light on the juke box.

He insisted that there were only two or three couples on the dance floor at any one time. Further, a go-go boy performed for the patrons, and his performance lasted about an hour.

He stated that the usual dance numbers were fast numbers, that when a slow number was played on the juke box only one couple was on the floor. He described the patrons as being well-behaved, very quiet and "I didn't see anything wrong." He denied that there was any kissing, petting and any lewd activity. He also denied that two people occupied the same seat, or that any one sat on the lap of his or her companion.

On cross examination, Sidlow asserted that if he were at the door when the agents sought to enter the premises he would have denied them admittance because, as he stated to them:

"Most of our clientele is mostly gay kids. I try to keep out all the straight people I can because I don't want trouble. I think I never had trouble. And if I seen you coming in I wouldn't let you in until I seen identification."

He admitted that all of the patrons of this establishment were "gay" and that he has operated this type of facility for a number of years. However, he insisted that he did not permit any lewd or indecent activity and if he does observe the same he would put them out. He admitted, however, he did not, nor did his bartenders, put anyone out on this date. Furthermore, he questioned the bartenders and they denied that there was any indecent activity taking place on this occasion.

James Dansey, who was employed as a bartender on the night in question, testified that the go-go boy was performing some time between 2:00 and 4:00 a.m. and his performance usually takes about forty to fifty minutes. He stated that there were about thirty to fifty patrons on this date and that they were well behaved. He readily admitted that Agent C pointed out two males dancing with each other and said to him "There are two guys over there really like each other." He replied "It is possible." He admitted that he did observe couples kissing each other but, if there was any "soul kissing", that would be reason for putting them out. However, he did not observe any such action on this night nor did he have any occasion to put anyone out.

On cross examination he admitted that when he was employed elsewhere as a teacher he usually patronized this type of establishment and socialized with some of the patrons.

Finally he admitted that he had specific instructions to use his judgment, and if he felt that the patrons were getting "a little too out of hand to flag them." He didn't mind if the patrons had their arms about each other, but if they engaged in rubbing each other's private parts and similar activity he would stop it. However no such activity took place on these premises. Finally, he insisted that if he saw two males or two females dancing closely with their arms wrapped around each other, that he didn't think this was a reason for interfering.

In adjudicating this matter, I am 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).

In assessing the testimony given herein, I have had an opportunity to observe the demeanor of the witnesses as they testified. Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I find, from my evaluation of the testimony, that the account given by the Division witnesses accurately, factually and credibly substantiated this charge. It is clear that these agents pursued this investigation upon a specific assignment, and there is no suggestion in the record that they had any preconceived prejudice against the licensee. On the other hand, I disbelieve and find incredible the testimony of the witnesses for the licensee, who claimed that there was no misconduct or unusual behavior on the part of the patrons or customers.

It should be stated clearly that the licensee is not being charged with permitting, allowing or suffering the congregation of male homosexuals or lesbians on the licensed premises. This Division recognizes the impact of One Eleven Wines & Liquors, Inc. v. Div. Alcoholic Bev. Cont., 50 N.J. 329 (1967) which held

in effect that the "mere, though open congregation of homosexuals at the licensed premises" forms no basis for a charge against them. Said the court:

"So long as their public behavior violates no legal proscriptions they have the undoubted right to congregate in public. And so long as their public behavior conforms with currently acceptable standards of decency and morality, they may, at least in the present context, be viewed as having the equal right to congregate within licensed establishments such as taverns, restaurants and the like." (50 N.J. at p. 339)

Thus well-behaved, apparent homosexuals and lesbians have the equal right to patronize and meet in these premises as would any other patrons. However, the fact that they have equal rights does not make them more equal than other patrons; they are equally proscribed from engaging in overtly indecent conduct and public displays of sexual desires manifestly offensive to currently acceptable standards of propriety and decency.

The charge made against this licensee was made under Rule 5 of State Regulation No. 20 and specifically cites the licensee for allowing, permitting and suffering lewdness, immoral activity and foul, filthy, indecent and obscene conduct in and upon its licensed premises. Although these premises admittedly cater almost exclusively to a "gay" crowd, nowhere within the four corners of the charge is there any specification of the nature of the patronage. Therefore, the critical issue is whether these patrons, regardless of whether they were heterosexual or apparently homosexual, conducted themselves in such manner as to constitute a violation of the aforementioned regulation.

As above stated, I find from the testimony that the behavior of these patrons was such as to be violative of the subject regulation. It would seem to me that, where a licensee admittedly caters to this type of clientele, it should be particularly sensitive to the conduct of its patrons. Although it has no special obligation, it nevertheless cannot use less diligence than that required by all who must bear the burden of less comprehensive responsibility under the Alcoholic Beverage Control law and the Rules and Regulations of this Division.

It is no answer to this charge that Sidlow or his bartenders did not see the conduct or the specific acts of the patrons as delineated in considerable detail by the ABC agents. It has been consistently held that the licensee and its agents are not only expected to regulate the activity on licensed premises but must use their eyes and ears and must use them effectively to prevent the improper use of licensed premises. Re Schuyler, Bulletin 1787, Item 1; Re Ehrlich, Bulletin 1441, Item 5. A tavern should not provide an arena for the behavior disclosed by the record. See concurring opinion in One Eleven Wines & Liquors Inc. v. Div. Alcoholic Bev. Cont., supra (50 N.J. at p. 342, 343).

After carefully considering the totality of the record herein, the conclusion is inescapable that the said charge has been established by a preponderance of credible evidence. It is, therefore, recommended that the licensee be found guilty of said charge.

Licensee has no prior adjudicated record of suspension of license.

It is, further, recommended that this license be suspended for forty-five (45) days, Re Toth, Bulletin 1356, Item 4.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I have noted the comments in the said exceptions and find that the exceptions have either been considered in the Hearer's report or are lacking in merit.

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 20th day of May 1970,

ORDERED that Plenary Retail Consumption License C-102, issued by the Board of Commissioners of the City of Atlantic City to Ceil's Ltd., t/a Ceil's Saratoga, for premises 203-205 South New York Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 7 a.m. Tuesday, June 2, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7 a.m. Friday, July 17, 1970.

Richard C. McDonough
Director

8. DISCIPLINARY PROCEEDINGS - GAMBLING (SLOT MACHINES) - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Tadeusz Kosciuszko Club, Inc.
State Highway & York St.
Burlington City, N. J.,

CONCLUSIONS
and
ORDER

Holder of Club License CB-12, issued
by the City Council of the City of
Burlington

Licensee, by Hugh E. Murray, Secretary, Pro se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on February 20, 1970, it permitted the playing for stakes of money (gambling) on and possessed two devices in the nature of slot machines, on the licensed premises, in violation of Rules 7 and 8 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Point Pleasant Lodge #1549 Loyal Order of Moose, Bulletin 1719, Item 11.

Accordingly, it is, on this 19th day of May 1970,

ORDERED that Club License CB-12, issued by the City Council of the City of Burlington to Tadeusz Kosciuszko Club, Inc. for premises State Highway & York St., Burlington City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, June 1, 1970, and terminating at 2:00 a.m. Saturday, June 6, 1970.

Richard C. McDonough
Director

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

In the Matter of Disciplinary
Proceedings against

Robert Joseph Reilly
t/a Lantern Bar & Grill
57-59 Garden Street
Passaic, N. J.

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-102, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Passaic, and transferred
during the pendency of these
proceedings to
Vincent Muscio,
t/a Lantern Bar & Grill
for the same premises.

No appearance on behalf of Robert Joseph Reilly.
Thomas H. Bruinooge, Esq., Attorney for Vincent Muscio, Transferee.
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 July 25, 28, and 29, 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 July 25, 28, and 29, 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."

These proceedings were instituted by notice dated October 15, 1969 which was mailed to the licensee with the request that a plea must be entered not later than Thursday, October 23, 1969. When no plea was entered by that time, a telegram was sent to him informing him that the hearing herein would take place at the Division offices on Thursday, October 30, 1969.

The licensee did not appear at the October 30 hearing. However, on October 31 he sent a telegram to this Division wherein he entered a plea of not guilty.

On November 3, 1969 the Division sent him notice that the hearing in this matter had been rescheduled to November 14, 1969, at 10 a.m. at the Division offices. On the morning of November 14, 1969 the licensee phoned the attorney of this Division requesting a further adjournment "due to illness." The matter was then again adjourned to December 10, 1969, and the licensee was requested to advise the Division if he intended to change his plea before the said hearing date. The licensee did not respond.

On the scheduled date of hearing (December 10, 1969), licensee appeared at the Division offices and requested a further adjournment for the reason as set forth in a letter prepared while he was in this office addressed to the Division "that I need additional time to complete my investigation and arrange for the appearance of witnesses in my defense." On December 11, 1969 the Division replied to this letter and informed him that this matter had been further adjourned to Monday, February 2, 1970 at 2 p.m. and that, if there was no change in the plea, he was requested to advise the Division on or before Tuesday, January 27, 1970. Not having received any response to the Division's letter, the Division's attorney wrote to the licensee on January 28, 1970 notifying him that the matter has been definitely set down for hearing on February 2, 1970 at 2 p.m., and that, if he did not appear, the Division would nevertheless go forward with its proof.

The licensee did not appear on February 2, 1970 at 2 p.m. and at 2:50 p.m. I authorized the Division's attorney to go forward with the Division's case.

ABC Agent S testified that, pursuant to a specific assignment to investigate alleged gambling activities at the licensed premises, he visited the said premises on eight occasions. On July 25 and 28, 1969 he visited the premises and placed numbers bets with the bartender (later identified as Robert (Rob) Williams). Williams accepted money for the said bets and noted the same on white slips of paper. On his visit of July 29, 1969 he entered the premises at 10:45 a.m. accompanied by ABC Agents G and Ga. He again placed a numbers bet with Williams who recorded the bet on a piece of paper and received \$1 therefor. This bet was placed in the presence of a woman (identified as Mary Youngman) who relieved Williams and acted as barmaid.

The testimony of Agent S was corroborated by Agents G and Ga.

I conclude that the Division has established the truth of the charges by a fair preponderance of the evidence and recommend that the licensee be found guilty as charged.

While the licensee has no adjudicated record prior to the institution of this action, it should be noted that, subsequent thereto, his license was suspended by the local issuing authority for fifteen days commencing October 26, 1969 for (1) sale during prohibited hours, (2) failure to keep his premises closed during prohibited hours, and (3) failure to provide a clear view of the licensed premises, all in violation of the local ordinance.

In view of the failure of the licensee to appear at this hearing and his failure to contact this Division since the date

of the hearing and offer a satisfactory explanation for his failure so to appear, it is further recommended that the license be revoked. Re Farley & Danieli, Inc., Bulletin 1626, Item 1; Re Allen, Bulletin 1886, Item 4.

Conclusions and Order

Written exception to the Hearer's report, pursuant to Rule 6 of State Regulation No. 16, limited to the penalty of revocation of license recommended by the Hearer, was filed by the attorney for Vincent Muscio, the present licensee.

The record discloses that on May 6, 1970 this license was transferred from Robert Joseph Reilly to Vincent Muscio, t/a Lantern Bar & Grill, for the same premises. The attorney for the transferee pleads that the licensee should not be penalized for the failure of the prior licensee to appear at the hearing herein, which said unexplained failure or refusal resulted in the afore-said recommendation.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation as to the finding of guilt on the said charges. However, I shall modify the recommended penalty from revocation to a suspension of sixty days, the usual penalty imposed for such violation. Re Weaver's Orange Room (a corp.), Bulletin 1901, Item 5.

Accordingly, it is, on this 1st day of June 1970,

ORDERED that Plenary Retail Consumption License C-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Robert Joseph Reilly and transferred during the pendency of these proceedings to Vincent Muscio, t/a Lantern Bar & Grill, for premises 57-59 Garden Street, Passaic, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2 a.m. Monday, June 8, 1970; and it is further

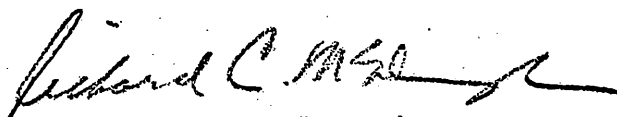
ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, August 7, 1970.

Richard C. McDonough,
Director

10. STATE LICENSE - NEW APPLICATION FILED.

V. & P. Import Inc.
41 Marietta Parkway
East Rutherford, New Jersey

Application filed July 6, 1970 for limited wholesale lice.



Richard C. McDonough
Director