

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

BULLETIN 1747

August 24, 1967

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1100 Raymond Blvd. Newark, N.J. 07102

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August 24, 1967

1. APPELLATE DECISIONS - LEMONGELLI v. NEWARK.

Ralph Lemongelli, t/a)	
Club Carmen,)	
)	
Appellant,)	ON APPEAL
)	
v.)	CONCLUSIONS
)	AND
Municipal Board of Alcoholic)	ORDER
Beverage Control of the City)	
of Newark,)	
)	
Respondent.)	
-----)	

Mario V. Farco, Esq., Attorney for Appellant
No appearance on behalf of Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant (holder of plenary retail consumption license for premises 28 Columbia Street, Newark) was found guilty by respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) of sale of alcoholic beverages in and upon his licensed premises on municipal election day, Tuesday, June 14, 1966, during the hours that the polls were open, in violation of Rule 2 of State Regulation No. 20, whereupon his license was suspended for twenty days, effective January 16, 1967. He filed this appeal challenging such action, and an order was entered by the Director of this Division on January 12, 1967, staying the effect of the order of suspension until the further order of the Director.

The petition of appeal alleges that the Board's action was erroneous for reasons which may be briefly summarized as follows: (1) the verdict was contrary to the weight of the evidence; (2) the penalty imposed was "harsh, excessive and unduly severe."

The Board filed an answer in which it admitted both the jurisdictional and substantive allegations of the petition. Since this answer could be an obvious inadvertence, I called this to the attention of the attorney for the Board and an amended answer denying the substantive allegations of the petition was permitted to be filed nunc pro tunc. (The attorney for the appellant, by letter, objected to the substitution of this amended answer because it was filed out of time. Since it is obvious that there was an unintentional admission in the original answer which would require summary judgment on the pleadings, common fairness would suggest that the Board should not be disadvantaged by such adventitious circumstance.) The answer, as amended, asserted that the decision was based upon the factual testimony before the Board, from which it "in its sound discretion, concluded that the penalty imposed substantiated such action."

The 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.

No appearance was made at this hearing by the attorney for the Board. However, the stenographic transcript of the hearing below was submitted pursuant to Rule 8 of State Regulation No. 15.

The following picture is reflected from the transcript: Deputy Chief John L. Redden and Detective Gerald H. Carroll of the Newark Police Department were on motor patrol in the vicinity of the licensed premises on Tuesday, June 14, 1966, at approximately 11:10 a.m. This day was set aside for the election of municipal officers. They observed two persons in appellant's premises and suspected that a sale of alcoholic beverages was being effected.

Parking their vehicle opposite the steps in the rear of the tavern, they approached the premises and observed two males about to emerge therefrom. When these persons saw the two officers, they ran back into the tavern and "slammed the door shut." The officers ran to the door and sought to enter, but the door was held shut by these persons.

They finally forced their entrance into the tavern, and observed a person (later identified as Melvin J. Ryan, an employee of the appellant) place a bottle of wine on the bar. They questioned Ryan and asked why he had locked the door on them. His answer was that he wanted to protect the management. Both men were then questioned further. The other individual (a Mr. Schustak) stated that he had purchased the bottle of Twister wine from Ryan for seventy-five cents. Ryan's version was that Schustak had helped him perform certain chores as a porter and he was going to give him a drink of wine because he was sick. Ryan thereafter executed a voluntary signed statement (which was admitted into evidence) at Newark police headquarters, which contained, in part, the following:

"Q. Did you sell any wine today?

A. No.

Q. When you saw me why did you slam the door shut?

A. I wanted to protect the place.

Q. What about the bottle of wine I saw you lay on the bar?

A. I gave the bottle to Shorty because he is a friend of mine and said he was Sick."

Melvin J. Ryan, testifying both before the Board and at this plenary appeal hearing, denied selling any wine to Schustak and asserted that as a matter of fact he was employed as a porter and had no authority to sell any alcoholic beverages at these premises.

At the hearing below, this witness stated that Schustak (who is a friend of his and is known as Shorty) had helped him in his porter work and "I gave him a drink because he was sick." He added that this was the second time that he had helped him, and on the prior occasion he had also given him a drink. However, at the hearing on this appeal, Ryan denied giving Schustak a drink and stated that he "was going to give him a drink for helping me clean up. When I opened up the door I seen somebody running at the door, so I closed the door, but I didn't notice it was the police. The police broke the door open and came in and told me I was selling the man a pint of wine." I then asked him the following:

"Q. How did Shorty happen to help you?

A. He came around to see me that morning. He just came from out of town. He told me to let him clean up because he needed a drink. He had the shakes. He was sick."

He added, however, that he did not in fact give Shorty a drink from the bottle on the bar and was not paid for any drink. Finally, he admitted that Shorty was not paid for the work that he performed for him that morning.

My evaluation and assessment of the totality of the record herein convince me that the substantial truth lies in the version as given by the two Newark police officers. Their version appears grounded upon a more realistic appraisal of what actually transpired at these premises, and is credible and forthright.

On the other hand, the testimony of Ryan is at once contradictory and incredible. Thus, at one point he denies making a sale, while almost in the same breath admitting that he was about to give his friend Shorty a drink because he was sick. Still further, he states that he gave Shorty a drink because he had helped him perform certain duties about the premises, and presumably the drink was the consideration for Shorty's services, as was given on a prior occasion. His denial with reference to a sale is clearly contradicted by the voluntary statement in which he admits that he gave the bottle to Shorty because "he is a friend of mine and said he was sick."

A reasonable construction of what actually occurred from the record herein is as follows: Ryan delivered the bottle of Twister wine to Shorty--whether in payment for services rendered or for a price is substantially irrelevant. As Shorty was about to leave the premises with the bottle of wine, he and Ryan observed the two police officers approaching the rear door. It was obvious that, almost by reflex action, Ryan sought to bar entry to these officers. When the officers finally forced their way into the premises, the bottle of wine was placed on the bar and the confrontation and admissions as noted above took place.

Appellant is under a mistaken conception of the nature of a "sale" as defined by our Statute. He conceives that a sale occurs only when there is a payment received in a consummated transaction. This conception is traversed by the definition of "sale" in R.S. 33:1-1(w):

"Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including deliveries from without this State and deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee."

It is clear from this definition that even the gratuitous delivery or gift of any alcoholic beverage by any licensee, as well as the acceptance of an order for an alcoholic beverage, comes within the orbit of that definition, and is a violation of the applicable regulation.

We are dealing here with a purely disciplinary measure and its alleged infractions; such measures are civil in nature and not criminal. In re Schneider, 12 N.J.Super. 449 (App.Div. 1951).

Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20, N.J. 373 (1956).

I am satisfied that the charge has been established by a fair preponderance of the believable evidence. Appellant has failed to meet the burden of establishing that the action of the Board was erroneous. Rule 6 of State Regulation No. 15.

Appellant finally advocates that the penalty of twenty days imposed herein was excessive. The power of the Director to reduce or modify a penalty imposed by a municipal issuing authority has always been and will be sparingly exercised, and only with the greatest caution. E.A.V. Liquors & Bar, Inc. v. Paterson, Bulletin 1702, Item 1; Benedetti v. Trenton, Bulletin 1040, Item 1; cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). As the appellant's attorney admits in the petition of appeal, this suspension took into consideration the fact that appellant's license was suspended for a similar (sale during prohibited hours in violation of State Regulation No. 38) violation within the past five years. Since it is the Director's practice to suspend the license for a second similar violation of this nature within a five-year period for thirty days (Re Maczka, Bulletin 1510, Item 2), I do not find that the action of the Board in imposing a suspension of twenty days was unreasonable, or evidenced an abuse of discretion.

It is recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates of suspension.

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 testimony, the exhibits, oral argument in summation presented by the attorney for appellant, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 14th day of June, 1967,

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

ORDERED that Plenary Retail Consumption License C-771, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ralph Lemongelli, t/a Club Carmen, for premises 28 Columbia Street, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, commencing at 2:00 a.m. Wednesday, June 21, 1967; 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. Tuesday, July 11, 1967.

JOSEPH P. LORDI,
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE - CONGREGATION OF HOMOSEXUALS
- PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary
Proceedings against

Val's Bar, Inc.
t/a Val's Bar
114 South New York Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption
License C-225, issued by the Board of
Commissioners of the City of Atlantic
City.

Jacobson & Silverman, Esqs. (of Record), by Irving Silverman, Esq.,
and Oshtry & Miller, Esqs., by Norman A. Oshtry, Esq., of
Counsel, Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On August 13, 19, 27 and September 10, 1966, you
allowed, permitted and suffered your licensed place
of business to be conducted in such manner as to be-
come a nuisance in that you allowed, permitted and
suffered persons who appeared to be homosexuals, i.e.
males impersonating females, in and upon your licensed
premises; allowed, permitted and suffered such persons
to frequent and congregate in and upon your licensed
premises and otherwise conducted your licensed place
of business in a manner offensive to common decency;
in violation of Rule 5 of State Regulation No. 20."

Licensee raised certain identical issues of law in a
recent disciplinary proceeding involving a similar violation by
this licensee, on a similar factual complex, upon conviction of
which its license was suspended by the Director for one hundred
twenty days effective June 16, 1966. Re Val's Bar, Inc., Bulle-
tin 1685, Item 1. That matter is presently on appeal in the
New Jersey Supreme Court, and the order of suspension by the
Director therein has been stayed pending the outcome thereof.

During the pendency of said appeal, and as a result of
an additional investigation of the said licensed premises, the
above stated charge was preferred.

At the hearing on this said charge the Division
developed its case through the testimony of four ABC agents,
which may be briefly summarized as follows: ABC agents visited
the premises during the early morning hours of August 13, 19, 27
and September 10, 1966. Agent J gave the following account:
Pursuant to specific assignment to investigate the licensed

premises to determine whether or not it was "a hang-out for homosexuals", he visited the tavern on September 10, 1966, in the company of four other Division investigators. After seating himself at the bar he observed that there were approximately sixty-five males and three females, 75% of the males of whom specifically attracted his attention because they appeared to be males acting like females, and by their attire and actions appeared to be homosexuals. "Many of them had, wore heavy makeup. Some had false eyelashes. Some of them wore their hair adorned on top of their heads. The majority of them wore tight chino-type trouser moccasins, loose-fitting blouse-type shirts with long sleeves and a few of them wore sweaters with the V-neck and with the sleeves drawn up to the elbow" and, further, he observed that these individuals extended their pinky when drinking from the glasses; they spoke in high-pitched tones, and referred to each other in such endearing terms as "Darling, Dearie, Girl." When they walked they swayed their buttocks in exaggerated motions, much like a person walking on the balls of the toe, in a female manner; "all appeared to be in pairs." One would pay for the other's drinks, light his companion's cigarette and "reach over and kiss the other person on the neck or on the cheek and at times I observed them, one would place their hands on the legs of the other partner."

In a conversation with one of the bartenders, an apparent homosexual was overheard to say, "Can you imagine, he went all the way to Pittsburgh to see Freddy" (referring to the person seated next to them); and then, turning to his companion, said "Forget Freddy. You are what I care for. Come with me, I want to go to my room, come with me." This conversation took place in the presence of the bartender. He specifically described an individual who appeared to be friendly with many of the patrons then present. This person wore pancake makeup, false eyelashes and black-and-white bell-bottom trousers. "He acted just like a woman. He swished and swayed, used all the effeminate mannerisms a woman would use" and had about him "a strong odor of perfume." At one point he performed a dance to slow music, "a suggestive dance in that he caressed his what I would consider my chest, he caressed it in a provocative manner and then went down his body slowly with his hands and then cupped his lower extremities and at the same time maneuvering about with his buttocks, swishing it from side to side, and it was at the completion of this dance when all cheered and applauded", including the three bartenders. This patron then told Agent C that the bartender was his husband, that they were married. The bartender agreed, "Yes, that's right, but we are going to be divorced soon because I am going into the Navy. From his observation this agent was of the opinion that these patrons were males impersonating females, and appeared to be homosexuals.

On cross examination the agent acknowledged that no one single characteristic, as described, would be a conclusive presumption of apparent homosexuality, but that the combination of the dress, mannerisms and conduct of these individuals caused him to reach an opinion that they were apparent homosexuals. The agent further admitted that, while he is not "a scholar in sociological terms as to homosexuals or as to apparent homosexuals' life", his opinion was arrived at through his long experience as an ABC agent participating in similar investigations.

Agent C testified as follows: He visited these premises on August 27, 1966 and September 10, 1966, and it was stipulated that his testimony on direct examination with respect to the visit

of September 10 would be substantially the same as that heretofore testified to by Agent J. He added the following: Agent J left these premises on this date at about 2:30 a.m. and this witness joined Agent O and identified himself to Sebastian J. Aman (one of the bartenders). Aman admitted knowing that there were apparent homosexuals in the premises but would not estimate the exact number. He explained that it was not "his job to control these people; it was the job of the doorman." The doorman, who identified himself as Donald Cohn, seemed to swish and sway as he walked lightly on the balls of his feet and, upon questioning, stated that his sole function was to check minors at the door. He added that some of the officers of the corporation had been in the premises earlier that evening; that he had not received any specific instructions from his employer with respect to the above-described patronage "other than he felt that they didn't want, the stockholders did not want the patrons misbehaving."

This witness paid an earlier visit to these premises on Saturday, August 27, in the company of Agents D and B, and noted that there were approximately ninety male patrons, approximately seventy-five of whom appeared to him, by their dress, mannerisms, conduct and behavior, to be males impersonating females or apparent homosexuals. The description of these persons was substantially similar to that described hereinabove with respect to the patronage on September 10. In addition he saw "a few of them with their arms around their waists and there was some petting." On cross examination this witness admitted that he too had no "special qualifications or experience" with respect to homosexual behavior other than that acquired in his capacity as an ABC agent in similar investigations.

Closely examined with respect to his definition of a female impersonator as distinguished from an apparent homosexual, he explained that under certain circumstances, such as in theatrical engagements or at masquerades, a person may be a female impersonator without necessarily being an apparent homosexual. However, it was his opinion that in this tavern, on these occasions and under these circumstances, the patrons whom he described were apparent homosexuals.

Agent G visited the premises on August 19 and September 10, 1966, and his version of the September 10 visit coincided with that theretofore described by the other two agents. He added the following with respect to that visit:

- "A ...one time this one fellow had his hands on his partner's leg and he would rub it up and down and at times he would grab, put his hands over the other fellow's privates.
- Q Where did that take place?
- A At the bar. He would bend over and kiss him on the neck.
- Q Where did this take place?
- A Right at the bar.
- Q Where were the bartenders?
- A It was in full view of the bartenders."

Elaborating upon the conversation which a patron known as "Junior" had with the bartender, the following was overheard: "I'm going to divorce the bartender because he's going into the Navy soon." Replied the bartender, "Yes ... I'm going into the Navy and Rocky and Junior are sisters Rocky wants to enter the Miss America Pageant but they won't let him enter."

With respect to his visit on August 19, he entered the premises at 10:40 p.m. and observed that there were approximately sixty male patrons (no female patrons), of whom about one-third, or twenty, attracted his attention because they fitted the description above set forth and fitted the appearance of apparent homosexuals because of their mannerisms, dress and behavior. It was his opinion that these persons were males impersonating females and apparent homosexuals. Finally he stated that his observations with respect to the activities on September 10 coincided with those of Agents J and C and that his opinion was the same as those of the other agents with respect to the patronage at that time. On cross examination he admitted that he did not question any of the patrons nor did anyone complain to him about any of the actions or conduct at the said premises.

Agent B visited the said premises on August 27, 1966 and September 10, 1966. With respect to his September 10 visit, it was stipulated that his testimony on direct examination would be the same as that of Agent G. On cross examination he was questioned about the criteria upon which he based his opinion that the patrons described by the other agents were apparent homosexuals. He stated that he would use the same criteria, namely, the conduct, mannerisms and demeanor of these patrons, in arriving at the same opinion as expressed by his colleagues. He explained that a person does not have to be dressed as a female to be considered a female impersonator or to be an apparent homosexual.

The only witness produced on behalf of the licensee was Sebastian J. Aman (a bartender employee and actually engaged in his duty on the dates embraced in the said charge). He stated that he was also the manager in charge of these premises, and was given specific instruction by the officers of the corporate licensee that, if persons did not conduct themselves properly, they were to be removed from the premises. He described the dress of these patrons as being on the "young side, so they dressed sort of up-to-date but no differently than anyone else, like a college bar or maybe a little better." They did not wear any cosmetics and "not much perfume came across." With respect to the behavior and mannerisms described by the agents, he said that there may have been one or two people who acted that way but no more. He specifically denied seeing anyone kissing, and in fact could not see it because "of the bar being the height it is;" but he insisted that there were no males impersonating females, the patrons were generally well-behaved and orderly.

On cross examination he admitted that neither he nor the doorman had any instructions to keep out any persons who might appear to be homosexuals so long as they behaved and "If they didn't do anything like indecent acts." He was then asked:

"Q During the time that you worked there during August and September of 1966 and July, were there some such people who did come in?

A I would assume so, yes, sir."

However, he denied that there were as many as testified to by the agents, although he didn't know exactly how many because "I didn't go around suspecting people."

I have detailed much of the testimony of the witnesses for the Division and the witness for the licensee in order to develop an objective perspective of the facts upon which this

charge is bottomed. My analysis and evaluation of the testimony, together with my observation of the demeanor of the witnesses as they testified at the hearing, lead me to the considered conviction that the version as presented by the agents of what transpired on August 19, 27 and September 10, 1966, is a credible, forthright and true version.

On the contrary, I was singularly unimpressed with the credibility of the manager of these premises who testified on behalf of the licensee. It appears to me that he operated under the mistaken notion that the congregation of apparent homosexuals is perfectly permissible so long as they do not commit a disturbance or engage in illegal conduct. It was equally evident that a similar approach was adopted by the principal officers of the corporate licensee.

The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. The fact is, however, that such overt acts as kissing, petting, indecently suggestive dances and other conduct described by the agents took place on the said premises. Furthermore, the testimony is persuasive that the bartender and the doorman admitted persons who were clearly apparent homosexuals by their mannerisms, appearance and behavior, and that they were aware of the fact that these large numbers of persons described as apparent homosexuals were congregating at the bar and conducting themselves fully in the manner described by the agents. In fact several of the conversations with the bartender truly evidenced his knowledge of the nature of the patronage; further, that the three bartenders, in at least one instance, applauded the indecent dance performance described by the ABC agents.

A consideration of the facts adduced hereto satisfies me that the Division has proved its case by a fair preponderance of the believable evidence, indeed by the overwhelming and substantial evidence. Re Carelis, Bulletin 1393, Item 2, affirmed Carelis v. Division of Alcoholic Beverage Control (App. Div. 1961), not officially reported, repinted in Bulletin 1430, Item 1; Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App. Div. 1961), reprinted in Bulletin 1395, Item 3.

The attorney for the licensee submitted a memorandum in summation in which he contends that this charge cannot be sustained for the following reasons:

- "1. The charge was brought under the wrong Rule of Regulation No. 20.
- "2. There is no satisfactory evidence in the record to establish homosexuals were upon the licensed premises.
- "3. Even if there were such evidence, this would not be a sustainable charge because there is nothing in the law in effect in the State of New Jersey designating homosexuality as a crime.
- "4. There is no evidence in the record whatsoever establishing the existence of a nuisance.
- "5. General regulations which, if so interpreted as to make illegal the congregation of homosexuals,

without more, in a licensed premises, violate the constitutional rights of the licensee and of those individuals who desire to patronize the premises and who would come under said prohibition.

- "6. This interpretation of such general regulations would, in view of the fact that there is no law prohibiting homosexuality or the homosexual status, require the licensee to commit an illegal act by barring such alleged persons from the licensed premises."

As stated at the outset, substantially the same arguments hereinabove set forth were submitted in summation in the prior case (Re Val's Bar, Inc., supra), and were answered in detail therein. Thus no useful purpose would be served in repeating in detail the answer to these contentions. However, for completeness of this report, the short answers to these contentions are as follows:

As to (1): This charge was brought under the appropriate Rule 5 of State Regulation No. 20. It is the proscribed activity which constitutes a nuisance within the contemplation of the rule. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J.Super. 405 (App.Div. 1957); Re Rutgers Cocktail Bar, Bulletin 1133, Item 2.

As to (2): It is not necessary to establish that these individuals were in fact homosexuals. The charge clearly delineated that there was a congregation of a relatively large percentage of apparent homosexuals, which is sufficient to sustain the said charge. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra.

As to (3): The licensee's contention that this charge is not sustainable because "there is nothing in the law in effect in the State of New Jersey designating homosexuality as a crime" is a non sequitor. It has not been asserted, or even suggested, by the Division that homosexuality is a crime. Furthermore, Rule 5 of State Regulation No. 20 does not definitively embrace only those acts which are criminal within the orbit of proscribed activity constituting a nuisance on licensed premises. For further emphasis it should be repeated that homosexuality of the patrons is not the issue -- rather, it is the congregation of inordinate numbers of apparent homosexuals on liquor-licensed premises which is considered objectionable and a violation of the rule. Thus this contention is frivolous.

As to (4): I conclude that the evidence sustains the charge that there was a nuisance. Murphy's Tavern, Inc. v. Davis, supra; Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5; affirmed One Eleven Wines & Liquors, Inc. v. Div. of Alcoholic Beverage Control (App.Div. 1966), not officially reported, recorded in Bulletin 1695, Item 1; cf. In re Schneider, 12 N.J.Super. 449 (App.Div. 1951).

As to (5): I find that the licensee's constitutional rights were not violated by the promulgation and enforcement of the subject regulation, nor were the rights of the patrons constitutionally infringed upon. Re One Eleven Wines & Liquors, Inc., supra; Shubert v. Nixon Amusement Co., 83 N.J.L. 101 (Sup.

Ct. 1912); State v. Colgan, 92 N.J.L. 307 (Sup.Ct, 1919). Further dispositive of this contention it should be noted that matters of constitutional dimension are not cognizable at the administrative agency level, since the applicable statutes and regulations are presumed to be valid. Such issue must be determined by a court of competent jurisdiction. Blanck v. Magnolia, 73 N.J. Super. 306; cf. Klein & Tucker v. Fair Lawn and Schweder, Bulletin 1175, Item 3; Cunningham and Drew v. Vernon and Great Gorge, Bulletin 1737, Item 2.

As to (6): The contention that the licensee would be permitting illegal activity by barring congregation of apparent homosexuals is clearly frivolous and has been most recently rejected in Re Jo-Stem Corporation, Bulletin 1625, Item 2; Re Kaczka & Trobiano, Bulletin 1063, Item 1; Re V.M. & S., Inc., Bulletin 1345, Item 6; Re Bader, Bulletin 1073, Item 4. The congregation of a relatively large percentage of apparent homosexuals on the licensed premises who conducted themselves in the manner described by the agents, and who by their dress and acts and conduct readily appeared to be apparent homosexuals, constitutes a nuisance within the contemplation of the aforementioned rule. Common sense would dictate that such activity is "inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes." Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra.

The promulgation by the Division of Alcoholic Beverage Control of the rule providing that no licensee shall allow, permit or suffer in or upon its licensed premises any lewdness or immoral activity or conduct is within its orbit of authority. McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 51; R.S. 33:1-39. As was pointed out in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra:

"...the liquor business must in the interest of the public welfare be carefully supervised and tightly restrained, and to that end, the governmental power extensively to regulate licensees should be accorded broad judicial support."

I conclude therefore that, in the totality of the evidence presented herein, this charge, in so far as it relates to August 19, August 27 and September 10, 1966, has been established by a fair preponderance of the credible evidence. I recommend that the licensee be found guilty of the charge with respect to those dates.

Licensee has a prior adjudicated record. Effective June 16, 1966 its license was suspended by the Director for a similar violation for a period of one hundred twenty days (Re Val's Bar, Inc., supra), stayed pending determination of an appeal thereon in the New Jersey Supreme Court. In addition, the license then held by K & K Corp. for the same premises, in which Mildred F. Kusek (a 1% stockholder of the licensee corporation and holder of a purchase price security agreement) was the holder of five of eleven shares of stock, was suspended by the municipal issuing authority for twenty-five days effective February 8, 1953, for sale to minors and by the Director for fifty-five days effective October 6, 1964, for permitting apparent homosexuals on the licensed premises. Re K & K Corp., Bulletin 1588, Item 3.

It is therefore further recommended that the prior record of suspension of license of K & K Corp. (to which the licensee corporation is linked by the stockholding and security interest of Mildred S. Kusek -- cf. Re Jervic, Inc., Bulletin 1603, Item 5; Re White Poodle, Inc., Bulletin 1530, Item 4) for dissimilar violation in 1953 occurring more than five years ago be disregarded, but that the prior record of two suspensions of the license for similar violations occurring in 1964 and 1966, both being within the past five years, be considered and that the license be suspended for one hundred eighty days. Cf. Re Club Tequila, Inc., Bulletin 1557, Item 1; Re Elcor, Inc., Bulletin 1515, 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 transcript of the proceedings, the arguments of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 14th day of June, 1967,

ORDERED that Plenary Retail Consumption License C-225, issued by the Board of Commissioners of the City of Atlantic City to Val's Bar, Inc., t/a Val's Bar, for premises 114 South New York Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, commencing at 7:00 a.m. Wednesday, June 21, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is suspended until 7:00 a.m. Monday, December 18, 1967.

JOSEPH P. LORDI,
DIRECTOR

3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1966 THROUGH JUNE 30, 1967

	1st Quarter July Aug. Sept	2nd Quarter Oct. Nov. Dec.	3rd Quarter Jan. Feb. Mar.	4th Quarter Apr. May June	Total
ARRESTS:					
Total Number of persons arrested	60	58	51	59	228
Licensees and employees	29	31	30	31	121
Bootleggers	31	27	21	28	107
SEIZURES:					
Motor vehicles - cars	1	1	1	-	3
- trucks	-	-	1	-	1
Stillis - 50 gallons or under	3	2	4	-	9
Alcohol - gallons	32.80	25.50	27.60	25.25	109.15
Mash - gallons	400	415	442	-	1,257
Distilled alcoholic beverages - gallons	21.28	27.68	138.41	21.24	208.61
Wine - gallons	39.82	202.56	9.26	20.58	272.22
Brewed malt alcoholic beverages - gallons	82.44	206.04	78.94	110.30	477.72
RETAIL LICENSEES:					
Premises inspected	1,899	2,135	2,221	2,384	8,639
Premises where alcoholic beverages were gauged	1,558	1,775	1,806	2,030	7,169
Bottles gauged	25,065	29,668	30,208	34,192	119,133
Premises where violations were found	232	205	182	278	897
Violations found	415	326	301	415	1,457
Unqualified employees	254	178	116	202	750
Application copy not available	41	46	47	85	219
Other mercantile business	21	30	25	17	93
Reg. #38 sign not posted	34	13	17	23	87
Prohibited signs	9	9	1	14	33
Disposal permit necessary	10	6	5	8	29
Improper beer taps	2	-	-	1	3
Other violations	44	44	90	65	243
STATE LICENSEES:					
Premises inspected	90	56	71	72	289
License applications investigated	40	35	21	63	159
COMPLAINTS:					
Complaints assigned for investigation	1,097	1,137	982	1,201	4,417
Investigations completed	1,069	990	1,064	1,106	4,229
Investigations pending	(204)	(326)	(260)	(302)	(302)
LABORATORY:					
Analyses made	232	313	380	686	1,611
Refills from licensed premises - bottles	155	179	278	560	1,172
Bottles from unlicensed premises	6	15	44	30	95
IDENTIFICATION:					
Criminal fingerprint identifications made	28	27	15	35	105
Persons fingerprinted for non-criminal purposes	1,503	1,105	1,014	1,517	5,139
Ident. contacts made w/other enforcement agencies	950	759	655	1,040	3,404
MV identifications via N.J. State Police teletype	-	-	-	1	1
DISCIPLINARY PROCEEDINGS:					
Cases transmitted to municipalities	21	19	28	42	110
Violations involved	23	22	31	56	132
Sale to minors	11	11	17	24	63
Sale during prohibited hours	10	9	12	28	59
Failure to close prem. dur. prohibited hrs.	1	2	2	4	9
Single instance of other violations	1	-	-	-	1
Cases instituted at Division	59	77*	78*	90	304*
Violations involved	68	101	103	116	388
Possessing liquor not truly labeled	16	19	24	35	94
Sale to minors	11	14	11	13	49
Permitting lottery acty. on premises.	6	11	7	13	37
Sale during prohibited hours	9	14	3	6	32
Permitting bookmaking on premises	2	3	7	8	20
Beverage Tax Law non-compliance	2	5	4	5	16
Sale to intoxicated persons	2	2	4	5	13
Permitting immoral acty. on premises	1	2	6	3	12
Permitting foul language on premises	3	1	2	4	10
Fraud in application	2	3	2	3	10
Hindering investigation	-	4	4	1	9
Permitting hostess activity on premises	-	2	5	1	8
Conducting business as a nuisance	2	3	2	1	8
Unqualified employees	1	1	2	3	7
Failure to close prem. dur. prohibited hours	-	2	4	-	6
Permitting gambling on premises	1	1	1	4	7
Sale below filed price	-	-	4	1	5
Fraud and front	-	2	1	2	5
Sale outside scope of license	1	2	-	1	4
Mislabeled beer taps	1	1	-	1	3
Employee working while intoxicated	-	-	2	-	2
Failure to file notice of change in lic. appl.	-	-	-	2	2
Possessing indecent matter	-	-	-	2	2
Employing female bartender (local reg.)	-	2	-	-	2
Single instance of other violations	7	6	7	3	23

includes two cancellation proceedings - license improvidently issued in that licensee not a bona fide club and license improvidently issued in that licensee-corporation disqualified because of officer's conviction of crime involving moral turpitude.

	1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		Total
	July	Aug.Sept	Oct.Nov.	Dec.	Jan.Feb.	Mar.	Apr.	May June	
DISCIPLINARY PROCEEDINGS (CONTINUED)									
Cases brought by Municipalities on own initiative and reported to Division	58		57		54		48		217
Violations involved	73		72		72		58		275
Sale to minors	30		33		39		30		132
Sale during prohibited hours	4		4		3		8		19
Permitting brawl, etc. on premises	7		7		1		3		18
Conducting business as a nuisance	4		5		5		4		18
Failure to close prem. dur. prohibited hours	4		3		3		4		14
Hindering investigation	1		3		4		1		9
Permitting persons of ill repute on premises	6		2		1		-		9
Unqualified employees	2		2		4		-		8
Permitting lottery activity on premises	1		3		3		-		7
Permitting gambling on premises	3		2		-		1		6
Permitting immoral activity on premises	3		1		-		1		5
Permitting foul language on premises	2		2		-		1		5
Permitting minors on premises unaccompanied by parents or guardians (local reg.)	-		-		-		4		4
Permitting bookmaking on premises	2		1		-		-		3
Sale to intoxicated persons	-		2		1		-		3
Failure to afford view into prem. during prohibited hours	-		-		2		-		2
Single instance of other violations	4		3		6		1		14
HEARINGS HELD AT DIVISION:									
Total number of hearings held	107		137		104		145		493
Appeals	20		20		18		11		69
Disciplinary proceedings	53		79		66		90		288
Eligibility	31		25		14		29		99
Seizures	-		5		2		8		15
Tax Revocations	2		5		4		5		16
Applications for license	1		3		-		-		4
On Petitions	-		-		-		2		2
STATE LICENSES AND PERMITS ISSUED:									
Total number issued	5,469		4,933		3,314		23,063		36,779
Licenses	690		16		6		11		723
Solicitors' Permits	178		102		161		2,887		3,328
Employment Permits	1,484		1,056		754		4,296		7,590
Disposal Permits	185		182		166		167		700
Social Affair Permits	1,364		1,267		1,111		1,284		5,026
Wine Permits	52		760		7		4		823
Miscellaneous Permits	732		667		481		865		2,745
Transit insignia	703		812		479		11,924		13,918
Transit certificates	81		71		149		1,525		1,826
OFFICE OF AMUSEMENT GAMES CONTROL:									
Licenses issued	19		102		325		223		669
State Fair Licenses issued	193		-		-		2		195
Premises inspected	1,157		-		-		312		1,469
Premises where violations were found	81		-		-		3		84
Number of violations found	94		-		-		4		98
Enforcement files established	82		2		4		21		109
Disciplinary proceedings instituted	3		-		-		-		3
Violations involved	4		-		-		-		4
Redemption of prize for money	2		-		-		-		2
Fraud and front	1		-		-		-		1
Failure to file change in application	1		-		-		-		1

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: July 20, 1967

4. MORAL TURPITUDE - CONVICTIONS FOR (1) ILLEGAL POSSESSION OF NARCOTICS - (2) POSSESSION OF DANGEROUS DRUGS - (3) ASSAULT AND BATTERY ON POLICE OFFICER - HELD TO INVOLVE MORAL TURPITUDE.

Re: Eligibility No. 755

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of crime.

Applicant's criminal record discloses that on October 11, 1962, he was indicted in another state on three charges (1) for illegal possession of narcotic drugs, (2) for possession of dangerous drugs and (3) for assault and battery (first count), for assault and battery on a police officer while the police officer was lawfully arresting the applicant (second count) and (3) for unlawfully knowingly, willfully and forcibly obstructing, resisting and opposing the police officer while the police officer was making a lawful arrest of the applicant (third count).

On October 11, 1963, applicant was convicted on aforesaid three indictments and, as a result thereof, received suspended sentences, placed on probation for five years and ordered to make restitution to the police officer in the amount of \$75.

Applicant's conviction for assault and battery on a police officer while the police officer was lawfully arresting him (a misdemeanor in the Commonwealth of Pennsylvania) is tantamount to a conviction under N.J.S. 2A:90-4 which offense is designated as a high misdemeanor in New Jersey. In my opinion, such conviction per se involves the element of moral turpitude.

In view thereof, it is unnecessary to determine whether or not applicant's other convictions, outlined above, involve that element.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him, in any business capacity whatsoever, a person so disqualified.

I. Edward Amada
Attorney

Approved:

Joseph P. Lordi
Director

Dated: June 20, 1967

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

MILDRED ROMAN)
 104 Fifth St.)
 Hoboken, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-135 issued by the Municipal)
 Board of Alcoholic Beverage Control
 of the City of Hoboken.)

 Licensee, Pro se.

Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
 May 3, 1967, she possessed alcoholic beverages in four bottles
 bearing labels which did not truly describe their contents, in
 violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
 twenty days, with remission of five days for the plea entered,
 leaving a net suspension of fifteen days. Re Hackensack Golf
Club, Bulletin 1726, Item 7.

Accordingly, it is, on this 1st day of August, 1967,

ORDERED that Plenary Retail Consumption License C-135,
 issued by the Municipal Board of Alcoholic Beverage Control of
 the City of Hoboken to Mildred Roman for premises 104 Fifth
 Street, Hoboken, be and the same is hereby suspended for fifteen
 (15) days, commencing at 2:00 a.m. Tuesday, August 8, 1967, and
 terminating at 2:00 a.m. Wednesday, August 23, 1967.


 Joseph P. Lordi,
 Director.