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

BULLETIN 1865 July 2, 1969

TABLE OF CONTENTS

ITEM

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

BULLETIN 1865 July 2, 1969

1. APPELLATE DECISIONS - YARUSHEWICH v. PASSAIC

| | | |
|---|---|---|
| ROSE YARUSHEWICH, t/a PALACE BAR, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Passaic, Respondent. | ) | ON APPEAL CONCLUSIONS AND ORDER |

Feder & Rinzler, Esqs., by Joseph A. Feder, Esq., Attorneys for Appellant
Charles E. Miller, Esq., by Milton J. Pashman, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is from the action of respondent (hereinafter Board) which by unanimous vote of its members on June 24, 1968 denied the application of appellant for renewal of her plenary retail consumption license for 1968-69 for premises 177 Third Street, Passaic. The resolution adopted by the Board which relates, among others, to appellant's tavern is as follows:

"BE IT RESOLVED, that Alcoholic Beverage Licenses for the year beginning July 1, 1968 and expiring June 30, 1969 be and the same are not renewed, for the reason that the public necessity and convenience dictates that they not be renewed:

* * * * *

C-50 Rose Yarushewich, t/a Palace Bar."

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

"(a) Because certain people have visited said tavern who engaged in fisticuffs or some difficulties with one another. At no time has there been any charge against appellant, nor has appellant committed any offense at any time during the entire period of her possession of the premises. Said premises has been in existence as a tavern for a period of 35 years.

Appellant and her family have been engaged in the tavern business for about 30 years in the City of Passaic.

"(b) Because the patrons who visited said premises have been involved in difficulties, but none with the appellant herein. At no time was it alleged that appellant was involved in any of these difficulties or precipitated them, or caused them to come about. Appellant has on several occasions called the police because of certain heated arguments that took place."

The Board's answer filed in this matter avers that "... it considered all the facts and circumstances pertaining to the refusal to renew the license, and that the grounds not to renew same was reasonable and proper and in the best interest of public welfare."

Upon filing of the appeal herein the Director entered an order dated July 1, 1968, extending the term of appellant's license pending determination of the appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the attorneys for the respective parties to present testimony and cross-examine witnesses.

It appears from the testimony of Milton I. Mostel (chairman of the Board) that, after examination of incidents which happened in appellant's premises for the years 1966, 1967 and 1968, the Board was of the opinion that appellant's license should not be renewed for the 1968-69 licensing year.

It was agreed by the attorneys for the respective parties that various police reports with reference to incidents occurring during the years in question, produced at the hearing by Sergeant John Magdziak, supervisor for compilation of records relating to liquor matters, were the basis for the Board's action. Beginning with the year 1966, I shall set forth the alleged incidents occurring in regard to appellant's establishment, together with a brief resume as to what actually occurred at the times in question.

In so far as 1966 is concerned, it appears from the records that on February 26 a woman, after having an argument at home, went to the appellant's premises but was followed by the man with whom she had been arguing who knocked her from the bar stool and threatened her with serious injury. However, when the police arrived the man had already left the premises. On March 4, as a result of an anonymous call the police came to the tavern, spoke to one of the participants who refused to give him his name or make a complaint in the matter. On March 27 a male patron with a friend, having a drink in the appellant's premises, was cut on the index finger by a knife, but the unknown assailant had left before the police arrived. On July 30 the police arrived as a result of a call that a patron was being threatened by a man but, when they arrived, he had already gone. On August 12 a woman al-

leged she was short-changed and the police advised her to make a complaint to the local court. On December 26, when the police came into the establishment as a result of a call, the bartender stated that a patron had refused to pay for a drink which had been served to him.

With reference to 1967, it appears that on July 20 Peter Maksymetz (father of the licensee) was struck with a bottle by an unruly patron. The patron was apprehended and the victim was taken to the hospital for medical treatment. On August 19 the police, while looking for three males in appellant's tavern, were called over by the bartender who related to them that a disturbance had taken place between a patron and the bartender, as a result of which the patron was taken from the tavern. On September 24 a woman was in the premises who had been stabbed in a fight with another woman when the latter threw a glass of water in her face. The woman who was injured was taken to the hospital by the police. On November 24 a woman was in appellant's tavern drinking when she felt something wet on her leg and found that it was blood but she did not know anything else about the incident.

As to 1968, the records disclose that on January 1 police received a complaint from a woman patron at the appellant's place of business that a man had pulled a knife on her while at the bar. However, when the police arrived, the alleged assailant had already gone from the tavern. On February 3 Mrs. Peter Maksymetz (mother of the licensee) called the police because a patron known to her as "Teddy Bear" attempted to snatch a wallet from another patron who was at the time leaving the licensed premises. Mrs. Maksymetz told the police that she took the victim of the attempted theft behind the bar for protection. When the police arrived, Teddy Bear had already left the tavern. On April 4, the police report indicated that two men were arguing when they arrived at appellant's tavern and that they (the police) settled the argument. Also on the same day police were again called to appellant's establishment because some patrons refused to leave the licensed premises on direction of the person in charge thereof who wanted to close the establishment for the day. Police spoke to the patrons in question and all complied with their request to leave the premises. On May 24 the police again were called to the tavern and, when they arrived, a patron advised them that he had fallen and cut his arm on a broken glass. This man refused medical treatment and said that he would consult his personal physician.

The appellant testified that, although she was not personally present when some of the aforesaid incidents occurred, she had been advised of them by her father who relieved her as bartender at 4 p.m. each afternoon.

The appellant further testified that there is an apartment house of twenty-eight apartments adjacent to her licensed premises and there are no telephones in any of the apartments. Therefore, some of the calls made to the police were made by persons who resided in the apartment house for alleged occurrences and incidents that did not happen in or had any connection with the licensed premises.

She further testified that there are a couple troublesome people living in the apartments who patronize her tavern and she tries to make behave themselves. Moreover, according to the licensee, the neighborhood has changed within the past several years, presenting conditions which had not theretofore been happening. To cope with and avoid trouble with those now living in the neighborhood, the bar is usually closed on weekdays by 8:00 p. m. Furthermore, she does not sell alcoholic beverages for off-premises consumption at her licensed premises.

Officer John Lucianin (a member of the Police Department) testified that he knows the licensee and her family for many years, since 1955 when he was in the Detective Bureau which was assigned to supervise liquor licenses. During that time he checked on appellant's licensed premises when he was in charge of the liquor licenses in the area. Officer Lucianin further testified that he had worked in the neighborhood for approximately four or five years continuously from 12 Noon to 8:00 in the evening, and was also assigned to work there a few times at night. While working in the area Officer Lucianin testified that he used to check appellant's premises as well as other liquor establishments and that he never had any reason to apprehend anyone in appellant's licensed premises. The officer further stated that he is now assigned to traffic duty not too far distant from the appellant's premises and that he occasionally stops in while en route to make a call at the call-box in the area of the licensed premises.

Milton I. Mostel (chairman of the Board) testified that he examined the police reports and "the other factors had to do with the manner of the operation of the bar, the proliferation of the bars in the area and the behavior pattern within the bars, within the particular bar and about the bar in relationship to what goes on generally in that area. And it was determined by me and by my two co-commissioners, unanimously, that this was one of the troublespots of the area, and we found agreement among everyone we talked to in the police department, and the name was known to us from reading the newspaper, things that were going on and so on, and we felt that this was for the good and welfare of the community, that this bar should not be permitted to continue." Chairman Mostel further testified that he never at any time inspected the licensed premises and that the action taken in denying the renewal of appellant's license was by the Board on its own initiative.

Peter Maksymetz testified that he and his wife operated the licensed business for many years prior to transferring the license about three years ago to appellant licensee (who is their daughter).

There have been no disciplinary proceedings brought against the appellant during the three years that she has held the liquor license.

I shall now discuss the various incidents aforesaid taken from the records of the Police Department beginning with the year 1966. In that year one of the calls was made for police to come to appellant's place of business because a woman had been attacked by a man after an argument which had taken place in her home a distance away. At another time, as a result of an anonymous call the police came to the licensed premises and spoke to one who had allegedly participated in a brawl, but this man refused to give his name or make a complaint by reason thereof. On another occasion a man was cut on the index finger but, by the time the police arrived, the assailant had left the establishment. On two occasions, one in which a woman had claimed she was shortchanged by the bartender, and another occasion where the recipient of a drink refused to pay for it, the police upon arrival advised that they make the complaint in the proper court for their alleged accusations. And another time a call was received by the police that a person was threatening patrons at appellant's tavern but, when the police arrived, the said person had already left.

With reference to 1967, one arrest was made of a patron who had attacked the bartender and struck him with a bottle. At another time a patron was attempting to argue when the police were there in search of three males, and the police ejected the man from the premises. Another time a woman was stabbed by another woman in whose face she had thrown a glass of water. On the fourth and final occasion in 1967, a woman found that her leg had been cut but she did not know how she sustained the injury.

As to 1968, five calls at the licensed premises were made by police officers during the six months beginning January 1, 1968. In none of these calls for alleged incidents according to the police reports was there any arrest made by the officers. On two occasions the alleged instigators of the trouble had already departed before the police arrived. On the third occasion two men were involved in an argument which the police settled forthwith. On another occasion some of the patrons refused to leave appellant's establishment until the police arrived and requested that they do so. On the last occasion a man stated that he had fallen in the premises on a broken bottle and had sustained an injury.

After examination of all of the reported incidents, many of which appear somewhat remote, there is no evidence that the incidents in question were instigated or allowed by the licensee or her employees. Under the circumstances, calls were made to the police by the tavern management when it appeared that it was foolhardy to take the law into their own hands with reference to the occurrences at the time in question. Thus it can readily be seen that they used good judgment by calling the police for protection.

The municipal issuing authority may in the first

instance use its discretion to determine whether an applicant is worthy of license. Nevertheless, such exercise of discretion must be based on valid and substantial grounds and may not be denied capriciously or merely to reduce the number of licenses in the municipality. If such denial is not based on reasonable grounds, it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; B & L Tavern, Inc. v. Bayonne, Bulletin 1459, Item 1; Bayonne v. B & L Tavern and Division of Alcoholic Beverage Control (App.Div. 1963), not officially reported, reprinted in Bulletin 1509, Item 1, aff'd 42 N.J. 131 (1964).

The resolution denying the renewal of appellant's license for the current licensing period gave as its reason that "the public necessity and convenience dictates" that it should not be renewed. Although commendable that one of the reasons for the Board's action was to reduce the number of licenses existing in the municipality where too many liquor licenses are outstanding, such reduction must be accomplished through some less arbitrary means. The courts have ruled that an owner of a license or privilege acquired through its investment therein an interest which is entitled to some measure of protection. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466. The mere fact that alleged incidents occur in the licensed premises, without proof that the licensee or her employee provoked or participated in the said incidents or that they resulted from her negligence in the operation of the licensed premises, is insufficient to warrant denial of the renewal of the license. It is quite significant in the instant case that, if conditions were as bad as claimed and that violations had been committed, no disciplinary proceedings were instituted against the licensee.

I am cognizant of the fact that the Board came into being on April 5, 1968 and thus, under the circumstances, was not in existence during the time when practically all of the alleged incidents had taken place. Be that as it may, after careful consideration of the reasons given by the Board, which do not appear to be adequate under the circumstances, it is recommended that an order be entered in this matter reversing the action of 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, 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 14th day of May, 1969,

ORDERED that the action of the respondent be and the same is hereby reversed, and the respondent is hereby directed to renew appellant's plenary retail consumption license for the 1968-69 licensing period in accordance with the application filed therefor.

JOSEPH M. KEEGAN
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - OBSCENE LANGUAGE AND CONDUCT - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 60 DAYS.

| | |
|---|---|
| In the Matter of Disciplinary Proceedings against<br><br>CADILLAC MOTEL, INC.<br>t/a CADILLAC MOTEL<br>821 U. S. Route #1<br>853 U. S. Route #1<br>Elizabeth, N. J.<br><br>Holder of Plenary Retail Consumption License C-188 issued by the City Council of the City of Elizabeth | CONCLUSIONS AND ORDER |

Elias I. Cohen, Esq., Attorney 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 charges:

"1. On November 14 and 15, 1968, you allowed, permitted and suffered in and upon your licensed premises, lewdness, immoral activity and foul, filthy, indecent and obscene language and conduct, viz., in that (a) on both of said dates, you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner, (b) on both of said dates you allowed, permitted and suffered foul, filthy and obscene language and conduct on your licensed premises by persons employed thereon and by others, (c) on said date of November 15, 1968, you allowed, permitted and suffered the playing of a recording entitled: 'Pearl Williams. A Trip Around the World is Not a Cruise', the subject matter of which and the words, phrases and expressions used therein, together with the manner and form of rendition having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation

of Rule 5 of State Regulation No. 20.

"2. On November 14 and 15, 1968, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

Two Division agents (D and De) participated in the investigation which resulted in the lodging of the charges.

Agent D testified that he entered the licensed premises (a cocktail lounge, containing a bar large enough to accommodate approximately nine or ten patrons, a juke box, a stage about the same height as the bar and about four or five feet distant therefrom, and a dining area containing tables, chairs and booths) on November 14 at approximately 12:30 p.m. and positioned himself at the bar next to Agent De who had entered the premises shortly prior to D's entry.

He identified Bernard Schatten (employed by the licensee as manager of the cocktail lounge and as a bartender) and Priscilla --- as tending bar. Two go-go girls entertained singly. One was called "Gee Gee" (later identified as Georgiann ---) and the other was called "Betty" (later identified as Betty---). Both females entertained on the stage next to the bar. Gee Gee was attired in a "bra-type halter, with dance pants, with stockings, mesh stockings, dark mesh stockings." Betty was similarly attired except that she did not wear mesh stockings. He observed each female perform "about five times." Each performance took "about ten or fifteen minutes." The agent then testified as follows:

"Q With respect to Gee Gee, how would you say her performances compared with each other?

A Usually her performances were the same.

Q Will you describe her performances as you saw them?

A She started out normally dancing as a go-go girl, moving her body about, and then she would go into bumps and grinds when the music hit certain beats, and she would continue it until she went off, and she would start out the same way practically every time. In fact, she did every time and would go off into bumps and grinds and would move the lower portion of her body in circular motion and throw her private portion out to the patrons at the bar and patrons seated at tables. Other times, on one occasion, she laid down on the stage in prone position, and she moved her body about in bumps and grind fashion, and in doing so was simulating sexual intercourse. Another time when she was doing the bumps and grinds she reached over to a chandelier which contained about ten candles,

candle light, and she took one candle with her right hand and simulated sexual intercourse--not sexual intercourse but masturbation of a male, and she took both hands and went through the same motion, and she remarked to two males seated at one of the tables about four feet from the dance stand they were too skinny.

Q Referring to what?

A To the candles. On another occasion one of the male patrons got up and went to the men's room. She looked at him and looked at the fellows viewing her performance and made a masturbation sign with her right hand. She would also take her hands and cup them under her breasts while she was doing bumps and grinds and push her breasts up, and she would take her right hand and rub her private while she was doing bumps, and also made motions to the patrons to come to her, but no one moved, and she would make like a shame sign to them with her fingers.

Q You say she touched her private. What part of her body was that?

A Her lower private, her vagina.

Q How many times did you see her do that during her performances?

A She would do that every time she got on the stage.

Q How often did you see her fondle her breasts?

A Every time she was on the stage.

Q While she had her hands on her breasts and vagina what were her motions?

A She was doing bumps and grinds. When she had both hands on her breasts she was doing bumps and grinds; on her vagina, she would throw her private in bumping fashion as if denoting sexual intercourse."

Referring to Betty's performances, the questioning revealed the following:

"Q Describe her performances.

A She started off in go-go girl type dance, and she would go into bumps and grinds. They in themselves were not enunciated as much as the other one. However, she would go into a squatting position, like a catcher in a baseball game, and she would do bumps while in squatting position to the male patrons, and she would also turn around and her buttocks one at a time moved while the rest of her body stood still, and then she would do both of them.

Q How often did these two things you just testified

to occur? In how many of her numbers?

A I would say every time she got on the stage she did it at least once.

Q Was there any occasion in particular you observed while she was performing?

A Yes. On one occasion one of the two males seated at one of the tables in front of the stage got up and took like a place mat napkin when she had her back side to the audience, and he placed it under her, and he had a knife in one hand and fork in the other, and she squatted down and made some motions with the rear part of her body until she got, I would say, a foot and a half from the knife and fork."

On this date D observed Betty consume two drinks paid for by two different males. One drink was served to her by Schatten, the other drink by Priscilla.

Continuing, D testified to certain language allegedly used by Priscilla which was undeniably foul, filthy and obscene. No useful purpose would be served by detailing the language.

The agents left the premises at 2:40 p. m.

On November 15 both agents reentered the cocktail lounge at approximately 12:35 p. m. and sat at the bar. Schatten and Priscilla were again tending bar. The agents witnessed Gee Gee and Betty perform singly approximately five times. Gee Gee's attire was the same as the day before. Betty, instead of wearing a bra-type halter, "had pasties which measured approximately three inches in diameter." D described Gee Gee's performance thusly:

"Hers was the same as it was on the 14th, with the exception she only used a candle once to simulate masturbation, only used one hand, and she didn't go into the prone position like she did on the 14th."

Betty's performances were the same as the day previous except that the knife, fork and napkin incident was omitted. The dancers completed their routines shortly after 2:00 p. m.

On this day, D also observed the female dancers consume drinks which had been ordered and paid for by male patrons.

After 2:00 p. m. Schatten played a record on a recording machine which was located under the bar, entitled "Pearl Williams' Midnight Show." (By stipulation of counsel, a complete side of the record was played at the hearing in the presence of the Director. The record was then received in evidence.)

Thereafter the agents identified themselves to Schatten. He made no comment when D expressed an opinion that the female dancers' performances were lewd. He admitted playing the record and surrendered it, asserting that it was left there that morning by a trucker. The questioning of D then proceeded thusly:

"Q Did he [Schatten] make any comment with respect to the content of the record?

A Yes. He admitted it was lewd. He also admitted Priscilla has a foul mouth. He also admitted that male patrons had purchased drinks for the go-go girls."

Shortly prior to departing from the premises, the agents encontered Albert Cotugno (president and principal stockholder of the licensee corporation) entering the premises. Finally D testified as follows:

"Q When Mr. Cotugno arrived at the premises what, if anything, did you do or tell him?

A I apprised him of the subject of the investigation, and he denied any knowledge of the violations. He told us Mr. Schatten is manager and that is his responsibility.

Q Did Mr. Schatten respond to anything Mr. Cotugno said?

A Yes. He said yes, he knows it is his responsibility, and he is sorry. He said he will see to it it don't happen any more. So did Mr. Cotugno."

On cross examination the agent asserted that Priscilla's remarks could be heard by anyone at the bar. Concerning the payment of drinks ordered by the female entertainers, the agent testified that on one occasion (on November 15), he observed a male patron pay a dollar for one drink. On other occasions, he observed the bartender pick up checks, ring them up on the cash register. He did not see what was marked on the checks.

The attorneys for the respective parties stipulated that the testimony of ABC Agent De (who accompanied D on both dates mentioned in the charges) would be similar to the testimony offered by D.

In defense of the charges, William A. Holman testified that he had patronized the licensed premises for a period of approximately a year (including the month of November 1968) at lunch time on the average of three or four times weekly, and frequently brought guests to dine with him. He described the music emanating from the juke box as offensively loud. If he were sitting at the bar, it would be almost impossible to hear what the female performers were saying, if they did talk. He had witnessed go-go girls perform at the lounge since July or August of 1968. He never observed them perform in a manner that would suggest any immoral act. It was his opinion that

their performances were not indecent. He heard no indecent or obscene language. He never saw the girls perform topless or with their breasts exposed. He never observed patrons purchase drinks for the go-go girls. He could not state specifically that he patronized the cocktail lounge on either of the dates mentioned in the charges.

On cross examination the witness admitted that he concentrated more on his guests than he did on the entertainment and he could not describe everything the females did while performing.

Roy Lombardi testified that he patronized the licensed premises four times weekly since June 1968 and would usually sit at the bar. He never saw the dancers perform in a manner which he deemed immoral or suggestive. He never observed any patron purchase drinks for the dancers. He then testified as follows:

"Q It has been testified here this morning that the girls have used foul language, made obscene gestures, and conducted themselves in an indecent and immoral manner. What has been your observation over the times you have been in there?
A The times I have been there, as I said, I sit the furthest end next to the juke box, and if I had to watch the go-go girl during a minute of the act I would have to make a complete left turn because the chair is flush against the juke box. I couldn't possibly see everything going on.
* * *
Q Have you ever heard her [Priscilla] use obscene language while you were there?
A Well, I won't say you would call it obscene. We normally kid around sometimes and gestures and jokes but nothing where I would say I heard a curse, not as far as I was concerned.
Q Did you hear any obscene language?
A I never heard it. As I said, I am at the furthest end. Three or four come in and sit at the furthest end of the bar."

He never saw the females perform topless.

On cross examination the witness asserted that he had patronized the lounge on November 14 and 15 at lunch time. Describing Gee Gee's dance, he observed "shaking of her uppers, bumping of the lower."

Bernard Schatten testified that he had been employed as the manager and bartender at the licensed premises since March 1968. Cotugno instructed him to familiarize himself with ABC rules and regulations. When he first engaged go-go girls to entertain in August, Cotugno instructed him that they (the girls) "were not to be lewd, they were not to make any motions that would be suggestive of anything we talk about in every day life as dirty, they were not to accept any drinks from customers, to be properly attired at all times." He instructed each girl that "these were the rules and regulations of the house."

Schatten was then queried relative to the Pearl Williams record, as follows:

"Q In your opinion, is this an obscene, suggestive record?
A I really have no opinion of what the record is. I might say this: I enjoy it. I play it. I have it in my house.
Q You don't think there is anything wrong with the record?
A No, I don't."

He recalled nothing unusual occurring on November 14. He did not recall anything unusual occurring on November 15 except that the Division agents identified themselves and informed him of the alleged violations. He never permitted any patron to purchase a drink for a girl. If a patron ordered a drink for a girl, in order to avoid trouble he would give the girl a drink and not charge the patron for it.

To Schatten the word "topless" meant that "they are not wearing anything to cover themselves," i.e., above the waistline. He "never had a go-go girl working in that manner." He noticed nothing that would suggest that the go-go girls performed in a lewd or suggestive manner. The juke box music was so loud that the waitress had to repeat her orders to him. He never heard Priscilla employ profane language or language that might suggest vulgarity.

On cross examination Schatten admitted that he had heard the Pearl Williams record and that it was played in the licensed premises on November 15. On November 14 he did not pay specific attention to the performances of Gee Gee and Betty. He observed only the normal go-go routine plus bumps and grinds. He did not recall having any conversation with Priscilla. Nor did he hear her converse with any of the patrons or the agents. He was busy behind the bar. The witness was then questioned as follows:

"Q During the time Miss Priscilla was with you do you or do you not say she has been sometimes vulgar in her actions and conduct and words?
A I would say she is loud; I would not say vulgar.
* * *
Q Did she grab hold of you and rub against you and say, 'I wish I were a man'?
A I have been told this, and I don't remember.
Q What?
A I have been told this, and I don't remember it. I don't remember doing anything like that."

He did not recall receiving a dollar bill from a male patron who ordered a drink for one of the female entertainers. He did not inform the agents that he did not charge the males when they ordered drinks for the dancers.

Priscilla --- testified that she had been employed as a waitress and as a part-time barmaid since August 1968 at the luncheon hours. The females performed no differently from "go-go girl dancers in any other places." She saw the females strapless but not topless. There was nothing suggestive in their dress, act or language. In explaining the candle gesture, she testified:

"The only time, in fact, it was this one, Gee Gee, started to fall because she got too close to the

end. In fact, the only reason I remember it is because we kidded about it after and said she could have fallen on somebody's table, you know.

Q What did she do?
A She started--she went over too far, naturally, you are going to grab at anything you find, and probably the chandelier if she did, but outside of that there was nothing."

Although patrons have attempted to purchase drinks for the entertainers on many occasions, she never permitted that activity. She was informed that "no female employee is allowed to have a customer buy her a drink or food." She does not use foul or filthy language. She explained the incident of "I wish I were a man" thusly:

"Bernie asked me, Mr. Schatten asked me to come in back of the bar and take over while he brought charges down to the front office. I had got in back of the bar. As you go into the bar you have to bend down. There is nothing that lifts up. He was going out and I was standing there because I was fixing the other waitress' cocktails for customers, and when he went to go out he bumped into me. This is really a joke with me because we say one of us has to lose weight because bending over we are losing weight, and I said, 'Just once I want to be a man.' There was nothing dirty. I didn't say anything else."

On cross examination the witness asserted that her duties prevented her from viewing Gee Gee's or Betty's performances in their entirety. She denied using filthy or foul language in any connection whatsoever.

Albert Cotugno testified that he is familiar with the local and state rules and regulations concerning the sale of alcoholic beverages. He had employed Schatten approximately one year and cautioned him against violating the rules and regulations. He did not consider the Pearl Williams record objectionable or suggestive.

He confirmed that he instructed Schatten that "if the girls, entertainers or any employees, wanted a drink he was to give it to them without charge."

Concerning the performances of the go-go girls, he testified, "There was nothing wrong with it. I wasn't up there on the two days but I had been there previously and found nothing wrong. If I found something wrong I would dispense with it immediately."

In view of the many requests received from patrons, go-go girls were hired to entertain. However, he eliminated go-go entertainment subsequent to the incident complained of.

Referring to the Pearl Williams record, the witness did not know the record was in the licensed premises. It was not played with his knowledge.

In rebuttal Agent D testified that he did not observe Gee Gee make a motion as though she were falling or about to fall off the stage. She had the candlesticks in her hands "at least a half-minute, maybe a minute."

Preliminarily, I observe that 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 herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness 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); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

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.

In order to arrive at a determination herein, I carefully observed the demeanor of the various witnesses as they testified and made a careful analysis and evaluation of their testimony.

I am accepting as factual the agents' version of the performances given by the two female entertainers. Their testimony (which I have set forth at length) afforded me a graphic, detailed and explicit verbal portrayal of the performances. On the other hand, it appears that none of the licensee's witnesses observed a complete performance by either of the females. One of the witnesses for the licensee, a patron (Holman), could not specifically recollect that he was in the licensed premises on the dates mentioned in the charges.

It is my view that the evidence is overwhelming that the performances given by the females were lewd, indecent and immoral as charged, and I so find.

I am also accepting as factual the testimony offered by the agents of the language used by the barmaid. I find as a fact that the language was foul, filthy and obscene, as charged.

Additionally, after having heard the Pearl Williams recording of "A Trip Around the World Is Not a Cruise", which was admittedly played in the licensed premises, I find and conclude that the words, phrases and expressions used therein contained references to sexual activities both natural and unnatural, and is patently in violation of the rule charged.

I am persuaded by the clear and convincing proof in this case that Charge 1, in its entirety, has been sustained by, at least, a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the said charge.

Concerning Charge 2, I am drawing no inference of

guilt as to the transactions wherein the bartender would pick up tabs or checks and ring them up on the cash register. Admittedly, the agents did not see what was rung up on the tabs after patrons ordered drinks for the female entertainers. However, I find the testimony concerning the acceptance of the dollar bill from a patron by Schatten after the patron ordered a drink for a female entertainer on November 15 to be reliable. I have noted that on cross examination Schatten testified that he did not remember the transaction. I therefore recommend that the licensee be found guilty of that part of Charge 2 which refers to the date of November 15, 1968.

Licensee has no previous record of suspension of license.

I further recommend that an order be entered suspending the license on the first charge for forty-five days (Re The Village Barn, Inc., Bulletin 1853, Item 5; Re Caggy's, Inc., Bulletin 1852, Item 4) and on the second charge for fifteen days (Re Bucci, Bulletin 1832, Item 8), or a total of sixty days.

Conclusions and Order

Exceptions to the Hearer's report and argument with reference thereto directed to the penalty recommended were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the exceptions are without merit and that the penalty recommended is consonant with previous practice.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 12th day of May 1969,

ORDERED that Plenary Retail Consumption License C-188, issued by the City Council of the City of Elizabeth to Cadillac Motel, Inc., t/a Cadillac Motel, for premises 821 U.S. Route #1, 853 U.S. Route #1, Elizabeth, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1969, commencing at 2 a.m. Monday, May 19, 1969; 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, July 18, 1969.

Joseph M. Keegan
Director