STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2174 February 6, 1975

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2174 February 6, 1975

1. COURT DECISIONS - SHOP-RITE OF HUNTERDON COUNTY, INC. v. RARITAN ET AL. - DIRECTOR REVERSED - MATTER REMANDED TO DIVISION.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-959-73

SHOP-RITE OF HUNTERDON COUNTY, INC.,

Plaintiff-Appellant,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF RARITAN, COUNTY OF HUNTERDON, NEW JERSEY, and ROBERT A YARD,

Defendants-Respondents.

(On appeal from Director, Division of Alcoholic Beverage Control)

SHOP-RITE OF HUNTERDON COUNTY, INC.,

Plaintiff-Respondent,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF RARITAN, COUNTY OF HUNTERDON, NEW JERSEY, and ROBERT A. YARD,

Defendants-Appellants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2084-73

(On appeal from Superior Court, Law Division, Hunterdon County)

Argued November 18, 1974 - Decided December 9, 1974.

Before Judges Leonard, Seidman and Bischoff.

Mr. Lee B. Roth argued the cause for plaintiff, Shop-Rite of Hunterdon County, Inc. (Mr. Daniel E. Knee on the brief).

Mr. Richard G. Jefferson argued the cause for defendant, Township Committee of the Township of Raritan, County of Hunterdon, New Jersey (Messrs. Jefferson, Jefferson & Vaida, attorneys).

Mr. Edmund H. Bernhard argued the cause for defendant, Robert A. Yard (Messrs. Herr & Fisher, attorneys).

Mr. William F. Hyland, Attorney General of New Jersey, filed a Statement in Lieu of Brief on behalf of Division of Alcoholic Beverage Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel).

The opinion of the Court was delivered by

BISCHOFF, J.A.D.

(Appeal from the Director's decision in Re Shop-Rite of Hunterdon County, Inc. v. Raritan et al., Bulletin 2132, Item 3. Director reversed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - CONNOR v. MILLBURN - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-760-73

IN THE MATTER OF
JOHN R. CONNOR,

Appellant,

v.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MILLBURN and
EDWARD J. FLYNN, t/a FLYNN'S TAVERN,

Respondents.

Submitted November 26, 1974 - Decided December 9, 1974.

Before Judges Kolovsky, Lynch and Allcorn.

On appeal from Division of Alcoholic Beverage Control.

Mr. John R. Connor, appellant pro se.

Mr. Eugene T. O'Toole, attorney for respondent Township of Millburn.

Mr. John Anthony Lombardi, attorney for respondent Edward J. Flynn.

Mr. William F. Hyland, Attorney General of New Jersey, filed a Statement in Lieu of Brief on behalf of Division of Alcoholic Beverage Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re Connor v. Millburn et al., Bulletin 2125, Item 3. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions.

3. COURT DECISIONS - FERNANDES v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2494-73

ADELINE FERNANDES and
ERNESTO FERNANDES,
t/a E.P.C. CLUB,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY, DIVISION
OF ALCOHOLIC BEVERAGE CONTROL,

Defendant-Respondent.

Argued November 26, 1974; Decided December 16, 1974.

Before Judges Carton, Crane and Kole.

On appeal from Division of Alcoholic Beverage Control.

Mr. David Shor argued the cause for appellants (Messrs. Forman, Forman & Cardonsky, attorneys).

Mr. David S. Piltzer, Deputy Attorney General, argued the cause for respondent (Mr. William F. Hyland, Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from the Director's decision in Re Fernandes, Bulletin 2151, Item 4. Director Affirmed. Opinion not approved for publication by the Court Committee on Opinions).

4. APPELLATE DECISIONS - PARKER INN, INC. v. HAWTHORNE.

Parker Inn, Inc., t/a Parker Inn,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and
Board of Commissioners of the Borough of Hawthorne,	)	ORDER
Respondent.	)	

Fischer, Guston & Sala, Esqs., by Arthur D. Reiss, Esq., Attorneys for Appellant
Evans, Hand, Allabough & Amoresano, Esqs., by Douglas C. Borchard, Jr. Esq., Attorneys for Respondent

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners of the Borough of Hawthorne (hereinafter Board) which, by resolution dated August 12, 1974, suspended appellant's Plenary Retail Consumption License C-1, for premises 448 Lincoln Avenue, Hawthorne, for sixty days upon a finding that appellant did, on July 18, 1974, sell alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Appellant's petition of appeal contended that the finding was against the weight of the evidence. It was also alleged that the length of suspension was manifestly unfair. The Board denied these contentions and averred that its action was proper, and was based upon the evidence before it.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15 at which the parties were permitted to present evidence and to cross-examine witnesses. Additionally, pursuant to Rule 8 of said regulation, a transcript of the proceedings before the Board was received upon which both parties relied in support of their respective positions and in lieu of the testimony at this hearing. Oral argument was heard from each of the parties upon the conclusion of which a formal Hearer's Report was waived by all parties, together with a request that the Director make a prompt determination of the matter.

An examination of the transcript of the proceedings before the Board reveals the following: Patrolman Thomas H. Conroy testified with respect to his visit to appellant's licensed premises on the evening of July 18, 1974. He observed a youth, later identified as Patrick ---, age sixteen, at the bar and holding a beer

mug in his hand. As the youth simultaneously observed the patrolman, he exited the premises to the parking lot, where the patrolman apprehended him. The officer had seen Patrick drink from the mug, and so notified appellant's manager of his observation.

Patrick testified that he had come to appellant's premises with a friend. He ordered beer for both of them and was served. He did not pay for the beer but drank "a little bit". He was not asked his age, or requested to sign any statement indicating his age. He related that, when he saw the officer, he advised his friend that he would leave; whereupon, his friend gave him his keys for the car in which the minor could sit.

Peter G. Hadeler, Patrick's friend, testified that he ordered beer for Patrick but, as he was talking with someone and facing another direction, did not see Patrick actually drink the beer. He admitted that he realized that Patrick was under age, and therefore, he gave him his car keys so that he could find refuge there.

George Walter, a patron present during Patrick's visit, testified that he saw the bartender bring two beers for Patrick and his friend Peter, but could neither affirm nor deny that Patrick drank the beer.

The bartender, Thomas E. Ackerson, testified that he was on duty on the evening of Patrick's visit and served Patrick's friend Peter. He admitted that he could have brought two glasses of beer to both boys, but was not sure.

In defense to the charge, appellant advances several contentions which it believes were substantiated by the testimony. For example, the patrolman could not identify the contents of the mug from which the minor drank as beer. The minor's height and hair style causes him to be mistaken easily for someone over eighteen years of age. Neither the patron, Walter, nor the bartender saw the minor drink any beer. The municipality has a belligerent attitude toward appellant which is evidenced by its recent refusal to act on appellant's application for license transfer as well as by the preferment of the instant charge. Lastly, appellant contends that a sixty-day suspension is unreasonably severe.

The Board denied that the transfer application was not acted upon because of its attitude. In fact, it sets forth that the delay has been occasioned by the hospitalization of the Mayor who, as Director of Public Safety, is required to report with reference the investigation initiated by his department. In response to the remaining contentions, the Board insisted that the proofs amply support its conclusions.

The evidence clearly preponderates in favor of the Board. The patrolman saw the minor consume some contents of a mug. The bartender did not deny that beer was placed upon the bar. The

minor admitted the consumption and his age, sixteen, was affirmed by the introduction into evidence of a copy of his birth certificate showing his date of birth to be June 1, 1958. In short, appellant has failed to establish that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Lastly, with respect to appellant's contention that the suspension of license for sixty days was excessive, the Board justified its determination by showing that such suspension was the result of the license misuse by appellant, resulting in prior charges and prior suspensions. One of the prior suspensions was grounded on a similar violation. Therefore, the normal penalty which would have been otherwise imposed could well have been doubled, to a penalty totalling sixty days.

The suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Robinson et al v. Newark, Bulletin 54, Item 2; Russo v. Lincoln Park, Bulletin 1177, Item 7; Harrison Wine & Liquor Company v. Harrison, Bulletin 1296, Item 2; Feldman v. Irvington, Bulletin 2143, Item 2.

Accordingly, it is, on this 19th day of December 1974,

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

ORDERED that my order of August 26, 1974 staying the Board's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-1, issued by respondent Board of Commissioners of the Borough of Hawthorne to appellant, Parker Inn, Inc., t/a Parker Inn for premises 448 Lincoln Avenue, Hawthorne, be and the same is hereby suspended for sixty (60) days, commencing 3:00 a.m. on Thursday, January 2, 1975 and terminating 3:00 a.m. on Monday, March 3, 1975.

Leonard D. Ronco
Director

5. APPELLATE DECISIONS - EBRON CORPORATION v. JERSEY CITY.

Ebron Corporation, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	On Appeal CONCLUSIONS AND ORDER

Lepis, Lepis & Kline, Esqs., by Norman L. Kline, Esq., Attorneys for Appellant
Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which, on March 18, 1974, suspended appellant's plenary retail consumption license for premises 587 Ocean Avenue, Jersey City, for a period of sixty days, following a finding of guilt of charges alleging that on July 2, 1973, it violated the local "hours" ordinance, hindered an investigation, in violation of N.J.S.A. 33:1-35, and permitted a brawl or act of violence to occur on the licensed premises, in violation of Rule 5 of State Regulation No. 20. The effective date of the suspension imposed was stayed by the Director of this Division on April 9, 1974, pending the determination of this appeal.

Appellant's petition of appeal contends that the action of the Board was erroneous and without basis in fact or in law. The Board in its answer denied these contentions.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity

afforded the parties to introduce evidence and cross-examine witnesses.

The Board introduced the testimony of its secretary, Leonard G. Greiner, who confirmed that disciplinary proceedings were held on the charges outlined in the Board's Resolution, a copy of which was received into evidence.

Police Officer Richard Bennett of the Jersey City Police Department testified that on July 2, 1973 at about 2:20 a.m., he was on radio-car duty with a fellow officer, Anthony Cervino, when they observed a man emerge from appellant's premises and throw a bottle into the street, shattering it. Stopping their vehicle at the entrance of the licensed premises, Bennett attempted entry, and observed a bartender serving a drink to a patron who was seated with fifteen or twenty others at the bar. This observation was made through an adjar space at the door, which was immediately closed upon him, causing him to be pushed backwards and out of the premises.

Bennett was then joined by his fellow officer, Cervino, and obtained entry with the intent to place the person, later identified as Ernest Duncan, who had pushed him out initially, under arrest. The person whom the officer saw tending bar, later identified as Lawrence Duncan, came from the bar and attempted to prevent the arrest of Ernest. In doing so, he struck Officer Bennett, knocking him to the floor. Another patron, later identified as J.C. Rice, joined in the melee and struck both police officers. Eventually, order was restored, additional police units arrived, the combatants were placed under arrest and taken to police headquarters.

Patrolman Anthony Cervino, the radio-car partner of Officer Bennett, testified that about 2:20 a.m. on the date charged herein, he observed a person emerging from appellant's premises and saw a bottle thrown into the street. When Bennett attempted to open the door and succeeded in opening it partly, he was repelled back to the sidewalk. He then entered the tavern and ovserved fifteen to twenty patrons, including about eight women at the bar. Immediately following entry he found himself engaged in a scuffle with Lawrence and Ernest Duncan and the patron called J. C. Rice.

While attempting to arrest Ernest Duncan, Lawrence Duncan bit Officer Cervino's finger (for which he was later treated at the hospital) and, while attempting to extricate Lawrence from Bennett, he was jumped upon by Rice. Four other police officers then entered and restored order. He had gathered, from words shouted, that Ernest Duncan had some heart condition, in consequence no handcuffs were put on him. Lawrence Duncan and J. C. Rice were handcuffed and taken to police headquarters along with Ernest Duncan.

Appellant introduced the testimony of patrons, Wade Rogers, Lawrence Duncan, the son of Ernest, the barmaid Pearl Neville, an employee J. C. Rice and the manager Ernest Duncan. The substance of their testimony was to the effect that the officers entered without resistance, began the arrest of Ernest Duncan which precipitated outcries of protestation by Lawrence Duncan. In consequence, the officers, either or both, began striking Lawrence as well as J. C. Rice whose voice was added to the protest. The entire incident, as they described took but a few minutes and terminated well before two o'clock. At no point did either Lawrence Duncan or J. C. Rice strike or threaten either officer. Any agressiveness exhibited during the incident was solely on the part of the officers.

I

The charge relating to the after-hours violation is clearly supported by the testimony of appellant's witnesses as well as that of the police officers. From the testimony, it is apparent that the wall clock, upon which most of the appellant's witnesses relied, was presumed to be set twenty minutes fast. That advanced setting was done daily in that the clock was connected to aline which was automatically disconnected each evening. The arrival of the police at ten minutes after two o'clock, would have meant that the correct time then was ten minutes to two o'clock. Yet, to be in harmony with the remaining testimony, the door was secured at one-thirty o'clock. Despite the remaining one-half hour to closing time, appellant's witnesses identified, as present witnin the premises, only those persons who were alleged to have some connection with the management and who could be lawfully therein.

In matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature, and, thus, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). 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 common experience and observations of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I am persuaded and so find that the "hours" ordinance of the City of Jersey City (Ord. No. W-153- Sec. 4-13-1) was violated.

II

Concerning the charge relating to the brawl or act of violence occurring within the licensed premises, the testimony of the police officers was clear and credible. The testimony of appellant's witnesses belies logic. Accepting their testimony to be true, as a hypothesis, the indignation of Lawrence that ignited the violence was the prospective arrest

of his sick father, with the attendant hand-cuffing. However, all of the witnesses were in agreement, including Ernest Duncan, that he had not been handcuffed and was peaceably led to the police car. Nonetheless the acrimony of Lawrence and J. C. Rice continued, resulting in the acts of violence and the subsequent arrest. Officer Cervino did, in fact, receive medical treatment at a local hospital.

The testimony of the officers in describing the altercation, was clear in its description of the causative wrath that resulted in their being attacked. The logic of the presented facts supports the version given by the police, and vitiates the description given by appellant's witnesses of any ring of veracity. The outrage of Lawrence and J. C. Rice lead to the overaction and the acts of violence which enused.

I find that this charge was established by a fair preponderance of the believable evidence, and recommend that this charge be affirmed.

III

The charge that appellant's hindered an investigation is, however, open to doubt, particularly in that before any investigation could be put in motion, the officers elected to place Ernest Duncan under arrest. At that point they had been ostensibly held at the door through which they could not get easy admittance. However, according to their testimony it was then well after two o'clock and the doors of this and other taverns in their city should have been locked. Incensed by the hesitancy of Ernest Duncan in opening the door and his effort to debar their admittance momentarily stemned their prospective investigation, which admittedly they never had opportunity to perfect. Certainly an assault upon a door and an immediate arrest of a fractious bar-manager cannot be said to have the earmarks of an investigation. This then leads to the determination if the delay, in itself, constituted a hindering when viewed as a concomitant part of the entire incident.

Appellants were charged with "hindering an investigation", in violation of Rule 35 of State Regulation No. 20. The appellant is under a duty to do everything in its power to facilitate the lawful and authorized investigation of a criminal act occurring within its premises and may not, in any way hinder or delay that investigation. Vogellus v. Division of Alcoholic Beverage Control (App. Div. 1963-not officially reported) Bulletin 1537, Item 1; Cf. N.J.S.A. 33:1-35.

The charge hindering related to the blockage of the entrance by appellant's manager and the repulsion of the officer on his first attempt at entry. In a similar matter,

it was noted that:

> "Despite the fact that the hindrance and delay of the investigation was of only a moments duration, nevertheless, it was violative of the spirit and intendment of the rule cited in the charge leveled against the licensee...Although that act may not have concealed a violation, a hindrance or a delay of an investigation for a moment, could be as great an evil and offend the rule as much as a hindrance of a much longer duration. To hinder is to impede or obstruct. (WEB.DICT.) Whether an act impedes or obstructs is determined not by the length of time which expires, but, rather, with the events which take place during that period."
>
> Re Conrad's Wines & Liquors, Inc., Bulletin 2070, Item 2.

In Conrad's supra, the Director added:

> "Although I feel that hindering an investigation is a serious charge, the charge should be established by clear and convincing evidence. The alleged hinderance and delay should be substantial and indicate an intentional action by the licensee's employee."

In the above case, entry was attempted by ABC Agents in conventional clothes. Their only means of identifying themselves from the exterior of the premises was by voice and the flashing of their identification badge. The Director held that there was reasonable doubt the licensee was positive enough of such identification so that the lapse of a minute before the door was opened did not constitute a hindering.

However, in the matter sub judice, Officer Bennett was in uniform, he orally identified himself, obtained a partial opening of the door so that he could be seen, was accompanied by a fellow uniformed officer, and the police vehicle was parked directly in front of the premises. While it would admittedly be mere speculation, foreclosing entry of the officers could gain a licensee time within which to have the after-hours patrons leave via another door. In any event, and for whatever reason, the appellant's manager did not permit entry by the police officers, and they were required to use force in order to gain admittance. I find that there was substantial evidence presented in support of the charge. I, thus, recommended that the finding of guilt of this charge should be affirmed.

It is, therefore, concluded that appellant has

failed to meet the burden of establishing that the Board erred in its determination, Rule 6 of State Regulation No. 15. Accordingly, I recommend that the action of the Board be affirmed, the appeal be dismissed, the Director's Order staying suspension be vacated, and that an order be entered reimposing the suspension.

Conclusions and Order

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

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 recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of January 1975,

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

ORDERED that my Order dated April 9, 1974 staying the respondent's Order of suspension pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-56 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ebron Corporation for premises 587 Ocean Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. on Monday, January 20, 1975 and terminating at 2:00 a.m. on Friday, March 21, 1975.

Leonard D. Ronco
Director

6. DISCIPLINARY PROCEEDINGS - PREMISES CONDUCTED AS A NUISANCE - PERMITTING SALE OF DANGEROUS DRUGS ON PREMISES - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against Mockingbird, Inc. t/a Sonny's Sidewalk Cafe 1214 Absecon Boulevard Atlantic City, N.J., Holder of Plenary Retail Consumption License C-238, issued by the Board of Commissioners of the City of Atlantic City.	S-10,065 X-50,085-B CONCLUSIONS and ORDER

Nathan W. Davis, Jr., Esq., Attorney for Licensee.
Carl A. Wyhopen, 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:

> "On February 12, 1974, you allowed, permitted and suffered immoral activity in and upon your licensed premises and allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to constitute a nuisance, viz., in that on the aforesaid date you, through Schanelle L. Smith, a person employed on your licensed premises, made an offer to and an arrangement with a customer or patron on your licensed premises to obtain and procure for and/or sell to this customer or patron controlled dangerous substances, as defined by the New Jersey Controlled Dangerous Substances Act (R.S. 24:21-1 et seq.), viz., cocaine, and did in fact sell or distribute the aforesaid controlled dangerous substance to said customer or patron on the date cited above; in violation of Rule 5 of State Regulation No. 20."

It was stipulated that on February 21, 1974 a detective of the Atlantic City Police Department, purchased a quantity of cocaine for the sum of $40.00 in the licensed premises from Schanelle L. Smith, who was then employed by the licensee as a barmaid.

In defense of the charge, the licensee offered the testimony of two members of the local police department and of a principal officer of the corporate licensee.

Carroll A. Perry, a detective assigned to the Anti-crime Squad of the local police department, testified that he is acquainted with Lawrence McCall, a principal officer of the corporate licensee. Approximately 3 months prior to February 1974, McCall informed him that he wanted assistance because of narcotic traffic in the barroom. Perry informed McCall that he would contact members of the Narcotics Squad relative thereto.

He thereupon conferred with Detective Jones, who was in charge of the Narcotics Squad. Perry informed Jones "of McCall's plight, he was cooperative, he didn't know how to go to the police. Mr. McCall submitted the names of Schanelle Smith and Robert Burns, plus various agents he suspected being in traffic narcotics."

On three or four occasions thereafter, McCall inquired of him, "what was taking so long." Perry replied, "They are working the narcotics investigation. These things take time. Probably got an undercover agent there. Takes time. Don't worry." Perry had received the information that he conveyed to McCall from Jones. Perry was aware that the investigation was in progress and moving as planned.

Henry E. Tyner, a local detective sergeant, testified that he is acquainted with McCall. In the fall of 1973, he visited the licensed premises occasionally. McCall informed him that he "thought people he mentioned were trafficking in drugs."

Tyner asserted that he was aware that an investigation was in progress and although McCall called him several times, he did not want to divulge too much information. He passed on all of the information that McCall gave him to detectives Young and Perry.

He added:

> "I had occasion almost to make an arrest in that area. I knew the investigation was about coming to an end so I passed it up to keep the investigation going. I heard Chenelle Smith was involved, and I didn't want him to chase his hide looking for her. I was on the raiding team when she was arrested."

Lawrence McCall, who manages the operation of the licensed premises, testified that Shanelle Smith was employed as a barmaid since November, 1973. As soon as he suspected that she was engaged in narcotics activity he contacted Perry and gave him the names of several individuals whom he suspected of dealing in narcotics, including the name of the barmaid, Smith. Not certain that the investigation was continuing, he called Perry on several occasions in order to ascertain why something wasn't being done. Perry advised him that he had submitted the matter to the proper authorities and that he (McCall) should leave it alone.

McCall further added that although he considered discharging Smith as a barmaid, Detective Perry recommended against it.

Upon being recalled as a witness, Detective Perry testified that he did not recall discussing with McCall whether he should or shouldn't discharge Smith.

The testimony then reflected the following:

"Q Would it be possible for this gentleman to fire Chenelle Smith under the situation? A Well, I was personally in the arrest. I didn't think to fire Chenelle with what was going on because we had two or three others. Even her boy friend came in. I knew they had some one already making buys, if they made 1, 2, 3 buys. That was the context of the conversation. He didn't have any direct orders not to fire her. This is general conversation.

Q Then it would have been preferable for her to remain there during the investigation? A Yes, it would. That is my opinion."

From my examination of the record, I find support to McCall's contention that he informed the police authorities of narcotics activities carried on in the licensed premises; that he informed them that one of the licensee's employees was implicated therein; that he continued his dialogue with the police authorities thereafter; and that he was directed not to discharge the offending employee pending completion of the police investigation. I find the circumstances herein to be analogous to those contained in Re Revon Corporation; Bulletin 2031, Item 2 and Re Satinover, Bulletin 2031, Item 3. In these matters the licensee cooperated fully with the Atlantic City Police Department, in which the then Director dismissed the Division charges in both matters. While it is true that a sale was made on February 21, 1974, as noted herein above, this sale did not have the element of culpability because it was made at the instance and direction of, and in cooperation with the law enforcement authorities. Therefore, the licensee, under these circumstances, cannot be chargedwith having sold or suffered the sale of narcotics as charged.

I, therefore, recommend that the licensee be adjudged not guilty, and the charge herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibit, the argument of counsel in summation and the Hearer's report, I concur in the findings and

conclusions of the Hearer and adopt them as my conclusions herein. I, therefore, find the licensee not guilty of the said charge.

Accordingly, it is, on this 10th day of December 1974,

ORDERED that the charge herein be and the same is hereby dismissed.

LEONARD D. RONCO
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Sicilian Wines Import Co., Inc.
114 Mac Arthur Avenue
Garfield, New Jersey
Application filed January 31, 1975 for limited wholesale license.

Blitz-Weinhard Company
1133 West Burnside Street
Portland, Oregon
Application filed February 3, 1975 for limited wholesale license.

Ritchie & Page Distributing Co., Inc.
280-288-292 Third Street
Trenton, New Jersey
Application filed February 5, 1975 for additional warehouse license for premises 100 Stokeley Avenue, Trenton, New Jersey, under State Beverage Distributor's License SBD-77.

Leonard D. Ronco
Director