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

BULLETIN 2261

August 3, 1977

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - GEIGER v. HARRISON.

Fred Geiger t/a Cozy Inn,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Town Council of the Town of Harrison,	)	
Respondent.	)	

Joseph F. McCarthy, Esq., Attorney for Appellant
Joseph P. Di Sabato, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Mayor and Council of the Town of Harrison (hereinafter Council) which on June 5, 1976, revoked appellant's Plenary Retail Consumption License C-1, for premises 209 John Street, Harrison, following a finding of guilty to a charge alleging that on August 8, November 1, 2, 14, 15, 17 and 29 of 1975, the appellant permitted lewdness, immoral activity, foul language, brawls, and acts of violence, and permitted the licensed premises to become a nuisance; in violation of Rule 5 of State Regulation No. 20.

Appellant contends that the Council's decision was not based on competent evidence, but was based of hearsay and unsubstantiated documents. The Council responded that it made its findings based upon the totality of the evidence before it.

Upon the filing of the appeal, the Director stayed the revocation of appellant's license by Order of June 4, 1976 pending the disposition of the appeal.

An appeal de novo was held in this Division pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. Additionally, transcripts of each of the hearings held by the Council were introducted into evidence, in accordance with Rule 8 of State Regulation No. 15.

From these transcripts, it appeared that testimony was produced before the Council relative to the specified incidents, except for those occurring on November 2nd and 15th, which dates were apparently the carry-over of the November 1st and 14th incidents, hence should not have been cited in the complaints as independent occurrences.

Relative to the incident which occurred on August 8, 1975, Anne Trucillo and Dennis C. Warner, testified that, although it appeared to them that an argument was brewing within the barroom, they were surprised to find a full-blown fight going on outside the premises at their departure. Warner found himself directly involved when someone leveled a blow upon him.

He, as well as many others, was arrested and taken to Police Headquarters where he made a complaint against the person who struck him. There was no testimony whatever that the barmaid, the lone employee in the premises, could have forseen the brawl or could have or should have anticipated its probability.

Captain Dennis Dacey and Officer Philip Dohn, both of the Harrison Police Department, testified concerning an incident which occurred inside the licensed premises on November 1, 1975. Upon arrival, police observed four or five men locked in a struggle of such intensity that reinforcements were called to terminate it. There was no proof offered that the call to the Police came from the licensed premises.

On November 14th, Officer Dohn again responded to a call to appellant's premises and, upon entry, found a young woman unconscious and lying upon a shuffleboard. His inquiry and that of his fellow-officer, Richard Appleton, revealed that there had been a brawl involving two females. Although the barmaid, who called the police did not testify, her statement was read into the record. This statement indicated that a vicious argument ensued resulting in a severe beating inflicted on one of the women. The barmaid asserted that she finally called the police after some patron, who had first refused, finally permitted her to use the phone.

Three days later, a neighbor of appellant's premises, Joseph K. Kropiewnicki, called the police in the late hours because the owner of appellant's premises and a female were shouting obscenities at each other. Upon the arrival of the police, the female departed.

Relative to the final incident, Christine Gallagher, the barmaid, testified that, on November 29, 1975, she was on duty when a patron known to her entered with four men who did not speak English. Upon her refusal to serve them, they retreated to the men's room and failing to emerge therefrom within a reasonable time, she sent a patron to notify them to depart. Upon their failure to do so, she, herself, entered the men's room and found them sitting on the floor.

Being fearful that they were "going to do something with their drugs" she ordered them out. The patron whom she knew became so incensed that he picked up a barstool and flung it over the bar, striking her with it. Whereupon, she summoned the police who arrived after the males departed. She characterized these men as persons who, in the past, had acted ungentlemanly with her female patrons, and had tried "to sell dope".

Upon the conclusion of the testimony, the members of the Council voted unanimously to revoke appellant's license.

At the hearing in this Division, Councilman Cifelli affirmed the unanimity of the Council's decision.

Appellant, Fred Geiger, testified that he had obtained the subject license in June of 1975. His testimony was both clouded and evasive. He denied being present during the incident of November 1, although the officers indicated that he had directed them to the back room where the fight was in progress. He further indicated that he was present on November 29, when the incident occurred involving the barstool being thrown at his barmaid. He alleged he was then in the backroom but "she thought I went out".

There is little if any controversy respecting the factual basis for the charges. None of the allegations were specifically denied. The thrust of appellant's contentions was that the best evidence of these incidents was not used.

Actions of this kind are civil in nature, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alc. Bev. Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). Testimony to be believed must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

The Council has had the opportunity to observe the demeanor of the witnesses produced before it and I have had the opportunity to observe the demeanor of the appellant. The Council, by its unanimous decision, was persuaded by the totality of the testimony before it that acts of violence did occur within appellant's establishment. I, too, have found from the testimony and demeanor of the appellant, that he had abdicated his responsibility as a licensee in favor of barmaids who apparently were totally unable to control the type of patronage which he encouraged.

The sole and remaining issue in this appeal is the extent of the punishment or penalty meted out by the Council. The denial of a right to continue the operation of a licensed premises, that is, the revocation of a license, represents the most severe penalty as may be imposed upon a licensee.

A liquor license is a privilege. Mazza v. Cavicchia, 15 N.J. 498 (1954). The control of that privilege is vested in the issuing authority. The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive. Feldman v. Irvington, Bulletin 2143, Item 2; Benedetti v. Trenton, 35 N.J. Super. 30 (App. Div. 1955); Cf. Paiva v. Harrison, Bulletin 2134, Item 2.

It should be noted that of the five incidents described by the testimony before the Council the first and last were not attributable to conduct permitted by the appellant. The first related to a brawl completely on the outside of the premises with no proof advanced that there was knowledge of the incident by the appellant's barmaid. The last occurrence was a situation in which the barmaid did summon the police, albeit, only after her own safety was in jeopardy.

The remaining three incidents clearly implicated appellant's employee or himself. Two serious acts of violence occurred resulting in serious injury to patrons and, in one instance, the police were summoned by a passerby. The third incident resulted in a disturbance requiring two visits of the police. Had the Council heard testimony relating to each of these occurrences based upon individual charges lodged shortly after each, it is apparent that individual penalties would have been imposed on each.

Most recently the Director of this Division reduced from ninety to sixty days the penalty in connection with a brawl that had been permitted in a licensee's premises. Cf. Bacet Corp. v. Cliffside Park, Bulletin 2195, Item 2.

The primary purpose of a suspension being imposed against a licensee is to serve as a warning that, if the conditions are repeated, the license would be in jeopardy. Bayonne v. Bayonne B & L Tavern, 42 N.J. 131 (1964). The appellant does not have a record of any prior disciplinary proceeding, hence, the charges levelled against him were essentially a first infraction, with concomitant penalties to be imposed. Because of this, I am inclined to recommend that appellant be given an opportunity to prove his worthiness to remain in the alcoholic beverage industry.

Accordingly, I find that the appellant has not met his burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15 and, thus, recommend that the action of the Board in its finding of guilt be affirmed. However, I

further recommend that the penalty imposed of outright revocation be modified to a penalty of one-hundred and eighty days.

Conclusions and Order

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

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

While the offenses proven are serious infractions, I am cognizant of the absence of a prior adjudicated record herein, the represented absence of difficulties since the last offense, and the absence of exception by the Town Council to the modification of penalty from revocation to suspension proposed by the Hearer.

Accordingly, it is, on this 5th day of April 1977,

ORDERED that the action of the Town Council of the Town of Harrison finding appellant guilty of violation of Rule 5 of State Regulation No. 20 be and the same is hereby affirmed; and it is further

ORDERED that the penalty imposed of revocation of license be and the same is hereby modified to the imposition of a suspension of license for one-hundred eighty (180) days, and, as so modified, the action of the Council is hereby affirmed, and the appeal be and the same is hereby dismissed; and it is further

ORDERED that my Order dated June 4, 1976 staying the Council's suspension pending 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 the Town Council of the Town of Harrison to Fred Geiger, t/a Cozy Inn for premises 209 John Street, Harrison, be and the same is hereby suspended for the balance of its term, i.e., midnight, June 30, 1977, commencing at 2:00 a.m. Thursday, April 14, 1977; and it is further

ORDERED that any renewal of said license which may be granted be and the same is hereby suspended until 2:00 a.m. Tuesday, October 11, 1977.

Joseph H. Lerner
Director

2. DISCIPLINARY PROCEEDINGS - LEWD SHOW - INDECENT ENTERTAINMENT - LICENSE SUSPENDED FOR 30 DAYS - FINE IN LIEU OF SUSPENSION PERMITTED.

In the Matter of Disciplinary Proceedings against The Ban-Shee, Inc. t/a The Kings's Harem Route #35 Sayreville Borough P.O. South Amboy, N.J. Holder of Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Sayreville.	CONCLUSIONS AND ORDER

Stanton & Stadtmauer, Esqs., by Seymour H. Stadtmauer, Esq., Attorneys 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 May 24, 1976, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered a female person, while performing on your premises for entertainment of your customers and patrons, to engage in conduct of a lewd, indecent and immoral manner, and to commit and engage in acts, gestures and movements of and with her hands, legs and other parts of her body, in a manner and form having lewd, indecent and immorally suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

ABC Agent S testified that, accompanied by ABC Agent B, he entered the licensed premises on May 24, 1976 at about 8:50 p.m. He described the bar as "V" shaped and, at the point where the two segments join, there is a small stage, enabling patrons seated at either segment to have a reasonably unobstructed view of the dancers as they performed.

The agents positioned themselves at a point near the junction of the bar with the stage. The patronage of sixteen persons, upon entry, increased to approximately twenty-two at its maximum. Music was provided by a juke box.

A female go-go dancer, later identified as Lois Burger, was performing at the time, and concluded her performance at 9:25 p.m. Her attire and performance was characterized as normal.

Soon after, another dancer, identified as Sandy Materliano took the stage. She was attired in bikini type panty, and a black sheer short nightgown through which could be seen purple pasties covering the nipples of each breast, which were otherwise uncovered. She also wore a string strung under her breasts, up her chest and shoulders, which was fastened behind her neck.

She danced in this attire for several minutes. She then took a sport shirt from the bar area, adjacent to the stage, placing the shirt in front of her, she slipped one side of the nightgown off replacing it with the shirt, and repeating it to accomplish the same thing on the other side.

Buttoning the shirt halfway, she commenced to dance for a few minutes before picking up a loosely woven shawl which she used to cover herself. Thus attired, she removed the shirt from underneath, and began to dance clad only in the see-through shawl. After a few minutes she reversed the process putting the shirt on, underneath the shawl. After dancing in this attire for a minute or two, she removed the string that was tied behind her neck as well as the pasties. She picked up the shawl again and removed the shirt from beneath it.

It was obvious now, since the shawl was loosely-woven and, in effect, see-through, that her breasts were totally unclad. She danced for a while holding the shawl away from her body so that as she turned she afforded the patrons on either side, an unobstructed view of her bare breasts.

She manipulated the shawl, flipping and criss-crossing it in such a manner that her bosom was visable each time. After several more changes as described above she left the stage. Miss Burger then returned and danced in much the same uneventful manner as she had done, previously.

At 10:30 p.m. Materliano returned to dance again. She was attired in the same bikini bottoms and sheer black short nightgown with pasties covering her nipples. However, she didn't have the string around the neck and under the breasts. She performed in similar manner, as described above, with several minor exceptions, the principal one being that she used two shawls in this performance. Again the audience was afforded a clear view of her totally unclad breasts.

Throughout the evening while the agents were present, there were two female bartenders and Robert Sak, the manager, in attendance.

ABC Agent B's testimony was corroborative of S's with nothing of significance added.

Gregory Vazquez, a Lakewood Police Officer present that evening as a patron testified on behalf of the licensee. His description varied from that of the ABC Agents only in that he denied seeing the dancer's bare breasts. He stated that he did not consider the performances a violation of ABC Rules and Regulations. He asserted that, if he did see her perform bare-breasted, he would not have agreed to testify on behalf of the licensee. He maintained that he saw the show clearly from his seat, and that the dancer did not remove the pasties.

Deborah Prolow testified that she, too, was present that night as she was considering accepting employment there as a waitress, and wanted to see the operation before making a final decision. Her testimony was corroborative of that of Vazquez. She decided to take the job and was employed by licensee at the time of the hearing. She stated that she saw flesh colored pasties on the dancer's nipples when she met her in the ladies room where the dancers changed their clothing.

Jeanette Gentile, one of the barmaids on duty that evening, and Robert Sak the manager also corroborated Vazquez's testimony but added a new factor.

Gentile asserted that Agent S had visited the premises several times previously, and had made uncouth and suggestive comments directed towards her. It stood out in her mind from subsequent similar occurrences because she had just been hired and this was the first time she was the object of indecent suggestions by bar patrons, although it has happened countless times since. She recognized the Agent by his general appearance and mannerisms.

Sak said Agent S had made similar comments to his wife, who works at the club as a waitress. Had Agent S not left the premises he would have thrown him out. Several females had complained to him about the Agent's behavior and he "stared him the eyes", but did not confront him verbally.

The Division then recalled Agent B who stated that he worked with Agent S as a partner on undercover assignments for several years. Until a few weeks prior to the hearing, Agent S had a beard similar to his (B's). Agent B's beard was heavy and to some degree, unusual. It is not the type one could easily overlook in recalling his appearance at some later date.

Licensee's attorney recalled Gentile who stated she remembered the beard now; in fact, the girls had given,Agent S the nickname of "Abe Lincoln" because his beard was so similar in appearance to that of President Lincoln.

Sak stated that he "looks into a person's eyes to recognize them, not his beard."

It is apparent that a purely factual question has been presented for determination.

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, thus, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division 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). 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. "...Every fact or circumstance tending to show the jury the witness' relation to the case or the parties is admissible to the end of determining the weight to be given to his evidence." State v. Spruill, 16 N.J. 73, (1954). It is fundamental that the

interest or bias of a witness is relevant in evaluating his testimony. In re Hamilton State Bank, 106 N.J. Super. 285 (App. Div. 1969).

I have carefully evaluated the testimony herein, and have had the opportunity to observe the demeanor of the witnesses as they testified. A study of the entire record gives rise to the inescapable conclusion and I find that the charge has been amply supported by the credible and forthright testimony of the agents. The agents' version of what occurred on the date in question is a factual and believable account.

On the contrary, I was unimpressed with the testimony of the licensee's employees; (their denial lacked the ring of credibility.) The testimony of the Lakewood Policeman, present that evening, was over-balanced by the specificity of the Agents' testimony.

In adjudicating matters of this kind, I observe that the question of lewdness must be evaluated according to the legal and decisional precedents followed by the Division. See Re Club "D" Lane, Inc., Bulletin 1900, Item 3; aff. 112 N.J. Super. 577 (App. Div. 1971) wherein the court re-affirmed the long established principle that

> "... we are not here concerned with the censorship of a book, nor with the alleged obscenity of a theatrical performance. 'Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade.' McFadden's Lounge, Inc. v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 61, 68 (App. Div. 1954). Lewdness or immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally. Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App. Div. 1955); Jeanne's Enterprises, Inc. v. New Jersey, etc., 93 N.J. Super. 230 (App. Div. 1966), aff'd 48 N.J. 359 (1966)."

Further, the court in Re Club "D" Lane, supra, (pp. 580, 581) emphasized that all licensees are charged with knowledge of the admonition of former Director Lordi, set forth in Bulletin 1778, Item 1, as follows:

> "In passing, however, I wish emphatically to advise all licensees, that so called 'topless' female employees, whether entertainers or otherwise, and whether with pasties described by the Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State."

Upon due consideration of all of the evidence herein and the legal precedents I find as a fact that the dancer may be characterized as having performed "topless". It has been established that the performer wore pasties which merely covered the nipples of her breasts and a loosely woven shawl which did not conceal the performer's breasts even when the shawl was in place.

Accordingly, after considering and evaluating the entire record herein, I conclude that the Division has met its burden of establishing the truth of the charge by a fair preponderance of the credible evidence, indeed, by clear and convincing evidence.

I, therefore, recommend that the licensee be found guilty of the charge.

Licensee has no prior adjudicated record. It is, further, recommended that the license be suspended for thirty (30) days.

CONCLUSIONS AND ORDER

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Upon receipt and consideration of the Hearer's Report, the licensee notified the Division that it desired to make application for the imposition of a fine, in lieu of suspension, in accordance with the provisions of N.J.S.A. 33:1-31.

I have favorably considered the application, in the absence of a prior adjudicated record, and shall accept an offer, in compromise, by the licensee to pay a fine of $3,000.00, in lieu of suspension of license.

Accordingly, it is, on this 6th day of April 1977,

ORDERED that the payment of a $3,000.00 fine by the licensee be and the same is hereby accepted, in lieu of a suspension of license for thirty (30) days.

Joseph H. Lerner
Director

3. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED INTEREST - DISQUALIFIED PERSON CONDUCTING BUSINESS - NO DEFENSE ENTERED - EX PARTE PROCEEDING - LICENSE SUSPENDED FOR BALANCE OF TERM UNTIL IMPROPER SITUATION IS CORRECTED - NOT LESS THAN 115 DAYS.

In the Matter of Disciplinary Proceedings against 746 Rumpus Room Tavern, Inc. 746 Broadway Newark, N.J. Holder of Plenary Retail Consumption License C-466, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark,	:	CONCLUSIONS AND ORDER

Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR;

The Hearer has filed the following report herein;

Hearer's Report

The following charges were preferred against licensee pursuant to N.J.S.A. 33:1-31 :

"1. In your short form application dated July 30, 1976, and filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which you obtained your current Plenary Retail Consumption License, you, after listing Willie Baker as holder of 50% of your issued and outstanding stock and Mary Roberts as holder of 50% your issued and outstanding stock, in your answer to Question 11 failed to disclose a change in material fact in your last prior long-form application, viz., to show a change in answer from "No to "Yes" to Question No. 21 which asks: "Does any corporation, partnership, association or individual other than the stockholders herein set forth hold any beneficial interest, directly or indirectly, in the stock held by such stockholders, or is any of such stock held in escrow or pledged in any way?____. If answer is "Yes", state details _____.:" to show and disclose that Beverly Guzenski, Ralph Brienza, aka Ralph Guzenski and Jack Poffenberger, has such interest in that he was the real and beneficial owner of shares of stock listed in the name of Willie Baker and Mary Roberts. Such evasion and suppression of material fact being in violation of N.J.S.A. 33:1-25.

2. In your aforesaid short-form application for license you, in your answer to Question No. 11 failed to disclose a change in material facts, in your last prior long-form application, viz., to show a change in answer from "No"to "Yes" to Question No. 27 which asks: "Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?_____. If so, state names, addresses and interest of such individuals, partnerships, corporations or associations _____;" and show and disclose that Beverly

Guzenski, Ralph Brienza, aka Ralph Guzenski and Jack Poffenberger had such an interest in that they, indirectly through said Willie Baker and Mary Roberts had such an interest as hereinbefore set forth in the license applied for and in the business conducted under said license; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

3. In your aforesaid short-form application for license you, in your answer to Question No. 11 failed to disclose a change in material fact, in your last prior long-form application, viz., to show a change in answer from "No" to "Yes" to Question No. 28 which asks; "Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise), all or any portion or percentage of the gross of net profits or income derived from the business to be conducted under the license applied for?_____. If so, give complete details_____;" and to show and disclose you had agreed to permit Beverly Guzenski, Ralph Brienza, aka Ralph Guzenski and Jack Poffenberger to retain a share of the profits and income derived from your licensed business; such evasion and suppression of material fact being in violation of N.J.S.A. 33:1-25.

4. From on or about May 1975 to the present, you knowingly aided and abetted said Beverly Guzenski, Ralph Brienza, aka Ralph Guzenski and Jack Poffenberger to exercise contrary to N.J.S.A. 33:1-26, the rights and privileges of your plenary Retail Consumption License; in violation of N.J.S.A. 33:1-52.

5. From on or about May 1975 to present, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed premises, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the name of persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20.

6. In your aforesaid short-form application for license you, in your answer to Question No. 11 failed to disclose a change in material facts, in your last prior long-form application, viz., to show a change in answer from "No" to "Yes" to Question No. 30 which asks: "Has the applicant or has any person in this application having a beneficial interest in the license applied for or in the business to be conducted under said license ever been convicted of any crime?_____. If so, state details as to each conviction, giving the name of the person convicted, date thereof, nature of the crime, court in which the conviction was entered and sentence imposed_____.", whereas in truth and fact you knew or had reason to know that Ralph Brienza, aka Ralph Guzenski, who, directly or indirectly, had a beneficial interest in your licensed business would fail to qualify as an individual applicant for the reason of the fact that he had been convicted of a crime involving moral turpitude; such evasion and suppression of material fact being in violation of N.J.S.A. 33:1-26.

7. From on or about May 1975, you employed and had a business capacity with you, Ralph Brienza, aka Ralph Guzenski, a person who has been convicted of a crime involving moral turpitude without said person having his disqualification resulting from said conviction removed or first having obtained a rehabilitation Employment Permit, in violation of Rule 1 of State Regulation No. 13.

8. On March 11, 1976, you conducted your licensed business without a list, in form prescribed by the Director, containing the names and addresses of, and required information with respect to, all persons currently employed on and in your licensed premises; in violation of Rule 16c of State Regulation No. 20."

The aforesaid charges were personally served upon William L. Smith Jr., manager of subject licensee who acknowledged said service on October 6, 1976. Further notice was sent by mail advising the corporate licensee at the tavern as well as the stockholders at their listed addresses of the time and place for hearing. This latter notification was as a result of a "not guilty" plea being entered on its behalf when it failed to respond or plea within the time set for such action. Thereafter, and until the morning of the hearing no one contacted this division relative to the matter. On that morning, one hour and fifteen minutes after it was scheduled to be heard, an attorney phoned the Division stating he was engaged elsewhere and requested an adjournment. This request was denied.

The hearing was held ex parte, no one having appeared in behalf of the licensee.

From sworn statements obtained by this Division the following factual situation emerges: Willie D. Baker and Mary Roberts each owned 50% of the stock of subject corporation which they conveyed in May 1975 to Beverly Guzenski, a Newark school teacher, and Jack Poffenberger, her brother, for $3,500.00 cash and the assumption of outstanding loan liabilities.

In June 1975, at the time set for annual renewal of liquor licenses, Guzenski paid the necessary fee and had Baker renew the license as if no sale and change of corporate status had taken place. To date, the records of Newark's Municipal Acoholic Beverage Control Board and this Division do not reflect the filing of a change in the Corporate status, as required.

Upon assuming ownership, Guzenski appointed a very close friend, Ralph Brienza, manager. Brienza was convicted of conspiring to possess and sell counterfeit United States currency and sentenced to five (5) years imprisonment. The crime of counterfeiting involves moral turpitude and disqualifies Brienza from either owning or working in a licensed premises.

The Employees list, on the line allocated to Brienza, indicates "No" in the column headed "convicted of crime, Yes-no". Although this Division has a long-established procedure for rehabilitation of persons convicted of crimes of moral turpitude, Brienza never availed himself of it.

Division accountant, Russell Long, testified that the only record that was presented, upon demand, was a daily sales record, He was asked;

> "Q: were you able to perform any accounting procedure that is required by the rules and regulations for licensee's to keep a proper record of their business transactions?
>
> A: I was unable to perform a function called a cash flow. This normally determines accuracy for me by taking the beginning cash, adding to it any receipts of the business, and subtracting from it any disbursements of the business to arrive at an ending cash picture with a tie-in to either books of account or a tax basis. There being no tax basis and no records of receipts, disbursements, etc this was impossible."

Upon the evidence adduced, the proofs preponderate in favor of the Division and against the licensee with respect to each of the charges. I, therefore, find the licensee guilty of each of the counts, as charged.

It is, further, recommended that the license be suspended for a total of 115 days. However, since the unlawful situation has not been corrected to date, the license should be suspended for the balance of its term and any renewal thereof which may be granted, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the said suspension whenever the unlawful situation has been corrected, but such lifting of the suspension shall not be granted, in any event, sooner then one hundred and fifteen days from the commencement of the suspension herein.

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, 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 6th day of April 1977,

ORDERED that Plenary Retail Consumption License C-466, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, New Jersey to 746 Rumpus Room Tavern, Inc., for premises 746 Broadway, Newark, New Jersey, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1977, effective 2:00 a.m. on Tuesday, April 19, 1977, and for the term of renewal of said license which may be granted, with leave to the licensee or any bona fide transferree of the license, or of any renewal of the said license which may be granted, to apply to the director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected; but, in no event shall the lifting of said suspension be sooner than one-hundred and fifteen (115) days from the commencement of the suspension herein.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATIONS FILED.

Velardi Associates, Inc.
43 Samworth Road &
312 Allwood Road
Clifton, New Jersey
Application filed July 25, 1977
for state beverage distributor's
license.

Silk City Beverage Co. Inc.
8-10 Amity Street
Paterson, New Jersey
Application filed July 29, 1977
for place-to-place transfer of
licensed salesroom under State
Beverage Distributor's License
SBD-93, to 360 Clinton Street,
Haledon, New Jersey.

Joseph H. Lerner
Director