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

BULLETIN 2031 March 2, 1972

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 2031 March 2, 1972

1. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER IMPOSING SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
John Coleman 643 Communipaw Avenue Jersey City, N. J.	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-362, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)	

John Coleman, Licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On November 5, 1971 I entered a Supplemental Order reimposing a revocation (Re Coleman, Bulletin 2018 , Item 7) heretofore imposed (Re Coleman, Bulletin 1941, Item 1) and stayed by Order of the Appellate Division of the Superior Court until the outcome of the said appeal.

Upon affirmance by the Appellate Division of the action of the Director on November 3, 1971 (Re Coleman, Superior Court, Appellate Division 1970, not officially reported, recorded in Bulletin 2014, Item 3) and prior to the effectuation of the said Supplemental Order of revocation, a petition for certification to the Supreme Court of New Jersey was filed by the appellant.

An Order of the Appellate Division of the Superior Court entered on November 9, 1971 stayed my Supplemental Order of November 5, 1971 pending the determination by the Supreme Court of the petition for certification.

The Supreme Court of New Jersey denied the petition of certification on January 18, 1972 (Supreme Court C-204, Sept. term 1971), not officially reported, recorded in Bulletin , Item . Thus, the revocation may now be reinstated and re-imposed.

Accordingly, it is on this 28th day of January, 1972

ORDERED that Plenary Retail Consumption License C-362, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Coleman, for premises 643 Communipaw Avenue, Jersey City, be and the same is hereby revoked, effective immediately.

Richard C. McDonough,
Director

2. DISCIPLINARY PROCEEDINGS - NARCOTICS ACTIVITY - NUISANCE - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

Revon Corporation
t/a Dixie Tavern & Liquor Store
411-413 Madison Avenue
Atlantic City, N. J.,

Holder of Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS and ORDER

Samuel Epstein, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to the following charges:

"1. On February 10, 17 and March 9 and 10, 1971, you allowed, permitted and suffered unlawful activity pertaining to narcotic drugs, as defined by R.S. 24:18-2, in and upon your licensed premises, and on said dates of February 10, 17 and March 10, 1971, you allowed, permitted and suffered the unlawful possession of such narcotic drugs in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.

2. On February 10, 17, March 9 and 10, 1971, you allowed, permitted and suffered immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on all said dates you, through a person employed on your licensed premises, made offers to and arrangements with customers and patrons to obtain and procure for and/or sell narcotic drugs to them, and in furtherance of such offers and arrangements sold a narcotic drug to customers and patrons on your licensed premises on said dates of February 10, 17 and March 10, 1971; in violation of Rule 5 of State Regulation No. 20."

This case is a companion to the matter of disciplinary proceedings heard simultaneously against Louis L. Satinover, t/a Herman's Bar, Maryland and Arctic Avenues, Atlantic City. Louis L. Satinover is the principal officer and stockholder of the corporate licensee herein. The same agents were assigned to the investigations, testified in both matters and developed a factual picture resulting in similar charges.

Also, the same type of defense was made by the licensee in both cases. Since they are parallel cases they were heard in sequence and hence, reference is made thereto.

ABC agents J and B participated in the investigation of alleged narcotic activity at the subject premises, pursuant to a specific assignment, as a result of which the aforementioned charges were preferred.

Agent J gave the following account: Accompanied by agent B and an informant supplied to them by the Atlantic City Police Department, they entered the premises on their first visit on Wednesday, February 10, 1971 at about 3:00 p.m. A barmaid, later identified as Marie Davis was on duty and there were approximately ten male and female patrons in the premises. The informant asked Marie for narcotics stating "We want to buy a few bags of stuff" (meaning heroin). Marie stated, 'I only have five left'. The informant then said, 'I will take two'. Agent B ordered two and agent J took the last one. The informant gave Marie $6, which she placed in her pocketbook. She then handed him two glassine packages of alleged heroin. Agent B then gave her a $10 bill from which he received four $1 bills in change from her and she gave him two glassine "packages". The witness then gave her three $1 bills and received one package of alleged heroin. After consuming the beer which they had previously ordered they left the premises and turned over the packages to ABC agent C, who in turn, turned them over to a member of the Atlantic City Police Department.

The agents next visited the premises on February 17, 1971, at 4:55 p.m. again accompanied by an informant. Shortly thereafter, Marie entered the premises and a similar transaction was negotiated. Marie asked them, 'Okay, honey, how many do you want?'; the witness replied, 'I will take two bags'. She received payment from him, placed the same in her pocketbook which was behind the bar, and handed him two packages of alleged heroin. This transaction took place in the presence of agent B.

The next visit was made by these agents on Tuesday, March 9, 1971 and again Marie was on duty behind the bar. They sought to make a purchase but Marie said, 'Baby, I ain't got nothing. I don't got nothing now, but I might have something later on tomorrow'. They returned to the premises on Wednesday, March 10, 1971 at around 11:55 a.m. They sought to make a purchase and Marie stated, 'Yes, baby, but I only have a few'. The agent then said, 'Let me have one bag' and Marie informed him, 'You know, it's $4 now'. The agent then paid the $4, received the glassine package of alleged heroin, which he turned over to Detective Colin Jones of the local Police Department.

The agent admitted on cross examination that he did not make any preliminary tests of the contents of the glassine packages nor were they made in his presence.

It was stipulated that agent B's testimony on direct examination would be fully corroborative of that given by the prior witness.

Richard Gervasoni, a chemist employed by the New Jersey State Police Laboratory, detailed the procedure involved in submitting these glassine bags for testing. He made a chemical analysis of the specimens which were given to him by the Atlantic City Police Department; his analysis established that they contained heroin and quinine. In fact it was conceded by the attorney for the licensee in his summation that the glassine packages sold to the agents did, in fact, contain heroin.

Sergeant Peter Mucci, called on behalf of the licensee, gave the following account: On December 29, 1970, Louis Satinover, the principal officer of this corporate licensee, visited him and gave him "some information" that he suspected one of his barmaids, Patricia Bostic, of "dealing in heroin and that she was associated with several other persons within the bar. He said that these

other people would frequent the bar and he thought they were users of a narcotic drug." The witness informed Satinover that he had recently received information similar to the information given to him by Satinover with reference to these premises and other liquor licensed premises, and informed him that he was going to contact this Division for the purpose of making further investigations. Satinover visited him on several other occasions with reference to alleged narcotic activity at these premises.

After the agents left the premises upon making these purchases they turned over these envelopes to police officers and particularly to Detective Jones, who in turn turned them over to him. He made a total of six preliminary field tests of the glassine packages, which tests indicated that they were "positive for heroin". The packages were, in turn, turned over to the New Jersey State Police Laboratory and the reports received by him confirmed the results of the preliminary field tests.

Louis L. Satinover gave the following account: He is principal officer of the corporate licensee and the corporation consists of himself, his wife and his son. In December 1969, he complained to the Police Department that his premises were being "infiltrated by narcotics" and he was directed to the Special Investigation Squad of the Police Department. He spoke to Sergeant Mucci and told him that Patricia Bostic, a barmaid employed by him, was engaged in the sale of narcotics. Thereafter, he spoke to Miss Bostic and she denied any association with narcotics. However, since her sister was in his employ at another location and "was a very reliable person, I took her word."

However, in January of 1971 he discharged her. He also discharged another employee by the name of Leroy Davis. With respect to Marie Davis he did not suspect her of any association with narcotics; nevertheless, when rumors persisted of continued narcotic activity, he spoke to her because "I wanted her to keep her job and I wanted to keep my place."

He asserted that he spoke to Sergeant Mucci on four occasions and he was assured by the officer that investigation would be made at this place and Herman's Bar, a licensed premises which he also operated in this City. He never suspected Miss Davis and for that reason did not discharge her until she was ultimately arrested by local police officers.

On cross examination, he stated that he was usually in attendance both at the liquor store adjacent to the bar portion of the premises, was in and out of both places daily between 1:30 and 5:30 p.m. and would occasionally visit the premises in the evening. However, most of his time was spent in the package liquor store and he would from time to time stand in the doorway and look down toward the bar. He never saw any narcotic activity.

He employs a manager by the name of Theodore Dobson for these premises who spends most of his time in the package goods area. The manager's hours are from 2:00 p.m. to 6:00 p.m. and 8:00 p.m. to 10:00 p.m. He explained that the manager was not present at this hearing because "someone has to look after the store."

In disciplinary proceedings the Division is required to establish its case by the preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 503 (1956). It is beyond dispute, and, indeed, admitted by the licensee that traffic in narcotics took place within the licensed premises. It is also abundantly clear from the forthright and credible testimony of the agents that purchases of narcotics were openly made by the barmaid on the dates alleged herein in the licensed premises.

Satinover, nevertheless, maintains that he had no knowledge of such activity on the part of the employee. Even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on his licensed premises. He cannot hide behind his employees. Hodes Corporation v. Newark, Bulletin 1730, Item 1; Re Steinweiss, Bulletin 1401, Item 7.

Rule 33 of State Regulation No. 20 provides that, in disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to her by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings. In fact it has been held that even where an agent engages in proscribed activity against the express instructions of his employer, the licensee shall be guilty of such violation. Richards, Bulletin 1838, Item 1; Cf. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); Benedetti v. Trenton et al., 35 N.J. Super. 30 (App. Div. 1955). As the then-Director stated in Re Belair Inn, Inc., Bulletin 981, Item 1:

> "Manifestly, the Rule and its upholding are essential to proper and effective enforcement in protection of the public welfare. Without it the State would be rendered impotent and licensees would enjoy an immunity through the simple expediency of making sure that individual licensees (and members of licensee corporations) absent themselves from the licensed premises....
>
> As our courts have long held, the liquor traffic is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied. Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Essex Holding Corp. v. Hock, supra; Crowley v. Christensen, 137 U.S. 86; 34 L. Ed. 620."

The licensee is, therefore, fully responsible for the activities of his employees during their employment on the licensed premises. Kravis v. Hock, 137 N.J.L. 252; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

In Benedetti, supra. the same argument was advanced (35 Super. at p.33). The appellant argued that in the absence of direct proof that he knew of or consented to the charged activities upon the licensed premises, the evidence adduced at the hearing was insufficient to sustain the revocation of his license. Rules 4 and 5 impose the responsibility upon the licensee not to "allow, permit or suffer" upon the premises persons of the character and acts of the nature above described, and such responsibility adheres regardless of knowledge where there is a failure to prevent the prohibited conduct by those in the premises with his authority. Essex Holding Corp. v. Hock, supra.

I find it inconceivable that neither Satinover nor his full time manager was able to observe or be aware of the sales of narcotics in these premises, in view of the fact that the agents purchased the narcotics at the bar in full view of the patrons therein and the barmaid apparently made no attempt to conceal the transactions. Of course, we do not have the testimony of the manager who was not produced by the licensee. It may be that he was not called as a witness because his testimony might have been adverse to that presented by the licensee. Satinover excuses his

absence by saying that he was required to remain at the store. However, there is no suggestion that he could not have been called or that he was unavailable. Since it would be natural for the licensee to produce the manager, who possessed peculiar knowledge essential to the facts herein, an adverse inference may be drawn from the failure to produce him. Cf. State v. Clawans, 38 N.J. 162 (1962); Parentini v. S. Klein Dept. Stores, 94 N.J. Super. 452, 456 and cases cited therein; Jacoby v. Jacoby, 6 N.J. Misc. 86; Re Peppermint Twist, Bulletin 1558, Item 4.

In any event, I am persuaded that the manager and Satinover had ample opportunity to observe the activity on the licensed premises. The very fact that Satinover suspected activity and had already discharged several employees who engaged in the sale of narcotics would seem to indicate that a much closer supervision should have been given to this operation. The culpability of the licensee resides in its failure to exercise a high degree of supervision which was its responsibility and which the public had a right to expect because of the very nature of the admitted patronage of drug users and addicts. Licensees may not evade their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; 500 Cafe, Inc., Bulletin 1584, Item 2; Re Perla's, Inc., Bulletin 1946, Item 3.

The attorney for the licensee next argues that it was in the nature of an "entrapment" for the licensee to have alerted the Police Department about his suspicions of narcotic activity and then to have had these charges preferred against it. I find this reasoning specious. The fact that Satinover complained to the police and was assured by them that investigation would be made of such complaint did not relieve the licensee from the continuing obligation to closely supervise his premises. Certainly there was no entrapment involved here nor were any misrepresentations made to Satinover by the Police Department. As the attorney for the licensee conceded in his summation:

> "Mr. Satinover has learned a little fact of life and that he should have exercised a greater degree of supervision over his employees...."

In fact a much closer supervision should have been given to the employees after the police were alerted by the licensee and others of the suspected illegal activity in these premises. Cf. Schwartz v. Paterson, Bulletin 1577, Item 2.

Finally the licensee argues that the decision in Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (Sup. Ct. 1971) is properly applicable to the matter sub judice. Ishmal is clearly distinguishable from the facts in the instant matter. In Ishmal the licensee and her employees had a policy of refusing to serve, and, indeed, ejecting persons under the influence of drugs; she fully cooperated with the police department by furnishing it with names and descriptions of persons known to her to be pushers; and made good faith efforts to control the drug problem in her premises. No employees of Ishmal were involved or participated in the illegal activity.

However, in the matter sub judice the licensee's employees were directly involved in the sale of narcotics, thus, inculpating the licensee. In re Schneider, supra. Thus, this contention must be rejected.

I conclude, upon consideration of the entire record herein and the argument of counsel, that the charges herein were established by a fair preponderance of the credible evidence, indeed, by substantial evidence, and I recommend that the licensee be found guilty of the said charges.

This Division has operated on the broad principle that any unlawful activity within the licensed premises that involves narcotic traffic is cause for revocation of the license privilege. The Division has consistently taken a very dim view of situations where narcotics are possessed or peddled, particularly where such activities are carried on by agents or employees of the licensee. Because of the serious social consequences resulting from the commercialized traffic in narcotics, revocation has long been an established penalty.

While the driving force behind this principle is valid, its application cannot in all cases be so arbitrarily applied that revocation results as an automatic consequence. Re Gi-Mo-Do Enterprises, Bulletin 1979, Item 1 (suspension of license for one hundred eighty days); Re Kyle, Bulletin 1993, Item 1 (suspension of license for one hundred eighty days). See also Ishmal v. Division of Alcoholic Beverage Control, supra.

I am influenced by the fact that Satinover did complain to and seek advice of the Atlantic City Police Department, in effect, he blew the whistle on the premises; he was in contact with police authorities on at least three or four occasions to urge it to act in consonance with his complaint. Also the license privilege has been exercised by the licensee over a long period of time at these premises in a reputable manner. These factors suggest a compassionate consideration of the extent of penalty to be imposed.

While the corporate licensee has no prior adjudicated record, Satinover (98% stockholder in the corporate license) held a license in premises known as Herman's Bar in Atlantic City, which was suspended by the Director for ten days, effective October 5, 1970, for sales during hours prohibited by State Regulation No. 38. Re Satinover, Bulletin 1939, Item 11.

It is further recommended that the license be suspended for one hundred twenty days, to which should be added five days days for the dissimilar violation occurring within the past five years, making a total suspension of one hundred twenty-five days.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16 written exceptions to the Hearer's report and argument in support thereof have been filed by the licensee. Additionally, oral argument was had before me on January 26, 1972 at which Walter H. Cleaver, Esq., appeared on behalf of the Division and Samuel Epstein, Esq., appeared on behalf of the licensee.

Sergeant Peter Mucci of the Drug Control Unit of the Atlantic City Police Department was also present, at my request.

The Hearer's report recommended a finding of guilt on the charges preferred against the licensee, that on February 3, 10 and 17 it (1) allowed, permitted and suffered unlawful possession of narcotic drugs on the licensed premises, in violation of Rule 4 of State Regulation No. 20; and (2) allowed, permitted and suffered through its employee the sale of narcotic drugs, in violation of Rule 5 of State Regulation No. 20.

The exceptions do not deny the sale activity as charged but challenge the allegation that the licensee "allowed, permitted and suffered" the same to occur. The licensee asserts that in fact, Louis Satinover, the principal officer of the corporate licensee contacted the Atlantic City Police Department on at least four occasions commencing with December 29, 1970, to

"enlist the support of the police to stamp out suspected narcotic traffic" (at these licensed premises). He was informed by Sergeant Mucci that an investigation would be made and that he was to "sit tight, maintain the status quo and make no changes at either of his two establishments."

The licensee, therefore, maintains that since it was cooperating with the Police Department, in effect, "blew the whistle" on the licensee's own premises and acted in accordance with the instructions given to Satinover by the Police Department, it should not be found guilty of these charges.

From my examination of the record, I find support to Satinover's testimony that he did, indeed, go to the police with information concerning narcotic activity in his licensed premises and on several occasions discussed the matter with Sergeant Mucci, who was then assigned to a special squad to investigate narcotics activity in Atlantic City.

At this hearing before me I questioned Sergeant Mucci with respect to the testimony given by Satinover, since it appeared that Mucci was not present at the time that Satinover testified. He particularly did not deny that Satinover was told specifically to "sit tight" and not make any moves or changes, and that this discussion transpired both before and during the investigation by this Division and the Atlantic City Police Department. Mucci stated that it is more probable that he did so advise Satinover because the investigation encompassed a wide-scale investigation in the general area and there was a desire on the part of the police department not to impede and hinder the broader investigation by making a move in this particular facility.

I am now persuaded, in view of the additional information given to me at this hearing by Sergeant Mucci, that Satinover did, in fact, cooperate with the Atlantic City Police Department and this Division by alerting them to these activities and subsequently supplying information as the investigation proceeded.

I feel, therefore, under the circumstances herein, that the licensee should not be penalized and after consideration of the entire record and the supplemental evidence now presented before me, I am unable to agree with the Hearer's determination. Therefore, I shall enter an order dismissing the said charges.

Accordingly, it is, on this 1st day of February 1972,

ORDERED that the charges herein be and the same are hereby dismissed.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - NARCOTICS ACTIVITY - NUISANCE - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

Louis L. Satinover
t/a Herman's Bar
All N. E. corner of Maryland and Arctic Avenues
Atlantic City, N. J.,

Holder of Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS and ORDER

Samuel Epstein, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to the following charges:

"1. On February 3, 10 and 17, 1971, you allowed, permitted and suffered unlawful activity pertaining to narcotic drugs, as defined by R.S. 24:18-2, in and upon your licensed premises, and on said dates of February 3 and 17, 1971, you allowed, permitted and suffered the unlawful possession of such narcotic drugs in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.

2. On February 3, 10 and 17, 1971, you allowed, permitted and suffered immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on all said dates you, through a person employed on your licensed premises, made offers to and arrangements with customers and patrons to obtain and procure for and/or sell narcotic drugs to them, and in furtherance of such offers and arrangements sold a narcotic drug to customers and patrons on your licensed premises on said dates of February 3 and 17, 1971; in violation of Rule 5 of State Regulation No. 20."

This case is a companion to the matter of disciplinary proceedings heard simultaneously against Revon Corporation, t/a Dixie Tavern & Liquor Store, 411-413 Madison Avenue, Atlantic City. The licensee herein is the principal officer and stockholder of Revon Corporation. The same agents testified in both matters and developed a similar factual situation which resulted in similar charges. Also the same defense was made by the licensee in both cases. Since they are parallel cases they were heard in sequence. Reference herein is made to the Revon Corporation matter and they should be read together.

The investigation originated with a complaint made by the licensee herein and others to the Atlantic City Police Department, that narcotic activities were suspected in both licensed premises. As a result thereof, the Atlantic City Police

Department contacted this Division and agents were subsequently assigned to the investigation of alleged narcotic activity at the subject premises.

ABC agent B gave the following account: Pursuant to said assignment he first visited the subject premises in the company of agent J and an informant on Wednesday, February 3, 1971, at 9:00 p.m. Entering the premises separately, they seated themselves at the bar and were tended by a bartender, later identified as Milton Little. The informant asked Little for two bags of heroin; Little removed a packet from his pants pocket containing twenty glassine bags and gave the informant two packages for which he received $6. Little then asked this witness whether he wanted any; he received an affirmative reply. He also sold him two packages of alleged heroin for which he in turn received $6. When the agent left the premises with the informant, the packages were turned over to ABC agent C, who, in turn, delivered them to a member of the Atlantic City Police Department for a preliminary field test of their contents.

Agent B returned to the premises on Wednesday, February 10, 1971 at 12:00 p.m. Agent J, who accompanied him did not enter the premises because it was felt that Little was suspicious of them on their first visit. The agent accompanied by the informant, seated themselves at the bar and asked Little for heroin whereby he replied, "I'm all sold out, I may have some late tonight!" They returned that evening but Little was not on duty.

The next visit to the premises was made on Wednesday, February 17, 1971 at 4:25 p.m. Agent J again remained on the outside of the premises while this witness and the informant entered the premises. A transaction was made with Little wherein Little sold the agent two glassine packets, for which he received $6. These, in turn, were thereafter delivered to Detective Colin Jones of the Atlantic City Police Department. The witness conceded that he did not see the licensee in the premises on his visits.

ABC agent J corroborated the testimony of agent B with respect to the first visit made to these premises. He also corroborated the testimony with respect to the other visits so far as his participation was concerned.

Sergeant Peter Mucci, who was in charge of the Special Investigation Squad of the Atlantic City Police Department, testified that he participated in this investigation with the agents of this Division. He stated that the Atlantic City Police Department had prior information that persons in several taverns in the area in which the subject premises are located were "dealing in narcotic traffic", as a result of which he contacted Division agents to pursue this investigation. After the Division agents made visits to the premises and purchased the heroin they were turned over to Detective Colin Jones, who in turn, delivered them to him. He conducted field tests which preliminarily established that the cpntents of these glassine packages "were positive for heroin". They were then turned over to the New Jersey State Police Laboratory for a more complete examination. The reports from the laboratory to the Police Department confirmed that the contents were positive for heroin.

Richard Gervasoni, employed as a chemist at the New Jersey State Laboratory, detailed the method used to test the contents of the glassine packages, which established that they were positive for Diacetylmorphine: heroin and quinine. The glassine packages and the reports of analyses were admitted in evidence.

ABC agent C gave the following account: He was in charge of the Belmar Office of this Division and was contacted by the Atlantic City Police Department to assist in this investigation. He assigned agents B and J and on several occasions, accompanied by local police he made observations of the agents entering the premises and departing therefrom with the packages of alleged heroin. He had been informed by Sergeant Mucci that the licensee had been in to see him and had given him certain information regarding the activities at these premises and the Dixie Tavern (Revon Corporation) which this licensee also operated.

Louis L. Satinover, the licensee herein, testified as follows: He had been the licensee of these premises since 1943 and before that time it had been operated by his father. When he became suspicious that narcotic activity was taking place at both these premises and the Revon Corporation, t/a Dixie Tavern & Liquor Store, which he operated as its principal stockholder, he spoke to Sergeant Mucci in December 1970, and requested some help. He spoke to Sergeant Mucci about three times in person and about two or three times on the telephone. He was advised that this Division would be notified and an investigation would be undertaken. He wanted to know what he should do about the situation and was told by Sergeant Mucci, "Leave them alone until we are ready to get them." Consequently, he did nothing until a raid was made on the premises and Little was arrested.

On cross examination, he stated that he spends most of his time in the package liquor store, adjacent to the bar portion of the premises and would look into the barroom frequently. However, he was unable to see the entire bar from the counter of the liquor store. He explained that he is in attendance in these premises about six days a week from about 11:30 a.m. to 2:30 p.m.; he is not permitted to work any more hours than that because of his serious health problem.

With respect to Little he became suspicious of him because he was "...very close with the girl that was apprehended at Dixie Tavern", although he never actually suspected him of selling narcotics because he did not see him sell or purchase any narcotics. Of course, as soon as Little was arrested by the police, he was discharged from his employment.

In evaluating this matter we are guided by the long established principle that disciplinary proceedings are civil in nature and not criminal, 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). There has been no doubt generated by the overwhelming testimony presented that Little, the employee of the licensee, did in fact, engage in narcotic activity and sold packets of heroin to the agents and the informant, as testified to by them. This was, indeed, admitted by the attorney for the licensee in his summation.

Satinover, nevertheless, maintains that he had no personal knowledge of such activity by his employee nor is there any affirmative evidence to establish that he actually had such knowledge. However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents as hereinabove related, on his licensed premises. He cannot hide behind his employees.

Rule 33 of State Regulation No. 20 provides that, in disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee

or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings. In fact it has been held that even where an agent engages in proscribed activity against the express instructions of his employer, the licensee shall be guilty of such violation. Richards, Bulletin 1838, Item 1; Cf. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); Benedetti v. Trenton et al., 35 N.J. Super. 30 (App. Div. 1955). As the then-Director stated in Re Belair Inn, Inc., Bulletin 981, Item 1:

> "Manifestly, the Rule and its upholding are essential to proper effective enforcement in protection of the public welfare. Without it the State would be rendered impotent and licensees would enjoy an immunity through the simple expediency of making sure that individual licensees (and members of licensee corporations) absent themselves from the licensed premises....
>
> As our courts have long held, the liquor traffic is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied. Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Essex Holding Corp. v. Hock, supra; Crowley v. Christensen, 137 U.S. 86, 34 L. Ed. 620."

The licensee is, therefore, fully responsible for the activities of his employees during their employment on the licensed premises. Kravis v. Hock, 137 N.J.L. 252; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

In Benedetti, supra, the appellant advanced the same argument (35 Super. at p. 33). The appellant argued that in the absence of direct proof that he knew of or consented to the charged activities upon the licensed premises, the evidence adduced at the hearing was insufficient to sustain the revocation of his license. However, Rules 4 and 5 impose the responsibility upon the licensee not to "allow, permit or suffer" upon the premises persons of the character andacts of the nature above described, and such responsibility adheres regardless of knowledge where there is a failure to prevent the prohibited conduct by those in the premises with his authority. Essex Holding Corp. v. Hock, supra.

Since these purchases were made by the agents at the bar, apparently openly and in full view of the patrons, and on a number of occasions, it is difficult to understand why Satinover was unable to observe these transactions or to have knowledge of their occurrence. The licensee explains that although he suspected narcotics activity he never suspected Little of engaging in the sale of narcotics. Obviously, such confidence in his bartender was misguided and unrealistic in view of the licensee's experience with other employees, both at these premises and at the Dixie Tavern & Liquor Store, who were evidently known to him to have been engaged in such traffic.

The culpability of the licensee resides, therefore, in his failure to exercise a high degree of supervision which was his responsibility, and which the public surely had a right to expect because of the very nature of the admitted patronage of drug users and addicts in these premises. Licensees may not evade their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; 500 Cafe, Inc., Bulletin 1584, Item 2. As the attorney for the licensee conceded in his summation:

"Mr. Satinover has learned a little fact of life and that he should have exercised a greater degree of supervision over his employees."

The licensee next argues that it was in the nature of an "entrapment" for him to have alerted the Police Department about his suspicions of narcotic activity, in effect, blowing the whistle on his own premises, and then to have these charges preferred against him. The fact is that while Satinover did make these complaints and importunations to the Police Department (the police had also received information from other sources) and was assured by them that an investigation would be made, he was, nevertheless, not relieved from his continuing obligation to carefully supervise the premises. Obviously, entrapment was not involved here nor were any misrepresentations made to him by the Police Department. It is clear that it was negligence of the licensee and lack of adequate supervision of his employees that permitted the illegal activity to exist. Cf. Schwartz v. Paterson, Bulletin 1577, Item 2.

Finally the licensee maintains that the decision in Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (Sup. Ct. 1971) is properly applicable to the matter sub judice. Ishmal is clearly distinguishable from the facts in the instant matter. In Ishmal the licensee and her employees had a policy of refusing to serve and ejecting persons under the influence of drugs; fully cooperated with the police department by furnishing it with names and descriptions of persons known to her to be pushers and made good faith in her efforts to control the drug problem in her premises. No employees of Ishmal were involved in the unlawful activities therein.

However, in the matter sub judice the licensee's employees were directly involved in the sale of narcotics, thus inculpating the licensee. In re Schneider, supra. Therefore, this contention must be rejected.

I conclude, upon consideration of the entire record herein and the argument of counsel, that the charges herein were established by a fair preponderance of the credible evidence, indeed, by substantial evidence, and I recommend that the licensee be found guilty of the said charges.

This Division has operated on the broad principle that any activity within the licensed premises that hinge upon narcotic traffic is cause for revocation of the license privilege. The Division has consistently taken a very dim view of situations where narcotics are possessed or peddled, particularly where such activities are carried on by agents or employees of the licensee. Because of the serious social consequences resulting from the commercialized traffic in narcotics, revocation has long been an established penalty. While the driving force behind this principle is valid, its application cannot in all cases be so arbitrarily applied that revocation results as an automatic suspension. Re Gi-Mo-Do Enterprises, Bulletin 1979, Item 1 (suspension of one hundred eighty days on similar charges); Re Kyle, Bulletin 1993, Item 1 (suspension of one hundred eighty days). See also Ishmal v. Division of Alcoholic Beverage Control, supra.

I am influenced by the fact that Satinover did make complaints to the Atlantic City Police Department and seek its advice on three or four occasions, thus, in effect, blowing the whistle on his own facilities; that he was victimized by his employees and did not personally participate in such activities; and that the license privilege has been exercised by him over a long period of time in a reputable manner. These factors suggest compassionate consideration in the imposition of a penalty.

The licensee has a prior adjudicated record. His license was suspended by the Director for ten days, effective October 5, 1970, for sales during hours prohibited by State Regulation No. 38. Re Satinover, Bulletin 1939, Item 11.

It is further recommended that the license be suspended for one hundred twenty days, to which should be added five days for the dissimilar violation occurring within the past five years, making a total suspension of one hundred twenty-five days.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16 written exceptions to the Hearer's report and argument in support thereof have been filed by the licensee. Additionally, oral argument was had before me on January 26, 1972 at which Walter H. Cleaver, Esq., appeared on behalf of the Division and Samuel Epstein, Esq., appeared on behalf of the licensee.

Sergeant Peter Mucci of the Drug Control Unit of the Atlantic City Police Department was also present, at my request.

The Hearer's report recommended a finding of guilt on the charges preferred against the licensee that, on February 3, 10 and 17, he (1) allowed, permitted and suffered unlawful possession of narcotic drugs on the licensed premises, in violation of Rule 4 of State Regulation No. 20; and (2) allowed, permitted and suffered, through his employee, the sale of narcotic drugs, in violation of Rule 5 of State Regulation No. 20.

The exceptions do not deny the sale activity as charged but challenge the allegation that the licensee "allowed, permitted and suffered" the same to occur. The licensee asserts that, in fact, he contacted the Atlantic City Police Department on at least four occasions commencing with December 29, 1970, to "enlist the support of the police to stamp out suspected narcotic traffic" (at these licensed premises). He was informed by Sergeant Mucci that an investigation would be made and that he was to "sit tight, maintain the status quo and make no changes at either of his two establishments."

The licensee, therefore, maintains that since he was cooperating with the Police Department, in effect, "blew the whistle" on his own premises, and acted in accordance with the instructions given to him by the Police Department, he should not be found guilty of these charges.

From my examination of the record, I find support to Satinover's testimony that he did, indeed, go to the police with information concerning narcotics activity in his licensed premises and on several occasions discussed the matter with Sergeant Mucci, who was then assigned to a special squad to investigate narcotics activity in Atlantic City.

At this hearing before me, I questioned Sergeant Mucci with respect to the testimony given by Satinover since it appeared that Mucci was not present at the time that Satinover testified. He particularly did not deny that Satinover was told specifically to "sit tight" and not make any moves or changes, and that this discussion transpired both before and during the investigation by this Division and the Atlantic City Police Department. Mucci stated that it is more probable that he did so advise Satinover because the investigation encompassed a wide-scale investigation in the general area and there was a desire on the part of the police department not to impede and hinder the broader investigation by making a move in this particular facility.

I am now persuaded in view of the additional information given to me at this hearing by Sergeant Mucci that Satinover did, in fact, cooperate with the Atlantic City Police Department and this Division by alerting them to these activities and subsequently supplying information as the investigation proceeded.

I feel, therefore, under the circumstances herein, that the licensee should not be penalized, and after consideration of the entire record and the supplemental evidence now presented before me I am unable to agree with the Hearer's determination. Therefore, I shall enter an order dismissing the said charges.

Accordingly, it is, on this 1st day of February 1972,

ORDERED that the charges herein be and the same are hereby dismissed.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
Eugenia Kogut
t/a New Polonia Bar) CONCLUSIONS
67 Passaic Street and
Passaic, N.J.) ORDER
)
Holder of Plenary Retail Consumption License C-17 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.)
- - - - - - - - - - - - - - - - - - - -)

Licensee, Pro Se.
Walter H. Cleaver, Esq., Appearing for Division.

Licensee pleads non vult to a charge alleging that on September 25, 1971 she permitted the sale during prohibited hours, of an alcoholic beverage in its original container for off-premises consumption in violation of Rule 1 of State Regulation No. 38.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Welcome Inn (A Corp.), Bulletin 2003, Item 10. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $400.00 in lieu of suspension.

Accordingly, it is, on this 31st day of January, 1972,

ORDERED that the payment of a $400.00 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director

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

In the Matter of Disciplinary Proceedings against	)	
Higgins Liquors, Inc. t/a Doc's Cafe & Higgins Package Store 1590-1592 Irving Street Rahway, N. J.	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-6, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.	)	

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 2, 1971, it possessed three bottles of alcoholic beverages the labels of which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Bobo Bar, Inc., Bulletin 2003, Item 12; Re 3 West Corp., Bulletin 2022, Item 10.

Accordingly, it is, on this 31st day of January 1972,

ORDERED that Plenary Retail Consumption License C-6, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Higgins Liquors, Inc., t/a Doc's Cafe & Higgins Package Store for premises 1590-1592 Irving Street, Rahway, be and the same is hereby suspended for fifteen (15) days, commencing 2:00 a.m. on Monday, February 14, 1972, and terminating 2:00 a.m. Tuesday, February 29, 1972.

Richard C. McDonough
Director

6. STATE LICENSES - NEW APPLICATIONS FILED.

Austin, Nichols & Co., Incorporated
58th Street & 55th Drive
Maspeth, New York
Application filed February 25, 1972 for plenary wholesale license.

Montesino, Carbonell & Co., Inc.
333 Veterans Boulevard at Oehler Place
Carlstadt, New Jersey
Application filed February 25, 1972 for place-to-place transfer of Limited Wholesale License WL-9 from Suite 1630, 24 Commerce Street, Newark, New Jersey.

Robert E. Bower
Director