

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

BULLETIN 2276

January 12, 1978

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

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January 12, 1978

1. COURT DECISIONS - MAURER v. TEANECK and DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1642-76

GEORGE C. MAURER, t/a ENTERPRISE
LIQUOR SHOP,

Appellant,

v.

TOWNSHIP COUNCIL OF THE TOWNSHIP OF
TEANECK, and DIVISION OF ALCOHOLIC
BEVERAGE CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY OF THE STATE OF NEW JERSEY.

Respondents.

Submitted October 4, 1977 - Decided October 21, 1977

Before Judges Lora, Seidman and Milmed

On appeal from Division of Alcoholic Beverage Control,
Department of Law and Public Safety, State of New Jersey

Mr. Samuel J. Davidson attorney for appellant

Mr. Jacob Schneider attorned for respondent
Township Council of the Township of Teaneck

Mr. William F. Hyland, Attorney General of New Jersey,
attorney for respondent Division of Alcoholic Beverage
Control (Mr. Mart Vaarsi, Deputy Attorney General, of
counsel, submitted statement in lieu of brief).

PER CURIAM

(Appeal from the Director's decision in Re Maurer v. Teaneck
Bulletin 2252, Item 2. Director affirmed. Opinion not
approved for publication by the Court Committee on Opinions).

- B. Its determination was based upon an erroneous construction of the ordinance involved.
- C. The facts as alleged do not constitute a violation of any state statute or regulation for which a suspension might be imposed.
- D. Final determination of the Respondent was influenced by prejudice and other considerations not germane to the charges against Appellant, and not a part of the evidence presented.
- E. A decision of the Clifton Municipal Court precludes further action based upon the exact same allegations.

The Answer of the Board denies the substantive allegations of the petition and avers as separate defenses that, (1) its determination was based upon the testimony and evidence adduced at the hearing before it; (2) that it has the power to regulate the hours of licensed premises and properly interpreted its ordinance; (3) a municipal court decision is criminal in nature and is not in conflict with the decision rendered by the Board, which is administrative in nature.

At the de novo hearing in this Division the respondent relied upon the transcript of the hearing below, and produced no witnesses.

The transcript reveals that Sergeant Steven Fraumberger of the Clifton Police Department, on routine patrol at 3:10 a.m. on September 16, 1976, observed lights on inside and outside appellant's licensed premises, as well as voices emanating from the interior. He departed his vehicle and proceeded to the front of the licensed premises and inspected the interior through a door window. He observed a bartender, six patrons at the bar, as well as glasses upon it. He then called headquarters for a backup unit and confirmed the time at 3:10 a.m.

When Patrolmen Kelly and Kubik arrived, he opened the front door, which was unlocked, and entered the premises. While Kubik took the names of the patrons, Fraumberger called headquarters to verify the time and was informed that it was 3:11 a.m. The premises were then closed and the bartender taken to headquarters for processing.

Patrolman Kelly testified that at 3:10 a.m. he received a radio call from police headquarters directing him to subject establishment. He corroborated Fraumberger's testimony adding that the patrons were talking and singing when he first arrived. Patrolman Kubik's testimony was corroborative of that proffered by Kelly and Fraumberger.

Patrolman Michal, the radio dispatcher, testified that he time stamped an I.B.M. data card at 3:10 a.m. on receipt of Fraunberger's original call; 3:11 a.m. on receipt of his second call; and finally 3:45 a.m. on receipt of the final call advising completion of assignment.

He produced a second I.B.M. data card showing he first dispatched Kelly at 3:10 a.m., and that Kelly completed his assignment at 4:27 a.m.

No witnesses were produced at the hearing below by the appellant.

At the de novo hearing, in this Division, Louis Iovine, the bartender on duty that evening, testified that he served no drinks after (approximately) 2:20 a.m., and that, following cleaning up, which took about 45 minutes, everyone was preparing to leave when the police arrived and detained them. He admitted that five of those present were not involved in the operation of the establishment that evening, but were friends or patrons. The sixth was an employee who had worked in the premises that evening.

Appellant contends that the action of the Council was not based upon the credible evidence presented. These proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the Board was required to establish its case by a fair preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 503 (app. Div. 1956). In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042 (1964). It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have carefully examined and analyzed the testimony of the witnesses. I am persuaded that the testimony of the police officers was forthright, believable and truly reflected the situation that existed at the time. Obviously, they had reason to note the exact time before entering the tavern and that time was noted on the police log which was admitted into evidence. Thus, their testimony, fortified by the manifest evidence of the police record, and further supported by the testimony of Sergeant Fraunberger, generates no doubt in my mind that they entered the tavern at the time stated by them. On the other hand, I do not find credible the testimony of the appellant's witness.

As to the applicability of the ordinance in question, there were patrons in the tavern during the prohibited hours which, thus, constitutes a clear violation of the ordinance. This ordinance enjoins a licensee from permitting its licensed premises to be open during the above prohibited hours (between the hours of 3:00 a.m. and 7:00 a.m.).

These ordinances have uniformly been interpreted to mean that if there be anyone (of the public), found on the said premises, it shall be deemed a violation of the said ordinance. As used in this ordinance, the closing-of-premises provisions means that all members of the public must be excluded. Town House, Inc. v. Montclair, Bulletin 792, Item 3; Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3. The then-Commissioner Hock in Town House, Inc. v. Montclair, supra, in construing a similar ordinance emphasized that it is meant that all members of the public must be excluded; "Keeping open (which is the same as 'not being closed') requires only proof that the licensee continues to entertain the public." In re Zenda, Bulletin 271, Item 5; Re Casarico, Bulletin 268, Item 1.

I find no merit in appellant's allegation that a finding of "not guilty" in the Municipal Court precludes further action by the Board upon the same allegations. The municipal court proceedings are quasi-criminal in nature and require establishing guilt "beyond a reasonable doubt." An administrative hearing before the Board or at this Division merely requires that a determination be based upon "a preponderance of the credible evidence" only. The person charged in the Municipal Court proceeding is the bartender, whereas the corporate appellant is the entity subject to administrative charges. Lastly, the violation sub judice is of a municipal ordinance, while at the Municipal Court hearing, a state statute is involved. The doctrines of collateral estoppel and res judicata are not, therefore, applicable.

Appellant objected to the introduction of and the respondent's reliance upon, the transcript of the earlier hearing. Proofs presented clearly show that more than three days notice was given by the Board's attorney to the appellant, as required by Rule 8 of State Regulation No. 15. The adversary's consent to the use of a transcript is not required under the applicable rule. I find that appellant's motion to exclude the transcript is without merit. Similarly, I find no basis for support of the appellant's contention that the charge be dismissed due to an alleged statutory vagueness.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion is upon the appellant. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. Apparently the Board felt that the believable evidence established the truth of the charge. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

Furthermore, I find that there is no evidence to show any improper motivation on the part of the Board or that it acted prejudicially in reaching its determination.

My examination of the facts and the applicable law generates no doubt whatsoever that the charge was established by a preponderance of the believable evidence. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be affirmed and the appeal be dismissed. It is, further, recommended that the order of the Director staying the suspension be vacated, and that an order be entered reimposing the suspension heretofore imposed by the Board.

Conclusions and Order

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

Having carefully considered the entire record 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 30th day of September, 1977,

ORDERED that the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Clifton be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed; and it is further

ORDERED that my Order of March 24, 1977, staying the Board's order of suspension pending determination of this appeal, be and the same is vacated; and it is further

ORDERED that Plenary Retail Consumption License C-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Middle Earth, Inc., t/a Middle Earth, for premises 205 Ackerman Avenue, Clifton, be and the same is hereby suspended for twenty-five (25) days commencing 3:00 a.m. Monday, October 10, 1977 and terminating 3:00 a.m. Friday, November 4, 1977.

Joseph H. Lerner
Director

- 3. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT ENTERTAINMENT - HINDERING INVESTIGATION - FOUL AND ABUSIVE LANGUAGE - FAILURE TO PROVIDE EMPLOYMENT LIST - PRIOR SIMILAR AND THREE PRIOR DISSIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 145 DAYS.

In the Matter of Disciplinary Proceedings against

Blue Ribbon Inn of Irvington, Inc.,
t/a Blue Ribbon Inn
433 Grove Street
Irvington, N.J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-58, issued by the Municipal Council of the Town of Irvington.

.....
Leon Sacks, Esq., Attorney for the Licensee
Mart Vaarsi, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded "Not Guilty" to the following charges preferred on July 21, 1976:

S-10,873
X-47,519-E

1. On July 2 and 8, 1976, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., you allowed, permitted and suffered a female person, while performing on your licensed premises for the 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

2. On July 8, 1976, while inspectors of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation of your licensed premises, you failed to facilitate, hindered, delayed, caused the hindrance and delay of such investigation; in violation of Rule 35 of State Regulation No. 20.

3. On July 8, 1976, you allowed, permitted and suffered in and upon your licensed premises foul, filthy, indecent and obscene language; in violation of Rule 5 of State Regulation No. 20.

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

A similar plea was entered to the following charge preferred January 4, 1977:

On Thursday, December 9, 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 on your licensed premises, 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.

In support of the charges, the Division offered the testimony of five ABC Agents.

Agent S testified that on July 2, 1976, he visited the subject premises at approximately 3:00 p.m. He observed a go-go dancer performing in a bikini-style bottom with a halter-style blouse. During the performance she loosened the knot that held the blouse closed, opened the blouse by holding the sides outward and exposed her breasts for one recorded selection, as she danced.

Another dancer, Dorothy Jones, also performed that day. After dancing in what was described as "regular go-go fashion" for three selections, someone shouted "it's showtime, put something in the cup." A metal cocktail shaker was passed around for contributions. She then danced removing the lower portion of her costume to the accompaniment of vulgar comments and shouts from the patronage.

She fondled her vagina and moved about to expose it to the audience. She also exposed her breasts, rubbed them and thereafter, she reclined on the stage moving her pelvic area rhythmically while inserting her finger into the vagina to simulate sexual intercourse. This routine lasted approximately fifteen minutes.

The first dancer returned and then performed in a similar manner as did Jones.

Agent M was also present that day and corroborated Agent S's testimony.

Agent S further testified that he returned to the licensed premises on July 8, 1976, at 2:45 p.m. Agents Mc and D'A were already at the premises. He observed a barmaid signal the same go-go dancer, Dorothy Jones, to open her blouse. A male identified as Ed Abelow, passed a metal mixing cup for contributions. The dancer lowered the bottom part of her costume exposing her vagina. She then got down on her hands and knees and moved her hips up and down to simulate sexual intercourse, at the same time removing her breasts from the costume, caressing them and kissing the nipples. She performed in this manner during two recorded selections played on the juke box.

Agent D'A called the Irvington Police and upon the arrival of two local officers, the ABC agents identified themselves. The patrons then became boisterous and although the barmaid, at the agents' request, attempted to quiet them, she was not too successful.

At this time, Maxwell West, fifty-one percent stockholder and President of the corporate licensee, entered the tavern. After being told what was occurring he became loud and abusive towards the agents, used obscene language, the repetition of which would serve no useful purpose here. He accused them of lying and in general by his behavior hindered the performance of their investigation by stirring up the patrons who were restless and muttering.

West screamed that "I've got fifty witnesses who'll testify against you," and shouted to the go-go girl to go back on the stage and dance. This was despite Agent D'A's insistence that she refrain from performing, in order that, there be quiet so that the agents could complete their investigation. D'A and the other agents were continually subjected to abuse and obscene language until the police asked West to step outside, in an attempt to calm him.

An examination of the E-141 form disclosed it to be incomplete, as it lacked the name, and other required information, relative to Dorothy Jones, the dancer.

Lastly, West stated that the raid was in retaliation by Agent D'A, who, he alleged, lost fifty dollars in a pool game to West.

Agents Mc and D'A testified regarding the July 8, 1976 occurrence and corroborated Agent S. However, D'A added that West on at least two occasions stated that "he had 50 witnesses inside that would say that they hadn't seen anything like I had explained to him," and later "...he could bring in 50 witnesses that would say it never happened."

Agent J testified that he visited the licensed premises on December 9, 1976 at 2:25 p.m., as a result of a specific assignment, in the company of Agent V. He described in detail the go-go dancer's performance, which gave rise to the second charge of violation of Rule 5 of State Regulation No. 20.

The dancer ascended the stage and reclined upon her back after removing her dress. She then removed her G-string and lowered her bra, exposed her breasts and spread her legs. Using her hands, she separated the vaginal lips in full view of the patronage. This action elicited a lewd comment from one of the males in the audience.

After the performance, the agents identified themselves to the barmaid and the dancer and informed them of the violation. A male, identified solely as Al, and whom the patrons referred to as the owner, had departed the premises. Whether he was associated with licensee, or not, was never established.

The licensee produced ten witnesses, all of whom, in substance, testified that they did not see any of the alleged lewd acts take place as claimed by the Division's Agents. The licensee protested loudly at the conclusion of the hearing, as well as asserting in its written summation, that the hearing officer improperly refused to schedule an additional (fourth) day of testimony to permit two other witnesses to testify in its behalf.

Of the ten persons who testified, five were patrons, two were barmaids, two were co-owners and the last, one of the go-go dancers involved in the charge.

It would serve no useful purpose whatsoever to abstract the individual witness' testimony here. Suffice to say all expressed surprise or indignation that these charges were leveled against the licensee. All alleged they were most attentive to the dancing that day and nothing whatsoever even remotely suggestive of an impropriety occurred.

Marlene West, forty-nine percent stockholder and corporate officer added the only bit of testimony worthy of reference, and which was not repetitious. She stated that July 2nd was the date of her birthday party, being celebrated at the tavern from 11:00 a.m. until 2:00 a.m. the next day. To celebrate this happy event, the licensees hired four go-go dancers, and, in addition, the barmaids got up and danced on the stage as well. The interior was gaily decorated and food was served to the patrons. Since none of the agents testified to this obvious fact, it is, by inference, suggested that they were not even there that day, and thus, their credibility shattered.

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, 78 (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. My evaluation of the entire record gives rise to the inescapable conclusion, and I find, that the charges have 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 credibility of the licensee's ten witnesses. Sheer numbers of witnesses cannot substitute for credibility.

I cannot accept Maxwell West's assertion that this investigation was motivated by the alleged loss of \$50.00 by Agent D'A at the pool table. It should be borne in mind that the agents investigated activities on these premises pursuant to a specific assignment from their supervisor, not upon their own initiative.

The blanket denial of the incidents relating to the charges is entirely unconvincing in view of the minutely detailed account of the performances presented by the agents.

In adjudicating this matter I note the logic used by Judge Jayne speaking for the court in McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super 61, 62 (App. Div. 1954), wherein he stated:

Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession.

The Division's unrelenting policy of prohibiting "topless" female employees whether entertainers or otherwise has been affirmed by the courts. See In re Club "D" Lane, Inc., 112 N.J. Super 577 (App. Div. 1971).

Accordingly, after examining the various precedents cited, I am persuaded by the clear and convincing proof in this case, that the charges have all been sustained by a fair preponderance of the credible evidence.

The licensee's attorney raised two procedural issues for resolution.

The Divisions' case was presented ex parte, as the licensee had, for the second time, discharged its attorney on the eve of the hearing. The new (and third) attorney chose not to appear. Instead, he sent a letter claiming he was otherwise engaged and requested an adjournment. He asserts that the denial of his request resulted in great harm to the licensee and, conversely, a brief adjournment would not have prejudiced the Division's case.

Additionally, he requested and was denied an additional day in order to produce two witnesses, who, for some reason, did not appear at the April 13th hearing.

The deputy Attorney General in his response to these motions presents an exhaustive review of the adjournments granted to the licensee, and I quote a portion of it herewith:

"It bears mention at the outset that the granting of an adjournment in an administrative hearing rests in the sound discretion of the hearing officer. In re Darcy, 114 N.J. Super. 454, 462 (App. Div. 1971). Unquestionably there was no abuse of discretion here. Perhaps the most persuasive argument that can be made in support of the Hearer's action is to simply list the chronology of postponements, adjournments, changes of counsel and ostensibly peremptory dates which preceded the actual hearing of this matter. The record of correspondence between the parties and the hearing transcripts reveal the following (see attached):

- July 21, 1976 - Division mails notice of charges and accompanying letter to licensee.
- July 30, 1976 - Letter from licensee enters plea of not guilty.
- July 30, 1976 - Letter from Division sets September 13, 1976 as first hearing date.
- September 9, 1976 - Letter of Eugene Rosner, Esq., informs Division that he will represent licensee and that Harry Coleman, Esq., has been relieved as counsel due to conflict. Also requests first adjournment of two weeks.
- September 10, 1976 - Division grants adjournment to October 27, 1976.
- October 21, 1976 - Counsel requests second adjournment to obtain transcript of related municipal court hearing.
- October 25, 1976 - Division grants adjournment to November 10, 1976.
- November 1, 1976 - Counsel requests indefinite postponement due to illness of one licensee.
- November 4, 1976 - Division grants adjournment to November 22, 1976.
- November 22, 1976 - Division grants further adjournment to December 16, 1976.
- November 29, 1976 - Counsel's letter to Division confirms telephone conversation requesting indefinite adjournment due to illness of one licensee.
- January 20, 1977 - Division sets February 8, 1977 as peremptory hearing date.
- February 2, 1977 - Counsel requests adjournment of peremptory date due to conflicting court appearance.
- February 4, 1977 - Division grants adjournment of peremptory date to new peremptory date of February 14, 1977.
- February 9, 1977 - Counsel again requests adjournment of peremptory hearing date due to conflicting appearance.
- February 11, 1977 - Division grants adjournment of second peremptory date to February 17, 1977.

- February 17, 1977 - Licensee appears at hearing without counsel and presents Hearer with letter from Leon Sachs, Esq., requesting adjournment to enter and prepare for case. Adjournment is denied, the State presents its case ex parte and the matter is concluded.
- March 4, 1977 - Mr. Sachs requested opportunity to present defense case.
- March 9, 1977 - Division grants request to reopen matter to allow defense case. Peremptory date of March 21, 1977 set for hearing.
- March 11, 1977 - Mr. Sachs requests adjournment to March 23 due to conflicting court appearance.
- March 15, 1977 - Division grants adjournment; new peremptory date set for March 25, 1977.
- March 25, 1977 - Hearing continued, but defense does not finish presenting its case.
- March 28, 1977 - Division sets April 11, 1977 as adjournment for hearing on request of Mr. Sachs, who asked that matter be set down for a Monday and that he receive two weeks notice.
- March 28, 1977 - By letter Mr. Sachs requests adjournment change to Tuesday or Wednesday, April 12 or 13.
- March 28, 1977 - After receiving letter of Mr. Sachs, Division changes date to April 13, 1977.
- March 30, 1977 - Mr. Sachs confirms by letter.
- April 13, 1977 - Hearing is continued and licensee presents remainder of its witnesses who are present, asks further adjournment to present two additional witnesses who did not appear for hearing that day. Request is denied.

The foregoing demonstrates that licensee had ample opportunity to retain counsel prior to the first hearing date but failed to do so. Clearly the Division was justified in proceeding ex parte and granting no further adjournments of this long-delayed matter. It is likewise clear that the licensee had a full and fair opportunity to present its case, and was in fact given a choice of dates on which it wished to proceed. Manifestly, its failure to produce all the witnesses it desired on the hearing date which counsel for the licensee himself chose is attributable to no fault or unfairness on the part of the Division."

I adopt the last paragraph of this letter as my own and find, as a fact, that licensee's two procedural motions are without merit.

Accordingly, after examining the various precedents cited, I am persuaded by the clear and convincing proof in this case that all the charges have been sustained by a preponderance of the credible evidence.

I therefore recommend, in light of licensee's lack of a prior chargeable record that, its license be suspended for the July 2, 1976 and July 8, 1976 violations, as follows:

Lewdness upon its licensed premises.	30 Days
Hinderance of an investigation.	20 Days
Foul and obscene language upon its licensed premises.	10 Days
Incomplete employee's list.	10 Days
Total	<u>70 Days</u>

Further, I recommend that its license be suspended thirty days for the December 9, 1976, violation, to which should be added an additional thirty days for the prior similar violation occurring within the past two years, and an additional five days for each of three prior dissimilar violations occurring within the past five years, or a total suspension on this charge of 75 days.

In sum, I recommend that its license be suspended for a total of 145 days.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the licensee, and written Answers thereto were filed on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

The licensee, in its Exceptions alleges a deprivation of a "due process" right to a fair and full hearing, as a result of licensee's lack of representation of counsel at an initial hearing in this Division, and the refusal to grant an adjournment of an April 13, 1977 hearing.

These arguments were advanced at the hearing, and were correctly resolved in the Hearer's Report. Prior to the ex parte hearing, where the licensee was not represented by counsel, it had requested and received six adjournments requested by two different attorneys, thereby causing a delay of the hearing for more than five months.

The request of the licensee for a seventh adjournment, made at the seventh rescheduled hearing date, to permit a third lawyer to be substituted on its behalf, was correctly denied. Clearly, any lack of representation of counsel on behalf of the licensee was the direct consequence of its own actions.

Thereafter, upon request of the third counsel for the licensee, I authorized the reopening of the hearing, and permitted the licensee to present its defense, which was held during two additional sessions. The licensee presented ten witnesses on its behalf and I find no error in the denial of a request to present two more witnesses at a requested third hearing.

I find no abuse of discretion, or prejudice to the licensee in the procedural aspects attendant in these hearings, and accordingly, I find this Exception to be lacking in merit. In re Darcy, 114 N.J. Super. 454, 462 (App. Div. 1971).

Similarly, the unspecified exceptions by the licensee to the effect that the recommended findings of the Hearer are erroneous and against the weight of the evidence, are without merit. The record supports findings of guilt by a fair preponderance of the credible evidence.

Having carefully considered the transcripts of the testimony, the exhibits, the Hearer's Report, the Exceptions to the said Report and the Answer filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this ~~27th~~ day of September, 1977,

ORDERED that Plenary Retail Consumption License C-58, issued by the Municipal Council of the Town of Irvington to Blue Ribbon Inn of Irvington, Inc., t/a Blue Ribbon, Inn, for premises 433 Grove Street, Irvington, be and the same is hereby suspended for one hundred and forty-five (145) days, commencing 2:00 A.M., Wednesday, October 5, 1977 and terminating 2:00 A.M., Monday, February 27, 1978.

JOSEPH H. LERNER
DIRECTOR

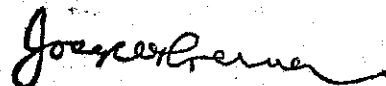
4. STATE LICENSES - NEW APPLICATIONS FILED.

Franche Comte, Ltd., 428 Old Hook Road, Emerson, N. J.

Application filed January 10, 1978 for place-to-place transfer of Wine Wholesale License WW-1 to include a warehouse at 201 Bay Avenue, Elizabeth, N. J.

Julius Wile Sons & Co., Inc., 580 Sylvan Avenue, Englewood Cliffs, N. J.

Application filed January 10, 1978 for place-to-place transfer of licensed salesroom, Plenary Wholesale License W-83, from 560 Sylvan Ave., Englewood Cliffs, N. J.



Joseph H. Lerner
Director