

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

BULLETIN 2140

March 27, 1974

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March 27, 1974

1. COURT DECISIONS - TERRACINA, INC. v. JERSEY CITY - APPEAL OF ABOVE DISCIPLINARY MATTER - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-506-73

TERRACINA, INC., a New Jersey
Corporation, t/a TUBE BAR,

Appellant,

v.

DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND PUBLIC
SAFETY,

Respondent.

Argued December 11, 1973 - Decided February 13, 1974.

Before Judges Kolovsky, Fritz and Crane.

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

Mr. Samuel J. Davidson Argued the cause for appellant
(Mr. Michael Halpern, attorney).

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

PER CURIAM

(Appeal from the Director's decision in Re Terracina, Inc.,
Bulletin 2139, Item 2. Director affirmed. Opinion not
approved for publication by the Court Committee on
Opinions).

2. APPELLATE DECISIONS - MOON STAR, INC. v. JERSEY CITY.

Moon Star, Inc., :
: Appellant, : On Appeal
: v. :
: Municipal Board of Alcoholic : AMENDED ORDER
: Beverage Control of the City :
: of Jersey City, :
: Respondent. :

.....
Salvatore Perillo, Esq., Attorney for Appellant
Raymond A. Hayser, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

On November 16, 1973 Conclusions and Order were entered herein reversing the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City which, on November 12, 1973, denied the appellant's application for renewal of its plenary retail consumption license for the current license period for premises 268 Duncan Avenue, Jersey City. The Order directed that the respondent renew the said license, "expressly subject to the special condition that appellant forthwith employ a special police officer or uniformed guard (not a regular police officer) to aid in the orderly conduct of the premises and to keep the exterior of the premises free of loiterers and litterers". Moon Star, Inc. v. Jersey City, Bulletin 2130, Item 3.

Upon the entry of the said Order, appellant appealed from the imposition of the special condition to the Appellate Division of the Superior Court which, by Order dated November 27, 1973, granted a stay of the said special condition until the determination of the said appeal. This appeal is presently pending. Re Moon Star, Inc. v. Jersey City, (App.Div. 1973, Docket #A621-73).

Appellant has now made an application to the respondent for the removal of the said special condition because it has obtained a purchaser for the said license, and has represented that it would be unable to effectuate the sale unless the said condition was removed. The appellant further represented that the reason for the imposition of the special condition was based upon the inability of the appellant to control its premises, and asserted the said objections were not directed to the premises.

After a full hearing on the said application, the respondent by resolution adopted on January 8, 1974 has recommended that my

Order of November 16, 1973 be amended to remove the special condition, expressly subject (1) to the effectuation of the proposed person-to-person transfer of the subject license to a transferee with "which neither the present license nor any of its principals is affiliated"; and (2) that the appellant withdraw and discontinue its appeal now pending in the Appellate Division upon the entry of the said Order.

Good cause appearing, I shall enter the Amended Order as requested.

Accordingly, it is on this 1st day of February, 1974

DETERMINED that my Order dated November 16, 1973 in the above matter be and the same is hereby amended as follows: That the special condition therein imposed be and the same is hereby vacated, expressly subject to the following:

- (1) That the appellant shall forthwith upon the entry of this Order, withdraw and discontinue its appeal in this matter, now pending in the Appellate Division of the Superior Court; and
- (2) That the said license shall forthwith be transferred to a transferee who is not affiliated with either the present appellant-licensee or any of its principals.

Robert E. Bower,
Director

3. APPELLATE DECISIONS - MABEL ESA and IDLE HOUR TAVERN, INC. v. PATERSON.

Mabel Esa, and Idle Hour Tavern, Inc.,)	
Appellants,)	
v.)	On Appeal
Board of Alcoholic Beverage Control for the City of Paterson,)	CONCLUSIONS and ORDER
Respondent.)	

Goodman and Rothenberg, Esqs., by Sylvan G. Rothenberg, Esq.,
Attorneys for Appellant Esa
Michael Hornick, Esq., Attorney for Appellant Idle Hour Tavern,
Inc.
Ralph L. DeLuccia, Jr., Esq., by Richard M. Fried, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which on August 22, 1973 denied appellant Esa's application for a person-to-person transfer of plenary retail consumption license held by appellant Mabel Esa to appellant Idle Hour Tavern, Inc.

The resolution complained of ascribed the following as respondent's reasons for its action:

" * * * * *

"WHEREAS, reports received by this Board indicate that the premises ... are involved in a major criminal investigation currently being conducted; and

"WHEREAS, it is the opinion of this Board that any change of ownership at this time would be detrimental to the applicant and to the welfare of the community at large;
NOW, THEREFORE;

"BE IT RESOLVED, that the transfer of said license be and the same is hereby denied."

Appellants, being the transferee and transferor applicants, contend that the action of the Board is erroneous in that the prior conduct of the transferor, who admittedly is neither a necessary nor a proper party to such appeal, is not a proper basis of rejection; that the issue before the Board is solely the qualifications of the transferee.

The Board contended in its answer that it is within its discretionary power to approve or disapprove any application for a transfer of license so long as such transfer is considered inimical to the public interest; and, having found such, its action should be affirmed.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

Testifying on behalf of appellant Idle Hour Tavern, Inc., Bennie Chappelle stated that he is an advisor to a Mrs. Brown, holder of all of the corporate stock of appellant corporation, who is presently ill and could not appear at the hearing. He described the Idle Hour Tavern, Inc. as the holder of a plenary retail consumption license in a building which has been demolished as a result of highway construction. Mrs. Brown, and her father before her, had operated that establishment for a total of thirty years without violation or difficulty. He averred that he was present when a contract was signed for the purchase of Esa's tavern, and that Mrs. Brown was aware of the existing suspension and problems the Esa license faced.

Board Secretary William W. Harris testified that the application of appellant Idle Hour Tavern, Inc. and the personal qualifications of Mrs. Brown were not questioned by the Board. It had no reservations as to the personal integrity of Mrs. Brown but feared that, if the transfer were approved, appellant Idle Hour Tavern, Inc. would be accepting a license that was presently in jeopardy. The Board's rejection was merely a means of protecting Mrs. Brown from the possibility of purchasing a license that could be subject to potential revocation because of the poor record developed under appellant Esa's ownership.

It is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy to receive the privilege of a license, and its determination should be given considerable weight on appeal. Eana, Inc. v. Pleasantville, Bulletin 1024, Item 2; Clark v. West Orange, Bulletin 631, Item 7.

As there was no proof whatever that appellant Idle Hour Tavern, Inc. or its principal stockholder Mrs. Brown was unworthy to hold a plenary retail license, the Board's determination to withhold approval of her application was entirely arbitrary. Cf. Federici's Hideaway, Inc. v. Belleville, Bulletin 1595, Item 2; Chestnut Wines & Liquor, Inc. v. West Orange, Bulletin 1740, Item 1.

While the motives of the Board in attempting to prevent Mrs. Brown (sole stockholder of appellant corporation) from being intertwined with the sorry record of appellant-transferor are laudable, the equities in favor of Mrs. Brown securing a new location for her license should have weighed more heavily. The license of appellant Esa having been suspended and her husband having been charged with a serious crime, it would logically be of the best interests of the citizens of that community if the license was transferred to a person of integrity. The admission that Mrs. Brown and the Idle Hour Tavern, Inc. are licensee-nominees of good repute should have induced the Board to grant the application.

I therefore conclude that appellants have sustained the burden of establishing that the action of respondent issuing authority was arbitrary and erroneous. Rule 6 of State Regulation No. 15.

It is accordingly recommended that the action of the Board be reversed, and the Board be directed to grant the transfer in accordance with the application filed therefor.

Conclusions and Order

No written 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 5th day of February 1974,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson in denying appellant's application for a person-to-person transfer from appellant Mabel Esa to appellant Idle Hour Tavern, Inc., be and the same is hereby reversed; and it is further

ORDERED that respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby directed to approve the aforesaid person-to-person transfer of plenary retail consumption license held by appellant Mabel Esa to Appellant Idle Hour Tavern, Inc., in accordance with the application filed therefor.

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT DANCE BY EMPLOYEE -
PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 100 DAYS.

In the Matter of Disciplinary)
Proceedings against)

The Vacston Co., Inc.)
502 Frelinghuysen Avenue)
Newark, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-335, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Newark.)

Sheldon and Freda, Esqs., by Victor J. Freda, Esq., Attorneys for
Licensee
David S. Piltzer, 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 Friday, January 5, 1973, you permitted and suffered lewdness and immoral activity in and upon your licensed premises viz., in that you allowed and permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner, in violation of Rule 5 of State Regulation No. 20."

Several ABC agents participated in the investigation which resulted in the preferment of the said charge.

Division agent B testified that, accompanied by agents C and P, he entered the licensed premises on January 5, 1973, at approximately 4:50 p.m. Later, Agent Ch entered the licensed premises. The barroom contained a "C"-shaped bar, and behind the far end of the bar, there was located a raised stage with mirrors behind it.

Upon entry, agent B observed approximately thirty male patrons either seated at the bar or at the rear tables, or playing pool. On duty behind the bar was a male, identified as Paul Antonelli, and a female identified as Robin Mack.

Performing a dance on the stage was a female, identified as Judith VanYoung. She was attired in something similar to a two-piece black bathing suit and performed a "go-go" dance. The agent positioned himself at the bar immediately in front of the stage approximately eight feet distant.

The witness described Judith's performance as follows:

"When I entered I took a position in front of the female dancing. I observed her breasts were completely exposed. As I walked in front of her I observed the bra portion of her costume to be below her breasts. The straps which are usually worn over the shoulders were between her elbows and shoulders. They were hanging off her shoulders. The rear portion of her costume was unsnapped."

And further:

"Judith did not remove the bra from her body but let it hang, the straps on her arms, and breasts exposed for approximately a minute. She would then grab the tops of the cups to pull them over the nipples of her breasts, lift the straps between the elbows and shoulders, snapping the rear portion of the bra affair. She would continue to dance and the costume would fall and expose her nipples or the whole breasts. She would fondle them while they were exposed. I observed this to happen 3 times between 4:50 and 5:00 p.m. for approximately one minute intervals. Her breasts were completely exposed to the patronage."

While the breasts were uncovered they "would move up and down and side to side as she danced." Patrons called out "Come on! Take it off!" Agent B observed both bartenders look at Judith while her breasts were exposed. They did not tell her to cover up or remove herself from the stage. One patron observed to Antonelli, "She has nice tits, hey!" Antonelli laughed.

Judith danced topless from 4:50 to 5:00 p.m. At approximately 5:00 p.m. Judith "placed her shoulder straps over the top of her body, pulled the cups up, didn't snap the bra, and continued to dance to 5:10 p.m., not exposing her breasts at any time."

Shortly prior to 5:00 p.m. a male, identified as Joseph Bocchino, entered the premises and commenced tending bar. He said to Judith, "Come on! Show the patrons what you have!" Judith responded, "I just did that."

A female identified as Penny Snyder followed Judith on the stage at approximately 5:10 p.m. The agent described her attire thusly:

"She was attired in fur or fake fur white bra portion, also in leather or leatherette lower portion adorned with feathers hanging in front of her pubic area. The feathers were hanging to the rear by her buttocks. The leatherette or leather portion was covering her buttocks area. It had a symbol on it with little beads."

In describing Penny's dance agent B testified as follows:

"She danced to the music and at time would bend over with her buttocks facing the mirrors to the rear of the stage, and I observed what appeared to be a bare pubic area when she bent over to the rear. I observed a red or pink filmy material to be around her waist or her belly button to the back, not underneath her body but around her waist. She bent over like this approximately 3 or 4, maybe 5 times, with her buttocks facing the mirrors. I observed her buttocks to be bare. It appeared to see shadows inside her buttocks and what appeared to be a bare pubic area."

He observed that, as Penny bent over, she took one of the feathers to cover the crack in her buttocks. Patrons called for her to move the feather. Penny shook her head with a "doubting kind of smile." The agent observed this to occur at least three times. On one occasion, while twirling, the dancer's costume lifted and it appeared to him that her pubic area was uncovered. Penny hopped from the stage onto the bar, approximately three or four feet distant from agent B and squatted with her knees out and with the front portion of her costume hanging in front of her pubic area.

The agent noted that the performer didn't have anything on underneath the costume, and he saw her pubic hair. One patron commented "She has a nice bush, hey!"

Penny took what appeared to be a motorcycle cap from the head of a male, held it in front of her chest, pulled the fake fur underneath her right breast, thus leaving her right breast exposed. She then covered it with her hat. Penny proceeded through the same ritual, leaving her left breast exposed. She then covered both breasts with the cap for approximately two or three seconds before the cap "popped off", leaving both breasts exposed. She did this twice. After the second time, she covered the breasts with the fur, looked inside the cap and said, "Oh, it is 7-1/4. That is why it doesn't fit. It is too small" and "then went back to the go-go stage and continued to dance on the go-go stage."

Bocchino snapped a photograph of Penny at an instant when she was not exposing any part of her anatomy. Agent B made the following inquiry of Bocchino relative to Penny, "She didn't have anything on underneath; right?" Bocchino replied, "No, she doesn't have anything on underneath."

At approximately 5:20 p.m. agent Ch departed from the premises and a call was placed to the local police by agent C. The police entered the premises at approximately 5:30 p.m. The agents identified themselves to Antonelli, Mack and to both female performers.

On cross examination, the agent testified that agent Ch entered the barroom approximately four or five minutes after he (agent C) and the other agents entered the barroom at 4:50 p.m. He did not identify himself or call the police while the first female was performing because he knew that another female was about to perform, and he also wanted to observe that performance.

It was stipulated that the testimony of agent C would be corroborative of the testimony offered by agent B.

Agent Ch testified that he waited outside while agents B, C and P entered the subject licensed premises on January 5, 1973, at 4:50 p.m. He entered approximately five minutes later and positioned himself at the back of the bar. He observed Judith VanYoung dancing.

"As I walked in her breasts were completely exposed. By the time of my entry and reaching in the back of the bar she was starting to put up the straps and step down."

It was stipulated that agent Ch's testimony of his observations concerning Penny Snyder's performance would be similar to the testimony adduced from agent B. He saw the photograph snapped by Bocchino. He did not seize it because there was nothing indecent about the photograph or be of any benefit in the subject investigation.

In behalf of the licensee, W. M. Loban testified that he was a patron in the licensed premises on January 5, 1973, at approximately 4:00 p.m. At that time a "short girl in a black bathing suit type outfit" was dancing and she finished her set at approximately 4:00 p.m., was fully dressed at approximately 4:30 p.m., and did not perform at all after leaving the stage. She did not at any time pull down the top of her bathing suit or expose her breasts.

At approximately 4:15 p.m. a female, approximately 6'1" tall, weighing approximately 180 to 190 pounds, was attired in an outfit similar to the one which the agents described Penny Snyder was wearing. Penny did not get on the bar because the ceiling was too low for her to stand on the bar. During the past year-and-a-half he has patronized the barroom approximately three or four times a month.

On January 5, the witness arrived at the barroom at approximately noontime. At that time the first female (Judith) was dancing; She danced until 4:05 p.m. when the second female (Penny) was due to entertain. He played pool most of the time during which Judith

was performing her dance. While Penny was performing, he stopped playing pool so that he could observe "the girl with the feathers." She was on stage from a half-hour to forty-five minutes and he observed most of her performance. While she twirled, her skirts would go up. He observed that her front crotch area was covered by a patch approximately the size of a two-by-three playing card.

The following testimony was then elicited:

- "Q Do you know how it [the patch] was fixed? A String?
A I know there was a string went around her waist because that was above everything else. The reason I can remember this is the fact that everybody in the place was watching and applauding and laughing because of the feathers.
- Q When she twirled the only thing covering her buttocks would be the string?
A Yes.
- Q The only thing covering the front portion of her anatomy below the waist would be a black patch about two by three inches?
A I didn't remember whether black or not but I know there was definitely a patch there."

He added that she did not squat on the bar.

John R. Callagy testified that he arrived at the tavern at approximately 3:50 p.m. and observed a female wearing a black bikini-type costume dancing. Although her costume was low-cut, exposing the top part of her breasts, the lower part of her breasts was not exposed. She never removed the top part of her costume. She continued dancing for fifteen minutes after he arrived at the tavern.

The female with the feather costume made her appearance on the stage at approximately 4:15 p.m. He remained in the premises until the ABC agents identified themselves at approximately 5:30 p.m. At no time did the second performer disrobe or expose either her upper or lower body.

Callagy based his time of arrival at 3:50 p.m. upon the fact that he stopped working at 3:30 p.m. and it normally takes him twenty minutes traveling time to arrive at the tavern. He described the second performer as being approximately five feet nine or ten inches tall and weighing 125 to 130 pounds. Her buttocks were never exposed.

On cross examination, the witness testified that he commenced patronizing the licensed premises approximately a year-and-a-half ago; that he was attracted by the entertainment furnished at the licensed premises; he made no notes of the occurrences of January 5; that he gave his name to Paul; that Paul called him the day prior to hearing herein in order to ascertain whether he could attend the hearing; that ever since January 5 he spoke to no one concerning the occurrence of January 5, except that he spoke with

the licensee's attorney on the morning of the hearing. He observed the performers during the entire time that they danced.

He did engage in some conversation with an acquaintance at the bar. When the second female danced, he observed that she wore "something on the order of panties" which also covered her buttocks, black in color. He did not see any strings at the area of her buttocks. When she bent, the patrons reacted loudly. He observed her to squat down on the bar. Further, the witness observed the dancer to take a hat from a male's head and use it to cover her breasts on the outside of her costume.

Joseph Bocchino, Jr. testified that he is a part-time employee of the licensee. He arrived at the licensed premises on January 5 at approximately 5:00 p.m. at which time the female with the feathers was performing. He did not observe her to expose her breasts or buttocks.

On cross examination, the witness testified as follows:

- "Q You don't know whether she had anything under the costume?"
- A I would say she did. Not out of the way. Like I say, I'm not paying that much attention.
- Q How do you know?
- A I'm not saying anything out of the way. If she did I could see it.
- Q Did you see?
- A Nothing out of the way. Like I say, I can't say she did or not.
- Q You don't know either way; is that right?
- A I was tending bar.
- Q Answer my question.
- A I said I didn't see anything either way because I didn't pay attention to it. About thirty or forty guys, whatever it was, I can't pay attention to them and pay attention to her at the same time."

Robin Mack, employed as a barmaid by the licensee, testified that she arrived at the licensed premises on January 5 between 2:30 and 3:00 p.m. The go-go dancer, attired in the black outfit (Judith) was dancing. She stopped dancing between 4:00 and 4:15 p.m. and was followed on the stage by the female in the feathery outfit (Penny). A patron remarked that Penny had "nothing on underneath". Mack looked and observed that she was covered. She did not observe Judith dancing with her straps down and her breasts exposed. She did not see Judith expose her pubic area or her breasts.

Paul Antonelli, employed as a bartender, testified that he reported for work on January 5 at approximately 10:30 a.m. Judith danced from 11:30 a.m. to approximately 4:10 p.m. She was followed on the stage by Penny, who danced approximately forty minutes, until the ABC agents identified themselves. He did not

either female remove any part of her costume. He denied urging either of the females to take something off. Penny wore a covering underneath her costume.

On cross examination Antonelli, denied that Judith let her shoulder straps hang down. He observed her entire dance. He did not see Penny put a hat over her breasts. She put the hat on her head.

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. 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 credibility of the licensee's bartenders and its witnesses. It should be borne in mind that the agents investigated activities on these premises pursuant to a specific assignment and there has been no showing, nor was it even alleged, that they had any improper motivation in testifying as they did.

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

Licensee's argument that agent Ch's testimony did not fully corroborate the testimony of the other agents is without merit.

It is noted that agent Ch entered the premises approximately five minutes after the other agents had entered therein. In any event, agent Ch testified that, as he walked in, he observed Judith's breasts were exposed.

The contention that the agents' version lacked credibility because they alleged that, although they had claimed to have witnessed a lewd performance by the first performer, they did not identify themselves until they witnessed a performance by the second dancer is also, without merit. There are numerous instances of ABC agents and other law-enforcement personnel withholding action after one violation has been observed in order to see whether this is followed up by repetitive or similar acts.

I further find that the other contentions asserted by the licensee, with respect to the challenge to the agents' credibility similarly lack merit.

Additionally, I have not failed to note that one of the witnesses for the licensee, in contradiction of the other witnesses, testified that the second dancer was wearing only a patch the size of a playing-card covering the lower part of her anatomy; that the patch was fixed by a string; and that the only thing covering her buttocks was the string.

After examining all of the evidence 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.

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

Licensee has a prior record of suspension of license by the Director for forty days effective March 16, 1972, for permitting a lewd performance, possession of contraceptives on licensed premises, and for permitting an obscene object on the licensed premises. Re Vacston Co., Inc., Bulletin 2036, Item 4.

In view of the prior similar violation occurring within the past five years, I recommend that the license be suspended for one hundred days. Cf. Re Starshock, Inc., Bulletin 2111, Item 1.

Conclusions and Order

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

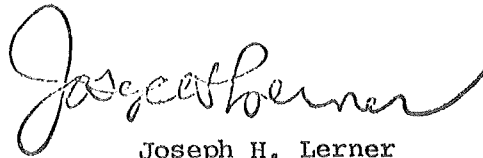
Having carefully considered the entire record herein, including transcript of the testimony, exhibits, the argument of counsel in summation, and the Hearer's report, I concur in the

findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 1st day of February 1974,

ORDERED that Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Vacston Co., Inc., for premises 502 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for one hundred (100) days, commencing at 2 a.m. Wednesday, February 13, 1974, and terminating at 2 a.m. Friday, May 24, 1974.

ROBERT E. BOWER
DIRECTOR



Joseph H. Lerner
Acting Director