

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
Newark International Plaza  
U.S. Route 1-9 (Southbound), Newark, N. J. 07114

BULLETIN 2293

August 29, 1978

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Department of Law and Public Safety  
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Newark Internation  
U.S. Route 1-9 (Southbound), Newark, N. J. 07114

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August 29, 1978

1. DISCIPLINARY PROCEEDINGS - LEWDNESS BY PATRONS - PRIZES OFFERED FOR INDECENT BEHAVIOR - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against

A.H.S., Inc.  
t/a Royal Manor  
s/w Corner of Church Rd.  
and Hwy. #35  
P.O. Spring Lake  
Wall Township, N.J. 07719

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Wall.

CONCLUSIONS  
and  
ORDER

.....  
Figarotta and Russo, Esqs., by Robert P. Figarotta, Esq.,  
Attorneys for Licensee.  
Carl A. Wyhopen, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to the following amended charges alleging that:

1. On July 20, 21, 27 and 28, August 3 and 4, and September 7 and 8, 1976, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., you allowed, permitted and suffered female persons, who were customers and patrons in your licensed premises, in association with persons employed on your licensed premises, to commit and engage in acts, gestures and movements of and with their hands, legs and other parts of their bodies, 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 the aforesaid dates, you allowed, permitted and suffered in and upon

your licensed premises and had in your possession and viewed to your customers and patrons, obscene, indecent, filthy, lewd, lascivious and disgusting photographic slides; in violation of Rule 17 of State Regulation No. 20.

3. On the aforesaid dates, you offered cash prizes to patrons and customers in and upon your licensed premises; in violation of Rule 20 of State Regulation No. 20.

Several Division agents participated in the investigation which culminated in the preferment of the subject charges.

#### I - Charge No. 1

##### Factual Findings

Relative to Charge 1, the central issue for determination is whether the licensee allowed, permitted or suffered nudity in its licensed premises and consequently lewd and immoral activity, as encompassed and defined in the Alcoholic Beverage Law.

Although the licensee sought to discredit the testimony of the ABC agents by means of exhaustive cross-examination, it is undisputed that it publicized and held what was referred to as a "wet T-shirt contest", wherein approximately six or more female patrons participated for a cash prize offered by the licensee on the several dates alleged in this charge, and in Charge 3.

Arthur Stock, principal stockholder of the corporate licensee, conceded that such contest were held; that he was present at most of them; that the T-shirt received in evidence (D-2) was similar to those given to each contestant by the management; and that each contestant was required to sign a writing giving her name and occupation. This writing included a statement that any contestant who attempted to expose her breasts or groin area would be disqualified immediately. The shirts were handed out by either he or his manager, Mark Reagen.

Mark J. Reagen testified in defense of the charges and stated that he was employed by the licensee in the capacity of manager for a period of three years, including the dates mentioned in the charges. The licensee staged wet T-shirt contests from late May to early September, 1976. In his capacity as manager, he was present on stage and in charge of all, wet T-shirt contests, except one.

The procedure for staging each contest would be the same. During the course of an evening, an announcement would be made that any female interested in entering a wet T-shirt contest should go to the office and register. Each female would then receive a T-shirt and sign the statement heretofore referred to in Stock's testimony.

A child's wading pool and a bucket of water would be brought on the stage of the licensee's establishment, referred to as the Playpen room. Several floormen in the employ of the licensee would be stationed on stage and several more would be stationed on the floor for crowd control.

The contestants would be escorted to the main ladies room off to the right side of the stage (where they donned the T-shirt given to them by the management). The contestants were called upon singly by the band leader who "would ask the girl's name, where they were from, what they did for a living, and then the girls would get into the pool, and they would be wet down."

The individual wetting down the females would use a small water pitcher to pour the water onto a contestant. The contestant would be in the pool for approximately a minute, and, while the band played, the contestant would perform what may be described as a modified go-go dance. The contestant would then proceed to the left of the stage.

The aforementioned routine would be followed by each succeeding contestant. After the last contestant was wetted down, an elimination procedure was held for the purpose of picking the winner of that evening's wet T-shirt contest.

Reagan testified that, generally, two or three individuals, who were either employees or patrons or a mixture of both, were chosen by the management to act as judges. The judges selected from two to four of the contestants as finalists. The winner of the contest was the female who received the most applause from the audience.

Occasionally, the finalists would have their T-shirts wetted once more prior to the audience judging.

At the conclusion of the contest, the females would be escorted to the ladies room where they would don the clothes they had been wearing upon entry into the establishment.

At no time did he observe any contestant expose her breast or groin area. In addition to a T-shirt, each contestant wore a garment covering her body below the waist area.

On cross-examination, Reagen conceded that a photograph taken by one of the Division agents and marked D-4-10 may have depicted water being poured or thrown on the backside of a contestant's underwear (panties) while she was bent forward. However, the witness denied that he observed any such occurrence. He further conceded that occasionally band members would pull out the collar of a T-shirt and pour water inside a contestant's collar.

In general, the testimony of the investigating ABC agents was similar to the testimony presented by Stock and Reagen relative to the method of conducting the wet T-shirt contest.

(A) July 20-21 Incident

Agent S testified, on behalf of the Division that, accompanied by Agents B and L, he entered the licensed premises on the night of July 20, 1976. After paying an admission charge of \$1.00, they remained therein until the wet T-shirt contest was held. Upon entry, he estimated that there were approximately 800 patrons in the establishment and that the number rose to approximately 1500 at the height of activity. Several announcements were made during the course of the evening concerning the staging of a wet T-shirt contest.

Agent S stated that the contest commenced at approximately 12:15 a.m. on July 21, when it was announced that twelve contestants would participate. Twelve females attired in T-shirts and with either pants or underwear on the lower part of their body proceeded to the stage area. The ABC agent then described the contest as follows:

"Once they (the contestants) moved onto the stage area, one of the band members acted as an MC for the contest. He would call one girl over at a time. She would step into this wading pool. The MC would then ask the girl her first name. She would state that, and then the contest would begin by another male, who was unidentified to us, he had a metal shaker, commontype shaker found in bars. He would dip it into this plastic garbage can full of water. The band would begin to play.

He would pour water over the front of the T-shirt of the female, who was now standing in the pool which then would render the T-shirt wet. It would saturate the T-shirt. Once doing so, the observations showed a clear view of the breast area, the skin tone and of the darker nipple area. It would appear to one that it was clearly visible. The entire outline of both breasts along, as I said, with the nipple area, along with the pouring of the water on the front of the T-shirt. He would also lift the collar of the T-shirt away from the body and pour water down the T-shirt. This would run down through the body and saturate even more so the T-shirt.

As the band would play, the contestant would move about or dance or gyrate in some fashion within the pool. Once this was done, this was repeated for all the contestants. Each one would similarly step into the pool, be wet down. Afterwards, they would step out of the pool and move on to the other side of the stage area."

Four finalists were chosen by the judges. The winner was chosen by the amount of applause given to each of the finalists by the audience. An announcement was made that no single winner could be picked between two of the finalists, and that the prize of \$100.00 would be divided between them.

An announcement was also made, and it was posted about the premises, that a wet T-shirt contest would be held every Tuesday evening.

(B) July 27-28 Incident

Agent S, accompanied by ABC Agent D, re-visited the licensed premises on July 27, 1976. The wet T-shirt contest was conducted in a manner similar to the previously described contest except that nine females participated. The wetting of the T-shirt over the front and through the collar again rendered a visible view of the breasts, the skin tone and the darker nipple area.

As to this incident Agent S testified as follows:

"One of the females who was noted to be wearing underwear, while in the pool, after having the front of her shirt wet down, dancing about, she was noted to turn about, now with her back to the audience, and facing the rear of the stage, she bent over forward. At this time the male who was pouring the water on was noted to pour the water into her underwear. This, as with the T-shirt, gave an appearance of being nude. It completely saturated the underwear, and a view of the skin tone definition of her buttocks was seen.

After she stood up after being wet down and moving about there, she turned back around to the audience, and at this time it was noted that the front of her underwear, which had also become wet from the water, had moved slightly down on her body, and the top area of her pubic hair could be seen by the patronage. Upon seeing this, the crowd, all the patrons who were in this main bar room there, responded loudly with cheers and yells. Some of them were yelling to take it off."

After four finalists were chosen by the judges, each of the contestants again stepped into the pool, were wetted down again and the winner was picked by audience applause. The contest terminated at approximately 1:15 a.m.

#### (C) August 3-4 Incident

Agent S, revisited the licensed premises on August 3, 1976 at approximately 11:00 p.m., accompanied by ABC Agents B and G. An announcement was made that a wet T-shirt contest would be held that night with the winner to be awarded a prize of \$100.00.

Eight females participated in the contest which commenced at approximately 12:35 a.m. The contest was conducted in the same manner as the previously described contests. The agent indicated that water was poured over the front and through the collar of each contestant, thus saturating the T-shirt and permitting a view of the breast area, the skin tone and the darker nipple area. Two of the contestants wore pants, several of them wore panties, and one (identified as Kim) was observed to wear nothing at all underneath the T-shirt.

He observed that after Kim was wet down, the T-shirt clung to her body and thus, permitted a view of the darker crotch area. While Kim was moving about he observed her to turn her back on the audience and bend over forward, thus affording the patronage a clear view of her nude buttocks and pubic area. The patronage responded with cheers, yells and screams.

Instead of following the past procedure of departing from the premises at the conclusion of the contest, by prearrangement, Agent G contacted the local police department. Agent S, accompanied by Agent B, followed the females off the stage and observed them entering the ladies restroom located off to the left of the stage. The agents then proceeded to the manager's office and identified themselves to Reagen, whose presence they had observed upon the stage. Agent S asked for, and received from him, the T-shirt and the slides displayed in the premises. They were received in evidence.

The testimony of Agent D, who accompanied Agent S on the investigation of the licensed premises on the night of July 27 into the early morning of July 28, 1976, was corroborative of Agent S's testimony relative to those dates and of the matters relevant to the charges.

The testimony of Agent B, who accompanied Agents S and L on the night of July 20 into the early morning of July 21, 1976; and who accompanied Agents S and G on the night of August 3 into the early morning of August 4, 1976, was, in general, corroborative of the testimony adduced from Agent S relative to the charges, including Kim's alleged exposure of her buttock's area on the last mentioned date.

#### (D) September 7-8 Incident

ABC Agent M testified that he entered the licensed premises on September 7, 1976 at 11:30 p.m., and by prearrangement, met Agents L and C at one of the bars. After hearing announcements being made periodically of a wet T-shirt contest, six females engaged in a wet T-shirt contest which commenced at approximately 12:40 a.m. on September 8. This contest was conducted in a manner similar to the contests hereinabove described. Specifically the agent testified:

"One individual took a water pitcher, dipped it into this bucket of water and poured it across the front of the T-shirt of each of the females. He

also pulled the collar out away from the neck in the front and poured it down on the inside of the T-shirt and by doing that the entire breast was exposed."

The testimony of Agent L, who accompanied Agents S and B in the subject investigation on the night July 20 into the early morning of July 21, 1976, and who accompanied Agents M and C on September 7 into September 8, 1976, was essentially corroborative of the testimony of the previous ABC agents relative to the conduct of the wet T-shirt contests and in accord with the testimony that the dousing of the water on the T-shirts rendered the female contestants' breast and nipple areas visible through the fabric.

In defense of the charges, the licensee produced several witnesses in addition to Stock and Reagen.

Fred Lowitz testified that he was employed in the Detective Division of the local police department. He entered the licensed premises on two occasions in 1976 and observed the staging of wet T-shirt contests. He saw no display of nudity by any of the contestants either above or below the waist.

The officer's description of the females' participation in the contests essentially coincided with the description of the contests proffered by the other witnesses. He observed a male on the stage who poured water on the contestant's collar over the contestant and inside the T-shirt through pulling the collar away from the neck. He did not observe any activity on either occasion which would cause him to make a report thereof to the State ABC for further investigation. The officer asserted that both of his visits occurred prior to July 20 and on each visit he was off duty.

Detective Robert Clawson, of the local Police Department testified that he patronized the licensed premises once during the first week in August 1976, again during the second week in August 1976 and, concededly, on dates other than those mentioned in the charges.

His testimony concerning the conduct of the wet T-shirt contests was, in essence, similar to the testimony of Lowitz.

William McTague testified on behalf of the licensee. He is employed as a detective in the office of the Essex County Sheriff and is assigned to its obscenity division. He testified that at the request of Essex County Sheriff Cryan, and accompanied by Sheriff Cryan, he entered the licensed premises on August 31, 1976 at approximately 11:00 p.m., in order to investigate a wet T-shirt contest. His description of the mode of conducting the contest was mainly similar to the testimony offered by Lowitz. Specifically he testified as follows:

"The night I was there, there were seven girls who were contestants and each girl comes up and stood in a small plastic pool one at a time. There was water poured over her breasts, outside, and then it was a male employee of the Royal Manor with a pitcher of water. Then he did pull the T-shirt away and pour water inside the T-shirt. Each girl was in the pool, I would say for somewhat under a minute."

Applying the standards he employs in his position in the Sheriff's Office, the witness explained that he did not observe anything that he would classify as being obscene, indecent or lewd. The witness conceded that he was not an expert in judging the definition of lewdness.

Joseph DeMarino, presently Sheriff of Middlesex County, and who had prior to that time been engaged in police work with the Middlesex County Prosecutor's Office and with the Woodbridge police department, testified that, on the night of July 27, 1976, while en route with several of his teammates in a slow pitch league to the home of one of his teammates at the Jersey shore area, they passed by the licensed premises and observed a sign advertising a wet T-shirt contest. They decided to enter and observe its operation. While there, he engaged in conversation with Art Stock, whom he knew was the owner of a licensed premises in Sayreville, and whom he had met on two or three previous occasions.

DeMarino declined Stock's suggestion that he act as one of the judges of the contest. At DeMarino's suggestion, Stock selected three of DeMarino's companions to act as judges.

DeMarino explained that approximately eight or ten females engaged in the contest each wearing T-shirts and each being fully clothed below the waist. He had a clear and an unobstructed view of the proceedings. After each contestant was announced he described the wetting down as follows:

"They announced who they were and then had a pitcher of water, and they ran the pitcher of water from left to right across their shoulders, soaked the entire T-shirt till the pitcher was empty."

None of the females removed any of their clothes or exposed any part of their bodies or performed any act or gestures which could be deemed suggestive, indecent or immoral.

It was conceded by the parties hereto that the contestants wore no item of attire underneath the T-shirts. The licensee contended that all contestants wore some item of clothing from the waist to the thigh.

The licensee offered to submit demonstrative evidence consisting of the licensee producing a female (a professional dancer) wearing the T-shirt marked D-2 in evidence. She would be wetted down by Reagen and six photographs would be taken by a professional photographer. The stated purposes for the offer were (1) to serve as a basis for part of the defense of the charge, and (2) to preserve the record of the demonstration. The proffer was permitted without objection.

The demonstration consisted of the dancer standing in a child's wading pool and being wetted down once by Reagen; and then a second time at the request of the Hearer after Reagen explained that, on occasions, the females were wetted a second time, particularly, if the contestant was a finalist.

After the second wetting down the photographer took six photographs, two of which were a front view and four side views, two of the left side and two of the right side. The developed pictures are part of the record herein.

There was no evidence of audience participation, other than vocal encouragement or comments.

#### Legal Analysis

Prior to arriving at a determination of this charge it would be appropriate to discuss some of the guiding principles and precedents pertinent thereto.

Although statutes penal in character normally must be strictly construed, the Legislature enjoined the courts otherwise in R.S. 33:1-73 which provides:

"Intention and construction of law. This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

Vide, Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct.) rev's on other grounds, 136 N.J.L. 161 (E. & A. 1947). Further, Chief Justice Case, speaking for the court in Hudson Bergen, etc. Ass'n v. Hoboken, 135 N.J.L. 502, 506-507 (E. & A. 1947), said:

The sale of intoxicating liquor has from the earliest history of our State been dealt with by legislation in an exceptional way. In its legal significance it is sui generis. "It 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 County, 50 N.J.L. 585, 595. "The sale of intoxicating liquor is in a class by itself." Bumball v. Burnett, 115, Id. 254. "The right to regulate the sale of intoxicating liquors by the legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless. It may extend to the prohibition of the sale altogether. A license is not a contract. It is a mere privilege." Meehan v. Excise Commissioners, 74 Id. 382 affirmed, 75 Id. 557. "There is no inherent power in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils." Crowley v. Christensen, 137 U.S. 86; 34 L. Ed. 620. "The liquor business is peculiarly subject to strict governmental control." Franklin Stores Co. v. Burnett, 120 N.J.L. 596."

Later the court stated, at 135 N.J.L. at 507-509:

The reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes from early colonial times.... Thus, through nearly 250 years the legislature has struggled with the conditions arising out of the sale of liquor. The current statute is to be construed in the light of the long series of statutes of which it is the culmination and of the decisions of the courts regarding those statutes. Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil. The state authorities should be given every reasonable opportunity to work out the mandate of the legislature.

This language was quoted by the court in deciding Greenbrier v. Hock, 14 N.J. Super. 39, 43 (App. Div. 1951). See also In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61 (App. Div. 1954); Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957).

In McFadden's Lounge v. Division of Alcoholic Beverage Control, supra, Judge Jayne pointed out at 33 N.J. Super. at 62:

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.

And in justification of the stringency of Rule 5 of State Regulation No. 20 he stated that the disciplinary rule governing the conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location "must be measured in its relation to the reasonably apprehended evils of the trade." McFadden's Lounge, supra at 66.

Additionally, our courts have uniformly held that the standard applied by this rule (Rule 5 of State Regulation No. 20) to licensed premises has been more restrictive than the standards applied to commercial or non-licensed premises. Vide, Davis v. New Town Tavern, 37 N.J. Super 376, 378 (App. Div. 1955), wherein the court ruled:

What is lewdness or immorality for purposes of a rule regulating premises licensed for the sale of alcoholic beverages may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally.

Referring once more to McFadden's Lounge, the court pointed out, at 68:

(We) are not presently concerned with the preliminary censorship of a book or of an oral address or lecture. Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade. Vide, Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888).

In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the

rules and regulations pertaining thereto. A relaxation from the requirements of the provisions contained in the Alcoholic Beverage Law and the rules and regulations of this Division would be contrary to their intendment and against the dictates of sound public policy. A public convenience should not be allowed to degenerate into a social evil. See Jeanne's Enterprises, Inc. v. State of N.J. etc., 93 N.J. Super. 230 (App. Div.) aff'd per curiam, 48 N.J. 359 (1966). To hold otherwise, as Lucretius sagely observed, "the falling drops at last will wear the stone."

In New Jersey there is no cleavage of authority insofar as the *lex mammillaria* or the law pertaining to the "topless" female in liquor licensed premises is concerned. The consistent interpretation and enforcement of Rule 5 of State Regulation No. 20 relative thereto, since its promulgation in 1937, by all of the Division Directors has met with the uniform approbation of the courts.

I have carefully considered all of the oral evidence submitted at the several hearings held herein and I am firmly convinced that the wetting down of the T-shirts in the manner described and, in particular, after the second wetting down, rendered the T-shirts diaphanous or see through. I find the observations of the ABC agents as expressed in their testimony to the effect that the breasts and nipples of the female participants in the contests were rendered clearly visible to be entirely credible.

Although I deem that this conclusion requires no further probative embellishment, such embellishment was provided by the demonstrative evidence introduced herein. I deem the live performance of the professional dancer, which was preserved for the record by the several pictures taken of the performance, fully substantiates my view.

However, in this connection, I deem it significant that Reagen, the licensee's manager, testified as follows, comparing the live demonstration in the Hearing Room to what took place at the licensed premises during the staging of these contests:

Q. After the water was poured on the T-shirt. I would like, sir, from you your opinion as to whether or not that fairly resembles what took place on the stage of the Royal Manor during the wet T-shirt contest.

A. Very, very close.

Q. In what degrees is it very close?

A. As far as actual wetting down and exposure of the person, that would qualify, right.

In Re. Mrs. Jay's, Inc., Bulletin 1903, Item 2, which may be considered parallel to the subject case, a female employed as a barmaid and a waitress on several occasions wore a blouse of sheer or see-through material. She wore nothing underneath it from the waist up, thus allowing a clear view of the female's breasts. In that case the licensee's contention that the Division's failure to prove that the female's attire without any further consideration constituted lewd and immoral activity was rejected, and licensee was found guilty.

In Re Play Pen Incorporation, Bulletin 1778, Item 5, aff'd Play Pen Incorporation v. Division of Alcoholic Beverage Control, not officially reported, Bulletin 1805, Item 1, App. Div. Docket No. A-584-67), the Division equated with its prohibition against "topless" entertainment, female go-go dancers who wore pasties measuring three and one-half inches in diameter covering the nipples of their breasts with no other article of attire covering the upper parts of their bodies.

To the same effect was the ruling in Re Club "D" Lane, Inc., Bulletin 1900, Item 3, aff'd 112 N.J. Super. 577 (App. Div. 1970) wherein the Court observed at 112 N.J. Super at 580-81:

(All) licensees are charged with knowledge of the admonition of former Director Joseph P. Lordi expressed in an earlier proceeding against a licensee charged with employing "topless" female employees, set forth in Bulletin 1778, Item 5, reprinted in Bulletin 1805, Item 1, as follows:

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

Accordingly, after considering the entire record and the precedents cited, I am persuaded by the clear and convincing proof in this case that the charge has been sustained by a fair preponderance of the credible evidence.

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

#### II - Charge No. 2

Relative to Charge 2, the testimony of the ABC agents was uncontroverted that slides were shown on the walls of a room known as the Playpen Room in the licensed premises for viewing by its patronage on the several dates mentioned in the charges.

Of the approximately 300 slides taken from the premises, 38 of them were received in evidence and projected on a screen in the Hearing room for viewing by the litigants and this Hearer.

It was represented by the licensee that the slides depicted scenes of a wet T-shirt contest conducted in a licensed premises in Fort Lauderdale, Florida.

I find as a fact that, in a majority of the slides projected for viewing, the breasts of female contestants were clearly visible through the wetted T-shirts which they wore. In three or four instances it appeared that the bikini type bottom was saturated to such an extent that it was rendered see-through at the pubic area. One of the slides depicted a female who had uncovered her left breast.

Applying the same principles expressed above, I find and determine that charge 2 has been sustained by clear and convincing proof.

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

### III - Charge No. 3

In adjudicating Charge 3, the ABC agents testified that, on the dates mentioned therein, and prior to the actual staging of the contests, an announcement was made that the winner would receive a cash price of \$100.00. This evidence was unchallenged.

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

### IV - Penalty Recommendations

Licensee has no prior adjudicated record of suspension of license. I recommend that an order be entered suspending the subject license on the first charge for thirty days, on the second charge for fifteen days, and on the third charge for five days; making a total suspension of license of fifty days.

### Conclusions and Order

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

In its Exceptions, the licensee asserts, without specific

references to the record or documentation, several alleged errors in the Hearer's Report. Particularly, it alleges denial of due process of law, failure to accurately assess credibility of the witnesses for the licensee, absence of evidence to support findings of credibility of ABC agents' testimony, and lack of reconciliation of different conclusions advanced by the witnesses as to lewdness. I find these Exceptions to be without merit.

The licensee next argues that the recommended finding of guilt is arbitrary, unreasonable and capricious because no standards or criteria have been established to determine what is lewd, indecent or immorally suggestive. This argument was advanced at the hearing in this Division, was considered, and correctly resolved in the Hearer's Report. Accordingly, I find this Exception to be without merit.

Licensee maintains that, the Division agents took no action against the licensee on July 20, 1976 and July 27, 1976. Therefore, they could not determine what is lewd or indecent. The licensee was charged with violations of Rule 5 of State Regulation No. 20 on the above-referenced dates. Thus the agents did take action, and I find no basis for imputing any conclusions or inferences from this situation, other than a continuing investigation consistent with Division investigatory practices. It should also be noted that the ultimate determination as to what constitutes lewdness and immoral activity rests with the Director, based upon the total record.

In its final Exception, the licensee asserts that the demonstrative evidence introduced by the licensee does not substantiate the recommended conclusions of the Hearer. The personal observations of the demonstration by the Hearer, and the supporting photographic evidence, clearly support the Hearer's conclusion that the female's breasts were plainly visible through the wet material of the T-shirt. Therefore, I reject this Exception as without merit.

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

Accordingly, it is, on this 10th day of March, 1978,

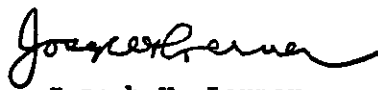
ORDERED that Plenary Retail Consumption License C-10 issued by the Township Committee of the Township of Wall to A.H.S., Inc., t/a Royal Manor, for premises s/w Corner of Church Road and Highway #35, Wall Township, be and the same is hereby suspended for fifty (50) days commencing at 2:00 a.m. Monday, March 20, 1978 and terminating at 2:00 a.m. Tuesday, May 9, 1978.

Joseph H. Lerner  
Director

STATE LICENSES - NEW APPLICATION FILED.

Stewart Hill Co. Inc.  
156 Northfield Ave., Bldg. 410  
Edison, N. J.

Application filed August 22, 1978  
for place-to-place transfer of its  
plenary wholesale license from 3001  
Hadley Road, South Plainfield, New Jersey.



Joseph H. Lerner  
Director