

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

January 18, 1972

BULLETIN 2024

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1. APPELLATE DECISIONS - RICCARDO v. PATERSON.

Rose Riccardo, t/a)	
D & R Lounge,)	
Appellant,)	
v.)	On Appeal
Board of Alcoholic Beverage)	CONCLUSIONS
Control for the City of)	and
Paterson,)	ORDER
Respondent.)	
-----)		
Appellant, Pro se		
Joseph E. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for		Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent Board of Alcoholic Beverage Control of the City of Paterson which on May 12, 1971, unanimously denied the application of Rose Riccardo, t/a D & R Lounge, for the place-to-place transfer of a plenary retail Consumption license from 6 Bank Street to 73 Mary Street, Paterson.

In her petition of appeal, appellant alleges that the action of the Board was erroneous, arbitrary and capricious in that the Board has transferred other licenses under similar conditions, and further, that proceedings by the New Jersey Department of Transportation, through the right of eminent domain have forced appellant to vacate her present premises.

The Board, in its answer, denies that its action was an abuse of discretion and avers that its action was proper.

In its resolution dated May 26, 1971, the Board:

"...determined that the grant of such application would be contrary to the provisions set forth in Section 2:3-3, Title 2, Chapter 3 of the Revised Ordinances of the City of Paterson, as amended, which pertain to the permissible distance between premises covered by Plenary Retail Consumption licenses...."

The ordinance in question currently provides inter alia that no plenary retail consumption license except renewals for the same premises, or transfers within the same premises shall be granted to any premises within one thousand feet from an existing plenary retail consumption license. However, a transfer within six hundred feet of the licensed premises may be permitted, notwithstanding such premises would transfer the license to within one thousand feet of an existing license, but a transfer to premises in excess of six hundred feet from the existing licensed premises is governed by the above one thousand foot rule.

Further, the local issuing authority may, in its discretion, allow a transfer to premises within fifteen hundred feet of the existing licensed premises, notwithstanding the proposed site of transfer is less than one thousand feet from an existing plenary retail consumption license where the licensed premises from which the transfer is sought is being taken for any municipal, County, State or Federal project or where the licensed premises is destroyed to the extent that the premises can no longer be used for license purposes.

Lastly, the ordinance provides that the distances referred to shall be measured in a normal way that a pedestrian would normally walk from the nearest entrance to the premises sought to be licensed.

At the de novo hearing held herein pursuant to Rule 6 of State Regulation No. 15, the testimony and exhibits established the following:

The licensee herein purchased the licensed premises at 6 Bank Street, in 1965 or 1966. An application for transfer to 73 Mary Street was made for the 1970-71 license period. Upon being advised by a member of the local Board that the proposed transfer site did not meet the requirement that it be more than one thousand feet from a licensed premises, the application was withdrawn. The testimony further established that the proposed transfer site is approximately one and one-half miles from the existing site.

At the same time condemnation proceedings against the licensed premises by the State of New Jersey were instituted.

The proposed transfer site was formerly a tavern, the license for which was terminated several years earlier. The site is seven hundred forty-one feet from an existing plenary retail consumption license.

There was admitted into evidence a letter from the Board herein to the City Engineer for the City of Paterson, which purported to show the existence of one plenary retail consumption license five hundred fifty feet from the proposed site and another, six hundred sixty-nine feet from the proposed site. No evidence was presented as to the method by which these distances were measured. However, both appellant and the Board agreed that the proposed transfer site is less than one thousand feet from two existing plenary retail consumption licenses. The letter further purports to show a distance of one hundred ninety-five feet to an entrance to St. Agnes R.C. Church.

A true copy of the minutes of the May 26, 1971 meeting of the Board admitted into evidence disclosed that while the Board agreed that this was a hardship case, it felt it could not waive the provisions of the ordinance cited herein. The minutes further disclosed that an objector appeared as spokesman for a group of objectors and presented a petition signed by seventy-five objectors to the proposed transfer.

The Board based its denial of the transfer on the proximity of the proposed site to two existing plenary retail consumption licenses as determined by the City Engineer and further, from the personal knowledge of the members of the Board.

The City Clerk candidly admitted that in another matter, a transfer in violation of the present ordinance had been inadvertently approved by him. He subsequently brought this to the attention of the Board. No further steps have been taken with respect to that transfer.

Appellant seeks to establish that the transfer of another plenary retail consumption license under similar circumstances constitutes unlawful discrimination. Accepting the admission of the City Clerk that such was the case "...it does not follow that the governing body should further perpetuate earlier unwise action." Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949) at 175. See also Re Price v. Millburn, Bulletin 976, Item 3.

The burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellant. (Rule 6 of State Regulation No. 16.) The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et als., Bulletin 997, Item 2.

Here, the Board properly concluded that such discretion was not available to it since the issue is one of law. Cf. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960) at 315. The proposed transfer herein is expressly violative of the provisions of local ordinance No. 2:3-3, as amended.

"When a commission, board, body or person is authorized by ordinance passed under a delegation of legislative authority, to grant or deny a license or permit, the grant or denial thereof must be in conformity with the terms of the ordinance authorizing such grant or denial...Nor can such commission, board, body or person set aside, disregard or suspend the terms of the ordinance, except in some manner prescribed by law."

Dal Roth v. Div. of Alcoholic Beverage Control, 28 Super. 246 (App. Div. 1953) at 254. See also In re Jersey City Retail Liquor Dealers' Association et al. v. Jersey City et al., Bulletin 976, Item 4.

Respondent, in its ordinance, has acknowledged certain exceptions based on hardship. By the provisions of that ordinance it has limited hardship situations. That a hardship exists is acknowledged by all.

"Administrative efforts to accommodate individual licensees must be accomplished within the framework of the existing legislation, construed in terms of overriding public policy. So viewed, appellant's application and reasons therefor were properly held...to be outside the scope of the relief clause...of the ordinance."

Smith v. Bosco et al., 66 Super. 165 (App. Div. 1961) at 170.

I therefore recommend that the determination of the Board herein in denying the application for transfer be affirmed, and that the appeal herein be dismissed.

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 conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of December 1971,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough
Director

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 105 DAYS, LESS 21 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

The J. V. Tavern & Restaurant, Inc.)
t/a Harry's Tavern)
225 Fabyan Place)
Newark, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-764 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Skoloff & Wolfe, Esqs., by Paul A. Wolfe, Esq., Attorneys for the Licensee.
Edward F. Ambrose, Esq., appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to two charges alleging that on (1) April 26, 28 and May 5, 1971 it permitted the acceptance of numbers bets on the licensed premises, in violation of Rule 6 of State Regulation No. 20, and (2) that on Sunday, August 29, 1971 it permitted the sale of alcoholic beverages for off-premises consumption in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for ninety days on the first charge. Re Fessler, Bulletin 2005, Item 5, and for fifteen days on the second charge, Re B.P.T. Amble Inn (Corp.), Bulletin 1983, Item 5, making a total of one hundred and five days, with remission of twenty-one days for the plea entered, leaving a net suspension of eighty-four days.

Accordingly, it is, on this 14th day of December, 1971,

ORDERED that Plenary Retail Consumption License C-764 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The J. V. Tavern & Restaurant, Inc., t/a Harry's Tavern for premises 225 Fabyan Place, Newark, N.J. be and the same is hereby suspended for eighty-four (84) days commencing 2:00 a.m. on Tuesday, January 4, 1972 and terminating 2:00 a.m. on Tuesday, March 28, 1972.

Richard C. McDonough,
Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -
LICENSE SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
Bridgeboro Inn, Inc.)	
Route 130 and Bridgeboro Street)	CONCLUSIONS
Delran Township, N.J.,)	and
)	ORDER
Holder of Plenary Retail Consumption)	
License C-1, issued by the Township)	
Committee of the Township of Delran.)	
-----)		
Leonard Cinaglia, Esq., Attorney for Licensee		
Edward F. Ambrose, Esq., Appearing for Division		

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 12, 14 and 18, 1971, it permitted gambling, i.e., the making and accepting of horse race bets, in and upon the licensed premises in violation of Rule 7 of State Regulation No. 20.

Absent prior record of suspension of license, the license will be suspended for ninety days with remission of eighteen days for the plea entered, leaving a net suspension of seventy-two days. Re Fessler, Bulletin 2005, Item 5.

Accordingly, it is, on this 14th day of December 1971,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Delran to Bridgeboro Inn, Inc., for premises Route 130 and Bridgeboro Street, Delran Township, be and the same is hereby suspended for seventy-two (72) days, commencing 1:00 a.m. on Tuesday, January 4, 1972, and terminating 1:00 a.m. on Thursday, March 16, 1972.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 35 DAYS, LESS 7 FOR PLEA -
APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary)
Proceedings against)

Alfred S. Zukowski)
t/a Windjammer)
344 Ocean Avenue)
Sea Bright, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-16, issued by the Mayor)
and Council of the Borough of Sea)
Bright.)

-----)
Karasic and Karasic, Esqs., by Bernard D. Karasic, Esq.,
Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that his predecessor in interest (Crestwick Corporation) possessed nine bottles of alcoholic beverages the labels of which did not truly reflect their contents, in violation of Rule 27 of State Regulation No. 20..

Absent prior record of this licensee or his predecessor in interest, the license would normally be suspended for thirty-five days, with remission of seven days for the plea entered, leaving a net suspension of twenty-eight days. Re Roma, Bulletin 1808, Item 6. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$3,164 in lieu of suspension.

Accordingly, it is, on this 14th day of December 1971,

ORDERED that the payment of a \$3,164 fine by the licensee is hereby accepted in lieu of a suspension of license for twenty-eight days.

Richard C. McDonough,
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES FROM MOTOR VEHICLE - CLAIM OF LIENOR FOR RETURN OF MOTOR VEHICLE RECOGNIZED - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure : Case No. 12,529
on July 16, 1971 of a quantity of :
alcoholic beverages, a 1967 Buick : On Hearing
two-door hardtop automobile, a :
metal cash box and \$152.44 in cash : CONCLUSIONS and ORDER
at the unlicensed premises of :
Bertino Farm, Linden Avenue, :
Waterford Township, County of :
Camden and State of New Jersey. :

.....
Samuel Adler, Esq., appearing for James W. Scarborough and Rosetta G. Brown, claimants.
Cumberland National Bank of Bridgeton by Gary F. Simmerman, Vice-President, claimant.
Harry D. Gross, Esq., appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 to determine whether 35 containers of alcoholic beverages, \$152.44 in cash, one metal cash box and one 1967 Buick sedan, as set forth in an inventory attached hereto, made a part hereof and marked Schedule "A", seized on July 16, 1971 at the unlicensed premises of Bertino's Farm, Linden Avenue, Waterford Township, Camden County constitute unlawful property and should be forfeited.

An application by Rosetta Brown to the Director for the return of the motor vehicle herein in advance of statutory hearing was heard and denied on August 10, 1971 (Bulletin 2002, Item 6) when it was established that she was not the sole owner of said vehicle, but that, in fact, the Cumberland National Bank, Bridgeton, N.J. held a secured interest in the subject vehicle.

At the hearing held pursuant to State Regulation No. 28, on September 9, 1971, Rosetta Brown and James Scarborough appeared with counsel and abandoned their claim to the property and cash. Gary F. Simmerman appeared on behalf of the Cumberland National Bank of Bridgeton, N.J. and sought recognition of its lien claim on the vehicle herein.

The Division file, admitted into evidence with the consent of the parties, discloses that, on May 17, 1971 at 12:00 noon, ABC Agents D and B proceeded to the premises to investigate alleged unlawful sales of alcoholic beverages. Fortified with currency, the serial numbers of which had been previously recorded, Agent B circulated among the workers picking crops. He ultimately arrived at the area where farm labor transportation buses were parked. A male, subsequently identified as James Walter Scarborough was standing at the rear of the automobile described herein, and was observed selling sandwiches, beer and wine to the laborers from the trunk of the automobile.

Agent B ordered and was served a sandwich and a can of Schaefer's Beer from the trunk of the automobile for which he paid Scarborough with a "marked" bill. He then made a second purchase of a can of Schaefer Beer which Scarborough obtained from the trunk of the automobile, and again paid Scarborough with a "marked" bill. He then signalled other agents and local police officers, who arrested Scarborough; Scarborough was charged with the unlawful sale and possession of alcoholic beverages in violation of N.J.S.A. 33:1-2 and N.J.S.A. 33:1-50 (a & b).

A seizure of the vehicle and its contents was then completed. A cash box containing \$152.44 with the two commingled "marked" bills was also seized.

The Division file contains the certificate by the Director certifying that no alcoholic beverage license or special permit of any kind has ever been issued to Scarborough, or to any other person at, or for the said premises; an inventory of the items seized; an affidavit of mailing of Notice of Hearing; an affidavit of publication of Notice of Hearing and the report of chemical analysis by the Division chemist as certified by the Director establishing that one six ounce bottle of Schaefer Beer seized herein is an alcoholic beverage, fit for beverage purposes, with alcoholic content of 4.06% by volume.

Gary F. Simmerman testified that he is vice-president of the Cumberland National Bank, Bridgeton, N.J. and manager of the installment loan department.

On May 17, 1971 the bank financed the purchase of the vehicle herein by Rosetta Brown. True copies of the Conditional Sale Contract, the original note and the Certificate of Title were entered into evidence and they established a deferred payment transaction by which Miss Brown was to pay to the Cumberland National Bank, 18 payments of \$111.39 each beginning on June 5, 1971. The Certificate of Title showed Cumberland National Bank, Bridgeton, N.J. as the secured party. On September 7, 1971, the date of the hearing herein, the balance due to this claimant was \$1,670.89.

Simmerman stated that, pursuant to standard bank policy, a credit check on Miss Brown was obtained from a local credit bureau, personal references were confirmed and the regularity of her employment was verified with the Wheaton Glass Co., Millville, N.J. No unfavorable criminal or credit record was disclosed and the bank had no knowledge or reason to believe that the vehicle would be used in the unlawful sales of alcoholic beverages.

He concluded that market value of the car, in its present, poor condition, would be approximately \$1,200.00 - \$1,400.00.

The seized alcoholic beverages are illicit since they were intended for sale and sold without a license; the said beverages, cash and the vehicle in which they were stored and from which they were sold constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2; N.J.S.A. 33:1-50(a & b); N.J.S.A. 33:1:66.

The Director has the discretionary authority to recognize the validity of any bona fide lien upon or interest in the seized property upon being satisfied that the claimant has acted in good faith and had no knowledge of the unlawful use to which the property was put or that he had no knowledge of such facts as would have led a person of ordinary prudence to discover such use. He may further order the return of such property upon pay-

ment of reasonable costs or he may order the retention thereof for the use of the State conditioned upon the payment of the lien or interest, or order the sale thereof and the payment of the lien or interest out of the proceeds of the sale. N.J.S.A. 33:1-66(f); Rule 3(c) of State Regulation No. 28.

I am satisfied from the evidence presented that the claimant, Cumberland National Bank acted in good faith and did not know or have any reason to believe that the vehicle would be used in unlawful possession, transportation and sale of alcoholic beverages. Seizure Case No. 11,106, Bulletin 1538, Item 6.

I, therefore, recommend that the lien of Cumberland National Bank upon the motor vehicle in question to the extent of the amount due at the date of hearing herein, \$1,670.89 be recognized. Since it appears that the appraised retail value of the vehicle in its present condition would not exceed the amount of the lien claim and the costs of seizure and storage, it is, accordingly, recommended that the seized motor vehicle be returned to the Cumberland National Bank, Bridgeton, N.J. upon payment by claimant of the costs of seizure and storage.

It is, further, recommended that an Order be entered forfeiting the balance of the seized property, including the \$152.44 in cash.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 4 of State Regulation No. 28.

Having carefully considered the facts and circumstances herein, I concur in the recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 10th day of December, 1971

DETERMINED and ORDERED that if, on or before the 10th day of January, 1972, the Cumberland National Bank, Bridgeton, New Jersey, pays the costs of seizure and storage of the 1967 Buick sedan, more fully described in Schedule "A", attached hereto, it will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with State Regulation No. 29, or shall be retained for the use of hospitals or State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Richard C. McDonough,
Director

SCHEDULE "A"

- 35 - containers of alcoholic beverages
- \$152.44 - cash
- 1 - metal cash box
- 1 - Buick (1967) two-door hardtop,
N.J. Registration UXK-859

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against Mike Kerwin's, Inc. 353 Bound Brook Road, Middlesex, N.J. Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Middlesex.

CONCLUSIONS and ORDER

Blatz and Feiring, Esqs., by Frank H. Blatz, Jr., Attorneys for Licensee. Edward F. Ambrose, 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 January 14, 21 and February 11, 1971, you allowed, permitted and suffered, in and upon your licensed premises, lewdness and immoral activity and foul, filthy and obscene conduct, viz., in that you allowed, permitted and suffered a female dancer, commonly known as a 'Go Go Girl', while performing on your licensed premises for the ostensible entertainment of your customers and patrons, to engage in conduct by herself and in association with male patrons and customers on your licensed premises in obscene, indecent, filthy, lewd, lascivious, disgusting and immoral manner and commit and engage in acts, gestures and movements of and with her hands, legs and other parts of her body, by herself and in association with male patrons and customers on your licensed premises, in manner and form having obscene, indecent, filthy, lewd, lascivious, disgusting, immoral and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

Pursuant to a specific assignment to conduct an investigation of an alleged lewd go-go show, ABC Agents S, D and M visited the licensed premises.

Agent S testified that on January 14 and January 21 and February 11th, 1971 he visited the premises, entering on each occasion, about noon. The premises contained a bar, restaurant area, juke box and go-go platform. Upon arrival, a go-go entertainer, who was later identified as Theresa A. Ward, was putting money in the juke box whereupon she ascended the platform and performed routine go-go dances. She was properly attired in a conventional go-go costume. After a period of dancing on the platform for "5 or 6 minutes, maybe 10", she left the platform

and proceeded to perform dances among the males seated in table area. She would dance up to the patrons, shake her lower torso into the shoulders of the males, or her buttocks into their arms, and move in time to the music. She also sat on the laps of the males and bounced up and down in time to the music. "During her performance there she would very often bend over and shake her breasts back and forth close to the faces of the males. She would very often fondle males' necks and ears, kiss males on top of the head, and perform bumps and grinds very close to males seated at tables."

The agent described the reaction by the patrons to the actions of the entertainer: "At different times during her performance males would yell and whistle, just in general make noise or comment regarding her dancing."

Later the entertainer danced to the music while on top of the oval bar in the premises. She would dance around on the top of the bar for about 10 or 12 minutes and "She would dance and stop at each male seated at the bar and dance expressly for that male for perhaps fifteen or thirty seconds." He added "...often she would bend over and dangle her breasts close to the face of the male; she would very often squat down with her legs spread apart and bounce up and down in front of the male, in this position she very often touched the males' necks and ears..." and "I saw one male put a dollar into her halter. Then she bent over and allowed him to kiss the top of her breast..."

As an additional part of her "act", she would borrow a tie from a patron and "tuck the tie into her bra and so that both ends would come out on either side....it acted as a lift if she held the ends of the tie she could pull it up or let it drop and cause her breasts to bounceshe bounced her breasts with the necktie in time to the music, sometimes one, sometimes the other.....there were yells and whistles from the male patrons..." As a climax to her performance, "she would snap the tie out with one fast pull and without really disturbing her breasts. Anyway, you would expect her breasts would pop out when the tie popped out, but she did it in such a manner the tie would come out in one fast pull. Then she would stick the necktie under her breasts and allow a small portion to stick out...perhaps an inch, inch and a half, maybe. Then she would call upon the owner of the necktie to come up and he would have to retrieve it from her bra...with his teeth. He would have to stick his face into her bosom and try to get a bite at the end of the tie and pull it out from her bra. Terry made it more difficult for him by shaking her breasts in his face by very rapidly by pulling his head into her chest..."

On cross-examination, the agent admitted that there was no indecent exposure of her body and that the entire "act" was apparently intended to be jocular. However, on the February 11th visit, the agent noticed at one point the entertainer unhooked her bra and although it still covered her it permitted greater movement which she accentuated by bouncing them up and down and rotating them from side to side.

Agent M corroborated the testimony of Agent S as it related to the visit on January 21, and Agent D corroborated the testimony of Agent S with respect to the visit on February 11th. Agent M added a further description of an additional activity of the entertainer "...a male came up and stood directly in front of the platform. She danced up to this male and, you know, he

grabbed her putting his hands on her buttocks, she put her hand on his shoulder and bent over toward him, and he put his head between her breasts and she shook her breasts from side to side."

Agent D testified that at the time of his visit he was not wearing a hair piece and his head is bald, as the entertainer danced on the top of the bar she leaned down, held his ears and kissed him on the top of his head. Her busts then were about three inches from his face. Her actions evoked a great deal of laughter from the patrons.

Martin Matuskiewicz, Mayor of Middlesex Borough, testified that although he was not present in the licensed premises on any of the specified dates, he had seen Miss Ward perform at a Christmas Party for the officials of the Borough that was catered by the licensee and on that occasion the entertainment was quite proper.

Harry L. Anderson, bookkeeper for the licensee, testified that he was in the licensed premises on each of the occasions testified to by the agents, either as a patron or as an employee. He characterized the entertainment as the burlesque type, not of the "smoker" variety. He admitted seeing a man place a bill in the bodice of Miss Ward and admitted further that she danced about on top of the oval bar. He denied that any person touched her but stated that he saw her kiss a bald headed man while on top of the bar.

Jerry Fontenelli, a patron, testified that he visited the licensed premises for lunch and observed Miss Ward's entertainment. He characterized it as a typical go-go dance, but admitted that he observed a man attempt to thrust a dollar bill down her bodice with his hand. On cross-examination, he stated he was a high school classmate of the licensee but denied he was an intimate friend. He further admitted he could not specifically testify as to Miss Ward's performance on any of the times alleged in the said charge.

William J. Deutschlander, a patron, testified as to the propriety of Miss Ward's dance. He could not recollect seeing anyone put bills down her bodice but did remember someone put bills in her boot and that she did kiss patrons on the forehead. He characterized her entertainment as burlesque type.

Mrs. Frances Benesky testified that she frequented the licensed premises for lunch, saw Miss Ward's performance. She considered it to be happy and gay, and not at all offensive. She could not, however, recall being in the premises on the dates testified to by the agents.

Mrs. Mary Guilmette, the barmaid, testified that she has observed Miss Ward's performances and she considers them very clever, not at all immoral. She admitted she could see it only in fractions as she is extremely busy tending bar. She saw a larger portion of the performance when Miss Ward was on the bar, kissing the heads of the bald men and pouring their beer in their glasses. She never saw anyone touch Miss Ward.

Mike Kerwin, the licensee, testified that he considered Miss Ward's act satire or comedy burlesque. With minor variations, her act was performed substantially as the agents testified. While "she never exposed her breasts fully" her gyrations were designed to promote laughter; she did receive

dollar bills inserted into her boots by others, retrieved by her and placed in her bra. He admitted seeing the tie trick and the extraction of the tie from Miss Ward's bodice by a patron; he admitted that she unhooked her back straps; "that was part of the act".

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, therefore require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956) (36 N.J. Super. 512, 519 (App. Div. 1955)).

Testimony to be believed must not only proceed from the mouth of credible witnesses 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, 555 (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.

Based upon the foregoing principles, I find that the believable evidence preponderates in support of the charge preferred herein. I find it impossible to believe that the numerous acts described by the agents could have been contrived. The testimony of Agent S was in no way adversely affected on cross-examination. It was thereafter corroborated by Agents M and D, whose testimony emerged unshaken despite vigorous cross-examination. The sole issue in this particular matter is one of credibility.

Narrowing the differences in testimony between that of the agents and that of the witnesses for the licensee to the closest measurement, it must be conceded that Miss Ward, did, in substance, what the agents said she did. Counsel for the licensee has, in a written summation furnished, ably pointed out that the "patrons who testified ... perceived the show to be good fun and somewhat burlesque and comedy oriented." While comedy and good fun may well have been intended, this scantily-clad, amply endowed entertainer did leave her go-go platform, dance among the male patrons seated at tables and did ascend the bar, part of which purpose was to exhibit her feminine charms in the closest possible public proximity to the amused males assembled. I find that the act of Miss Ward was within the proscription of the applicable regulation. "The object manifestly inherent in the rule (5 of Reg. 20) with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises..... 'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are contra bonos mores, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2nd ed)." In re Schneider, 12 N.J. Super. 449, 458 (App. Div. 1951).

Counsel for the licensee has strenuously urged that the charge be dismissed since the character of Miss Ward's dance was neither disgusting nor appealed to the purient interest

of the viewers. This contention is rejected upon the established facts herein.

"We are not here concerned with censorship of a book, nor with the alleged obscenity of a theatrical performance. Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade' McFadden's Lounge, Inc. v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App. Div. 1954). Lewdness or immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally. Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App. Div. 1955); Jeanne's Enterprises, Inc. v. New Jersey, etc. 93 N.J. Super. 230, (App. Div. 1966), aff'd o.b. 48 N.J. 359 (1966)" In re Club "D" Lane, Inc., 112 N.J. Super. 577, 579 (App. Div. 1971).

Perhaps the levity or touch of comedy that seemed to permeate Miss Ward's act carries less toxicity than some of the performances recently adjudged by the Division Re Polo Chez, Bulletin 1947, Item 2; Re Lemongelli, Bulletin 1948, Item 2; Re Captain Bill's Ponderosa, Inc., Bulletin 1950, Item 6. In such cases where go-go girls enlivened their acts with audience participation, as here, the penalty imposed was suspension of license for seventy-five days.

More akin to the case sub judice is Re Band Box, (A Corp.), Bulletin 1899, Item 3, where performers, clad in "micro" bikini costumes, engaged in bumps and grinds and other bodily movements simulating sexual intercourse and permitted male patrons to insert currency, held in hand and teeth, inside their abbreviated bras and panties and otherwise to come into contact with their bodies, particularly in the vulva area, including gestures and movements by the males suggesting an indigent sexual act. The total performances thus gaining a suspension for that licensee of forty-five days.

I conclude, after evaluation of the evidence and the applicable law, that the charge has been established by a fair preponderance of the credible evidence, and recommend that the licensee be found guilty as charged.

Licensee has a prior record of suspension by local issuing authority for three days effective November 12, 1962 for local "hours" violation.

The prior record for dissimilar offense occurring more than five years ago disregarded, it is recommended that the license be suspended for thirty days. Re The Garden House, Inc., Bulletin 1920, Item 3.

Conclusions and Order

Written exceptions to the Hearer's report pursuant to Rule 6 of State Regulation No. 16, limited to the penalty recommended by the Hearer, were filed by the prosecuting attorney for this Division. Oral argument was presented before me by counsel for the licensee and the attorney for the Division at my request.

From an examination of the transcript and the Hearer's

report it is apparent that the penalty recommended was based upon the presumption that the alleged jocularity engendered by the offending performance mitigated the penalty. It has been long established that the minimum penalty in cases of the nature herein which involved participation by patrons is a suspension of forty-five days. Re Jones, Bulletin 1950, Item 8; Re Shades Lounge Inc., Bulletin 1985, Item 5; Re 570 Main, Inc., Bulletin 1985, Item 7.

A public convenience should not be allowed to degenerate into a social evil. Re Yamouny, Bulletin 1995, Item 2. "Conduct of those who have been granted special privilege of vending alcoholic beverages at designated location may lawfully be tightly restricted to limit to utmost the evils of trade." Jeanne's Enterprises, Inc. v. State of N.J. etc., 93 N.J. Super. 230, at p. 231 (App.Div. 1966), citing McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App.Div. 1954).

Indecent entertainment is indecent whether portrayed in serious or humorous vein; humor cannot camouflage indecency so as to restore it to decency or legitimacy. The performance of the dancer as delineated in the charge and in the transcript of testimony was patently an indecent performance.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation as to the finding of guilt on the said charge. However, I shall sustain the exceptions filed by the attorney for the Division with respect to the recommended penalty and shall impose a penalty of suspension of license of forty-five days, instead of the thirty-day suspension recommended. Re Jockey Club, Inc., Bulletin 1488, Item 1.

Accordingly, it is, on this 15th day of December 1971,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Middlesex to Mike Kerwin's, Inc., for premises 353 Bound Brook Road, Middlesex, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m. Tuesday, January 4, 1972, and terminating at 2 a.m. Friday, February 18, 1972.

Richard C. McDonough,
Director.

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF LOCAL ORDINANCE (HOURS) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Lou-Mar Cafe (A Corp.))
14 Jersey Avenue)
New Brunswick, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-83, issued by the City Council of the City of New Brunswick.)

-----)
Licensee, Pro se
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, September 18, 1971, it sold alcoholic beverages on the licensed premises, in violation of the local hours ordinance.

Licensee has a previous record of suspension of license for five days effective February 8, 1954, for serving women at the bar in violation of local ordinance (Re Lou-Mar Cafe, Bulletin 1003, Item 8), and by the local issuing authority for five days, effective August 11, 1957, for "hours" violation.

Prior record of suspension for dissimilar and similar offenses occurring more than ten years ago disregarded for penalty purposes, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Feeny, Bulletin 1936, Item 6.

Accordingly, it is, on this 14th day of December 1971,

ORDERED that Plenary Retail Consumption License C-83, issued by the City Council of the City of New Brunswick to Lou-Mar Cafe (A Corp.), for premises 14 Jersey Avenue, New Brunswick, be and the same is hereby suspended for ten (10) days, commencing 2:00 a.m. on Monday, January 3, 1972, and terminating 2:00 a.m. on Thursday, January 13, 1972.


Richard C. McDonough
Director