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

BULLETIN 1804 August 15, 1968

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ITEM

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

BULLETIN 1804 August 15, 1968

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - CRIMINALLY DISQUALIFIED EMPLOYEE - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against TINY'S BAR & GRILL, INC. 185 Paterson Street Paterson, New Jersey Holder of Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	CONCLUSIONS AND ORDER

Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following reports herein:

Hearer's Report

The licensee pleaded not guilty to the following charges:

"1. During the early morning hours of Sunday, November 19, 1967, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy, indecent and obscene conduct in and upon your licensed premises viz., in that you allowed, permitted and suffered two persons, one male and one female, on your licensed premises, to perform and commit thereon, obscene, indecent, filthy, lewd, lascivious, disgusting and immoral acts, and to make gestures and movements with their hands and bodies having obscene, indecent, filthy, lewd, lascivious, disgusting, immoral and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.

"2. During the early morning hours of Sunday, November 19, 1967, you employed and had connected with you in a business capacity, Albert Nassaney, a person who had been convicted on or about March 22, 1967, in the Passaic County Court, Law Division-Criminal, of a crime involving moral turpitude, viz., procuring for prostitution; in violation of Rule 1 of State Regulation No. 13."

This matter was set down for hearing before the Division on January 18, 1968. Upon receipt of the licensee's letter stating that it was entering a plea of not guilty, the Division wrote to the licensee on January 15, 1968, advising that the matter would go forward on January 18 at 2 p.m. No one appeared on behalf of the licensee at the hearing (nor has any representative of the licensee contacted this Division up to the time of the submission of the Hearer's report). Hence this matter was heard ex parte

and the following picture was reflected from the testimony:

ABC Agent S, accompanied by Agent L, made two visits to the licensed premises pursuant to a specific assignment. They entered the premises on Sunday, November 19, 1967, at 12:01 a.m. and seated themselves at the bar. Albert Nassaney (also known as "Tiny") was engaged as a bartender and served drinks to the agents as well as to other patrons in the premises.

A certified copy of a judgment entered in the Passaic County Court, Criminal Division, entered into evidence, shows that on January 10, 1967, Albert Nassaney (former 98% stockholder of the licensee corporation) was tried under Indictment No. 935-65 and found guilty of procuring for prostitution. On March 22, 1967 he was sentenced to the Passaic County jail for a term of 364 days, which sentence was suspended and he was ordered to pay a fine of $1,000 within ten days. He is the same person whom the agents observed on duty at the premises on the date hereinabove referred to.

During the hour and ten minutes prior to identifying themselves to Nassaney, the agents observed a female (later identified as Madeline ---) enter the premises in the company of a male companion. At about 12:30 a.m. this female went to a raised platform and performed a lewd dance during which she exposed her breasts four times during the ten minutes of her performance, to the applause and delight of the male patrons and Nassaney. At about 1 a.m. she again returned to the platform and repeated her lewd performance. During this performance a male patron, at the suggestion of Nassaney, went to the platform and danced with her. "They embraced to a position simulating sexual intercourse", fondled each other's private parts and engaged in other lewd activities with their hands. During all this time Nassaney made no attempt to stop the dancing and, in fact, seemed to enjoy the performance.

The agents observed that during the course of this performance a couple left the premises, the girl saying to her male companion, "Let's leave this place. I'm not going to watch this. It's disgusting." The agents thereupon identified themselves to Nassaney, who denied that there was anything indecent about the performance.

Considering the facts and circumstances in this case, and the fact that the Division has adequately proved the charges by a fair preponderance of the credible evidence, I recommend that the licensee be found guilty of both charges.

Licensee has a prior adjudicated record. Its license was suspended by the Director (on appeal from the action of the local issuing authority) for thirty days effective May 7, 1963, for permitting a brawl on the licensed premises, and for two hundred twenty-five days effective January 12, 1967, for procuring for prostitution and failure to disclose in its license application the aforementioned thirty-day suspension. Re Tiny's Bar & Grill, Inc., Bulletin 1515, Item 4; Bulletin 1718, Item 1. In addition, when the license was held by Charles Nassaney, now a 50% stockholder of the licensee corporation, the license was suspended twice by the Director as follows: (1) for twenty-five days effective October 5, 1959, for sale to minors (Re Nassaney, Bulletin 1305, Item 2) and (2) for thirty days effective January 19, 1960, on a fraud and front charge, viz., concealing the fact that Albert Nassaney was the real owner of the

licensed business (Re Nassaney, Bulletin 1324, Item 2).

It is obvious that the licensee has shown a callous disregard for the rules and regulations of this Division, that it has wantonly abused the privileges of its license, and that it has utterly failed to adhere to the standards of public morality and common decency. Within the past year it has been guilty of violation of Rule 5 of State Regulation No. 20 (procurement for prostitution) and has clearly conducted its business as a nuisance.

My assessment of the licensee's entire previous record, including its failure to appear at this hearing, leads me to conclude, and I therefore further recommend that the only proper and justifiable penalty is revocation of this license. Cf. Re Farley & Danieli, Inc., Bulletin 1626, Item 1; Re Monkey Club, Inc., Bulletin 1511, Item 1.

Supplemental Hearer's Report

Following the submission of the Hearer's report upon the conclusion of the hearing held in this matter on January 18, 1968, at which time neither the licensee nor anyone on its behalf appeared, the now attorneys for the licensee requested a re-opening of this hearing for the purpose of granting an opportunity for the licensee to produce testimony in its behalf. Accordingly, this hearing will supplement the original Hearer's report filed herein.

It should be noted that, although the licensee's attorneys originally merely requested an opportunity to present testimony on behalf of the licensee, their further request made at this hearing for the opportunity to cross-examine the Division's witnesses in addition to present its primary testimony was granted.

ABC Agent S was cross-examined vigorously and at length, and his testimony adduced on direct examination was unshaken. In elaborating upon his direct testimony he stated that, when he entered the licensed premises herein, he observed Albert Nassaney standing on the bartender's side of the bar serving champagne to a female and to himself. He did not note whether Nassaney actually received any monies from this female since they were in the course of drinking at the time the agents entered said premises.

Shortly after he and his fellow agent seated themselves at the bar, they were served a bottle of beer each by Nassaney who accepted payment therefor and rang the sale up on the cash register.

After a performer left a platform on which she performed a regular go-go dance, a female patron (identified as Madeline ---) ascended the platform and performed a dance which took about ten minutes. Later on she again performed a similar dance on the said stage, both of which dances included bumps and grinds. During the course of these dances she exposed her breasts and performed certain acts in an indecent manner. During the course of her dance a male patron joined her on the platform, embraced the female, they danced together, touched each other's private parts and simulated sexual intercourse. Nassaney was "facing and looking toward the two patrons dancing" and, during the course of the dancing, variously stood or sat on a stool in the bartender's portion of the bar. The female patrons second performance was specifically requested by Nassaney and her performances were accompanied by

applause and encouraging expressions by the patrons. The witness further testified that the lighting in the premises was adequate and nothing prevented his clear observation of the performances.

The bartender (Nick Elia) observed these performances during the course of his duties and did nothing to prevent, interfere with or terminate this spectacle.

At the conclusion of the second performance the agents identified themselves to Nassaney, at which time the male patron who participated in the performance immediately left the premises before the agents were able to question him. This witness emphasized that, during the course of the hour and ten minutes that he was at these premises, he consumed three bottles of beer, one of which was served by Nassaney who at the same time served a bottle of beer to Agent L.

ABC Agent L was also vigorously cross-examined and substantially corroborated the testimony of Agent S. He added the following: Madeline performed her first dance at about 12:30 a.m. and this continued for about ten minutes. Her second performance was specifically requested by Nassaney who said to her, "Get back on the stage and show your bobbies." During her performance there was "hollering and clapping" on the part of the patrons. During that dance with the male she exposed her breasts at different intervals throughout the entire dance and in the full view of the patrons. The male placed his hands on her privates and her breasts and she placed her hand on his privates, at the same time simulating sexual intercourse during these embraces. During the course of these performances Nassaney was at times sitting and standing on the bartender's side of the bar.

Albert Nassaney, testifying on behalf of the licensee, denied that he was employed in any capacity on the licensed premises on that evening, and he gave the following account: He entered the premises shortly before 12 p.m. on the evening of November 18, remained at these premises for several hours and the early morning of Sunday, November 19. He stated that his wife, who is a principal stockholder of the corporate licensee, had given him change of single dollar bills which he handed to the bartender Elia, for which he received large denomination bills. He was also there for another purpose: It appears that a tavern owner, whom he knows only as Vinnie, was invited by him to come to the premises with the promise that he would serve her champagne if she came. He ordered a bottle of champagne from Elia and served Vinnie and himself from that bottle over a period of about an hour. He served these drinks from the bartender's side of the bar. He explained that he wanted to make an impression on Vinnie by serving her from the bartender's side, and explained it in the following way: "She is used to me serving her from coming in my place of business, and I says, 'Here, I'll serve you.' I served her a drink from behind the bar. She says, 'It isn't the same as serving', so I went behind the bar, too. As we were consuming the champagne I went behind the bar and served her champagne." He had been used to serving her in the past years when he operated this tavern, although he claims that the last time he actually served her was some time in 1966. He specificially denied serving the agents or any other patrons alcoholic beverages and insisted that, except for this occasion, he was usually seated on the patron's side of the bar.

Nick Elia testified that he is employed as a bartender and is also the manager of these premises. He stated that nobody invited Madeline to perform on the stage on that night; that she

performed gratuitously, and that her dance was the usual go-go dance. She did not expose her breasts and, when she danced with the male patron, they did a regular go-go dance which he did not consider indecent. However, he admitted that he never prevented her from performing on both occasions on the morning in question nor did he request that she discontinue her dance. The only time that these two patrons touched each other was "when she was falling off the stage he grabbed her; otherwise she might have got hurt." Other than that one instance, they never touched each other during their performance.

Miss Ann Miller testified that she was present on the date charged herein but witnessed only one of the performances of Madeline. She left before the second performance. She too noted that the only time the male patron touched Madeline was when "she looked like she was going to fall -- I don't know whether it was from drinking but it looked like she was going to fall, and he grabbed her." She agreed that it would be accurate to characterize this dance as involving "bumps and grinds."

On redirect, Agents S and L reiterated that Nassaney remained on the bartender's side of the bar after serving his friend Vinnie, and served the agents as well as other patrons drinks of alcoholic beverages.

In the determination of this matter, which presents a sharp factual conflict in the testimony herein, we are guided by the well established principle that these proceedings are civil in nature and not criminal (Kravis v. Hock, 137 N.J.L. 252) and require proof by a preponderance of the competent and credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956); Freud and Pittala v. Davis, etc., 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In evaluating the testimony the Hearer must credit as much or as little as he finds reliable. 7 Wigmore, Evidence, sec. 2100 (3rd Ed. 1940); Greenleaf, Evidence, sec. 201. Evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16, N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had the opportunity to observe the demeanor of the witnesses as they testified at these hearings, and my analysis of the testimony presented leads me to the unmistakable conviction that the truth lies in the version presented by the Division's agents. I find that their account of the activities on the date in question is a credible, factual and true version. It must be borne in mind that these agents investigated these premises on this occasion pursuant to a specific assignment and there has been no suggestion by the licensee that they were improperly motivated or influenced, or that they entered into a conspiracy to inculpate the licensee.

On the other hand, the testimony of the witnesses for the licensee, and particularly that given rather belligerently by Nassaney, does violence to common experience and to the probabilities in the circumstances. Nassaney kept referring to the dance of Madeline as a regular go-go type, yet readily

admitted that the dance included bumps and grinds. A dance of this nature, similarly admitted by the other witnesses for the licensee, is clearly an indecent and improper dance. Significantly all three witnesses for the licensee assert that the only time that the male patron who joined Madeline in this dancing spectacle ever touched her was when she was about to fall off the stage. This is a contrived and transparent version, which I find to be patently absurd. It is much more consistent with common experience and with the version given by the Division agents that this male patron frequently embraced Madeline during the performance, engaged in simulated sexual intercourse and performed the other indecent acts which, as they remarked, caused at least one of the female patrons to depart from the premises in disgust.

Madeline was apparently not a newcomer to the premises since Elia admitted that she had appeared at these premises on prior occasions and performed in a similar manner. Nassaney in fact says that she was there on many occasions so that the nature of her dance was well known since both Nassaney and Elia stated that it was no different than on the prior occasions. The licensee's employees freely admitted that they neither prevented her or the male patron who joined with her in engaging in this lewd performance, nor did they at any time try to prevent them from continuing.

If the version as given by the agent of the nature of her activity is true, and I believe that it is, then it became their obligation under the applicable law and rules of this Division to step in immediately to prevent such proscribed conduct. The licensee is fully liable for the activities of its employees during their employment on licensed premises. In re Schneider, 12 N.J. Super. 449.

It was no excuse that Elia claims that he was too busy tending bar to observe all of the activities of this performer. It has been consistently held that licensees and their agents are not only obligated to regulate the activities on licensed premises, but must use their eyes and ears, and use them effectively, to prevent the improper use of the licensed premises. Re Ehrlich, Bulletin 1441, Item 5; Re Schuler, Bulletin 1787, Item 1.

The testimony of Miss Miller is particularly suspect. According to her testimony she admits that she saw only the first performance of Madeline and did not stay to see the latter performance. Further, she admits that she was first requested to appear at the hearing in this matter only about a week prior to the date thereof. Her credibility is further put into question because she insists that at no time prior to her actual appearance at this hearing did she ever discuss her testimony or the facts of the case with anyone connected with the management of the said licensed premises. It is certainly unbelievable that a witness would be requested to appear without the licensee's agents or employees or counsel having first ascertained what her testimony would be in the light of the charges.

After carefully considering the testimony with respect to the first charge, the conclusion is inescapable that this charge has been established by a fair preponderance of the believable evidence, indeed by substantial evidence.

With respect to the second charge, it was admitted that on the date in question Albert Nassaney was criminally disqualified from being employed or engaging in any activity on the said licensed premises because of the fact that he had been convicted on March 22, 1967, in the Passaic County Court of a crime involving moral turpitude, viz., procuring for prostitution.

The explanation give by Nassaney for his presence at these premises on the date charged herein is equally incredible and palpably ludicrous. He states that he came to the premises for two reasons: one, to bring change which was given to him by his wife to the bartender (the change being single dollar bills for larger denomination bills), secondly, he invited a female friend, whom he knows only as Vinnie, to meet him at the tavern with the promise that he would treat her to champagne. Vinnie did in fact keep the date and she remained there for an hour while he served her the champagne from the bartender's side (during this time, presumably, his wife was waiting at hom for him to return). The reason he gives, which is similarly absurd, for serving her on the bartender's side of the bar is that he wanted to make an impression on her and serve her as he did on prior occasions. Of course, he denied serving any other patrons or the ABC agents; and, of course, he did not exercise control or management of the premises at that time. He does, however, admit that he spent some time immediately inside the bar, on the bartender's side, during the evening. His vehement denial that he had anything to do with management, however, seems to be diluted and effectively belied by his reaction to questioning with respect to the performance of Madeline. He was describing her dance as a go-go dance with gyrations and bumps and grinds. He was then asked:

Q At any time, Mr. Nassaney, did you see this lady pull up her blouse and expose her bosom?
A If I did she would have gone through the window of the place.
Q Why? You didn't have anything to do with the business, did you?
A I had been a tavern owner prior to this here charge where I became disqualified. I was in the tavern business twenty-five years.

At this point counsel interjected that this was an exaggeration and that "if it is his wife's concern it is his concern, too." That explanation is a rationalization, and I think that the answers of this witness clearly make manifest the fact that he was engaged on behalf of the licensee; that he was actually in control of the operation and employed (i.e., his services were utilized) there on the date in question. Further, his credibility has been affected not only by the total unrealistic explanations but by the fact that he has been convicted of a crime.

I therefore conclude that the Division has proved the second charge by a fair preponderance of the credible evidence. I recommend that the licensee be found guilty of both charges.

The recitation of the licensee's prior adjudicated record is set forth in the original Hearer's report in this matter. Reflecting as it does, the suspension of this license within the past year for two hundred twenty-five days for permitting and suffering lewdness and immoral activity on the licensed premises, to wit: "procuring for prostitution" and for failing to disclose in its license application a prior conviction, followed by these charges which involve permitting and suffering lewdness and immoral activity on the same premises, make it quite obvious that this licensee has

shown a callous disregard for the rules and regulations of this Division. It has flagrantly and wantonly abused the privileges of its license.

Had this licensee studiously planned the quickest and surest method of relieving itself of its licensed privileges, it could hardly have adopted any more prodigious means than that which it employed on this occasion. Its continued employment of Nassaney, who is criminally disqualified, and the operation of these premises in the manner hereinabove delineated, as reflected in the first charge herein, manifest an utter disregard in this respect for the law. In view of the facts and circumstances herein, including the prior record, it is clear that the continuation of this license would be contrary to the public interest.

I therefore recommend that the only proper and justifiable penalty is outright revocation of the license. Cf. Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra; Buckley v. Wallington, Bulletin 1772, Item 1. Cf. Re Pierre's French Quarters, Inc., Bulletin 1508, Item 1.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, exceptions to the Hearer's reports were filed by the attorneys for the licensee.

Having carefully considered the entire record herein, including the transcript of the proceedings, the exhibits, the Hearer's report, the supplemental Hearer's report, and the exceptions which I find totally lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 23rd day of May 1968,

ORDERED that Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Tiny's Bar & Grill, Inc., for premises 185 Paterson Street, Paterson, be and the same is hereby revoked, effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - ALCOHOLIC BEVERAGES AND COMMINGLED CASH ORDERED FORFEITED - DEPOSIT ON STIPULATION REFLECTING APPRAISED VALUE OF FIXTURES, FURNISHINGS AND EQUIPMENT ORDERED FORFEITED - DEPOSIT ON STIPULATION ORDERED RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on October 7, 1967 of a quantity of alcoholic beverages, various furnishings and equipment and $35.70 in cash in an unlicensed restaurant located at 1137 Broad Street, in the City of Newark, County of Essex and State of New Jersey.	Case No. 11,971 ON HEARING CONCLUSIONS AND ORDER

Benito Gonzales, Pro Se.
A.B.C. Distributing Company, claimant, by Allan Waldor, partner.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 and further pursuant to two stipulations, each dated December 29, 1967, one executed by Benito Gonzales and Allan Waldor, respectively, to determine whether three containers of alcoholic beverages, various furnishings, equipment, foodstuffs and $35.70 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on October 7, 1967 in a restaurant located at 1137 Broad Street, Newark, New Jersey constitute unlawful property and should be forfeited; and further, to determine whether the sums of $200.00 from Benito Gonzales and $300.00 from Allan Waldor, deposited with the Director under protest, under the aforesaid stipulations, representing the retail value of certain fixtures, furnishings and equipment, more particularly set forth separately thereunder, should be forfeited or returned to them.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises. At this hearing Benito Gonzales appeared pro se and sought the return of the money deposited under the stipulation signed by him representing the retail value of certain furnishings, equipment and foodstuffs, as well as the seized cash.

Allan Waldor, a partner in the A.B.C. Distributing Company, sought the return of the sum deposited under the stipulation signed by him, representing the retail value of two pinball machines, a juke box and a cigarette machine.

The testimony of ABC Agents M and B established the following facts: At about 8:30 P.M. on Saturday, October 7, 1967 ABC Agent M, in possessiom of four "marked" one dollar bills, entered a restaurant owned and operated by Benito Gonzales at the subject premises. On the left side of the store were tables, chairs and a juke box; on the right side were a counter, a cash register, a steam table, a

refrigerator and assorted foodstuffs; pinball machines were located in the rear of the store.

The agent seated himself at the counter and ordered a sandwich from a male, identified as Pedro Perez. He observed that Gonzales and a person identified as Gertrudis Quinones were seated in the rear of the store. After receiving the sandwich the agent ordered whiskey, was served by Quinones and paid for this drink with one of the "marked" one-dollar bills. Quinones rang up this transaction on the cash register, and gave him 50¢ in change.

The agent then ordered and was served two additional shots of whiskey; and paid for the same with "marked" money. At 9:00 P.M. the agent rejoined other agents in the area; and at 9:15 re-entered the premises, purchased a shot of Seagram's VO whiskey and paid for the same with a "marked" one-dollar bill. At 9:20 P.M. other agents and local police entered the premises and observed this agent seated at the counter with a glass of whiskey in front of him. He identified Quinones as the person who sold him the whiskey, after which a search and seizure were made. $35.70, including the "marked" money were found in the register. They questioned Gonzales who was apparently under the influence of liquor and he admitted being the owner of the premises. The "marked" money was entered into evidence; the contents of the bottle of whiskey was submitted to the Division chemist, who, upon analyzing a sample thereof, determined that it was an alcoholic beverage fit for beverage purposes.

Quinones, Perez and Gonzales were arrested; Gonzales was charged with the possession of alcoholic beverages with intent to sell the same in violation of R.S. 33:1-50(b) and held in bail for arraignment in the Newark Municipal Court.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Gonzales, Quinones or Perez, or for the premises where the violation took place. The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the commingled cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5.

Benito Gonzales, testifying in support of his claim for the return of the money deposited under the stipulation and the cash, gave the following account: He is the owner and operater of this restaurant. On the night alleged herein, he was tired and decided to go to sleep in the back of the premises. He put his friend, Quinones, in charge and doesn't know whether or not he sold any liquor. If Quinones did dispense liquor "Probably he give whiskey away with the food, you know, because we have a lot of friend like that. He probably say, 'Buddy, we drink together.' Maybe guy don't know what he was doing. Maybe he was drunk." He admitted that Quinones served customers at his request and direction.

Gertrudis Quinones testified that he came to the restaurant about 9:00 o'clock and served customers because Gonzales requested that he take care of the place "because he was tired". He denied serving any alcoholic beverages and stated that perhaps Perez was the one who actually served the agents. He admitted, however, that when he came to the restaurant that night, he brought a bottle of whiskey with him. Perez was not produced as a witness at this hearing.

ABC Agent B, called in rebuttal, testified that in a conversation with Gonzales, Gonzales admitted seeing the liquor in the premises.

From the evidence presented herein it has been established by a fair preponderance of the credible proofs that a speakeasy operation was being carried on, and that Gonzales was actually present and was aware that liquor was being sold. It is equally clear that Quinones and Perez were the agents or employees of Gonzales, and Gonzales is liable for their acts. I conclude, therefore, that the claim of Gonzales for the return of the monies deposited with the Director under the stipulation as aforesaid be rejected and that an Order be entered forfeiting the sum of $200.00 deposited by him together with the commingled cash and the alcoholic beverages. Seizure Case No. 11,850, Bulletin 1749, Item 6; Seizure Case No. 11,909, Bulletin 1779, Item 6; R.S. 33:1-66.

Allan Waldor, a partner in the A.B.C. Distributing Company sought the return to him of a juke box, two pinball machines and a cigarette machine. He gave the following account: He has been in the vending machine business for 22 years. He first installed these machines at premises operated by Gonzales at 320 Mulberry Street in Newark about three years ago and conducted his business dealings with Gonzales at the present premises. Before installing the machines he had Gonzales fill out a license form which he sent to the Newark License Bureau. It was his understanding that the License Bureau, in cooperation with the Newark Police, makes a full background investigation before the license is actually issued. He visited these premises twice weekly, usually in the morning and at no time did he ever see any evidence of alcoholic beverages being sold, consumed or possessed at these premises.

On the basis of the evidence presented, I am persuaded that the claimant relied upon the investigation presumably made of Gonzales by the Newark License Bureau and the Newark Police Department. No investigation was made by him of Gonzales' background or of the subject premises.

While this does not excuse his failure to make a personal investigation of the background of Gonzales and the activities at the premises, there is no affirmative evidence to establish that he knew or had any reason to believe that alcoholic beverages were being sold at the said premises.

I believe that under the circumstances the claimant merely acted imprudently and should be given the benefit of the doubt. I, therefore, recommend that his claim for the return of the deposit posted under the stipulation aforesaid be allowed and that an Order be entered returning the sum of $300.00 deposited to him. Seizure Case No. 11,909, supra; Seizure Case No. 11,821, Bulletin 1742, Item 5; R.S. 33:1-66(f).

Conclusions and Order

No exceptions were filed to the Hearer's report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's report and I adopt them as my conclusions herein.

Accordingly, it is on this 23rd day of May, 1968

DETERMINED and ORDERED that the sum of $300.00, representing the appraised retail value of a juke box, two pinball machines, and a cigarette machine which were returned to the claimant, Allan Waldor, a partner of the A.B.C. Distributing Company, paid under protest pursuant to the stipulation signed by the said claimant, shall be returned to him; and it is further

DETERMINED and ORDERED that certain furnishings, equipment, and foodstuffs, exclusive of the cash and alcoholic beverages, claimed by Benito Gonzales as set forth in Schedule "A", attached hereto, constitutes unlawful property; and that the sum of $200.00, representing the appraised retail value of the said personal property which was returned to him; paid to the Director of the Division of Alcoholic Beverage Control by Benito Gonzales be and the same is hereby forfeited in accordnce with law; and it is further

DETERMINED and ORDERED that the cash in the sum of $35.70 and the alcoholic beverages be and the same are hereby forfeited, and retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole, or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

3 - containers of alcoholic beverages; 1-juke box; 1-cigarette machine; 2-pinball machines; 5-tables; 1-cash register; 1-refrigerator; foodstuffs; $35.70 - cash.

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
NELLIE D'ANGELO t/a Main Street Tavern 19-21 N. Main Street Glassboro, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-1 issued by the Borough Council of the Borough of Glassboro	)	

Licensee, Pro se
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 3, 1968, she sold a case of quarts of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective October 2, 1967, for similar violation.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Suppa, Bulletin 1775, Item 4.

Accordingly, it is, on this 6th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Glassboro to Nellie D'Angelo, t/a Main Street Tavern, for premises 19-21 N. Main Street, Glassboro, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, commencing at 1:00 a.m. Thursday, June 13, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 1:00 a.m. Wednesday, July 3, 1968.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Helen D. Mularchuk t/a Bar H 417 South Laurel Avenue Hazlet, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Hazlet.	)	

J. Frank Weigand, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 29, 1968 she possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Heaney, Bulletin 1783, Item 6.

Accordingly, it is, on this 6th day of June 1968,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Hazlet to Helen D. Mularchuk, t/a Bar H, for premises 417 South Laurel Avenue, Hazlet, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1968, commencing at 2 a.m. Tuesday, June 11, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Monday, July 1, 1968.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
BARGE INN, INC. 410½ Monmouth Street Jersey City, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-421 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	)

Licensee, by Edward Szczepanski, President, Pro se
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 11, 1968, it sold drinks of beer to four minors, one age 18, one age 19 and two age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Cochrane, Bulletin 1690, Item 5.

Accordingly, it is, on this 5th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-421, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Barge Inn, Inc. for premises 410½ Monmouth Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, June 12, 1968, and terminating at 2:00 a.m. Thursday, June 27, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - SALE TO INTOXICATED PERSON - CHARGES NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against)

VAL'S BAR, INC.) ORDER
t/a Val's Bar)
114 S. New York Ave.
Atlantic City, N. J.)

Holder of Plenary Retail Consumption License C-238, issued by the Board of Commissioners of the City of Atlantic City.)

Jacobson & Silverman, Esqs., by Irving Silverman, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

By notice dated August 11, 1967, charges were preferred against the licensee alleging that (1) on divers days in June and July 1967 it permitted congregation of apparent homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20 and (2) on July 9, 1967, it permitted service of alcoholic beverages to one of the apparent homosexuals who was intoxicated, in violation of Rule 1 of State Regulation No. 20.

Thereafter on November 6, 1967 the N. J. Supreme Court reversed earlier convictions in three similar cases wherein congregation of apparent homosexuals was charged. One Eleven Wines & Liquors, Inc. v. Div. Alcoholic Bev. Cont., 50 N.J. 329, reprinted in Bulletin 1763, Item 1.

The attorney for the Division now moves for a nolle pros of the charges because of such reversal.

Good cause appearing, I shall grant the motion.

Accordingly, it is, on this 31st day of May 1968,

ORDERED that the charges herein be and the same are hereby nolle prossed.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against ANTHONY GEORGE CAPPUCCIO t/a The Paddock Inn 24 South Warren Street Trenton, N. J. Holder of Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton.	ORDER

Thomas DeMartin, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

By notice dated March 13, 1967, a charge was preferred against the licensee alleging that on divers day in January 1967 he permitted congregation of apparent homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

After hearing held and prior to submission of the Hearer's report, on November 6, 1967 the N. J. Supreme Court reversed earlier convictions in three similar cases wherein congregation of apparent homosexuals was charged. One Eleven Wines & Liquors, Inc. v. Div. Alcoholic Bev. Cont., 50 N.J. 329, reprinted in Bulletin 1763, Item 1.

The attorney for the Division now moves for dismissal of the charge because of such reversal.

Good cause appearing, I shall grant the motion.

Accordingly, it is, on this 31st day of May 1968,

ORDERED that the charge herein be and the same is hereby dismissed.

Joseph M. Keegan
Director