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

BULLETIN 2212 January 19, 1976

TABLE OF CONTENTS

ITEM

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

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1. APPELLATE DECISIONS - SIGNORE BROS., INC. v. EDISON.

Signore Bros., Inc., t/a The Evergreen,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Municipal Council of the Township of Edison,	)	
Respondent.	)	

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant
Roland A. Winter, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the alleged failure of the Municipal Council of the Township of Edison (hereinafter Council) to act upon appellant's application for a place-to-place transfer of its Plenary Retail Consumption License C-26, from 227 West Grand Avenue to 1963 Oak Tree Road, Edison. The application was filed and notice thereof duly published on or prior to March 6, 1975.

Appellant contends that the Council unduly delayed consideration of, and failed to act on appellant's application; and that such failure constitutes, in effect, a denial of its application. Since such alleged denial was not based upon a determination of the merits upon a hearing thereon, it was arbitrary and unreasonable. It, therefore, requests that the Director mold this appeal as an original application before him, and make a determination on its merits.

The Council denies appellant's contentions and avers that the location to which a transfer of license is sought is in an area which is proscribed to such use; therefore, no hearing need be held. Furthermore, the Council denies that it has, by not holding a hearing, rejected appellant's

application. The appellant's failure to have applied for a variance of the zoning ordinance was, in the opinion of the Council, a prerequisite to the determination of the merits of appellant's application.

At the de novo hearing in this Division, it was readily apparent that the facts, as hereinabove referred to, were not in substantial dispute. By stipulation of counsel, it was agreed that the basic issue is: was the Zoning Board or other Municipal approval required as a condition precedent to a hearing on the merits of appellant's application.

Although appellant agrees that this issue requires resolution it contends, that, the delay of the Council in providing a forum for the determination of appellant's application was evidence of a hostility against appellant upon which no fair and equitable determination could be based. Hence, appellant's request that the Director of this Division make a determination based on the merits of appellant's application, as noted herinabove.

Nothing in the record supports the charge that the Council refuses to provide a hearing for appellant. Once it became clear that a hearing upon appellant's application could be held by the Council, and that, in the event the Council voted favorably upon such application, the transfer thus granted could be conditioned upon approval by the Zoning Board, the Council consented to hold such hearing promptly.

In view of the expressed willingness of the Council to hold a prompt hearing on appellant's application, it is, recommended that the matter be remanded to the Council for that purpose. Accordingly, it is recommended that the Council conduct a hearing within forty-five days of the date of the Director's Order herein, and that the said proceedings be stenographically or electronically recorded and transcribed.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the appellant, and an answer to the said exceptions was filed by the respondent, pursuant to Rule 14 of State Regulation No. 15. A supplemental letter of reply (which is not authorized by the said rule) was thereafter filed; however, it was duly considered by me.

The main thrust of the exceptions is the contention that, because of the alleged "inaction of the governing body upon this application" the respondent abused its discretion. Therefore, it argues, the Hearer erred in recommending that the matter be remanded to the Municipal Council for its determination on the merits. The appellant asserts that in the present situation the Director should assume original jurisdiction and make a determination on the merits. I find no merit in this contention.

New Jersey's system of liquor control contemplates that municipalities shall have original power to pass on applications

for the transfer of liquor licenses, such applications must be considered by the local Boards in the first instance. Therefore, the action is broadly subject to appeal to this Division. Fanwood v. Rocco, 33 N.J. 404 (1960); Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949).

In its consideration of such application, the statute entrusts the local Board with wide discretion with respect thereto. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Fanwood v. Rocco, supra.

As the Hearer noted, the apparent reason upon which the Council's inaction was bottomed with reference to the appellant's application was that it conceived that the transfer to the proposed transfer site would be in violation of the existing zoning ordinance, and that a determination on the merits should not be made until the appellant first obtained a variance of the zoning ordinance.

When it became clear, at the hearing in this Division, that the subject application for transfer could have been granted if the respondent determined that such action was warranted on the merits, but that the grant of the transfer does not permit the licensee to operate without complying with the zoning ordinance, and obtaining approval by the Zoning Board, the Council represented, in its answer to the exceptions that it is not only "willing, but eager to hold the hearing which it is required by law to do." Cf. Lubliner v. Paterson, 59 N.J. Super. 419 (App. Div. 1960) modified 33 N.J. 428 (1960).

Conversely, the Council may upon such hearing, deny the said transfer if it determines that the transfer would be clearly in violation of the zoning ordinance, health codes, building codes or the like, Lubliner v. Paterson, supra (59 N.J. Super. at p.433). Of course, in the exercise of its discretion, it may deny the application if it determines on the merits, that the public interest requires such action. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970); Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

Significantly, the Hearer recommended that the Council be directed to conduct a hearing within forty-five days of the date of the Director's order herein. This cut-off date assures the appellant of a reasonably prompt hearing and determination.

I have examined the other exceptions and find that they have either been considered and correctly resolved in the Hearer's report or are lacking in merit.

Accordingly, it is, on this 16th day of October 1975,

ORDERED that the within matter be remanded to the respondent Municipal Council of the Township of Edison for the purpose of

conducting a hearing on appellant's application on its merit; and it is further

ORDERED that the Council be and the same is hereby directed to conduct the said hearing within forty-five (45) days of the date of this order, which said proceedings shall be stenographically or electronically recorded and transcribed; and it is further

ORDERED that the Council be and the same is hereby directed to make a prompt determination within a reasonable period after the conclusion of the said hearing. Jurisdiction by the Director is not retained herein.

LEONARD D. RONCO
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT ENTERTAINMENT - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against	)	S-10,397 X-47,477-G
Irving Reingold and Brothers Two of Oradell, Inc. t/a Brass Bell 41 Route #4 Hackensack, N.J.,	)	
Holders of Plenary Retail Consumption License C-32, (for the 1974-75 license period) issued by the City Council of the City of Hackensack, and	)	CONCLUSIONS and ORDER
Transferred to	)	
Irving Reingold, an Individual t/a Brass Bell Same Premises	)	
for the 1975-76 license period.	)	

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Calissi, Klinger, Cuccio & Baldino, Esqs., by Allan H. Klinger, Esq.
Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees plead "not guilty" to the following charge:

"On Thursday, April 17, 1975, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered male persons, while performing in and upon your licensed premises for entertainment of your customers and patrons, to engage in conduct, by themselves and in association with customers and patrons in and upon your licensed premises, of a lewd, indecent and immoral manner and to commit and engage in acts, gestures and movements of and with their hands, legs and other parts of their bodies, by themselves and in association with customers and patrons, in a manner and form having lewd, indecent and immorally suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

I

At the outset of this hearing, an objection was made on behalf of the licensees to my presiding at the hearing because of alleged merger of functions in this Division. It is contended that, since "this administrative body is the regulatory agency, is also the prosecuting agency, the complaining witnesses are employees of this agency ... this hearing is a denial of due process and constitutional rights of the licensee." This contention is without merit. In fact, the prosecution of this matter is undertaken by a deputy attorney general, assigned by the Attorney General of this State, and is not under the control of the agency.

Moreover, and dispositive of this contention is that such allegation had been considered and found to be without legal substance in numerous adjudicated matters.

The licensees' contention was considered and rejected in In re Larsen, 17 N.J. Super. 564 (App. Div. 1952), where the court stated:

"...in the evolution of governmental administrative and supervisory agencies, the Congress and the legislatures have constitutionally and quite uniformly delegated to such agencies the power to adjudicate controversies arising within the area of the particular administrative field."

The court cited Brinkley v. Hassig, 83 Fed. 2d 351, 356 (C.C.A. 10, 1936):

"The spectacle of an administrative tribunal acting as both prosecutor and judge has been the subject of much comment, and efforts to do away with such practice have been studied for years. The

> Board of Tax Appeals is an outstanding example of one such successful effort. But it has never been held that such procedure denies constitutional right. On the contrary, many agencies have functioned for years, with the approval of the courts, which combine these roles. The Federal Trade Commission investigates charges of business immorality, files a charge in its own name as plaintiff, and then decides whether the proof sustains the charges it has preferred. The Interstate Commerce Commission and State Public Service Commissions may prefer complaints to be tried before themselves."

Added the court, in resolution of this contention:

> "The wisdom and prudence of the legislative delegation of such a broad variety of functions to an administrative executive or board are not justiciable subjects."

Recently, the court in Kelly v. Sterr, 119 N.J. Super. 272, 274-275 (App. Div. 1972), aff'd 62 N.J. 105 (1973), cert. dn. 414 U. S. 822, (1973), considered an appeal by a State Police officer from a conviction after a departmental trial, presided over by a State Police captain. The appellant complained that the hearing "did not comport to due process". The court held that where rules allegedly violated by State Police officers were promulgated in accordance with legislative authority; the policeman had been notified of the charges made against him; was represented by counsel; had the opportunity to be heard at a departmental hearing and to be confronted with witnesses and to cross-examine witnesses; and a factual determination was made, the policeman was thereby accorded procedural due process notwithstanding that officers who investigated the case, as well as the officer who heard and decided the case, but who was not the investigating officer, were members of the State Police.

The court pointed out that "The hearing officer was appointed pursuant to legislative authority, and his findings reviewed and concurred in by the appropriate reviewing authority. Except where the Legislature has otherwise provided, such has traditionally been the accepted practice in administrative hearings, and we see no infirmity therein. See In re Bernaducci, 85 N.J. Super. 152 (App. Div. 1964), certif. den. 44 N.J. 402 (1965) and cases cited therein."

II

Pursuant to a specific assignment to investigate allegedly lewd performances at the subject premises, ABC agents P, W, D, C and Cu, arrived at the subject premises on Thursday, April 17, 1975 at about 9:45 p.m. Agents P and W, who are female inspectors entered the said premises while the other three male agents remained on the outside until 10:30 p.m., at which time male patrons were admitted into the premises.

Agent P gave the following account: Accompanied by agent W, she entered a small corridor where the agents were each required to pay a $3.00 admission fee. They thereupon entered the main barroom which contained a "U-shaped" bar along the left wall, booths, tables and chairs along the right wall, bleachers on the left side and a scaffold-type stand along the right wall where an employee plays discotheque records. In the center of this room is a large dance floor on which was a portable raised platform, two feet high, on which male "go-go" dancers entertained.

When the agents entered the main barroom, a male "go-go" dancer was performing to about three hundred-fifty to four hundred female patrons. He wore knee-high buckskin fringed boots and a low-cut bikini rayon costume, which exposed the crevice and a portion of his buttocks. During his performance, a woman went onto the stage, and "danced the bumps, I believe it is, with this male, during which time she wrapped her leg around this male's thigh and leg and bent her pubic area into his thigh in grinding motion." Another female placed her hand which contained a dollar bill inside the rear part of the costume,and inserted the dollar bill in "his buttocks". During the course of his dance four other females were observed to approach the stage and place dollar bills inside the costume in the area of the buttocks and in his front pubic area. During all of this time the patrons were "yelling loudly" and shouting "take it off".

After he completed his dance, a second male "go-go" dancer entered the stage. He was identified as Alex Bennett. When Bennett walked onto the stage he was fully dressed in a shirt and pair of pants, and held a drink in his hand. As he was about to commence his act, approximately five females ran up on the stage and began to undress Bennett, to the tune of a song entitled "The Stripper" which was played on the disco machine. The five females undressed him completely down to a bikini-type bathing suit. Bennett continued to dance to the records played by the disc jockey, while the patrons stood on the chairs and shouted "Take it off." Several female patrons placed paper currency inside Bennett's costume both in the area of the buttocks and the pubic area.

After he completed his performance, a third male "go-go" dancer, identified as Michael Miles, dressed in a bikini-type rayon costume, walked onto the stage and began to perform. During his performance, a female walked up to the stage and joined him "by dancing with bumps", and they bumped each other. A number of female patrons then walked up to the stage and placed money inside both the front and rear parts of his bikini trunks.

When he completed his performance, a fourth "go-go" dancer, known as "California Motorcycle Mike" later identified as Michael Garraly, stepped onto the stage. He was dressed in black rayon-type bikini trunks, which had a zipper in the front. He started to dance "suggestively". A female entered the stage and started to dance with Mike, who moved his "pubic area" towards her. She then placed money inside the top of his costume, at which

time he kissed her. At this point agent W approached the stage and placed a dollar bill inside his bikini trunks, at which point Garraly put his arms around agent W and kissed her "passionately".

Thereupon this witness approached the stage with a dollar bill in her hand and pulled the elastic top of his bikini out slightly and placed the dollar bill into the bottom part of the costume with her hand. Her hand went inside the costume and she could feel a portion of his penis, "at which time he put his arms around my neck and kissed me, forcing his tongue into my mouth."

A fifth male "go-go" dancer, later identified as Tod Frueh was the next performer. He engaged in "bumps and grinds" to the cheers of the female patrons who urged him to take off his bikini trunks. About eight patrons approached him and placed money inside his costume while he danced, punctuating his dance with "bumps and grinds". The money was placed mostly in his pubic area. His costume exposed portions of his buttocks and the crevice and was very low-cut. As each patron placed the money inside his costume he kissed them.

After Frueh had completed his dance, the other performers then reentered the stage and engaged in a suggestive dance which included "bumps and grinds". The female patrons were "yelling and screaming"and a number of them, including this witness, went up to the stage and placed money inside the costumes of these dancers. After this performance was concluded, the portable stage was removed from the center of the room, and males were then admitted into the premises.

Agents C and Cu entered the premises and the agents confronted Reingold, the co-licensee, identified themselves and informed him of the alleged violation.

On cross examination, this witness described in detail an incident during the performance by the first male dancer, unidentified,when a female got upon the stage and wrapped her legs around the dancer's thighs during his performance. She did not recall that any warning was given by the disc jockey to the patrons that they were not permitted to get on the stage. She did recall, however, that Reingold was present during these performances.

ABC agent W testified in substantial corroboration of the testimony given by agent P, and added her testimony with respect to her personal participation. She stated that, during the performance by Garraly who accented his dance with "exaggerated grinds", the women patrons reacted by "pounding glasses on the tables, yelling 'Take it off', standing on chairs." Female patrons approached the stage, walked onto the platform and placed paper currency "into the front penis portion of his costume." When they placed this currency in his "abbreviated bikini" he "rewarded each female by embracing them and kissing them."

At that point, as this witness walked to the platform with a dollar bill in her hand, the music stopped. She waved the dollar bill in front of the dancer, seeing the money he danced

over to her and pointed to the front portion of his body. She placed the dollar bill inside his costume which was very low; she was able to feel "his penis and penis hair, the top portion of his penis"; and further "After placing the money into the costume Mr. Garraly embraced me and kissed me and thrust his tongue into my mouth."

She noted that there were approximately ten females who placed money in the front portion of his bikini costume and were "rewarded by an embrace and kiss."

Agent P then went up to the platform and placed money in this dancer's costume "by pulling the costume away from the body and placing her hand into the costume ... she too was embraced in a passionate kiss." This was repeated at the final performance when all of the "go-go" dancers engaged "in the grand finale."

At the time of the confrontation with Reingold, Garraly who participated in the conversation with the agents, admitted that he works primarily for tips.

ABC agent C testified that he accompanied the other agents on the night charged herein and attempted to enter the premises. However, he was informed that no male patrons would be admitted until after the performance by the male "go-go" dancers; he was advised to return at 10:30 p.m. He sought entry again at 10:30 p.m. and was admitted. Shortly after entering the premises, he, together with the other agents, identified themselves to Reingold and discussed the matter of compensation arrangements between the licensees and the dancers. Reingold stated that the male "go-go" dancers worked for tips only. It was stipulated that if agent D were to testify, his testimony would be identical with that of agent C.

Michael Garraly, testifying on behalf of the licensees, recalled that there was a male "go-go" dancer, whom he knew only by his first name as "Shel", who performed between 9:45 p.m. and 10:30 p.m. He insisted that no female went on the stage. However, women patrons did give "Shel" tips which they placed inside his costume. "It was in different places but usually in the front." He further explained that under the rules of this facility, patrons are not permitted on the stage, and are not permitted to touch the dancer; nor are the dancers permitted to touch the patrons.

He could not recall that any patrons ascended the stage. With respect to the performance of Bennett, he insisted that Bennett was carried on the stage by male employees of the licensees, and they were the ones who removed his clothes.

On cross examination, he admitted that he permitted patrons to put money inside his bikini costume and that "they placed it in with their hands."

Michael Miles testified to the same effect, except that he denied that money was placed in his costume. He said the money was always handed to him.

On cross examination he admitted that he told the agents that he was paid only in tips, but that it was contrary to the fact. He said that he told them that because "...they didn't give me any identification or anything. I got upset. In fact, I was pretty nasty."

Tod R. Frueh, one of the male "go-go" dancers denied that female patrons went on to the stage or were joined in the dances with any of the male "go-go" dancers. He, too, explained that he told the agents that he was paid only in tips because he "was requested by [the owners] not to reveal how much he made, to anyone."

On cross examination, he admitted that female patrons did give him tips, and they did "take the dollar bills and tuck them in my bathing suit." Finally he admitted that he did kiss the female patrons while they placed the currency inside his bikini trunks.

Ginger Reiter, who identified herself as a "belly dancer" stated that "It is expected that belly dancers will go to the tables and get close to the people, very often contact them, touch them." And in the course of such contact they would receive gratuities which patrons would insert inside the bra and belt.

Irving Reingold, co-licensee, testified that he had instructed his performers not to permit patrons on the dance platform. In fact, on one occasion during this evening, he enforced the rule by telling a woman who appeared inebriated to get away from the platform. He asserted that he made every woman who stepped on the platform get off.

However, he admitted that he observed female patrons place money inside the costumes of the male "go-go" dancers, and saw these dancers simultaneously kiss these patrons.

III

This is a disciplinary proceeding which is civil in nature, and not criminal. Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947). Thus, the Division need establish its case only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence.

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super 1 (App. Div. 1961).

I have carefully evaluated the testimony produced both on behalf of the Division and the licensees, and have had the opportunity to observe the demeanor of these witnesses as they testified. I was particularly impressed with the concise and forthright testimony of the two female ABC agents, and am persuaded that their version of what transpired had the ring of truth, was credible, and was fully supportive of the charge.

There was no showing of any improper motivation on their part, or any bias against the licensees. They were assigned to pursue an investigation and their observations were directed at these activities during their visit. They testified that female patrons participated in the dancing on the stage, placed their hands inside the bikini trunks of the male "go-go"dancers during the performances and, in the course of placing the money they felt the pubic area and the buttocks.

Furthermore, these two agents themselves followed the other female patrons and as their testimony discloses, were embraced and kissed "passionately", i.e. soul-kissed by several of the "go-go" dancers when they placed currency inside the trunks and felt the male sexual organs of these performers.

The testimony of the licensees' witnesses, in fact, corroborated this testimony. Several of the witnesses admitted that there was money placed inside their bikini trunks, both in the pubic area and on the buttocks. They also admitted that, after receiving this money, several of the dancers kissed the female patrons. I do not believe the testimony of those witnesses who stated that no female entered the stage. I am convinced that female patrons did go on the stage and joined in dancing and embracing with the male "go-go" dancers.

It is quite apparent that the dancers enjoyed themselves and permitted the touching of their sex organs. The performers worked for tips and encouraged the participation of the patrons in order to benefit financially thereby.

There is, of course, no need to show that there was erotic excitation or passions aroused by the dancers, although, the testimony of agent W is to the effect that she was, indeed, sexually aroused. It appears quite obvious that many of the female patrons who acted in the manner described by these witnesses were similarly aroused. Rule 5 of State Regulation No. 20 reads as follows:

> "RULE 5. No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy, indecent or obscene language or conduct, or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

As the court stated in Re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971):

"We are not here concerned with the 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 Beverage 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 or 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)."

See Re Starshock, Inc., Bulletins 2101, Item 2 and 2111, Item 1.

I find as a fact that the licensees allowed, permitted and suffered lewdness and immoral activity on the licensed premises in the manner set forth in the subject Charge, which was in violation of Rule 5 of State Regulation No. 20. Thus, after careful consideration of the entire record, I find that the charge herein has been established by a fair preponderance of the credible evidence.

I, therefore, recommend that an order be entered finding the licensee guilty of the said charge.

Licensees have no prior adjudicated record. It is further recommended that the license be suspended for sixty days.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were submitted on behalf of the licensees and answering argument to the said exceptions was filed on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

In the exceptions, the licensee argues that the Hearer's "selectivity" in his summary of the evidence reveals "an obvious exaggeration and predisposition on the part of the Hearer with respect to certain material findings of fact." He also alleges that the Hearer "inferred certain factual events which are not stated in the record."

However, the licensee refers to only one specific instance where the fact was allegedly inferred. The Hearer noted that the first dancer's costume was "low-cut", although that particular phrase was not used in the testimony. Agent P, however, did testify that the bikini-type costume worn by this

dancer exposed the crevice of his buttocks. The Hearer logically and legitimately inferred that the costume was low-cut.

With respect to the contention that the Hearer was selective and left out portions of the testimony, my examination of the record indicates that only that factual testimony which was directly relevant and pertinent to the alleged violation was included in the report. The omissions of which the licensee complained are irrelevant and are not germane to the issue to be resolved, viz., was the charge herein established by a fair preponderance of the credible evidence?

A Hearer's report, must necessarily summarize only relevant testimony as it relates to the charge. How much testimony should be included in a factual summary is a matter confined to the fair judgment of the Hearer. The purpose of a Hearer's report is to provide the specific reasons and basis for the recommended finding. The procedural philosophy behind exceptions to a report is to allow any party to a hearing the opportunity to call to the attention of the final decision-maker any further factual material or legal analysis that such party feels should be considered; and in the final analysis, the ultimate determination herein is made by the Director, based upon his consideration of the entire record. Cf. Grant Lunch Corp. v. Newark, 64 N.J. Super. 553, 560 (App. Div. 1960).

The contention that the licensee was subjected to a predisposition toward a particular finding by the Hearer is totally unsupported by the record. The recommended findings by the Hearer are predicated on substantial credible evidence. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1955); Division of Alcoholic Beverage Control v. Zane, 99 N.J. Super. 196 (App. Div. 1968). See Mazza v. Cavicchia, 15 N.J. 498, 506 (1954); See 2 Davis, Administrative Law, Sec. 10.04 p. 19 and Sec. 1606 p.450.

Finally, licensee renews his objection to the organic function of the Division. This has been fully explained in numerous other matters, and has been fully considered by the Hearer. In addition to the authorities cited by the Hearer in Part 1 of his report, the following quotation from In re Information Resources, 126 N.J. 362 (App. Div. 1973) dealing with a proceeding before the Bureau of Securities also answers this objection:

> "Considering the whole of the record, the hearing was essentially a fair one. We have dealt above with the findings and conclusions reached. The real challenge here is to the procedure required by the statute. Federal courts as well as our own have held that the mere combination of functions in a single agency does not, without more, violate due process. For example, in Mackler v. Bd. of Education, Camden, 16 N.J. 362 (1964), the Supreme Court held that although a concentration of inquisitional,

prosecutional and judicial power must be guarded against in order to preserve impartiality of judgment, the mere fact that two board of education members had signed a formal complaint against defendant did not disqualify them from participating in the hearing, especially since no malice or ill will against defendant could be shown. See also, In re Blum, 109 N.J. Super. 125 (App. Div. 1970), holding that a merger of the functions of investigation, prosecution and judgment in the State Board of Medical Examiners would not violate due process. Cf. F.S. Donahue, Santo & Co. v. Kugler, 119 N.J. Super. 377 (App. Div. 1972), rev'd 61 N.J. 492 (1972).

The wisdom of creating an agency with a responsibility for both initiating and adjudicating a proceeding is a legislative function, and not a judicial one. In re Larsen, 17 N.J. Super. 564, 569-570 (App. Div. 1952), and see 575, Judge (now Mr. Justice) Brennan concurring. We perceive no prejudice that was visited upon IRC by reason of the concentration of powers in the Bureau Chief here complained of." Id. at 52.

I have considered the other exceptions and find that they have either been considered and correctly resolved in the Hearer's report, or are devoid of merit.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the written exceptions with supportive argument filed on behalf of the licensee, and the answering argument thereto submitted on behalf of the Division, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of October 1975,

ORDERED that Plenary Retail Consumption License C-32, issued by the City Council of the City of Hackensack to Irving Reingold, an Individual, t/a Brass Rail, for premises 41 Route #4, Hackensack, be and the same is hereby suspended for sixty (60) days, commencing 2:00 a.m. Monday, November 10, 1975 and terminating 2:00 a.m. on Friday, January 9, 1976.

Leonard D. Ronco
Director

3. DISCIPLINARY PROCEEDINGS - LEWDNESS - PROSTITUTION - FAILURE TO KEEP ACCOUNT BOOKS IN THE LICENSED PREMISES - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 120 DAYS SUSPENSION UPON PROOF OF APPROVED TRANSFER OF STOCK OWNERSHIP.

In the Matter of Disciplinary Proceedings against

Sport's Cafe, A Corp.
t/a Arden Cocktail Lounge
58 Church Street
Paterson, N.J.,

Holder of Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

Nathan Robins, Esq., Attorney for Licensee

BY THE DIRECTOR:

Licensee pleads guilty to charges preferred in separate actions, alleging that: (1) on January 18, 1975, it permitted the solicitation for prostitution in or upon the licensed premises, in violation of Rule 5 of State Regulation No. 20; and (2) from October 12, 1970 to date, it failed to have and keep proper books of account for the licensed business, in violation of Rule 36 of State Regulation No. 20.

Licensee has a prior record of suspension of license for sixty-days, effective May 27, 1974, and for sixty-days, effective July 26, 1974; in both instances, the suspensions were in consequence of charges alleging the permitting of the solicitation for prostitution in or upon the licensed premises.

The license would normally be suspended for sixty-days on the charges herein, to which would be added ninety days by reason of the two prior similar violations occurring within a two-year period, making a total suspension of one hundred-fifty days, with remission of thirty days for the plea entered, leaving a net suspension of one-hundred-twenty days.

I have determined, however, that there is insufficient control exhibited by the present licensee over the activities of the subject license, as evidenced by the prior record of similar violations by the licensee, and the instant violation. Therefore, the continuance of this operation requires a complete divestiture by the principal officers and stockholders of the present corporate licensee of their interest and control.

Accordingly, it is, on this 2nd day of June 1975,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control for the City of

Paterson to Sport's Cafe, A Corp., t/a Arden Cocktail Lounge for premises 58 Church Street, Paterson, be and the same is hereby suspended for the balance of its term, i.e., until midnight, June 30, 1975, commencing at 3:00 a.m. Monday, June 9, 1975; and it is further

ORDERED that any renewal of the said license that may be granted for the 1975-76 license period be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1976, with leave granted to any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the suspension upon establishing that such transfer has become effective, and Jennie E. Wood, Ronald Wood and Frances Kulesa have divested themselves of all and any interest in the license and completely divested themselves from any capacity whatsoever with the licensed business; however, such lifting of suspension shall not be granted, in any event, sooner than one-hundred-twenty (120) days from the date of the commencement of the suspension herein.

Leonard D. Ronco
Director