

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

BULLETIN 2092

MARCH 14, 1973

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.
2. APPELLATE DECISIONS - HALL-WILL, INC. v. NEWARK.
3. DISCIPLINARY PROCEEDINGS (Passaic) - PERMITTING SOLICITATION FOR PROSTITUTION - SALE TO MINORS - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 95 DAYS - SALE TO MINORS CHARGE DISMISSED.
4. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO MINOR - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 20 DAYS.
5. DISCIPLINARY PROCEEDINGS (Newark) - SUPPLEMENTAL ORDER.
6. APPELLATE DECISIONS - L & B MARLATT, INC. v. BOROUGH OF RIVERDALE - SUPPLEMENTAL ORDER.

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1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary Proceedings
against the following licensees:

CONCLUSIONS
AND ORDERS

- A. Pride of Perth Amboy Lodge 1183, I.B.P.E.O.W
683 State Street, Perth Amboy
Charge: Sale to non-members by Club- net
suspension of 10 days - Effective February 20,
1973 - Order: February 5, 1973. S-9478
Lic: CB-20
- B. Half Moon of Bergenfield Corp.
333 South Washington Ave. Bergenfield
Charge: Mislabeled 2 bottles- fine of \$400 in
lieu of 10 day net suspension - Order: February 5, 1973. S-9414
Lic: C-7
- C. Anna Madeira t/a Budde's Bar
79 Smith St., Perth Amboy
Charge: 'Hours' Regulation - fine of \$400 in lieu of
10 day net suspension - Order: February 5, 1973. S-9421
Lic: C-91
- D. Harbor Casino, Inc.
171 Warren St. Jersey City
Charge: local 'Hours' violation - prior similar
violation within 5 years - fine of \$800 in lieu of
25 days net suspension - Order: February 7, 1973. S-9468
Lic: C-416
- E. Herman Schnee t/a Village Tavern
373 Washington St., Newark
Charge: Mislabeled one bottle - fine of \$200 in
lieu of 5 day net suspension - Order: February 7, 1973. S-9463
Lic: C-130
- F. Alice's P.O.N.Tavern, Inc.
467 Clinton Ave. Newark
Charge: Failed to keep employee list - Rule 16c,
Reg.20 - license suspended net 5 days effective
February 21, 1973 - Order: February 7, 1973. S-9363
Lic: C-467
- G. Carmen Ramos
190 York St., Jersey City
Charge: 'Hours' Regulation- fine of \$500 in lieu
of 10 day net suspension - Order: February 7, 1973. S-9457
Lic: C-218
- H. Edgewood Country Club Inc.
Piermont Ave. & Rivervale Rd., Rivervale Twp., PO Westwood
Charge: Failed to keep employee list - Rule 16c,
Reg.20 - fine of \$200 in lieu of 5 day net
suspension - Order: February 7, 1973. S-9423
Lic: C-4

- I. Bronislawa and Michael J. Urban
147 Ninth St., Jersey City.
Charge: 'Hours' Regulation - fine of \$400 in lieu
of 10 day net suspension- Order: February 8, 1973. S-9454
Lic: C-386
- J. Zoumas Paxos Corp.
426 Jersey Ave., Jersey City
Charge: 'Hours Regulation- 10 day net suspension-
Effective February 20, 1973 - Order: February 8, 1973. S-9451
Lic: C-250
- K. Camden Liquor Corp.
306 South Broadway, Camden
Supplemental Order - Cf. Bulletin 2076 Item 5 -
Fine of \$700 in lieu of 10 day net suspension
conditioned upon withdrawal of appeal. Order:
February 8, 1973. S-9182
Lic: D-3
- L. Sanf Realty Corp. t/a Hoboken Foodtown
303 Jackson St., Hoboken
Charge: Failed to keep list of employees - Rule 16c-
Reg. 20 - Net suspension of 5 days -effective dates
deferred as premises was fire damaged - Order: February 8, 1973. S-9443
Lic: D-27
- M. Theresa Granese t/a J.G.'s Bar & Grill
832 North Sixth St., Newark
Charge: Gambling -numbers game- Net suspension of
72 days effective February 28, 1973- Order: Feb.9, 1973. S-9432
Lic: C-290
- O. Timothy Corcoran t/a 215 Club
215 First St., Elizabeth
Charge: 'Hours' Regulation - Net suspension of 10
days effective Feb.26, 1973 - ORDER: February 9, 1973. S-9490
Lic: C-128
- P. 500 Club of Elizabeth, N.J. Inc.
71½ Fifth St., Elizabeth
Charge: Gambling -numbers game- Net suspension of
72 days effective Feb.21, 1973- Order: February 9, 1973. S-9426
Lic: C-185
- Q. Bridge Bar & Grill Inc.
535 Riverside Ave., Lyndhurst
Charge: Failed to keep list of employees- Rule 16c
Reg. 20- Net suspension of 5 days effective Feb. 22,
1973 - Order: February 9, 1973. S-9366
Lic: C-29
- R. Alpha Ltd., t/a Laff-In-Saloon
113 Brighton Ave. Long Branch
Charge: Sale to three minors, under prior law,
ages 19,20 and 20 - fine of \$400 in lieu of 10 day
net suspension- Order: February 9, 1973. S-9465
Lic: C-44
- S. Walt Smith Inc. t/a Garden Liquors
156 Garden Ave., Belleville
Charge- Sale to minor 17- fine of \$600 in lieu of
15 day net suspension- Order: February 9, 1973. S-9462
Lic: D-9
- T. Tilton Inn. Inc.
SE Hingston Ave. & Tilton Rd., Egg Harbor Twp.
Charge: Sale to minor 18, under prior law-
Net suspension of 10 days effective Feb. 20, 1973
Order: February 9, 1973. S-9476
Lic: C-28
Supplemental Order, March 2, 1973 - Fine of \$400
in lieu of 10 days suspension.

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - HALL-WILL, INC. v. NEWARK.

Hall-Will Inc.,)	
)	
Appellant,)	
v.)	On Appeal
)	
Municipal Board of Alcoholic)	CONCLUSIONS and ORDER
Beverage Control of the City)	
of Newark,)	
Respondent.)	

Leon Sachs, Esq., Attorney for Appellant
 William H. Walls, Esq., by Beth M. Jaffe, 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) whereby it denied the application for renewal of appellant's plenary retail consumption license for the 1972-73 license period for premises 32-34 William Street, Newark. The resolution denying renewal states in pertinent part:

"WHEREAS, this Board deems such Renewal not to be in the best interest of the public good and welfare, and more particularly for the reasons as expressed in the Board's records, and also the Board's acceptance of the Police recommendations of denial, and the transcript of the hearing on the application for Renewal, does therefore, unanimously deny the same."

In its petition of appeal appellant alleges that the action of the Board was erroneous for the following stated reasons:

- "(a) The conclusions were against the weight of the evidence.
- (b) The findings were the result of hearsay testimony.
- (c) Arbitrary, capricious, and an abuse of discretion.
- (d) The action was beyond the scope of the authority of the Board of Alcoholic Beverage Control of the City of Newark, State of New Jersey."

In its answer the Board denied these contentions and alleged that its decision was based upon the factual testimony from which it concluded in its sound discretion that the license renewal should be denied.

Upon filing of the appeal, by order dated June 30, 1972, the Director extended appellant's 1971-72 license until determination of this appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony under oath and cross-examine witnesses. Additionally, transcript of the testimony before the Board was admitted into evidence pursuant to Rule 8 of State Regulation No. 15.

The transcripts of the proceedings before the Board reflect that the corporate appellant in its application for renewal of its plenary retail consumption license for the 1971-72 license period listed Mary Hargrove as president and as the holder of ninety-four shares of the one hundred shares of stock issued by the said corporation and that she was a resident of New Jersey, residing at 68 North 18th Street, East Orange, N.J. In the application for renewal of appellant's plenary retail consumption license for the 1972-73 license period Mary Hargrove was similarly listed.

At the meeting of the Board held on June 28, 1972 to consider the application for license renewal, Captain Raymond Tenpenny of the local Police Department asserted that he opposed the renewal of the license because of false answers given in appellant's license application in that Mary Hargrove, the holder of ninety-four percent of the stock, was a resident of New York and not New Jersey; that, although Mary Hargrove assigned her stockholdings, she was still listed as the stockholder and officer in the 1972-73 license application, and no notice of change was given to the Director and to the local issuing authority; that licensee failed to disclose a record of suspension imposed by the Director for thirty days effective August 23, 1971, wherein licensee was found guilty of a charge that it purchased alcoholic beverages from other than a manufacturer or wholesaler (Re Hall-Will, Inc., Bulletin 2001, Item 11); that licensee has been charged that it remained open after hours on July 14, 1971; that the licensed premises were found open after hours on April 1, 1971, and that an investigation disclosed that no employees list was available for inspection. Additionally, it is noted that the Director (in Bulletin 2001, Item 11) found licensee's violation was considered to be aggravated by reason of its declination to disclose the true source of the alcoholic beverages in question. It is also noted that licensee has a previous record of suspension for fifteen days effective April 23, 1970 for employing an unqualified person (Re Hall-Will, Inc., Bulletin 1909, Item 10).

The Board, after considering all of the above, unanimously denied renewal of appellant's license for the current license period.

At the de novo hearing Dolphin Hargrove testified that he resides at 68 North 18th Street, East Orange; that he has been separated from his wife Mary Hargrove; that she is the holder of ninety-four shares of the stock of corporate licensee; that she has resided in New Rochelle, New York, for the past two years, and that she assigned the shares of stock to him. The assignment of the shares of stock (introduced in evidence) was dated February 11, 1972.

The attorney for appellant energetically argued (1) that the corporate appellant's failure to file the change in corporate structure was caused by advice given to it to the effect that it should first apply for renewal of the license and thereafter file the change in corporate structure, and that the failure to disclose the prior record of conviction was wholly inadvertent, was the result of an unintentional omission and that, in neither case, was there intent on the part of the appellant to commit a wilfully fraudulent act; and (2) that, in any event, the refusal to renew was too severe a "penalty."

In considering the reasonableness of the Board's action it should be noted that a liquor license is a temporary permit or privilege to conduct a business otherwise illegal. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Whether it should be renewed rests in the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates a clear abuse of that discretion. 279 Club v. Newark, 73 N.J. Super. 15, 21 (App.Div. 1962); Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957). Further, as was stated in Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946) at p. 587:

"The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guidepost in the issuing and renewing of licenses."

In the area of licensing, the determinative consideration is the public interest in the creation or continuance of the licensed operation. Blanck v. Magnolia, 38 N.J. 484 (1962). In thus implementing the salutary objectives of statutory liquor control, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide the "public interest." Lubliner v. Board of Alcoholic Beverage Control of Paterson, 33 N.J. 428, 446 (1960).

I am persuaded that the application contained misrepresentations of material facts and was a fraud upon the Board, and that no attempt was made to correct the situation as of the time of the hearing held herein.

I also find that the licensee operated its business in total disregard of the Alcoholic Beverage Law. Undoubtedly the Board considered the recommendation made by the Captain of the local Police Department, whose report has been hereinabove detailed. His report listed not only the misrepresentations contained in the aforesaid applications but also listed additional charges of violation of the liquor laws leveled against appellant. Obviously, the Board considered appellant operated its business as a nuisance and that the renewal of this license would be contrary to the public interest.

My assessment and evaluation of the totality of the evidence presented herein and the summation of counsel lead me to the conclusion that the renewal of this license would be inimical to the public interest; that, conversely, the interests of the community would best be served by denying renewal of appellant's license.

It is therefore recommended that the Board's action in denying appellant's application be affirmed and the appeal herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed within the time limited by 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 recommendations.

Accordingly, it is, on this 1st day of February 1973,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated June 30, 1972, extending appellant's license issued by the respondent for the 1971-72 licensing period until the determination of this appeal, be and the same is hereby vacated.

Robert E. Bower
Director

3. DISCIPLINARY PROCEEDINGS - PERMITTING SOLICITATION FOR PROSTITUTION - SALE TO MINORS - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 95 DAYS - SALE TO MINORS CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

Regina H. Riotto)
t/a Cozy Rest Cocktail Lounge)
148 Passaic Street,)
Passaic, N. J.,)

Holder of Plenary Retail Consumption License C-31, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic, and transferred during pendency of these proceedings to)

CONCLUSIONS
and
ORDER

Carrero-Santiago, Inc.)
t/a Cozy Rest Cocktail Lounge,)

for the same premises.)
-----)

Siegendorf, Michaelis & Miller, Esqs., by August C. Michaelis, Esq., Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On October 31, 1971, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.
- "2. On December 10, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Limbevski D.---, age 18 and Bob B.---, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

With respect to Charge 1, ABC Agent B testified that, accompanied by Agent P, he entered the licensed premises (characterized by him as a "go-go" and "neighborhood" bar) on October 31, 1971, at 12:50 a.m. Two males, one of whom was identified as Sal Riotto (husband of the licensee) and another male who was identified as Frank Giacomarro were tending bar. The patronage consisted of approximately twenty males and females. The agents positioned themselves at the center of the bar. Agent B ordered drinks from Frank and asked, "Is Cliff around? He is supposed to fix us up with a couple of broads for a blow job." Frank replied, "Cliff isn't around but the broad down the end of the bar is a hooker." In reply to his question concerning the amount she charged, Frank said, "I don't know. Why don't you go down and see?" Agent B requested Frank to give the female (identified as Denise ---) a drink. Frank served Denise a drink and conversed with her and pointed towards the agents. The agents and Denise raised their glasses in acknowledgment of the drink. The agents then proceeded to the place where Denise was located.

Agent B then engaged in the following colloquy:

"I stated to the female, 'Frank sent us down. How much do you charge for a good time?' The female stated, 'Boy, you are awful forward. How much money you got? I charge twenty dollars.'"

Agent B then informed Frank that the price was too high, that he and his companion were going to seek a less expensive female and, if they were unsuccessful, they would return. They departed from the premises at 1:05 a.m. and conferred with two other ABC agents who were waiting at a post of observation. At 1:30 a.m. Agents B and P re-entered the licensed premises and rejoined Denise at the bar. The female then indicated that she would settle for payment of \$15 from each. Agent B recounted the following:

"Frank came over, and Agent P stated, 'She wants \$15' -- excuse me -- 'She wanted \$20 but she wants \$15 now.' Frank stated, 'They have a strong union here' -- no, she stated, 'They have a strong union here,' at which time Sal came down to the end of the bar. Now Frank and Sal were immediately in front of us at the corner of the bar. I stated to Sal, 'She wanted \$20 apiece; now she wants \$15 to ---- apiece.' Sal stated, '\$15 or \$20? It must be filet mignon. I never was over to her house. I really don't know.'"

Prior to leaving the tavern, Agent B informed Sal that he was going out with the female and said that he hoped that he wouldn't get rolled. Sal replied, "You won't have any trouble with her. She is O.K."

Agents B and P departed from the tavern, accompanied by Denise who directed them to a hotel room wherein she proceeded to disrobe upon receiving payment of \$30 marked money. Thereupon the two other ABC agents, and local police under the command of Sergeant Perno, were admitted into the hotel room. The marked money was retrieved from Denise.

At approximately 1:40 a.m. Agents B and P, accompanied by Sergeant Perno, entered the licensed premises and identified themselves to Sal and Frank. They both denied having any knowledge of the alleged solicitation by the female. In the presence of Agents B and P and Sergeant Perno, Sal stated, "Well, he calls me over and says he is going to go with the broad for twenty dollars. He asks me how she is, and I tell him I don't know."

On cross examination Agent B asserted that his testimony on direct examination, wherein he declared that he entered the licensed premises with Agent P and the local police officers at 1:40 a.m. for the purpose of confronting the licensee with the alleged violation, the time (1:40 a.m.) referred to Eastern Standard Time. The other times referred to in his testimony referred to Eastern Daylight Saving Time. It is noted that the change in time did take effect that morning at two o'clock.

The agent was not acquainted with a "Cliff." A male had advised him "to go inside and see Cliff or Frank, and they will fix us up with a broad." Neither Frank nor Sal was aware of the nature of the conversation preliminarily engaged in among Agents B and P and Denise after the agents had first met the female. Frank was first made aware of the arrangements upon being informed that the female wanted \$20 and he was asked whether she was worth it.

Agent P's testimony was substantially corroborative of the testimony elicited from Agent B concerning the matters relevant to the charge.

In defense of the charge, Frank R. Giacomarro testified that he is employed by the licensee as a part-time bartender and receives no compensation for his services. On the night in question he reported for duty at 10 p.m. He observed the female identified as Denise sitting at the bar. He had never seen her prior to the night in question. On this occasion ABC Agents B and P entered and said, "Is Cliff around? We are supposed to meet him." Giacomarro replied that Cliff wasn't in, that he is "in and out; never know when he is here." He is acquainted with a Cliff, solely as a patron.

The agents inquired, "What is going on?" Giacomarro responded, "Girl dancing. Nothing, as far as I know." One of the agents then asked whether Denise was alone. Giacomarro responded that he did not know. He was then asked, "Will she have a drink?" Giacomarro replied, "I don't know. Do you want to buy her a drink? I'll find out." Giacomarro served the female a drink after being informed by her that she would accept a drink and upon being requested by the agents to serve her a drink. Later he observed that the agents had positioned themselves next to Denise. They then ordered another round of drinks in which Denise was included. He later observed that the agents had departed. Denise was still at the bar.

Later the agents re-entered and rejoined Denise. Giacomarro continued working the bar, checking to see if anyone wanted a drink, and had no other conversation with the agents. "One of them went to the men's room, I don't remember which one, and yelled something across to me about Denise. Nothing. I just smiled and didn't know what was transpiring as far as what he said." Thereafter he noted that the trio had departed from the tavern.

He denied that either agent mentioned anything concerning \$20 or \$30 or anything concerning solicitation for prostitution, or "filet mignon." He did not know the nature of the conversation among the agents and the female.

When the agents returned with the local police, the agents first stated "We are charging you with a known prostitute on the premises" and, upon informing them that he was not acquainted with the female, one of the agents asserted, "We are charging you with prostitution."

Finally, Giacomarro reiterated that he was not acquainted with the female and had no knowledge that she was a prostitute.

On cross examination the witness asserted that, upon being questioned by the agents concerning the identity of the female at the end of the bar, he replied, "I do not know. She appears to be alone right now." Upon being questioned further concerning whether the female would have a drink, he then replied that he would ask her. It is unusual for him to ask females whether they would accept a drink because females rarely patronized the tavern.

The witness denied that the agents mentioned to him that the female sought the sum of \$20 for sexual relations or that he had any other conversation with the agents relating to solicitation for prostitution involving Denise.

Salvatore J. Riotto testified that he is employed as manager of the licensed premises. Females rarely patronize the tavern. Denise entered, sat at the corner of the bar and said, "My husband is going to pick me up in about forty-five minutes. Is it all right if I have a drink here and wait for him?" Riotto replied, "Sure. Why not?" He then served her a drink and worked the other end of the bar because, in the meantime, Giacomarro came in to tend bar. He had seen Denise only once previously. Six months previously she came in, ordered one or two drinks and left without conversing with anyone.

At one point that evening Riotto observed the agents conversing with Denise. He then engaged in the following colloquy:

"The agent called me over. He said, 'Sal, I would like to talk to you a minute.' I said, 'Yes, sir.' He said, 'We want to go out with this woman. Is she O.K.?' which, in turn, before I had a chance to say anything the woman says to them in front of me, she says, 'I told them I don't know you. I told them but they don't believe me.' I said, 'I don't know her. I don't know who she is.' Well, they are speaking about going with her, 'Because we are married men we don't want to get rolled.' I said, 'As far as I know, she is a customer, and as a customer she is O.K. That is all I know about her.' There was no prices mentioned. There was no words to let me think they were there for the purpose of what they say they did. With that, I walked away."

On cross examination the witness testified that Denise was seated at the bar alone from 9:30 p.m. to 1 a.m. He admitted being told by the agents, "You know, we are married men. We don't like to be rolled", to which he responded, "I don't know what you are talking about. If you are talking about her as a customer she is O.K. This is the second time I seen her. I don't know this girl." He denied hearing any mention of price in relation to sexual conduct or hearing anything relative to sexual conduct. Concerning the use of the words "filet mignon" Riotto first responded that he did not use that expression, but then admitted that "It may have been."

Finally he reiterated that, upon being confronted by the agents, he denied the allegation of solicitation and said that it appeared to be a "frame."

In rebuttal Agent B testified that, upon his return to the tavern with the local police officer, he did not recall hearing Riotta assert that he was being "framed."

In considering Charge 1 it is apparent that the major point of conflict is factual.

Licensee argues that the Division must establish the charge beyond a reasonable doubt.

The law is quite clear that this is a disciplinary action and is civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948). It is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. 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); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

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 the 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).

The general rule in these cases is that 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.

In view of the sharp contradiction between the testimony of the Division and that of the licensee, the issue of credibility became of paramount importance.

Despite licensee's forceful argument to the contrary, I am persuaded that arrangements were made in the licensed premises for acts of illicit sexual relations as charged, and that licensee's employee was aware of such arrangements. The admission was made by the licensee's manager to the effect that the agents said they were about to go out with the female; that they were married men, and didn't want to get rolled.

I do not find that the licensee or her employees "procured" the female to make the proscribed arrangements. In that event, it would be considered an aggravating circumstance in the imposition of penalty.

However, I am convinced that Agent B's version of his conversation with the bartenders concerning the arrangements he had made with Denise (amply corroborated by the testimony of Agent P) was forthright and credible, and was not improperly motivated in order to falsely and maliciously inculcate an innocent licensee.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947, at p. 31:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

It has long been held that the solicitation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from those sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App.Div. 1953).

The licensee is clearly inculcated by the misconduct of its employee. Such conduct constitutes a grave threat to the public welfare and morals and must be eliminated. Furthermore, it is a basic principle that, in disciplinary proceedings, the licensee is fully accountable for all violations committed or permitted and suffered on licensed premises by his servants, agents or employees. Rule 33 of State Regulation No. 20; Kravis v. Hock, supra; In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has established this charge by a fair preponderance of the credible evidence. I therefore recommend that, relative to Charge 1, the licensee be found guilty as charged.

It follows as a corollary, and I recommend, that the licensee's motion for a dismissal of said charge be denied.

Relative to Charge 2, the prosecutor moved that this charge be nolle prossed for the reason that his attempts to locate and subpoena the minors were unsuccessful. However, he reserved the right to reinstate the charge in the event that the minors are located in the future. The licensee moved for a dismissal of the charge, arguing that the matter should not be indefinitely held in abeyance. Inasmuch as the date of the alleged occurrence (December 10, 1971) is approximately one year from the date of this report, and considering the prosecutor's statement that the minors could not be located, it is my view that it is unlikely that they could now be located within a reasonably short period of time. I therefore recommend that Charge 2 be dismissed.

Licensee has a prior adjudicated record. Effective November 14, 1969, her license was suspended by the municipal issuing authority for ten days for failure to display license certificate in plain view and failure to show license certificate to a local police officer in violation of Rule 16 of State Regulation No. 20. On appeal, the Director affirmed the action of the municipal issuing authority. Riotto v. Passaic, Bulletin 1906, Item 3.

It is further recommended that the license be suspended for ninety days (Re Carmazino, Bulletin 2044, Item 2), to which should be added five days for the prior dissimilar violation occurring within the past five years, or a total of ninety-five days.

Agent B departed the premises, signaled Agent P and together they awaited the departure of the apparent minor, whom they later identified as Thomas ---. Upon ascertaining the minor's age, they re-entered the premises with the minor and the six-pack of beer. They informed the barmaid of the offense of sale to a minor, which she readily admitted.

Agent P corroborated the testimony of Agent B and added that the age of the minor was confirmed, and that the barmaid admitted making no check of the apparent minor's age.

The minor, Thomas ---, testified that he was nineteen years old, having been born on November 26, 1952. He admitted visiting the licensed premises alone, requesting and obtaining a six-pack of beer for which he paid \$1.40. He acknowledged that his age was not questioned by the barmaid but asserted that on a prior visit proof of age had been requested by someone in the licensed premises and, upon his inability to prove majority, no sale had then been made to him. He admitted once signing a paper indicating that his age was over twenty-one. That paper, dated May 18, 1972, and admitted into evidence, consisted of a short statement by the minor indicating that he had provided the ABC agents with an ID card in the name of one Harold Coleman issued by the U.S. Atomic Control which indicated a birthdate of Harold Coleman of January 26, 1950. The testimony of the minor as to the prior production of the card bore inconsistencies which were not resolved by intensive cross-examination.

Doris Buffington (the barmaid) testified that she sold the minor a six-pack of beer, asked for no identification on the evening of the purchase. She noted that, on a prior occasion, the minor had shown a card to her indicating his age to be over twenty-one. From prior visits and prior proof of age, she had been satisfied that the minor was over twenty-one. Despite a card having been previously shown to her, she never required the minor to sign any written representation of his age.

Vincent Santoferraro (an officer of the corporate licensee) testified that he had seen the minor on prior occasions, had obtained identification from him in the form of a "driver's" card showing he was twenty-one years old." He had not been present at the time of the sale to the minor which is subject of the charge.

The defense advances an apparent contention that, as the minor had been a previous patron, then affording proof of age, the sale to him in the presence of the agents was not violative of the proscribed rule. Such defense is utterly spurious. The statute setting forth defenses to a charge of sale to minors (N.J.S.A. 33:1-77) requires that, in defense, the minor falsely represented in writing that he or she was over twenty-one; that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one years of age or over and the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over (underscore added). It is no defense to this charge that the minor displayed a driver's license which represented his age as over twenty-one. See Special Note (p. 86 of the Rules and Regulations of the Division); Sportsman 300 v. Nutley, 42 N.J. Super. 488 (App. Div. 1957).

The proofs adduced herein fail to show any written representation made by the minor upon which a sale was based, and the appearance of the minor was in my judgment patently one under the age of twenty-one years as the agents considered, at first glance, that the minor was such.

The licensee has a prior record of suspension for three days effective February 24, 1970, for "hours" violation, by the municipal issuing authority.

It is accordingly recommended that the licensee be found guilty of the charge herein and its license be suspended for fifteen days (Re Urna, Bulletin 2042, Item 7), to which should be added five days by reason of the dissimilar offense occurring within the past five years, making a total suspension of twenty days.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 1st day of February 1973,

ORDERED that Plenary Retail Consumption License C-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Ano, Inc., t/a Vince & Fred's Tavern, for premises 587-589 Pine Street, Camden, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, February 15, 1973, and terminating at 2:00 a.m. Wednesday, March 7, 1973.

Robert E. Bower
Director

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against)
)
 The Back Street Lounge, Inc.) SUPPLEMENTAL
 t/a The Back Street Lounge)
 11 Lafayette Street) ORDER
 Newark, N.J.,)
 Holder of Plenary Retail Consumption License C-711, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
 -----)
 Herman Blank, Esq., Attorney for Licensee)

BY THE DIRECTOR:

On January 17, 1973, I entered Conclusions and Order in the above matter suspending the subject license for ninety days. However, the effective dates of the said suspension were deferred until further order because the subject license was already suspended by my orders dated December 12, 1972 (Re The Back Street Lounge, Inc., Bulletin , Item), and by an ex parte order (Tax Rev. #1682), effective December 29, 1972 (Re The Back Street Lounge, Inc., Bulletin , Item), in both of which matters the said license was suspended for the balance of its term, namely, midnight June 30, 1973, with leave to file a verified petition for the lifting of the said suspension of license, whenever the unlawful situation has been corrected as set forth therein, but not sooner than thirty-two days after the commencement of the first said suspension. Re The Back Street Lounge, Inc., Bulletin , Item .

It now appears from the verified petition submitted by the licensee that the unlawful situations set forth in the Conclusions and Orders hereinabove referred to have been corrected. I shall, therefore, grant the petition requesting the termination of the suspension of the license with respect to the said orders, but shall now impose the suspension based upon the violation as set forth in my Conclusions and Order dated January 17, 1973 which said suspension had been deferred.

Accordingly, it is, on this 16th day of February 1973,

ORDERED that the suspension heretofore imposed with respect to the violations set forth in my Conclusions and Order dated December 12, 1972 (S-9340), and my ex parte Order (Tax Rev. #1682), be and the same are hereby terminated; and it is further

ORDERED that with respect to the violation set forth in my order dated January 17, 1973 (S-9195), Plenary Retail Consumption License C-711 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Back Street Lounge, Inc., t/a The Back Street Lounge for premises 11 Lafayette Street, Newark, be and the same is hereby suspended for ninety (90) days, commencing 2:00 a.m. Thursday, February 22, 1973 and terminating 2:00 a.m. Wednesday, May 23, 1973.

ROBERT E. BOWER
 DIRECTOR

6. APPELLATE DECISIONS - L & B Marlatt, Inc. v. BOROUGH OF RIVERDALE - SUPPLEMENTAL ORDER.

L & B Marlatt, Inc., t/a)
 B-J's Pub,)
 Appellant,)
 v.)
 Borough Council of the)
 Borough of Riverdale,)
 Respondent.)

SUPPLEMENTAL ORDER

 Isenberg, Isenberg & Reiss, Esqs., by Lawrence T. Isenberg, Esq.,
 Attorneys for Appellant
 Slingland, Bernstein & van Hartogh, Esqs., by George W. Slingland,
 Esq., Attorneys for Respondent

BY THE DIRECTOR:

On January 26, 1973, Conclusions and Order were entered staying the imposition of a suspension of appellant's license for forty days until further order herein pending receipt of application by appellant for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. Re L & B Marlatt, Inc., v. Riverdale, Bulletin 2091, Item 2 .

The said application having been filed, and favorably considered, I have determined to accept an offer in compromise by the licensee to pay a \$1,600.00 fine in lieu of suspension.

Accordingly, it is, on this 14th day of February 1973,

ORDERED that the payment of a fine of \$1,600.00 by the appellant is hereby accepted in lieu of a suspension of forty days.

Robert E. Bower
 Robert E. Bower
 Director