

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

February 27, 1969

BULLETIN 1838

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1838

February 27, 1969

1. DISCIPLINARY PROCEEDINGS - POSSESSION AND SALE OF NARCOTICS -
PRIOR DISSIMILAR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

FRANCES RICHARDS)

t/a The Boom Boom Room)

254 Waite Street)

Paterson, New Jersey)

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption)

License C-86, issued by the Board)

of Alcoholic Beverage Control for the)

City of Paterson.)

-----)

Saltzman and Swartz, Esqs., by Robert P. Swartz, Esq., Attorneys)
for Licensee

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic)
Beverage Control

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 9, 12 and 20, 1967, you allowed, permitted and suffered in and upon your licensed premises unlawful possession of and unlawful activity pertaining to narcotic drugs, as defined by R.S. 24:18-2; in violation of Rule 4 of State Regulation No. 20.
- "2. On divers days during October, November and December 1967 and January and February 1968, you allowed, permitted and suffered immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on said occasions you, through persons employed on your licensed premises, made offers to and arrangements with customers and patrons to obtain and procure for and/or sell narcotic drugs to them, and in furtherance of such offers and arrangements sold a narcotic drug to a customer or patron on your licensed premises on said dates of October 9, 12 and 20, 1967; all such activity being in violation of Rule 5 of State Regulation No. 20."

The Division bottomed its case primarily upon the testimony of a State Police officer which was supplemented by the testimony of an ABC agent.

Frederick Cordes (a New Jersey State Police detective), who has participated in the investigation of thousands of narcotics cases, including several hundred cases involving the narcotic marijuana, during the past five years, testified as follows: Pursuant to a specific assignment to investigate the alleged sales of narcotics at the licensed premises he visited the premises on many occasions from October 1967 until February 1968. His first purchase

of marihuana was made on his visit to these premises on October 9, 1967, when his first contact was made with the bartender employed therein (identified as Michael Novick, also known as Michael Grisafe). On this occasion Grisafe was on the customers' side of the bar, and he asked him whether he had any "grass" for sale. The witness explained that marihuana is usually referred to as "grass". Grisafe asked him how many bags he wanted and, when he told him he wanted just one, he offered and sold him a bag of marihuana at the bar for \$5. Grisafe also informed him that the stuff that he sold him was "real dynamite stuff;" that he was growing it and that he was packaging it. At that time Grisafe informed him that he was employed at these premises as a bartender. The witness dated the bag and delivered it to the narcotics unit of the Paterson Police Department where it was initialed and dated. Cordes ultimately turned it over to the State Police laboratory for analysis which established that it was the narcotic marihuana.

The witness returned to the premises on October 12, 1967 at 1 a.m. and observed that Grisafe was engaged in his bartender duties. He purchased several drinks from him and again ordered and was sold another bag of marihuana for which he paid \$5. Grisafe told him that this package could be picked up underneath a sign on the outside of the premises and, accordingly, he went outside and obtained the bag of marihuana which he subsequently had initialed by detectives of the Paterson police force. He retained this bag and later transported it to the State Police laboratory for chemical analysis. This analysis established that this was the narcotic marihuana.

Returning to the premises on October 20, 1967, at about 11 p.m., the witness seated himself at the bar and noted that Grisafe was tending bar. He then engaged Grisafe in conversation and Grisafe asked him how many bags he wanted. He said he wanted two, paid Grisafe therefor, and was instructed to go into the barroom where he would find a bag of marihuana secreted underneath the sink in a hole in the wall. He proceeded to the barroom and found the bag, and at that time Grisafe entered the said barroom and handed him another bag. Further conversation elicited the fact that Grisafe had about a kilo of marihuana left and would sell it to him for a price. The witness then proceeded to the Paterson police headquarters where the bags were dated and initialed and ultimately turned over to the State Police laboratory for analysis.

This witness returned to the tavern on a number of occasions during October, November, December of 1967 and January and February of 1968. On all of these visits he saw Grisafe tending bar, and observed one Gene Catania (the manager of the premises). In fact, he says that he "can't remember that I ever walked in the tavern and did not see him [Catania]."

On his visit to these premises on February 3, 1968, Grisafe introduced the witness to one Russell Warmoults, a member of the band which was then performing for the patrons. After the said introduction Warmoults came over and seated himself at the bar next to this witness. Warmoults told him that he was in a position to sell him marihuana mixed with opium; that he had some LSD and speed, and that he could sell him large quantities in weight; that he was giving Christine Gearson (a patron) a sample of the drugs for him, and that he could then make a determination of how much he wanted to purchase. Warmoults told him that he could not invite him to his home because there was much heat from

the authorities, but that he would see him at a later date. Warmoults then returned to the band and continued performing for the entertainment of the patrons.

At that time Cordes engaged Christine Gearson in conversation. He had met Gearson on October 12, 1967, at which time he had his first conversation with her with respect to the proposed purchase of marihuana. She told him that she had marihuana and he made a purchase of one bag of marihuana from her, for which he paid her \$5. This bag was also ultimately submitted to the State Police laboratory in Trenton. On his visit to these premises on October 18, 1967, he again spoke to Christine Gearson who informed him that she had Vietnam grass in her pocketbook that she would sell him for \$5. He informed her that he wanted to purchase two bags. She assured him that she would be able to sell him that provided he accompanied her to her motor vehicle on the outside of the premises. The witness explained that he discussed this woman in the presence of the bartender on a number of occasions, and Grisafe confided that this woman was a girl friend of one William McCarthy and that most of the marihuana that the bartender and this woman had was probably obtained from McCarthy.

From the time that Warmoults assured him that he could do business with this woman in October 1967, he had contact with her on a number of occasions both prior to and subsequent to February 3, 1968. On April 3, 1968 Grisafe was arrested charged with the sale of marihuana, and this witness had a conversation with him in the presence of ABC Agent R. Grisafe admitted that he had sold marihuana to him in these premises; that he was employed as a bartender for "quite a period of time" and that he knew that this woman was engaged in the sale of narcotics. On cross examination the witness acknowledged that he did not see Christine Gearson on the premises after November 18 because she was barred from the premises by the licensee after that date.

ABC Agent R testified that he accompanied State Police and several members of the Paterson Police Department on April 3, 1968, when they arrested Grisafe. In a conversation in his presence Grisafe admitted that he had made three sales to Detective Cordes during October 1967, and further admitted that he had been employed as a bartender for approximately one and one-half years at these premises.

John P. Brady, a State chemist and toxicologist with an impressive background of experience in the examination and analysis of marihuana and narcotic drugs, identified the contents of the envelopes as the narcotic drug marihuana, and the same were admitted into evidence.

Eugene Catania, testifying on behalf of the licensee, gave the following account: He is manager of the licensed premises and has been associated with the licensee since June 1962. He was not aware of any of the activities of Grisafe as they related to the alleged sale of narcotics, and insisted that the first time he became aware of such activities was when he was questioned by the police on February 3, 1968, after McCarthy was murdered in the rear yard of these premises. In so far as Grisafe is concerned, he said that Grisafe was merely a part-time employee who was usually employed on week-ends and occasionally during the week. He also denied any knowledge of the activities of Christine or of Russel Warmoults and asserted that none of their activities had ever been brought to his attention. On cross examination he admitted that Grisafe had been working on and off at these premises for the past six years but that he never worked on a steady

basis. Grisafe lived in a room above the premises. Grisafe was discharged from his employment as soon as he was arrested on these charges. He was asked whether he had any employment records which would reflect the extent of Grisafe's employment and he stated that he did not have them with him at this hearing. He was then asked whether he was familiar with the term "pills", which he staunchly denied. He further denied having any additional heated conversation or "verbal bombastic fight" with Grisafe relating to "pills" allegedly lost by Grisafe which belonged to Catania.

Frances Richards (the licensee) testified that she was employed as a waitress at other premises but would be in attendance at the licensed premises every night. She was unaware of any narcotic activity on these premises until February 3, 1968, when "Tiny" McCarthy was murdered. However, she admitted that in November 1967 Lieutenant Ignofo, who was head of the narcotics squad of the Paterson Police Department, informed her that Christine was allegedly selling narcotics. When she became aware of that fact, she barred Christine from the tavern.

Frederick Cordes, called in rebuttal, related an incident in the latter part of October 1967 in the licensed premises when Catania called Grisafe from behind the bar and told him they wanted to talk to him. They went into the hallway and there was a loud and heated conversation. When Grisafe returned to the bar, he confided to this witness that Catania was "yelling at him because he had dropped a bunch of pills up on the stairs." From this witness' experience, the word "pills" has the connotation as being amphetamines or barbiturates -- one is a stimulant and the other is a depressant -- which can only be dispensed by prescription. The witness added that he has seen pills of this kind in this tavern on numerous occasions.

In adjudicating this matter I am guided by the long-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. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In assessing the testimony given herein I have had an opportunity to observe the demeanor of the witnesses as they testified. Testimony to be believed must not only proceed from the mouths of credible witnesses 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 (1945). 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.

From my evaluation of the testimony herein I am persuaded that Detective Cordes gave a forthright and accurate recital of the facts in support of these charges. It is clear that he pursued this investigation upon a specific assignment, and there is no suggestion in the record that he had any preconceived prejudice against the licensee. According to his testimony, the sales of these narcotic drugs were made by employees and Christine, openly and notoriously. ABC Agent R corroborated the testimony with respect to the confrontation with the bartender at the time of his arrest. The bartender, as noted, freely admitted that sales were made.

On the other hand, the testimony of Catania (manager of these premises) is not very impressive and is, indeed, incredible. Although Cordes states emphatically that Catania was always present in the premises on his numerous visits thereto, Catania simply did not see or was not aware of this activity. It is equally incredulous to believe that the licensee did not know of such activity although she was present every night. What is particularly significant is the fact that, although she was informed by the Paterson police that Christine was engaged in selling narcotics and, indeed, the licensee thereupon barred Christine from the premises, she never discussed with the bartender the matter of such alleged illegal activities although it would have been logical and realistic for her to do so. Furthermore, the bartender was not called as a witness to testify although Catania admits that, as recently as the morning of the hearing herein, he saw Grisafe at a diner in the vicinity of these premises. There is no doubt in my mind that this bartender was regularly employed at these premises, as was the entertainer who was also engaged in the sale and actually sold narcotic drugs to Cordes.

Rule 33 of State Regulation No. 20 provides that, in disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings. Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control, supra. In fact it has been held that, even where an agent engages in proscribed activity against the express instructions of his employer, the licensee may be guilty of such violation. See Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); Benedetti v. Trenton et al., 35 N.J. Super. 30 (App. Div. 1955). The licensee is, therefore, fully responsible for the activities of her employees during their employment on the licensed premises. Kravis v. Hock, 137 N.J.L. 252; In re Schneider, 12 N.J. Super. 449.

Although I am persuaded that Catania was well aware of the activities on these premises, it is nevertheless no excuse that he failed to observe the activities therein. It has been consistently held that the licensee and her 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 Schuler, Bulletin 1787, Item 1; Re Ehrlich, Bulletin 1441, Item 5.

After carefully considering the testimony with respect to these charges, the conclusion is inescapable that these charges have been established by a fair preponderance of the believable evidence, indeed by substantial evidence, and I recommend that the licensee be found guilty of both charges.

Licensee had a prior adjudicated record. When this license was held by Frances Richards in partnership with Margaret Prumatico, such license was suspended by the municipal issuing authority for fifteen days effective June 4, 1962, for (a) failure to close its premises, (b) for permitting a brawl on the licensed premises, and (c) for hindering investigation. Again, when this license was held by this licensee individually, the license was suspended by the municipal issuing authority for fifteen days effective July 8, 1963, for bookmaking.

A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). And, as Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App. Div. 1953), said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

This Division has consistently taken a very dim view of licensed premises where narcotics are possessed or peddled, particularly where such activities are carried on and arrangements to procure the said narcotic drugs are made by the agents and employees of the licensee. Such activity cannot and must not be tolerated in this State. These premises were clearly conducted in a manner as to constitute a nuisance.

In view of the serious social consequences resulting from the commercialized traffic in narcotics, the nature of the charges being considered, as well as the prior record of suspensions for dissimilar serious violations, the only proper penalty is outright revocation of the license, which I accordingly recommend. Re Smithpaul Corporation, Bulletin 1777, Item 1; Re Gnewcenski, Bulletin 1722, Item 1.

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 exhibits, the written memorandum in summation submitted by the attorney for the licensee, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of January 1969,

ORDERED that Plenary Retail Consumption License C-86, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Frances Richards, t/a The Boom Boom Room, for premises 254 Waite Street, Paterson, be and the same is hereby revoked, effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SOLICITATION FOR PROSTITUTION -
 LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary
 Proceedings against

TOTEM POLE ENTERPRISES, INC.
 t/a Totem Pole
 161 Paterson Street
 Paterson, New Jersey

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption
 License C-142 issued by the Board
 of Alcoholic Beverage Control for the
 City of Paterson

 Diamond & Diamond, Esqs., by Lawrence Diamond, Esq.,
 Attorneys for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of
 Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Wednesday night August 21, 1968, 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 and/or acts of illicit perverted sexual relations; in violation of Rule 5 of State Regulation No. 20."

Two ABC agents participated in the investigation of alleged solicitation for prostitution at the licensed premises pursuant to a specific assignment. Agent G gave the following account: In the company of Agent S, he visited the licensed premises on three occasions. On August 21, at about 9:20 p.m., the agents entered the tavern, seated themselves at the bar and were served by a bartender, later identified as Frank Ferriolo, 99 per cent stockholder and president of the corporate licensee.

The agents asked Ferriolo, "Where are all the broads?"; he replied, "There were a couple of girls in here a few minutes ago, a while ago, but there was no one around so they left, but they will be back." The agents confided to Ferriolo that they were interested in having perverted sexual relations and, in the course of the conversation, Ferriolo explained that "A couple of weeks ago there was broads all over the street. They would pick up the guys before they could come in the place. I don't mind if they pick up guys but if they bring them in for a drink this is good for business. I make some money."

At about 9:30 p.m., two females entered the premises, one of whom left shortly thereafter and the other, a black female, remained and seated herself at the bar. After Ferriolo served her a nip of beer, he nodded to the agents knowingly and shook his head up and down, gesturing toward this female. This female (known as Ann) shouted "Hi, honey!" to the agents and moved from

her position at the bar to a seat between the two agents. Ferriolo served Ann a drink of whiskey which was paid for by the agents and they immediately engaged her in conversation with respect to perverted sexual intercourse. No point would be served by repeating the vulgar language used, except to note that during the conversation relating to arrangements for such relations, the bartender was standing directly in front of the agents and Ann. She set the price at \$10 for each agent and \$5 for the room. During the conversation, she performed bumps and grinds while seated on the bar stool, touched her private parts and those of the agents, while the bartender smiled in appreciation.

When the agents asked the bartender whether he wanted to join them as they were taking Ann to the Midtown Hotel for perverted sexual intercourse, Ferriolo replied, "Why don't you wait for the two white broads that were here? They will be back." The agents commented that color made no difference to them and the bartender "laughed at us and he agreed."

Shortly after this conversation took place, Ferriolo was called away from his post by a telephone call and was relieved by another bartender, later identified as Tom Rascio. Rascio served them another round of drinks and they informed him that they were planning to take Ann to a hotel for the purpose of having perverted sexual intercourse. Rascio refused their invitation to join them, stating "No, not me. Maybe Frank will want to go." The agents then left the premises with Ann, went to the hotel where Agent G and Ann registered and entered a room. By pre-arrangement, Agent S and a local police officer were admitted to the room, noted that Ann was completely undressed, and found a "marked" ten-dollar bill (produced in evidence) in her possession. Ann was thereupon arrested, taken to police headquarters, and the agents returned with the police officer to the premises, where Ferriolo had resumed tending bar. Informed of the charge that solicitation for prostitution was allowed on the premises, Ferriolo replied, "I didn't get the girl for you"; however, "I knew what you were going to do."

On cross examination, Agent G stated that Ferriolo remained in the premises for at least ten minutes after the conversation hereinabove delineated, and left after receiving a telephone call.

Agent S substantially corroborated the testimony of the prior witness with respect to the activities at the premises. At the time of the confrontation, he agreed with Ferriolo that the latter did not procure the girl for the agents but "you knew she picked us up in the bar, and you knew where she was going to take us. You knew what she was going to charge us, and you knew what she was going to do." Ferriolo "agreed but the only thing he denied was he did procure the female."

Frank Ferriolo, testifying on behalf of the licensee, categorically denied the thrust of the agents' testimony. He even denied seeing the agents at these premises on their prior visits. He insisted that he did not have any discussion with them with respect to any women, nor did he hear any conversation relating to an arrangement for illicit sexual relations. He stated that within a few minutes after Ann joined the agents, he left the tavern to go to the basement because he was having trouble with the soda fountain; and he asked Rascio to take charge during his absence.

On cross examination, Ferriolo insisted that he did not

know that Ann was a prostitute; that he was not in their immediate vicinity when the agents were conversing with her. He did admit that they said something about having perverted sexual intercourse but "I ignored it. I walked away." He asserted that the agents called Ann over to them but, a few minutes after serving her a drink, he left the premises.

When the agents returned and charged him with having told him they were taking Ann to the Midtown Hotel, he said, "You are a liar. How could you tell me if I wasn't here when you left?" After he called the agent a liar, nothing else was said.

Thomas Rascio testified that he is a long time friend of Ferriolo and on the night of August 21, Ferriolo asked him to tend bar since he had to go to the basement. Ferriolo was in the basement for fifteen minutes, during which time Rascio was in charge of the premises. Rascio served a drink to Ann which was ordered and paid for by Agent S. He was asked by the agents to "join the party, join the fun." He replied, "I'm not interested" and there was no further conversation. Rascio did not recall any mention by the agents of a hotel or their going to any other place.

On cross examination he was asked, "Did they say to you, 'We are going with this broad to the Midtown Hotel for a blow job for ten dollars and five dollars for the room. Do you want to go with us when Frank comes back?'" His answer: "They said something to that effect. 'Look, I'm not interested'; that is all." He added that this was the first time he had tended bar at these premises and did so only at Ferriolo's request because he was having difficulty with the soda fountain machine in the basement.

Jo Ann --- (known as Ann) testified that she engages in prostitution and was in the premises for the purpose of soliciting for prostitution. She stated that the agents called her over and immediately engaged in conversation relating to perverted sexual intercourse. During this conversation, Rascio was tending bar as Ferriolo had left the premises.

On cross examination, she admitted having visited this tavern on four or five prior occasions and, on this occasion, entered the premises alone. After she joined the agents, Ferriolo remained behind the bar for about five or ten minutes before leaving. During the time Ferriolo was behind the bar, she discussed with the agents arrangements for engaging in perverted sexual intercourse.

In rebuttal, Agent S denied calling Ann over to their position and insisted that Ann made the first approach to them. He also denied hearing Ferriolo call him a liar at the time of confrontation.

I have set forth in considerable detail a summary of the testimony adduced herein in order to obtain a proper perspective of the incident on the date in question. We are dealing with a purely disciplinary measure which is civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); The Panda v. Driscoll, 135 N.J.L. 164 (E. & A. 1946). Thus the Division is required to establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). The violation

charged herein is embraced within Rule 5 of State Regulation No. 20, which provides as follows:

"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 any brawl, act of violence, disturbance 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."

The specific charge herein alleges that the licensee had violated this rule by allowing, permitting and suffering solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse and/or acts of perverted sexual relations. Our courts have consistently maintained that "the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is in itself an immoral activity comprehended by the scope of the regulatory rule." In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). The court stated in Schneider, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity..."

See In re Olympic, Inc., 49 N.J. Super. 299.

In my assessment of the record herein, I have had an opportunity to observe the demeanor of the witnesses as they testified. I am guided by the basic principle that no testimony need be believed but, rather, the hearer must credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899). 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.

Applying the crucible of these principles, I am persuaded that the more probable version and the truth lie in the testimony presented by the Division agents. They undertook the investigation pursuant to a specific assignment; and there is no reason to believe, nor is there any suggestion in the record, that the testimony of the agents manifested a conspiracy or prejudice against the licensee. Their version of what occurred was credible and factual and remained unshaken under vigorous and extensive cross examination by the licensee's attorney.

On the other hand, the testimony of Ferriolo taxes credulity to the utmost. He admitted that the agents mentioned to him their intention of engaging in perverted sexual intercourse with a female. Common experience does violence to his allegation that he withdrew from any further conversation and just walked away when considered within the context of the admitted intention, expressed to Ferriolo by the agents, that they were interested in engaging in illicit relations.

A licensee is the master of his establishment and it is his duty and obligation to take affirmative action to discourage such activity. Not only did Ferriolo not do so, but he permitted the activity to take place without bothering to ascertain from the female whether, in fact, such activity was being pursued. Just ignoring it and walking away was clearly an abrogation of his responsibilities under these circumstances.

I also find the credibility of Ferriolo challenged by his version of what transpired at the time of confrontation with the ABC agents. He stated that when the agents returned in the company of a local police officer, he was questioned only with respect to the hotel. After he accused the agent of lying, there was no further conversation. He specifically denied that the agents told him that arrangements with Ann were made in his presence. The obvious conversation at the time of confrontation would be to make him aware of the alleged violation since that was the principal reason for their return to the premises. I asked Ferriolo the following:

"Q Did he tell you you had committed a violation of the alcoholic beverage law?

A No.

Q He never said anything like that?

A No. The only thing, I said, 'What are you going to do? Take me downtown?' He said, 'Yes.' I said, 'They are going to book me?' He said, 'I don't know.' That is all was said.

Q What did you think they were going to book you for?

A I didn't know because when I seen the two police officers and the detective I figured something is wrong some place.

Q What did you figure was wrong?

A I didn't know. I had no idea.

Q Didn't you ask him?

A No, I didn't.

Q Why didn't you ask him?

A Because he told me they was going to book me downtown. That was it. I didn't say anything on the law.

Q Didn't you want to hear why?

A Because they were going to take me downtown anyway. When I go downtown I will find out what it is all about.

Q You didn't want to find out before?

A What is the use? They told me to close the place. No use arguing, never. I never argue with the law."

These answers are patently disingenuous, even cynical, and do not generate a sense of veracity in this witness.

The testimony of the admitted prostitute supported in one important particular the account given by the agents. She stated that when she joined the agents, they immediately engaged in a conversation relating to arrangements for the perverted sexual intercourse. During this time and for five or ten minutes thereafter, Ferriolo was directly in front of them and was in a position to overhear the conversation.

So far as Rascio was concerned, he was employed as a bartender and admitted being aware of the conversation between the agents and Ann, although he disdained any participation in such activity. Thus, the licensee is inculpated as well, by this employee's actions.

It has long been held that the solicitation for immoral purposes and the making of arrangements for sexual intercourse (in this case, perverted sexual intercourse) cannot and will not be tolerated on licensed premises. The public is entitled to protection from these 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). Ferriolo insisted that he did not make any arrangements for such illicit relations; nor, indeed, has he been charged with such activity. Where it has been established that a licensee or its employees actually procured a female or made offers to male patrons to procure a female to engage in acts of illicit sexual intercourse with them and made arrangements therefor, this Division has unhesitatingly revoked the license. See Re Tiny's Bar & Grill, Inc., Bulletin 1718, Item 1; Re Soto Pruna, Bulletin 1713, Item 1. As mentioned hereinabove, this dimension is not embodied in the charge against this licensee. But it is manifest, from the evidence presented, that the licensee's agents did permit and suffer the solicitation for prostitution to take place at the licensed premises.

From my examination and evaluation of the totality of the evidence, I reach the irresistible conclusion that this Division has established the truth of the charge by an overwhelming preponderance of the credible evidence, and I recommend a finding of guilt thereof.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for ninety days. Re Fap, Inc., Bulletin 1822, Item 4; Re Kirby, Bulletin 1792, Item 1.

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 argument of counsel for the licensee in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 7th day of January, 1969,

ORDERED that Plenary Retail Consumption License C-142, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Totem Pole Enterprises, Inc., t/a Totem Pole, for premises 161 Paterson Street, Paterson, be and the same is hereby suspended for ninety (90) days, commencing at 3:00 a.m. Tuesday, January 14, 1969, and terminating at 3:00 a.m. Monday, April 14, 1969.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
BARTHOLOMEW HENNESSY)	
3200 Kennedy Boulevard)	CONCLUSIONS
Jersey City, New Jersey)	and
)	ORDER
Holder of Plenary Retail Consumption License C-486 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)	
-----)	
Licensee, Pro se		
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control		

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 9, 1968, he sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Alois, Bulletin 1825, Item 11.

Accordingly, it is, on this 7th day of January, 1969,

ORDERED that Plenary Retail Consumption License C-486, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Bartholomew Hennessy for premises 3200 Kennedy Boulevard, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, January 14, 1969, and terminating at 2:00 a.m. Friday, January 24, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PATRICK SABELLA, MICHAEL SABELLA
& HENRY BATTAFARANO
t/a O'Kay Delicatessen
160 A Jackson Avenue
Jersey City, New Jersey

CONCLUSIONS
and
ORDER

Holders of Plenary Retail Distribution
License D-40 issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Jersey City

Licensees, Pro se

Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on Sunday, November 24, 1968, they sold a half-pint bottle of liqueur for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Alois, Bulletin 1825, Item 11.

Accordingly, it is, on this 3d day of January, 1969,

ORDERED that Plenary Retail Distribution License D-40, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Patrick Sabella, Michael Sabella and Henry Battafarano, t/a O'Kay Delicatessen, for premises 160A Jackson Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. Tuesday, January 7, 1969, and terminating at 9:00 a.m. Friday, January 17, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5.

ACTIVITY REPORT FOR JANUARY 1969

ARRESTS:			
Total number of persons arrested	- - - - -		13
Licenses and employees	- - - - - 9		
Bootleggers	- - - - - 4		
SEIZURES:			
Still - 50 gallons or under	- - - - -		1
Alcohol - gallons	- - - - -		.10
Mash - gallons	- - - - -		455
Distilled alcoholic beverages - gallons	- - - - -		1.07
Wine - gallons	- - - - -		.24
Brewed malt alcoholic beverages - gallons	- - - - -		2.71
RETAIL LICENSEES:			
Premises inspected	- - - - -		853
Premises where alcoholic beverages were gauged	- - - - -		683
Bottles gauged	- - - - -		11,046
Premises where violations were found	- - - - -		205
Violations found	- - - - -		307
No Form E-141-A on premises	- - - - - 98	No disposal permit	- - - - - 7
Unqualified employees	- - - - - 70	Other mercantile business	- - - - - 1
Form E-141-A incomplete	- - - - - 36	Other violations	- - - - - 52
Application copy not available	- - - - - 43		
STATE LICENSEES:			
Premises inspected	- - - - -		24
Licenses applications investigated	- - - - -		8
COMPLAINTS:			
Complaints assigned for investigation	- - - - -		474
Investigations completed	- - - - -		467
Investigations pending	- - - - -		209
LABORATORY:			
Analyses made	- - - - -		160
Refills from licensed premises - bottles	- - - - -		128
Bottles from unlicensed premises	- - - - -		6
IDENTIFICATION:			
Criminal fingerprint identifications made	- - - - -		5
Persons fingerprinted for non-criminal purposes	- - - - -		340
Identification contacts made with other enforcement agencies	- - - - -		277
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	- - - - -		7
Violations involved	- - - - -		8
Sale during prohibited hours	- - - - - 4	Failure to close premises during	- - - - -
Sale to minors	- - - - - 3	prohibited hours	- - - - - 1
Cases instituted at Division	- - - - -		42*
Violations involved	- - - - -		50
Beverage Tax Law non-compliance	- - - - - 10	Sale during prohibited hours	- - - - - 1
Sale to minors	- - - - - 7	Sale to non-members	- - - - - 1
Permitting lottery acty. on prem.	- - - - - 5	Serving bevs. other than ordered	- - - - - 1
Possessing liquor not truly labeled	- - - - - 5	Hindering investigation	- - - - - 1
Permitting immoral activity on prem.	- - - - - 4	Permitting minor to sell alc. bevs.	- - - - - 1
Sale below filed price	- - - - - 2	Employing alien w/o permit	- - - - - 1
Possessing indecent matter	- - - - - 2	Fraud in license application	- - - - - 1
Permitting bookmaking on premises	- - - - - 1	Delivery w/o invoice	- - - - - 1
Permitting misc. gambling on prem.	- - - - - 1	Delivery w/o transit insignia	- - - - - 1
Purchase from improper source	- - - - - 1	Possession of contraceptives	- - - - - 1
Unauthorized transportation	- - - - - 1	Sale to intoxicated person	- - - - - 1
Cases brought by municipalities on own initiative and reported to Division	- - - - -		11
Violations involved	- - - - -		13
Sale to minors	- - - - - 4	Employing female bartender (local reg.)	- - - - - 1
Sale during prohibited hours	- - - - - 3	Conducting business as a nuisance	- - - - - 1
Permitting brawls on premises	- - - - - 3	Permitting disorderly person on prem.	- - - - - 1
HEARINGS HELD AT DIVISION:			
Total number of hearings held	- - - - -		46
Appeals	- - - - - 7	Seizures	- - - - - 3
Disciplinary proceedings	- - - - - 28	Tax revocations	- - - - - 4
Eligibility	- - - - - 4		
STATE LICENSES AND PERMITS:			
Total number issued	- - - - -		1,116
Solicitors' permits	- - - - - 36	Wine permits	- - - - - 5
Employment permits	- - - - - 334	Miscellaneous permits	- - - - - 193
Disposal permits	- - - - - 60	Transit insignia	- - - - - 121
Social affair permits	- - - - - 334	Transit certificates	- - - - - 33
OFFICE OF AMUSEMENT GAMES CONTROL:			
Licenses issued	- - - - - 39	Enforcement files established	- - - - - 6

Dated: February 6, 1969

JOSEPH M. KEEGAN
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

*Includes one cancellation proceeding - license improvidently issued by reason of licensee's conviction of crime involving moral turpitude.

6. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

CHANCELLOR ASSOCIATION, INC.)
477 Union Avenue)
Irvington, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Club License CB-1,)
issued by the Municipal Council)
of the Town of Irvington.)

-----)
Licensee, by James Sloane, 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 November 22, 1968 it permitted gambling, viz., wagering on a dice game, on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Homestead Inn, Inc., Bulletin 1699, Item 1.

Accordingly, it is, on this 14th day of January 1969,

ORDERED that Club License CB-1, issued by the Municipal Council of the Town of Irvington to Chancellor Association, Inc., for premises 477 Union Avenue, Irvington, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, January 21, 1969, and terminating at 2 a.m. Friday, January 31, 1969.

JOSEPH M. KEEGAN
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Bayside Beer & Soda Distributors, Inc.
28½ Green Island Road

Green Island, Dover Township, Toms River, New Jersey

Application filed February 17, 1969 for place-to-place transfer of State Beverage Distributor's License SBD-66 from Rear, Dover Road and South Main Street, South Toms River, New Jersey

Affiliated Distillers Brands Corp.

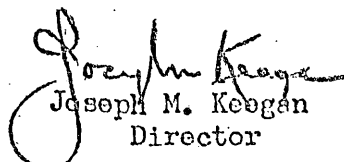
1290 Avenue of the Americas, New York, New York

Application filed February 21, 1969 for place-to-place transfer of the licensed salesroom, operated under Plenary Wholesale License W-41, from Rooms 707-9, 744 Broad Street, Newark, New Jersey, to 38-40 Sixth Street, Harrison, New Jersey, and to include 38-40 Sixth Street, Harrison, New Jersey as the licensed premises.

Krueger Distributing Company

1 Orchard Street, Dover, New Jersey

Application filed February 25, 1969 for place-to-place transfer of the licensed premises of State Beverage Distributor's License SBD-29 from 77 North Morris Street, Dover, New Jersey. Licensed warehouse and salesroom to remain at 77 North Morris St., Dover, N.J.


Joseph M. Keegan
Director