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

BULLETIN 2147 May 22, 1974

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ITEM

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

BULLETIN 2147 May 22, 1974

1. COURT DECISIONS - WENK, ET ALS. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL, RUTHERFORD AND B.P.O.E. - APPEAL DISMISSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2761-72

ELIZABETH WENK, EUGENE WENK, JOSEPH FLAUGHER, RITA FLAUGHER, DONALD MERINO, ROSEMARIE MARINO AND GRAVES B. WALKER,

Objectors-Appellants,

vs.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY, MAYOR AND COUNCIL OF THE BOROUGH OF RUTHERFORD, and RUTHERFORD LODGE NO. 547 OF THE BENEVOLENT AND PRTECTIVE ORDER OF ELKS OF THE U.S.A.,

Respondents-Appellees.

Argued March 11, 1974 - Decided April 5, 1974.

Before Judges Conford, Handler and Meanor.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Michael R. Cole and Mr. John J. Degnan argued the cause for objectors-appellants (Messrs. Clapp & Eisenberg, attorneys).

Mr. Charles L. Bertini argued the cause for Rutherford Lodge Number 547 of the Benevolent and Protective Order of Elks.

Mr. M. Harry Muser argued the cause for Mayor and Council of Borough of Rutherford.

PER CURIAM.

(Appeal from the Director's decision in Re: Wenk et als v. Rutherford and Elks Lodge, Bulletin 2102, Item 1. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. NOTICE TO WHOLESALE LICENSEES - SPECIAL PERMITS AVAILABLE TO BREWERS AND DISTRIBUTORS OF MALT BEVERAGES TO USE EQUIPMENT FOR SOCIAL AFFAIR PERMITTEES - PRIOR RULE RELAXED.

TO: WHOLESALE LICENSEES AUTHORIZED TO SELL MALT ALCOHOLIC BEVERAGES

In July 1939 the late Commissioner D. Frederick Burnett restated Regulations No. 21 of the pamphlet rules, in effect at that time, forbidding wholesalers from furnishing equipment to retail licensees. (For completeness it is noted that permittees are considered retail licensees for the duration of the permit.) He specifically pointed out that there is no provision in the rules for permitting loans of beer coolers. Additionally, he held that the loan of coolers by retail licensees to consumers was likewise prohibited by the rule. (Bulletin 331, Item 4.)

In April 1949 the late Director Erwin B. Hock ruled that the loan of a beer cooler to a consumer, by a retail licensee would not be considered violative of Rule 20 of Regulation No. 20, thus superseding a part of Commissioner Burnett's ruling. However, Director Hock did not authorize licensees to furnish free services of any bartender or other person to dispense the beer. (Bulletin 839, Item 12.)

The beer cooler referred to by both Commissioner Burnett and Director Hock was the standard box containing lead coils covered with ice, through which beer was forced by air into the barrel by a hand pump. When used at a picnic or some similar outing by inexperienced bartenders this system was found to be unsatisfactory since it required an almost continuous drawing of beer. In most instances, the drawn beer was warm and flat. As a result, most beer sold for use at a picnic, etc., was bottled beer which could be iced in tubs.

In later years, the beverage industry introduced more sophisticated equipment such as $C.O._2$ gas tanks, pressurized beer kegs, cold plates, easy taps, etc. which, when operated by persons experienced in handling the systems, was an improvement over the traditional primitive method of drawing draft beer. This change in equipment also brought about a change in orders for beer at picnics, outings and gatherings held by special permittees. Orders for bottled beer were replaced by orders for draft beer.

However, there was still a problem in operating the systems. Pressurized beer kegs and the use of $C.O._2$ gas, in the hands of an inexperienced operator, was potentially a dangerous instrumentality. Incorrect operation could result in exploded gas tanks or kegs. If the inexperienced operator withheld the required pressure, the beer product was tasteless and flat. Thus, the industry was still faced with the problem of devising a method for the proper servicing and dispensing of beer which would eliminate these hazards and retain the desired quality and taste. There appeared to be only one solution. Portable safe equipment for use at affairs conducted by special permittees and operated only by the licensee's experienced employee.

Consequently brewers and distributors rebuilt some of their transit equipment and installed the new systems, thereby hoping to use such equipment at picnics, outings etc. However, they were prohibited from using the equipment by reason of the Alcoholic Beverage Law and the Rules and Regulations as hereinabove detailed by rulings of prior directors of this Division.

I have met with representatives of the industry and members of my staff in an attempt to resolve the problem, because the potential of serious accident to any member of the public concerned me deeply. Accordingly, I have decided to and do now supersede Commissioner Burnett's and Director Hock's rulings, and shall henceforth, by authority of N.J.S.A. 33:1-74, issue special permits at a fee of $10.00 to brewers and distributors of malt beverages, to permit them to use their own equipment and their employees to dispense malt alcoholic beverages only, at affairs conducted by social affair permittees.

The permit allowing such service by brewers or distributors may be obtained prior to the delivery and service of the malt beverage, or within 48 hours subsequent to such service. It will permit the use of refrigerated storage and/or dispensing trucks, coolers, tubs, rods and taps, and ice, depending upon the requirement of the particular affair. If the service of the distributor's employee should be required, a charge for such service may properly be made, in addition to any charge the distributor or brewer desires to make for the equipment. The charge for the employee shall be no greater than the actual salary paid the employee, and all charges must be shown on the invoice submitted to the special permittee.

However, it is specifically emphasized, that the exception reflected in my ruling has not changed the long standing Division rulings of my predecessors prohibiting the furnishing of coolers or similar equipment to the holders of plenary retail licenses.

JOSEPH H. LERNER
ACTING DIRECTOR

May 6, 1974

3. APPELLATE DECISIONS - BELLA'S TAVERN, INC. v. JERSEY CITY.

Bella's Tavern, Inc., t/a Bella's Tavern, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	)	On Appeal CONCLUSIONS and ORDER

James F. Ryan, Esq., Attorney for Appellant
Raymond A. Hayser, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the determination and action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City (Board) which, by resolution dated December 26, 1973 suspended appellant's plenary retail consumption license for premises 199 Washington Street, a/k/a 201 Washington Street, Jersey City, for twenty days, effective January 14, 1974, after finding it guilty in disciplinary proceedings of a charge alleging that on Tuesday, February 20, 1973, it conducted its premises in such manner as to constitute a nuisance, "whereby an act of violence and brawl occurred", in violation of Rule 5 of State Regulation No. 20.

Appellant, in its petition of appeal, contends that the Board's action was erroneous because it was contrary to the weight of the evidence.

The Board's answer admits the jurisdictional allegations in the petition and denies the substantive contentions. In a separate defense, it defends that the testimony produced at the hearing was "overwhelming and conclusive in showing commission of violation of Rule 5 of State Regulation No. 20."

Upon the filing of the appeal, an order was entered by the Director on January 16, 1974 staying the Board's order of suspension pending the determination of this appeal.

Testifying on behalf of the Board, Felix M. Borowski, gave the following account: On February 19, 1973 he entered the subject tavern at about 10:45 p.m., accompanied by his friend, Frank Lishinski. He seated himself at the bar and remained at the bar until shortly after 1:00 a.m. (February 20) when he was stabbed. The stabbing incident came about as follows: When he returned from the mens room and resumed his seat, he observed a friend of his in an argument with a Puerto Rican whom he identified as Annibal Colon. Colon grabbed his friend, Jerry, by the hair, threw him to the ground and started kicking him.

> "I was overwhelmed by this barbaric act. So I watched and nobody tried to stop it. So I walked over and I said, 'Please don't fight.' That's all I said. Never argued. Then all of a sudden, Annibal Colon, my assailant, had a knife hidden in his hand and ran up to me and stabbed me. That's what happened."

He then went back to the bar because he didn't think that he had been seriously injured, but when he saw blood he asked the barmaid, identified as Loretta Cronin, for a towel which he held to his abdomen. He then left the tavern with his friend, Lishinski, at 1:20 a.m. and was driven by his friend to the Jersey City Medical Center, where he underwent an emergency operation. He remained in the hospital for ten days.

On cross examination he explained that there had been quarreling among the patrons for at least an hour prior to the time of the actual stabbing.

> "There was sporadic fighting all along, pushing and shoving, pushing and shoving, and I didn't want to get involved."

It seems that there was also fighting which included other patrons and several women, barmaids, who were in the tavern but not actually employed as barmaids at that time. Mrs. Cronin, the barmaid on duty, did on one occasion come from behind the bar to try to quiet them down, but was told by Joseph Shemonis, the porter, to go back behind the bar which she did.

Finally, Borowski insisted that he was perfectly sober; that he had been in this tavern on at least a dozen occasions prior to the incident herein; and that he had noticed Colon in this tavern as a patron on other occasions. He could give no reason why he was stabbed; it was his opinion that the knife held by Colon was meant to be used against Joseph Shemonis, but Colon was "...in such a rage that the rage got beyond his emotional control."

Joseph A. Shemonis testified that he was employed by the appellant on the date and time charged herein and he noted that Borowski entered the tavern at about 11 or 11:30 p.m. Shortly after

Borowski entered, there appeared to be a dispute between the barmaids who were seated in front of the bar and consuming alcoholic beverages. Mrs. Cronin came from behind the bar to calm them, but he advised her to get back behind the bar "...so she don't get implicated."

At that time Colon started to engage in an argument with him and shoved him, so he "shoved" him back. Colon took out a knife and says "I want a piece of you." He returned to his seat and a fight ensued, involving others and, in the general melee, Borowski was stabbed. When he saw that Borowski was bleeding profusely he told him to get to a hospital. Borowski left the premises at about 1:30 a.m. After that, this witness continued with his duties of cleaning up, and, in the meantime, two detectives arrived at the premises and informed him that Borowski had been seriously injured.

Somebody called Bella Kozakiewicz, the principal stockholder and officer of the corporate appellant, who arrived thereafter at the premises.

On cross examination, the witness stated that he did not see Mrs. Cronin go to the telephone which is located in the rear of the premises, although he wasn't sure whether or not she did, in fact, phone the police. He did not recall any uniformed police responding, but does recall that two detectives came and informed him that Borowski was on the "danger list". He explained that there had been loud arguments for some time prior to the stabbing incident, between a number of the patrons. When Mrs. Cronin came from behind the bar to try to quiet them, he advised her that it would be in her own best interest to return to behind the bar. He specifically saw Colon stab Borowski. He is no longer employed at these premises.

John Flesta, a local police officer, testified that he was on radio car patrol on the date charged herein, when he received a call from the dispatcher to respond to an alleged stabbing at these premises. He entered the premises at 1:55 a.m. and questioned Mrs. Cronin and a number of patrons. All denied that there was a stabbing or that anything unusual, in fact, had occurred. After questioning the barmaid and the patrons, he left the premises, reported back to the dispatcher, and was instructed to resume his auto patrol.

On cross examination, he asserted that his memory was refreshed from his examination of the police files, which included the radio car sheet that he filled out shortly after this incident, and the sheet prepared by the radio dispatcher at police headquarters.

On behalf of the appellant, Loretta Cronin gave her version of what occurred: She was employed as a barmaid at these premises on the date charged herein and started to work on the prior evening at 7:00 p.m. Several of the barmaids who were off duty were seated at the bar and engaged in heated arguments. She

went from behind the bar to try to stop them, and in the meantime, two patrons started to fight. She then went to the telephone to call Bella (the principal officer of the licensee corporation) and the police "...and before I knew it, a few of them were into it." She told the police there was trouble and they should respond. However, she did not tell them there was a stabbing because she did not know of the stabbing until she returned to the bar. However, the uniformed police officers did not respond, but two plainclothes detectives did enter the premises to investigate the stabbing incident. She denied ever seeing the uniformed police officer, who testified at this hearing, on the date in question.

She further testified that, when she completed the telephone call, she noticed that Borowski was holding his stomach. He told her that he was stabbed and requested a towel. She gave him a towel, he went back to his seat, finished his drink and then left the premises.

On cross examination, she admitted that, in her testimony before the Board, she stated that she had called the police at 12:30 a.m.; however, upon reflection, she now believes that it was much later than that. She informed the detectives that a person had been stabbed and that, while she was being questioned, Bella arrived. She left the premises at 2:00 a.m. and went home.

Bella Kozakiewicz testified that she is the principal officer of the corporate appellant, and she was at her home when she received a call from Mrs. Cronin telling her that there was trouble at the bar. After she received the telephone call, she immediately got dressed and arrived at the premises. She received the telephone call at 1:55 a.m. and stated it just took her a few minutes to get dressed and go to the tavern, which is located a few blocks from her home.

When she arrived at the tavern Shemonis was behind the bar performing his regular porter duties. She admitted that she was not present at the time of the alleged stabbing incident.

This matter involves a disciplinary action; such actions are civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported only by a preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Rule 5 of State Regulation No. 20 upon which this charge is grounded sets forth in pertinent part the following:

> "No licensee shall engage in or allow, permit or suffer in or upon the licensed premises... any brawl, act of violence, disturbance or unnecessary noise...."

The critical inquiry herein, is whether, in fact, a brawl or act of violence occurred in and upon the licensed premises. The determination of this issue developed by the testimony, presents a purely factual question. A brawl is defined as "a loud, angry and disorderly quarrel; a rough, noisy and often prolonged hand to hand fight" (Webster's Third New International Dictionary); a "clamorous or tumultuous quarrel in a public place" (Black's Law Dictionary 11 C.J.S. 767). From the testimony presented, there is not the slightest doubt nor is it disputed, that a brawl which culminated in an act of violence, namely, a stabbing, took place on the licensed premises.

At this de novo hearing, I was particularly impressed with the testimony of Borowski who stated, in substance, that there had been fighting, quarreling and loud disturbances for almost an hour before he was finally stabbed. Yet except for one attempt by the barmaid to contain the patrons, nothing else was done. He was the victim of a stabbing which caused very serious injuries to him and necessitated his hospitalization for ten days, when he sought to stop a fight that was then taking place. His testimony was substantially corroborated by a former employee of the appellant.

It appears quite logical to believe that the police responded to these premises after Borowski arrived at the hospital. This is made clear by the fact that Mrs. Cronin admitted that when she allegedly called the police she merely reported that there was a disturbance and she did not know of any stabbing; nevertheless, when the police arrived, they informed her that they responded because of an alleged stabbing that occurred on these premises. Thus, her testimony in this and several other respects lacks credibility.

In any event, I do not believe that she acted with the diligence that was required under these circumstances.

In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947), the court said that, within the meaning of the Alcoholic Beverage Law and regulations, the word "suffer" imposes disciplinary responsibility on a licensee, regardless of knowledge, where there is a "failure to prevent prohibited conduct by those occupying premises with his authority." Thus, the central and dispositive issue is whether the licensee or its employees could reasonably have taken steps to prevent the act of violence that took place on the licensed premises but failed to do so. See Bilowith v. Passaic, Bulletin 527, Item 3. While it is true that a licensee has been held not to be responsible for a "sudden flare-up" on his premises, where the licensee or its employees could not have reasonably been aware of the imminence, such is not the case here.

I am persuaded, as the Board was, that a disturbance took place over a substantial period of time and that the

appellant's employees did not act reasonably to prevent the improper use of its premises.

It is to the public's best interest that the licensee be held strictly accountable for keeping his patronage and premises under proper control. Seidel v. Upper Freehold Township, Bulletin 1246, Item 1; Re 451 Corp., Bulletin 1676, Item 5. See Jackson v. Newark, Bulletin 1600, Item 2; Re J & K Bar, Inc., Bulletin 2075, Item 4. From my consideration of the entire record, and assay of testimony of the witness whom I had the opportunity to hear and observe, I find, as a fact, that the appellant allowed and suffered a brawl to take place on its licensed premises. Thus this charge was established by a clear preponderance of the credible evidence.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and must establish that the action of the Board was clearly against the logic and effect of the presented facts. That burden was not met here. Hudson Bergen County Retail Liquor Stores Association v. Hoboken et al., 135 N.J.L. 501 (1947).

The Director should not reverse unless he finds as a fact that there was such an unwarranted finding of fact or mistake of law by the Board. Re Monteiro v. Newark, Bulletin 2073, Item 2; Schulman v. Newark, Bulletin 1620, Item 1; Lyons Farms Tavern v. Newark, 55 N.J. 292,303 (1956).

Accordingly, it is recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates of suspension which was stayed by the Director pending the entry of a further order herein.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions contained in the said Hearer's report, and adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of March 1974,

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

ORDERED that the Director's order entered herein on January 16, 1974, staying the Board's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-22, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Bella's Tavern, Inc., t/a Bella's Tavern for premises 201 Washington Street, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing 2:00 a.m. on Wednesday, April 10, 1974 and terminating 2:00 a.m. on Tuesday, April 30, 1974.

JOSEPH H. LERNER
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWDNESS ON LICENSED PREMISES - SOLICITATION FOR PROSTITUTION - PRIOR SIMILAR VIOLATION WITHIN 5 YEARS - PENALTY DOUBLED - LICENSE SUSPENDED FOR 288 DAYS.

In the Matter of Disciplinary Proceedings against

Boulevard Oasis
t/a Boulevard Oasis
1988-2004 Admiral Wilson Blvd.
Camden, N. J.,

Holder of Plenary Retail Consumption License C-161, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS and ORDER

Joseph Tomaselli, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to a charge alleging that on May 11 and May 16, 1973, it permitted the solicitation for prostitution in the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Testifying in behalf of the Division, Leonard W. Dreyer, a County Prosecutor's detective, gave the following account: Accompanied by Detective John M. Kerins, he visited the licensed premises on May 11, 1973, shortly after 9:00 p.m., pursuant to a specific assignment. The manager of the establishment, Michael Canzanese, was seated at the far end of a U-shaped bar which was attended by two barmaids.

The detectives seated themselves at the bar adjacent to a patron who was identified only as "Pat" Dreyer, spoke to Pat and indicated his interest in procuring the services of a prostitute. Pat advised him that girls were available but negotiations for such services could be made only through the manager Canzanese.

The detective was introduced to Canzanese by Pat. Upon repeating his request for female companionship, Canzanese replied "I sent them all home" but "there was a colored girl by the name of Tony in room 111 at the Four Winds Motel and that it would cost me $20." The detective had observed a black female previously present with whom Canzanese had earlier been in conversation. Supplied with this information, the witness arranged to leave the establishment and to be followed shortly thereafter by Detective Kerins who would alert other officers and agents of this Division of the expected rendezvous.

Detective Dreyer then related how he visited Room 111 of the Four Winds Motel and called that room, but his efforts brought no response. The investigation was thereupon adjourned on that evening.

On May 16, 1973, Detectives Dreyer and Kerins reappeared in the licensed premises after 10:00 p.m. Agents of this Division and other law-enforcement officers waited on the exterior. Dreyer and Kerins again took seats at the bar and observed the same black female (later identified as Tonya Robinson) enter shortly after their arrival.

Engaging Canzanese in conversation, Dreyer complained of the aborted arrangements made on the prior visit. Inquiring if the same girl was then available, Canzanese replied "That is Tony over there" and thereupon left the detectives and approached the female with whom he had a short conversation. Returning to the detectives, Canzanese indicated that the female would be available at Room 107 (of the Four Winds Motel) for a consideration of $20 but the detective should allow about ten minutes for the female to return to the room. The black female departed and, about ten minutes later, Detective Dreyer followed.

Arriving at the designated room of the Four Winds Motel, the detective knocked and was admitted by Tonya Robinson, to whom he paid $20. A few minutes thereafter, Detective Kerins, other law-enforcement officers and agents of this Division entered the room, found Tonya Robinson disrobed, retrieved the money paid, and placed her under arrest.

The testimony of Detective John M. Kerins was in substantial corroboration of the testimony offered by Detective Dreyer.

ABC agent G testified that he had accompanied Detectives Dreyer and Kerins on the assignment but was not party to their conversations with Canzanese. He did relate being part of the raiding party that entered the female's room, he corroborated that she was unclothed and money was retrieved.

At the close of the Division's case, the prior Division record of the licensee was offered both as proof of the said prior record and to establish that the licensee was found guilty by the municipal issuing authority on February 1, 1972, on an identical charge, resulting in a suspension of license for one hundred forty-four days.

Michael Canzanese, testifying on behalf of the licensee, stated that he is the manager and begins his duties after 6:00 p.m. each evening. He denied that prostitutes were permitted in the premises and related that he had directed Tonya to leave because the management "don't want no single girls around the bar."

On the evening of May 16, upon entering the barroom he observed Tonya seated at the bar and directed her to leave forthwith. She insisted that, as she had just purchased a drink, she would consume it and then leave. Immediately following his command to Tonya, Detective Dreyer spoke to him and informed him that Tonya was a friend, to which Canzanese replied, "She's leaving. Go follow her." About an hour later he was arrested.

Canzanese further recounted that, at some time prior to the May 16 incident, he and Frank J. Drago (principal owner of the corporate stock in the licensee corporation) visited the offices of the Division of Alcoholic Beverage Control to seek advice concerning the prostitution problem indigenous to most of the taverns in their city.

On cross examination he admitted that he believed Tonya was a prostitute and, as there are others who also attempted to visit the licensed premises, he made efforts to keep them out. He further denied knowing where Tonya lived, or referring anyone to her for any purpose whatever.

The principal owner of the corporate stock of the licensee corporation, Frank J. Drago, testified that, following the prior suspension for a similar violation, he was extremely concerned about the prospects of future violations occurring therein. He gave specific instructions to all his employees to keep single females, who appeared to be prostitutes, from frequenting the establishment. In addition, he visited the offices of this Division in the company of Canzanese to obtain advice relative to combatting the influx of prostitutes in the area. He referred to a conversation he had with a police lieutenant in which he had requested police assistance to combat the problem. He was told that the Police Department could not be used as bouncers for a licensee.

Laura Fogarino, employed as a barmaid in these premises, testified that on May 16, 1973, she was on duty behind the bar and recalled Tonya arriving at the bar and ordering a drink. She stated that, immediately upon receipt of the order, Canzanese approached Tonya and directed her to leave immediately after she consumed her drink. The barmaid then completed the making of the drink; she served it and observed Tonya leave upon its consumption. She further recalled the presence of the detectives who ordered a drink for Canzanese. She alleged that she had never seen Tonya before in the establishment although this witness had been employed in this facility for the past five years. She had never been told that Tonya was a prostitute

and it was unusual for the manager to direct her not to serve some females.

James D. Sims (a patron) testified that on May 16, after he had completed his work as a clerk in a liquor store a few hundred yards distant from these licensed premises, he entered this establishment and sat at the bar alongside a black female whom he recognized as a patron of his liquor store. That female (Tonya) upon being seated, ordered a drink, whereupon Canzanese approached her and asked her to depart. As Tonya's drink was already in preparation, Canzanese allowed her to finish her drink before departing, which she did. He described the direction given by Canzanese to Tonya to leave more as a request than a command.

In adjudicating matters of this kind we are guided by the established principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal 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). It has long been held that 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 these sordid and dangerous evils. In re 17 Club, Inc., Bulletin 949, Item 2, aff'd 26 N.J. Super. 43 (App.Div. 1953).

The testimony of the detectives was forthright and convincing. The arrangements testified to could not have been made as described without the intercession of the manager. The room number and motel to which it applied were furnished by the manager, not the prostitute. Additionally, the casual notice given by the manager to that female to leave, as described by licensee's witnesses, could well have been surreptitious instructions to her to return to her room for admittance of a paid caller.

The licensee is clearly inculpated by the misconduct of its employee. Such conduct constitutes a grave threat to the public welfare and morals and, unless eliminated, tends toward abuse and abasement. Kravis v. Hock, 137 N.J.L. 252 (1948); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

After carefully considering and evaluating the testimony adduced and the applicable legal principles, I conclude that the Division has established the truth of the charge herein by a fair preponderance of the credible evidence. Therefore, I recommend that the licensee be found guilty of the charge.

The licensee has a prior record of a similar violation to which it pleaded non vult, whereupon the municipal

issuing authority on February 1, 1972, suspended the license for a net suspension of one hundred forty-four days.

The attorney for the Division has urged that the licensee, by permitting an identical violation to occur within a year-and-a-half of the prior one, has demonstrated that it is not a proper licensee and, thus, its license should be revoked. While such argument has great cogency, it is posited upon a policy wherein recurring violations indicate apathy or disdain by the licensees of their responsibilities. Re Pete's Night Club, Bulletin 2029, Item 1; Re Lemongelli, Bulletin 1960, Item 2.

Licensee's counsel, on the other hand, advocated that, as the licensee by its principal owner had contacted both this Division and the local police in an effort to obtain guidance and help in coping with the prostitution problem, its good faith has been established and should constitute a mitigating circumstance in the imposition of penalty.

The licensee cannot avoid culpability by such efforts where its manager becomes the sole culprit. However, the licensee's efforts to overcome the problem, albeit abortive, should be a factor in mitigation to some extent less than outright revocation.

It is accordingly recommended that the license be suspended for two hundred eighty-eight days, which suspension represents the prior suspension doubled because of the prior similar violation within the last five years in accordance with Division policy. Re The New Rendezvous, Inc., Bulletin 2078, Item 1AV.

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 and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Thus, I shall impose a suspension of the subject license for two hundred-eighty eight (288) days.

Accordingly, it is, on this 20th day of March 1974,

ORDERED that Plenary Retail Consumption License C-161, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Boulevard Oasis, t/a Boulevard Oasis for premises 1988-2004 Admiral Wilson Boulevard, Camden, be and

the same is hereby suspended for the balance of its term, viz., midnight June 30, 1974, commencing at 2:00 a.m. Monday, April 1, 1974; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, January 14, 1975.

Joseph H. Lerner
Acting Director

5. STATE LICENSES - NEW APPLICATION FILED.

Wine World, Inc.
2000 Main Street
St. Helena, California
Application filed May 20, 1974
for wine wholesale license.

Joseph H. Lerner
Acting Director