

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

BULLETIN 2107

July 19, 1973

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - JOHNNIE MAE ISHMAL v. NEWARK - DIRECTOR AFFIRMED.
2. COURT DECISIONS - ANCORP NATIONAL SERVICES, INC. - DIRECTOR AFFIRMED.
3. DISCIPLINARY PROCEEDINGS (Pleasantville) - LEWDNESS ON LICENSED PREMISES - IMMORAL DANCE - LICENSEE REJECTS CESSATION OF IMPROPER ACTIVITY - LICENSE SUSPENDED FOR 50 DAYS.
4. APPELLATE DECISIONS - FELIX'S RESTAURANT AND COCKTAIL LOUNGE v. HADDON.

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

BULLETIN 2107

July 19, 1973

1. COURT DECISIONS - JOHNNIE MAE ISHMAL v. NEWARK - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-648-72

JOHNNIE MAE ISHMAL,

Plaintiff-Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF NEWARK,

Defendant-Respondent.

Submitted May 7, 1973 -- Decided May 22, 1973.

Before Judges Leonard, Halpern and Ard.

On appeal from determination and order of the
Director, Division of Alcoholic Beverage Control.

Mr. Golden E. Johnson, attorney for appellant.

Mr. William H. Walls, attorney for respondent
(Mr. Salvatore Perillo, on the brief).

Mr. George F. Kugler, Jr., Attorney General of
New Jersey, filed a statement in lieu of brief).

PER CURIAM.

(Appeal from the Director's decision in Re Johnnie Mae Ishmal
v. Newark, Bulletin 2079, Item 1. Director affirmed. Opinion
not approved for publication by the Court Committee on Opinions.)

2. COURT DECISIONS - ANCORP NATIONAL SERVICES, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-334-72

In the Matter of Disciplinary
Proceedings against

ANCORP NATIONAL SERVICES, INC.
t/a SAVARIN
Pennsylvania Railroad Station
Raymond Plaza West
Newark, N. J.

Holder of Plenary Retail Consumption
License C-609, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark,

Appellant.

Submitted May 7, 1973 -- Decided May 22, 1973

Before Judges Leonard, Halpern and Ard.

On appeal from determination and order of the
Director, Division of Alcoholic Beverage Control.

Messrs. Lamb, Blake, Hutchinson, Thompson & Chappell,
attorneys for appellant.

Mr. George F. Kugler, Jr., Attorney General of New Jersey,
attorney for respondent (Mr. David S. Piltzer, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM.

(Appeal from the Director's decision in Re: Ancorp
National Services, Inc., Bulletin 2073, Item 5.
Director affirmed. Opinion not approved for
publication by Court Committee on Opinions).

3. DISCIPLINARY PROCEEDINGS - LEWDNESS ON LICENSED PREMISES - IMMORAL DANCE - LICENSEE REJECTS CESSATION OF IMPROPER ACTIVITY - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against)

Jack London)
t/a Adventure Inn)
201 East Delialah Road)
Pleasantville, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Common Council of the City of Pleasantville.)

Martin Margolit, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The licensee pleaded not guilty to the following charges:

"1. On March 8, 1973, you allowed, permitted and suffered lewdness and immoral activity in and upon licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

2. On April 5, 1973, you allowed, permitted and suffered lewdness and immoral activity in and upon licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

3. On April 6, 1973, you allowed, permitted and suffered lewdness and immoral activity in and upon licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

4. On April 7, 1973, you allowed, permitted and suffered lewdness and immoral activity in and upon licensed premises, viz., in that you allowed, permitted and suffered

female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

5. On April 8, 1973, you allowed, permitted and suffered lewdness and immoral activity in and upon licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20."

A hearing in the above matter was held on May 2, 1973 before a Hearer, and at the conclusion of the said hearing, an inquiry was made of the attorney for the licensee whether the licensee intended to continue the activity alleged and established at this hearing. The attorney for the licensee stated that he was not in a position to give such assurance and that "It is my understanding my client possibly prefers to continue this activity."

The Hearer thereupon announced that, under those circumstances, a Hearer's report would not be prepared and that the entire record would be forwarded to the Director of this Division for his determination, and that he would prepare Conclusions and Order, in accordance with the provisions of Rule 6 of State Regulation No. 16.

The factual complex set forth in the charges herein are not substantially in dispute and, in fact, were readily admitted by the licensee. A brief resume of the record herein is as follows: Pursuant to specific assignment to investigate alleged "topless" activity at the licensed premises, ABC agents visited the premises on the dates alleged in the charges. On March 8, 1973 at about 12:10 p.m. ABC agents D and B entered the premises, which consist of a large barroom with an area for entertainment. The entertainment consisted of "go-go" girls dancing on a raised platform. On this occasion, they were dressed in high heels, mesh stockings, bikini briefs and "G"-strings.

The three girls who entertained wore pasties, the approximate size of a half-dollar, over the nipples of their breasts and their breasts were, except for the pasties, exposed and totally unsupported.

After viewing the performances for about an hour, the agents identified themselves to the licensee and informed him that the performance was a violation of State ABC regulations.

The next visit to these premises was made on April 5, 1973 at about 12:45 p.m. by ABC agents G and Gr. Upon entry, they each purchased admission tickets for \$2.00, each ticket of which was

redeemable for one drink. On this occasion there were six "go-go" dancers who performed in sets of three to the recorded music. These "go-go" dancers danced without pasties or covering on their breasts and their breasts were totally exposed and unsupported.

At the conclusion of the dancers' performances, which lasted about one hour and fifteen minutes, the agents left the premises, returned shortly thereafter with another ABC agent and a local police officer, and identified themselves to the licensee and to a Mr. Abramowitz, who represented himself to be the then-attorney for the licensee. Abramowitz and the licensee were informed by the agents the performance was in violation of Rule 5 of State Regulation No. 20. Abramowitz indicated, however, that the licensee intended to continue the activity. At that time the agents informed the licensee that they intended to return to the licensed premises at a later date, for further observation.

On the following evening, April 6, 1973 at 10:00 p.m. the agents returned to the premises, paid the admission fee and noted that there were about seventy patrons. At that time they observed "topless" dancing, with the girls dancing "...completely nude from the waist up, breasts unsupported, unrestrained, uncovered." The agents again spoke to the licensee, who at this time was accompanied by Mr. Margolit, the attorney who represented the licensee at this hearing. The agents informed the licensee that such entertainment was prohibited and that "...continuation of this type entertainment would compound the existing violations." The agents returned to the premises on April 8, 1973 and observed that the same type of performances as described hereinabove took place.

On cross examination, agent Gr stated that he was satisfied that the performances were proscribed by virtue of Division precedents and particularly in the matter of disciplinary proceedings instituted by this Division against the Play Pen Incorporation, recorded in Division Bulletin 1778, Item 5.

Agent W testified that he visited the premises on April 7, 1973 at about 8:45 p.m. and observed seven "go-go" dancers performing a "go-go" dance. "They had bikini briefs on from the waist down; from the waist up they were completely nude, the breasts were uncovered and unsupported."

After watching the performers for about an hour and fifteen minutes, he identified himself to the licensee and to a Mr. Weisgerber, his manager, and informed them that the licensee was permitting entertainment in violation of the subject regulation. They responded that "...they knew it was going on and they were not going to stop it."

This agent returned to the premises in the company of agent G on April 8, 1973 at about 8:30 p.m., paid an admission charge of \$3.00 and noted that, on this occasion there were approximately one hundred-fifty patrons present. The "go-go" dancers on this occasion were "completely nude, breasts were unsupported, uncovered." Also on this occasion the licensee sponsored an "amateur night", where females among the patrons were allowed to get up on the stage and perform. He offered a prize of \$50 for the winner and a second prize of \$25. The female patrons performed on the stage completely "topless" with breasts uncovered and unsupported.

In a conversation with the licensee after this witness identified himself, the licensee said he had no intention of "terminating the activity."

Jack London, the licensee, gave the following account: He was unaware of any of the bulletins published by this Division with respect to standards to be applied, nor did any official of this Division ever inform him of the subject rule and regulation. He never was aware of the Play Pen decision, and no one spelled out for him the meaning of the term "lewd and immoral conduct."

On cross examination, he admitted that he had operated these premises for the past year and a half and that he decided to provide this "topless" entertainment about three weeks before March 8, 1973. He never inquired of this Division as to whether or not such entertainment was permitted and he was under the impression that the Division "...supervised the liquor, not clothing." In fact, it was his feeling that even complete nudity would not be a violation of the pertinent Alcoholic Beverage Control regulation.

Furthermore, he admitted that "topless" dancing with complete exposure of the breasts was permitted in his premises on April 5, 6, 7 and 8, 1973. Notwithstanding the fact that he was specifically warned by the agents of this Division that the continuance of such entertainment would be compounding the offense, he decided to continue to offer such activity, reasoning as follows: "Is it possible to punish me more than once?"

The Division called, in rebuttal, agent Gr who restated that he had informed both the licensee and his then-attorney, Mr. Abramowitz, that such entertainment constituted "...in the eyes of the Division a violation of Rule 5 of State Regulation No. 20," and that the continuance of such entertainment would compound the offense. Mr. Abramowitz indicated that he was familiar with the Lido case, Re Starshock, Inc., t/a Lido, wherein this Division determined that similar type activity were proscribed by Rule 5 of State Regulation No. 20.

Dennis M. Brew, Assistant to the Director of this Division, testified that, in a telephone conversation with the licensee, he informed him that "topless" entertainment was prohibited by the subject regulation and that such interpretation

by this Division was affirmed on appeal by the Appellate Division of the Superior Court in numerous cases. He also explained that bulletins are indexed according to the material and subject and are available for examination at the Division offices to all licensees and to the public.

I

From my examination of the entire record herein, I am satisfied and conclude that the charges herein have been fully established by a fair preponderance of the credible evidence, and indeed, by substantive evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The facts in this case are essentially similar to those adjudicated in Starshock, Inc., Bulletin , Item . In that case "topless" activity took place on November 10, 11 and 12, 1972. Hearings were held in this Division prior to the dates of violations in the instant matter. The licensee and his attorney were well aware of the decision in that matter and in fact, Mr. Margolit who represented the licensee at this hearing, was also the attorney in a recent hearing involving Starshock, Inc., on similar charges brought, subsequent to the original proceedings against Starshock, Inc., supra.

In Starshock the Director referred to In re Club "D" Lane, Inc., 112 N.J. Super. 578 (App. Div. 1970), wherein Judge Mintz considered similar contentions involving a charge against a liquor licensee under Rule 5 of State Regulation No. 20, that it permitted a dancer wearing transparent bibs and pasties covering only the nipples on her breasts to perform on licensed premises. Rule 5 of State Regulation No. 20 promulgated pursuant to N.J.S.A. 33:1-39, provides that:

"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 a manner as to become a nuisance."

In Club "D" Lane, Inc., the licensee argued that, as here, lewdness and immoral activity should be determined in accordance with the criteria set forth in N.J.S.A. 2A:115-1.1, the statute dealing with obscenity, which incorporates the First Amendment right as defined by the United States Supreme Court. Roth v. United States, 354 U.S. 476 (1957), rehearing den. 355 U.S. 852.

Said the court (112 Super. at p.579):

"A license to sell intoxicating liquor is not a contract nor is it a property right. Rather it is a temporary permit or privilege to pursue an occupation

which is otherwise illegal. Since it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954).

"We are not here concerned with the censorship of a book, nor with the alleged obscenity of a theatrical performance. 'Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade.' McFadden's Lounge, Inc. v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App. Div. 1954). Lewdness and immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for the purposes of regulation of commercial entertainment generally. Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App. Div. 1955); Jeanne's Enterprises, Inc. v. New Jersey etc., 93 N.J. Super. 230 (App. Div. 1966), aff'd o.b. 48 N.J. 359 (1966).

"The public policy of this State strictly limiting the type of permissible entertainment in taverns was recently declared in Paterson Tavern & Grill Owners Ass'n Inc. v. Hawthorne, 108 N.J. Super. 438 (App. Div. 1970), rev'd on other grounds, 57 N.J. 180 (1970), where the court stated:

'The ordinance seeks to ban from Hawthorne's taverns and other licensed premises the 'topless' and 'bottomless' entertainers or dances. The community has a right to protect itself against this kind of an immoral atmosphere which exists elsewhere in the United States. Such so-called 'entertainment' is nothing more or less than an appeal to the prurient interest. It is bait to bring customers to the bar and hold them there, for the obvious purpose of increasing the sale of alcoholic beverages. It may be validly curbed, as Hawthorne provides in its ordinance.'

Thus, it is clear that, historically, nudity in liquor licensed premises has been denounced by this Division and by the courts. While the standards of dress at other than licensed premises have changed in recent years, there has been no lowering in the standard apparel as it relates to female entertainers on licensed premises. In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the rules and regulations pertaining thereto. A public convenience should not be allowed to degenerate into a social evil.

"The conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location 'may lawfully be tightly restricted to limit to the utmost the evils of the trade.'"

See Jeanne's Enterprises, Inc., v. Division of Alcoholic Beverage Control, 93 N.J. Super. 230 (App. Div. 1966), aff'd 48 N.J. 359 (1966).

In California et al., v. Robert LaRue et al., Docket 71-30, 93 S. Ct. 390, 41 LW 4039 (decided December 5, 1972), the United States Supreme Court upheld the California State Alcohol Control Board's regulations prohibiting sale of liquor by the drink in establishments offering live or filmed sexual entertainment and held that in the context, not of censoring dramatic performances in the theater, but of licensing bars and nightclubs to sell liquor by the drink, the States have broad latitude under the Twenty-First Amendment to control the manner and circumstances under which liquor may be dispensed; and here the conclusions that sales of liquor by the drink and lewd or naked entertainment should not take place simultaneously in licensed establishments was not irrational nor was the prophylactic solution unreasonable.

The court pointed out that the criteria of what is obscenity as set forth in the Roth line of cases did not apply with respect to liquor licensed premises nor did it believe that it was limited with respect to communicative contact as limited under the standards laid down by the court in United States v. O'Brien, 391 U.S. 367 (1968).

Said the court (41 LW 4039 at 4042):

"The Department's conclusion, embodied in these regulations, that certain sexual performances and the dispensation of liquor by the drink ought not to occur simultaneously at premises which have licenses was not an irrational one. Given the added presumption in favor of the validity of the state regulation in this area which the Twenty-First Amendment requires, we cannot hold that the regulations on their face violate the Federal Constitution."

And further:

"The substance of the regulations struck down prohibit licensed bars or nightclubs from displaying, either in the form of movies or live entertainment, 'performances' which partake more of gross sexuality than of communication... [these regulations] merely proscribed such performances in establishments which it licenses to sell liquor by the drink."

In sum, the court stated that "States may sometimes proscribe expression which is directed to the accomplishment of an end which the State has declared to be illegal when such expression consists, in part of 'conduct' or 'action'". Hughes v. Superior Court, 339 U.S. 460 (1950); Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949). See also, City of Portland v. Derrington, 451 P2d 111 (Sup. Ct. 1971); Marseo v. Cannon, 326 F. Supp. 1315 (E.D.Wisc. 1971).

The many pronouncements and disciplinary decisions rendered through the years by this Division in delineating the boundaries beyond which licensees may not permit questionable entertainment to proceed constitute adequate and sufficient notice to guide conscientious licensees. See Re Paddock International, Bulletin 1429, Item 2. In Re DiAngelo, Bulletin 753, Item 4, the Director, in discussing what was meant by lewd and immoral activity within the intendment of the said rule, stated:

"Entertainment, if presented upon licensed premises, must be of such character as not to be inimical to the public welfare and morals or to the best interest of the industry...Nudity has no place in the liquor industry."

II

The licensee argues that he had no guilty knowledge and was unaware of the regulations of this Division proscribing this type of entertainment. The short answer to this is that the licensee not only knew of the proscribed activity but that his attorneys with whom he consulted were well aware of the prior reported decisions respecting "topless" dancing. In fact, the licensee after being advised by the agents that he was continuing this activity in violation of the subject rule insisted that he, nevertheless, would not desist from continuing such entertainment. There is no merit in this contention.

III

Finally, the attorney for the licensee argues that the reason the licensee insists upon continuing this activity is that there is a principle here which he is seeking to preserve "... and in order to maintain that principle and pursue that principle our position is for continuance until otherwise unable to do so." He contends that this is a part of a "larger problem" and that there is presently a suit pending in the Federal court, which may eventually result in a determination that this particular activity is "not prohibited" and that the regulation is unconstitutional.

In answer to these contentions the attorney for the Division says, in fact, there are two decisions pending in the United States District Court in this State, one involving this licensee and another involving Starshock, Inc., t/a Lido.

However, in both of these cases temporary restraining orders directed at the Division in prohibiting conviction or interfering with either of these two licensees with respect to their permitting topless "go-go" dancing on the licensed premises has been vacated by the Federal Court. Further, there is pending in Starshock a motion to dismiss the complaint after summary judgment, and an early decision is expected with respect thereto.

Furthermore, the Division attorney pointed out that no court in this State has declared invalid Rule 5 of State Regulation No. 20, and that until that happens the licensee is required to comply with the said rule. This is particularly true since all of the court decisions so far have sustained the Division's authority to impose sanctions for violations of Rule 5, some of which are based upon charges of topless "go-go" dancing.

It is apparent that the licensee deliberately embarked upon this activity because he conceived that this was a device to attract patronage to the licensed premises, and increase his business. This was manifested by the holding of an "amateur night" at which time patrons were induced to perform "topless" by the offer of prizes for the best "topless" performances.

I find that this contention of the licensee is entirely without merit and is rejected.

IV

In sum, I find that the charges here have been established by substantive evidence and that the legal contentions advanced by the licensee are without merit. Therefore, I find that the licensee is guilty of all the charges herein.

Licensee has no prior adjudicated record. Considering the fact that there is a continuous flaunting of the subject rule and regulation, and, concededly, there is no assurance by the licensee that such proscribed activity will cease, I find that the conduct of the licensee constitutes an aggravated situation. In view thereof, I have determined to impose a suspension of fifty days, without delay, commencing on Thursday, May 17, 1973.

Accordingly, it is, on this 15th day of May 1973,

ORDERED that Plenary Retail Consumption License C-7, issued by the Common Council of the City of Pleasantville to Jack London, t/a Adventure Inn, for premises 201 East Delialah Road, Pleasantville, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1973, effective 4:00 a.m. Thursday, May 17, 1973; and it is further

ORDERED that any renewal of said license that may be granted be and the same is hereby suspended until 4:00 a.m. Friday, July 6, 1973.

ROBERT E. BOWER
DIRECTOR

4. APPELLATE DECISIONS - FELIX'S RESTAURANT AND COCKTAIL LOUNGE v. HADDON.

Felix's Restaurant and Cocktail Lounge (a corp.))	
T/a Haddonview Lounge,)	
)	On Appeal
Appellant,)	
)	CONCLUSIONS
v.)	and
)	ORDER
Board of Commissioners of the Township of Haddon,)	
)	
Respondent.)	
-----))	
Louis N. Caggiano, Esq., Attorney for Appellant)	
Michael A. Orlando, Esq., Attorney for Respondent)	

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of respondent Board of Commissioners of the Township of Haddon (hereinafter Board) which on December 5, 1972, found appellant guilty of a charge alleging that on September 27, October 1 and October 9, 1972, it allowed, suffered and permitted the licensed premises to be lit up, operated or open for business in violation of Section 29 of the local ordinance. In consequence thereof, the appellant's license was suspended for fifteen days. Appellant had also been charged with the sale, service or delivery of alcoholic beverages on the licensed premises on the said days during hours prohibited by Section 13 of the said liquor control ordinance. These charges had been dismissed by the Board.

On my own motion I am amending the last mentioned date in the said charge from October 9, 1972 to October 8, 1972, in order that it may conform with the proof. In view of the nature of the defense to the charge offered by appellant, it cannot plead surprise to the amendment.

Upon the filing of this appeal, an order was entered by the Director on January 3, 1973, staying the Board's order of suspension pending the determination of this appeal.

Appellant alleges that the action of the Board was politically motivated, was based upon insufficient evidence and was tainted with bias and prejudice. The Board denied these contentions and averred that its determination was based upon the evidence presented before it.

The appeal was heard de novo with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses, in accordance with Rule 6 of State Regulation No. 15.

At the outset of the hearing, copies of the adopted resolution and applicable ordinances were accepted into evidence.

In behalf of the Board, Police Sergeant Jack Chatelain testified that on September 27, 1972 at 3:00 a.m. he entered appellant's licensed premises and observed several persons "...dressed in suitable attire" sitting at the bar. He observed drinks on the bar. He warned the proprietor and departed therefrom and sat in his car. At approximately 3:05 a.m. he saw the same persons he had observed at the bar exit from the premises, the lights extinguished and the doors locked.

On October 1, 1972, he returned to the premises about 2:45 a.m. and observed six people in the licensed premises. There were no drinks on the bar. He observed a male, dressed in a suit and a female "suitably dressed" at the bar; a bartender, a barmaid and a male dressed in work clothes removing trash. He also observed the manager, whom he identified as James J. LaMena. The area was lit by "typical bar-type lighting, soft lights" or normal working light for that establishment. At approximately 3:05 a.m. he observed the male dressed in a suit and a female attired in a black dress leave the licensed premises.

On cross examination, the witness asserted that the licensee operates a restaurant and bar-type combination.

The sergeant had kept the establishment under surveillance at the request of Captain Saunders. He filed his report on October 11th.

Ronald T. Merriel, employed as a police officer by the Township, testified that at the request of Captain Saunders, he kept the licensed premises under surveillance. On Sunday morning, October 8, 1972 at 3:00 o'clock, he observed a group of eleven males and females dressed in sport jackets, suits and clothes that would normally be worn in a cocktail lounge atmosphere leaving the premises. The exterior lights were not lit. He did not observe the interior lighting.

On cross examination, Merriel asserted that he did not know what the group had been doing in the premises.

James J. LaMena, a principal stockholder of the corporate appellant testified that appellant has a restaurant license in addition to the liquor license, and that he operates a full-service restaurant. He may serve food after the legal hour of limitation for the service of alcoholic beverages; However, he has never permitted the service or consumption of alcoholic beverages subsequent to the hours limitation.

Specifically referring to the date of September 27th, LaMena testified that there may have been patrons eating in the establishment at the hour alleged in the charges. Referring to October 1st, he recalled dining with his landlord at 4:00 a.m. in order to discuss certain matters. On that morning his wife and his brother-in-law were also in the establishment. However, none of them was served an alcoholic beverage.

The central issue presented is whether a liquor licensed premises in this Township must be closed to the public at the expiration of the permitted drinking hours.

The issue may be resolved by the simple expedient of examining the controlling ordinance in force in the Township. The "Liquor Control Ordinance" adopted December 29, 1944, provides as follows:

"Section 29: No establishment licensed as a plenary retail consumption licensee shall be lit up, operated, or open for business between the hours of 2:30 A.M. and 8 A.M. on any week-day, and between the hours of 2:30 A.M. and 4 P.M. on any Sunday, except on New Year's Day, and then in accordance with Section 13 of this ordinance, and no one shall be permitted in the licensed premises save the licensee or his duly authorized agent or employee for the explicit purpose, however, of cleaning the premises, and not for any other purpose whatsoever."

Section 13 referred to in the above Section 29 forbids the sale, service or delivery of alcoholic beverages after 2:00 a.m.

Section 29 mandates that after 2:30 a.m. the premises shall be cleared of all persons save the licensee or his duly authorized agent or employee for the sole purpose of cleaning the premises. Hence the presence of any person other than the appellant's agent actually engaged in "cleaning the premises" subsequent to 2:30 a.m. is violative of the quoted ordinance. Certainly the uncontroverted testimony that persons were present in the appellant's premises at 3:00 a.m. on the days alleged could result in no conclusion other than a finding that the interdiction contained in the subject ordinance was violated.

The defense that no alcoholic beverages were sold or delivered to the persons in the licensed premises and that they were either members of the licensee's immediate family or were there solely to consume food is legally insufficient. See Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3 and cases cited therein. Obviously, the ordinance applied equally to all liquor licensed premises irrespective of whether the same are operated in conjunction with a restaurant.

I, therefore, find that the appellant has failed to sustain the burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15. Accordingly, it is recommended that an order be entered affirming the action of the Board, dismissing the appeal and fixing the effective dates for the suspension imposed by the Board and stayed pending the determination of this appeal.

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 of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 23rd day of May 1973,

ORDERED that the action of the Board be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order, dated January 3, 1973 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-11, issued by the Board of Commissioners of the Township of Haddon to Felix's Restaurant and Cocktail Lounge (a corp.) t/a Haddonview Lounge, for premises Cuthbert Road and MacArthur Blvd., Haddon Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, June 6, 1973, and terminating 2:00 a.m. Thursday, June 21, 1973.


Robert E. Bower
Director