

Jarvis

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

BULLETIN 1968

April 27, 1971

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"... their findings of the facts were contrary to the weight of the evidence and unsupported by the testimony adduced at the hearing; Section 2:4-2 of Title 2, Chapter 4 of the Revised Ordinances of the City of Paterson is unconstitutional and void as the result of its vagueness; Section 2:4-2 of Title 2, Chapter 4 of the Revised Ordinances of the City of Paterson is void as the result of the failure of the City of Paterson to first obtain the approval of the Commissioner as required by N.J.S.A. 33:1-4; the penalties assessed were excessive and the additional five (5) day suspension was without statutory permission."

In its answer, respondent denies the substantive allegations of the petition.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses. Both parties relied at this plenary de novo hearing upon the stenographic transcript of the proceedings held before the Board, which was admitted into evidence pursuant to Rule 8 of State Regulation No. 15, and presented oral argument. Additionally, the Board introduced certain exhibits in evidence including a copy of the charges and the two sections of the ordinances alleged to have been violated.

In support of the charges, the record reflects the following: Henry Bulwin, a local police officer, while enroute to a specific assignment in the early morning hours of March 20, 1970 (not related to the within charges) passed by the licensed premises and observed that its curtains were drawn. On his return trip (accompanied by Sergeant Stanley Neeson of the local police force) he again noted that the curtains were drawn. He stopped, peered through a crack and saw two men playing pool and other men at the bar. Upon knocking at the door, the officers were admitted by John Patrick Mullins, the tavern manager. Walking in, he observed one male identified as Peter Carnevale at the pool table with a glass of beer in his hand; the other male was walking away from the pool table. A male, identified as Proctor "... was slumped over the bar with a half a glass of whiskey with change, or coins, a dollar bill, \$5 bill, whatever the case was, lying on the bar itself." Upon request, the males identified themselves to Sergeant Neeson. Neeson informed Mullins that he was "in violation of having the tavern open and having these men in the bar at the time." Mullins replied that "they were customers at the time; don't worry about it."

On cross examination, Officer Bulwin testified that there was a distance of three feet between the bar and the pool table; two males were seated at the bar and one was standing at the bar. A male behind the bar was identified as Lester VanOrden. He was not serving any drinks. The officer did not see money or drinks being passed. Mullins said that they had just completed building or painting a stage for go-go dancers, and that "We're here having a few drinks and playing pool." The officer did not detect any odor of varnish or paint. The drinks and the money could have been on the bar since prior to 3:00 a.m. The only light in the tavern was over the pool table. He saw no tools or workmen's material in the tavern.

Sergeant Stanley Neeson's testimony, in substance, was mainly corroborative of the testimony adduced from Officer Bulwin.

In behalf of the appellant, Ronald Jaffe testified that he generally patronizes the licensed premises upon completion of work at his place of employment at 12:30 a.m. On the morning in question he arrived at the licensed premises at approximately 1:30 a.m. Mullins closed the tavern at 3:00 a.m. by putting out the lights, closing the door and requesting the patrons to leave. He remained in the premises in order to assist Mullins in applying a coat of varnish to the go-go stage. Three other males, whom he identified as Joe Proctor, Steve Herz and Pete Carnevale remained in the premises after 3:00 a.m. Additionally, Mullins (the owner) and VanOrden (who is employed by Mullins as a porter) remained in the tavern. He has often seen patrons leave money on the bar and then leave the premises. After 3:00 a.m. no one was served a drink and no one paid for any drinks. He was playing a game of pool when the police officers entered the tavern. Steve Herz was waiting for Mullins to take him for breakfast. Carnevale and Proctor remained in the tavern due to an incident which occurred therein prior to 3:00 a.m. No one entered or departed from the tavern between 3:00 a.m. and the time that the police officers arrived. He did not hear VanOrden request anyone to fetch empty glasses that were on the bar at the time the police officers arrived.

On cross examination, the witness asserted that he and another male varnished the go-go stage. The other two males aside from Mullins and VanOrden were "hanging around".

John P. Mullins, the principal officer of the corporate licensee, testified that several males, who were patronizing the tavern on the morning in question, volunteered to stay beyond the closing hour of 3:00 a.m. due to a threat made by an alleged minor who had been evicted by him. Jaffe stayed beyond 3:00 a.m. in order to assist Mullins in varnishing the go-go stage. The door was closed at 3:00 a.m. and not opened until 4:30 a.m. when he admitted the police officers in the tavern. Between 3:00 a.m. and 4:30 a.m. on, no one was served liquor, nor did anyone consume any liquor. The porter, VanOrden, had attended to other chores and he didn't finish with the task of removing and cleaning the glasses that were on the bar. Herz was waiting to be driven home.

On cross examination, Mullins conceded that upon completion of the varnish work, he engaged in a game of pool. They were waiting for VanOrden to complete his work so that they could go for breakfast. Later he testified that he saw Jaffe playing pool and that he and the other males were about to engage in a game of pool while waiting for VanOrden to finish cleaning when the police officers arrived.

Appellant's attorney argued chiefly that (1) the finding of guilt of each charge was contrary to the weight of the evidence; (2) that the ordinance was invalid because the Director did not approve the passage thereof, in accordance with R.S. 33:1-40; (3) the two charges actually constituted one violation ... should have been merged and a single penalty assessed and (4) that in assessing a penalty, the Board lacks the authority to consider any prior record of suspension.

These proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the Board was required to establish its case only by a fair preponderance of the credible evidence. In other words, the findings must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Referring to the first charge, my evaluation of the testimony which details the presence of four individuals (not employees) in the licensed premises at least an hour and a half after the closing hour (by appellant's own admission), glasses on the bar, some of them partially filled, a partially filled glass of beer in the hand of a male at the pool table and money on the bar may fairly lead to a strong inference that the first section of the ordinance which prohibited the sale, service, delivery and consumption of alcoholic beverages was violated.

I am mindful of the following aptly expressed reasoning of Justice Heher in the case of Ciuba v. Irvington Varnish & Insulator Co., 27 N.J. 127 (1958), at pp. 139, 140:

"... Circumstantial or presumptive evidence, as a basis for deductive reasoning in the determination of civil issues, is defined as 'A mere preponderance of probabilities, and, therefore, a sufficient basis for decision.' Jackson v. Delaware, L. & W. R. R. Co., 111 N.J.L. 487 (E. & A. 1933). It need not have the attribute of certainty, but it must be a presumption well founded in reason and logic; mere guess or conjecture is not a substitute for legal proof. The determinative inquiry is whether the evidence demonstrates the offered hypothesis as a rational inference, that is to say, a presumption grounded in a preponderance of the probabilities according to the common experience of mankind. The accepted standard of persuasion is that the determination be probably based on truth. A bare quantitative preponderance is not enough. The evidence must be such in quality as to lead a reasonably cautious mind to the given conclusion. The measure of the weight of the evidence is 'the feeling of probability which it engenders.' Joseph v. Passaic Hospital Association, 26 N.J. 557 (1958)."

I therefore find that the first charge has been established by the proofs.

In considering the second charge, I find the evidence is uncontroverted that the licensee allowed, permitted and suffered the presence of persons other than the employees in the licensed premises during the hours that it should have been closed in accordance with the cited ordinance.

It is noted that the pertinent part of the Ordinance of the City of Paterson, 2:4-2 provides that:

"During the times when sales are prohibited by section 2:4-1 the entire licensed premises shall be closed."

Parenthetically, I note that sub-section (a) of the Ordinance 2:4-1 prohibits the sale, service or delivery or allow the consumption of any alcoholic beverage on any licensed premises on week days between the hours of 3:00 a.m. and 7:00 a.m.

These ordinances have uniformly been interpreted to mean that if there be anyone found on said premises, it shall be deemed a violation of the said ordinance. As used in this ordinance, the closing-of-premises provisions mean that all members of the public must be excluded. Cf. Mama Ventura, Inc. v. Voorhees, Bulletin 1498, Item 1. See Town House, Inc. v. Montclair, Bulletin 792, Item 3; Re Casarico, Bulletin 268, Item 1; Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3.

The dispositive answer to appellant's second point raised is set forth in the following pertinent part of R.S. 33:1-40:

"... The governing board or body of each municipality may, as regards said municipality, by ordinance or resolution, limit the hours between which the sale of alcoholic beverages at retail may be made, prohibit the retail sale of alcoholic beverages on Sunday, and subject to the approval of the commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. The aforesaid limitations of ... of hours of sale shall be subject respectively to appeal to the commissioner, as hereinafter provided ..." (underscoring mine)

The underscored section is disjunctive and not conjunctive with the part that is not underscored. The Division has never ruled that a municipality must first submit an ordinance regulating the hours of sale to it as a condition precedent to its effectiveness or validity. It is interesting to note that Judge Haneman (later Justice Haneman) in construing R.S. 33:1-40 in the case of Walinska v. Mayor & Council, Gloucester City, 25 N.J. Super. 122 (Chanc. Div. 1953), held, at p. 131:

"It is plain, therefore, that it was the intent of the Legislature, in the first instance, to vest the power to determine the hours during which sales may be made on any weekday and Sunday in the local governing body."

In considering the third point urged by the appellant, I find that the Board's action in charging a separate violation for each of the two sections of the quoted ordinance instead of merging the separate charges into one violation is not unreasonable or illegal.

Additionally, it should be observed that the suspension imposed in local disciplinary proceedings rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Director to reduce the suspension on appeal is confined to cases where the suspension is manifestly unreasonable. Sventy and Wilson, Inc. v. Point Pleasant Beach, Bulletin 1930, Item 1. See also Pom Bon, Inc.

v. Cliffside Park, Bulletin 1897, Item 1, and cases cited therein, wherein a penalty of revocation of license was not disturbed.

In its petition of appeal, appellant challenged the constitutionality of the local ordinances alleged to have been violated. The Division lacks jurisdiction to challenge the validity of an ordinance. Suit must be brought in a court of competent jurisdiction. Blanck v. Magnolia, 73 N.J. Super. 306 (App. Div. 1962), reversed on other grounds 38 N.J. 484 (1962).

Appellant's last contention lacks merit. It has been the long settled practice of local issuing authorities to consider the prior record of suspension in assessing the penalty in disciplinary matters, and there is nothing in the Alcoholic Beverage Law or the rules and regulations pertaining thereto forbidding this practice.

I find nothing in the record to suggest any bias or prejudice on the part of the Board. My analysis of the transcript and evidence produced before me convinces me that the Board acted properly, and that the testimony before the Board preponderates in support of its determination. I am persuaded that the record on the whole supports the decision reached by the Board.

The burden of establishing that the Board acted erroneously, and in an abuse of its discretion, is upon appellant. The ultimate test in this matter is one of reasonableness on the part of the Board. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502; cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

My examination of the facts and the applicable law generates no doubt that both charges were established by a preponderance of the believable evidence. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is, therefore, recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates for the suspension of license imposed by the Board, and stayed by the Director pending the determination of this appeal.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's report were filed by the attorney for appellant.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

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

Accordingly, it is, on this 1st day of March 1971,

ORDERED that the action of respondent 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 Plenary Retail Consumption License C-298, issued by the Board of Alcoholic Beverage Control for the City of Paterson to P. J. Mullins Bar, Inc., for premises 591 East 31st Street, Paterson, be and the same is hereby suspended for forty (40) days, commencing at 3:00 a.m. Wednesday, March 17, 1971, and terminating at 3:00 a.m. Monday, April 26, 1971.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY (AMENDED HEARER'S REPORT) - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against)

Equitable Titles, Inc.)
t/a Jockey Club)
5-9 S. N. Carolina Avenue)
Atlantic City, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-44 (for 1969-70 license period), and C-157 (for 1970-71 license period), issued by the Board of Commissioners of the City of Atlantic City.)

Hyett, Auerbach & Mackler, Esqs., by H. Albert Hyett, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following reports herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Wednesday night April 29, 1970 you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from a customer or patron; in violation of Rule 22 of State Regulation No. 20."

Agent G testified in behalf of the Division as follows:

Pursuant to a specific assignment, he arrived at the licensed premises on April 29, 1970 at approximately 10:10 p.m. in the company of agents D and B. He entered the premises alone and Agents D and B entered shortly thereafter. He described the

premises as containing a large circular bar with a service area of tables and chairs separated from the bar area by a railing. He characterized the premises as a night club and estimated its capacity at approximately two hundred. There were twenty-five patrons seated at the bar on his arrival. He observed a male and female tending bar, later identified as Hilda Jeffery and John Troiano.

Agents D and B entered shortly thereafter and seated themselves in the service area. He observed several females alternating as entertainers in costume, one of whom was later identified as Alice Pizicas, a/k/a Samara (hereinafter referred to as Samara). He remained at the bar approximately an hour and a quarter and then prepared to leave. As he neared the exit he was approached by Samara who suggested that he return to the bar. He returned and Samara seated herself next to him.

The barmaid, Jeffery, approached and asked what he would like to drink. Agent G ordered a Bourbon and 7, Jeffery returned with his drink, and also "took an old-fashioned glass and poured in some champagne over ice, placed that in front of Samara." *** "I placed a five-dollar bill on the bar. She took that up, rang up three-fifty, returning a dollar fifty to me."

He noted that he had not ordered the drink for Samara, and that both he and Samara consumed the drinks. The barmaid returned and repeated the service. The barmaid then took a ten-dollar bill from in front of Agent G, rung up three dollars and fifty cents and returned six dollars and fifty cents to Agent G. He then summoned Agent D and both agents identified themselves to Samara and the barmaid. Agents G, D, Samara and the barmaid then went to the rear room and confronted Jacob Hyett, an officer of the corporate licensee, apprising him of the violation in the presence of Samara. Samara denied the occurrence in the presence of the barmaid, who made no comment.

On cross examination, Agent G testified that there had been no conversation between the barmaid and Samara; that he was within ten feet of the exit when approached by Samara; he had not asked any other employee to have a drink; he did not have a glass in his hand when approached by Samara. Further, Agents D and B were approximately ten feet from where he had the drinks with Samara and that he had seen Samara perform earlier that evening.

On re-direct examination he testified that he had observed Samara entertain in theatrical attire earlier and that she was dressed in normal street clothes while in his company.

Agent D testified that he arrived at the premises approximately 10:15 p.m. on April 29, 1970, in the company of agents G and B, and that in Agent B's company he entered shortly after Agent G. He seated himself with Agent B in the service area where both could see Agent G at the bar. Approximately an hour later Agent G signaled that he was leaving. While in the process of paying the check and leaving with Agent B, he observed Agent G seated at the bar with Samara. He and Agent B then took seats approximately ten feet from Agent G and Samara.

He had seen Samara perform earlier on the premises; he observed Agent G and Samara with drinks in front of them which they then consumed. The barmaid served each of them a second drink and she took money from in front of Agent G. Agent G consumed his second drink and Samara consumed a portion of hers.

He then joined Agent G and Samara; both he and Agent G identified themselves to Samara and the barmaid. He seized the remaining portion of her drink, whereupon, he, Agent G, Samara and the barmaid entered Hyett's office.

On cross examination, he testified that there were thirty-five or forty patrons at the bar during this incident; he heard Samara deny receiving the drink; he saw drinks in front of Agent G and Samara when he and Agent B arrived at the bar and he saw a second service of drinks to Agent G and Samara.

Agent B substantially corroborated the testimony of Agents G and D as to the incident which occurred at the bar and service area.

Hilda Jeffery testified on behalf of the licensee that she served a round of drinks, Bourbon and 7 and champagne to Agent G at his request. The agent paid for both drinks and she put both drinks in front of him. Samara refused the drink and consumed no part of it. Agent G then showed his credentials. She further testified that Agent G stopped Samara as she walked by; Samara emphatically refused the drink. Later, in Hyett's office Samara denied consuming the drink.

On cross examination, she testified that she did not know whether Samara had performed that evening. Samara had not, to her knowledge, been employed by the licensee for some time.

Walter Zimmerman testified that he was a regular patron and was present on April 29, 1970 when the alleged incident occurred. He saw Samara walk behind Agent G; Agent G stopped her and called to the bartender. He heard Samara refuse a drink and saw the barmaid place two drinks in front of Agent G. Samara did not accept the drink.

On cross examination, he testified that he had been frequenting the licensed premises for six or seven years. He was seated six to eight feet from Agent G and heard little of the conversation. Samara was standing behind Agent G and two drinks were placed in front of Agent G. He saw no consumption by Samara of the drink and he saw only one round of drinks served.

Rita Flynn testified for the licensee that she is employed as cashier on the licensed premises. She was in the check room approximately one yard from the incident when Agent G stopped Samara as she walked by. She thought she heard Samara refuse a drink; she saw drinks placed in front of Agent G and Samara consumed none of the drinks.

On cross examination she testified that there was only one round of drinks served and that she had seen Samara perform in costume earlier that evening.

Philomena Franks, a waitress in the licensed premises, testified that she saw Agent G with a drink in his hand near the check room. As Samara walked by Agent G stopped her; the drinks, one round, were placed in front of Agent G but Samara consumed no portion of the drink.

On cross examination she testified that she is still employed at the licensed premises. Agent G and Samara were standing next to each other at the bar; and she was seated three seats from where Agent G and Samara were standing.

Jacob Hyett, testified that he is president, holder of 98% of the stock of the corporate licensee. He witnessed none of the above, but he had instructed all employees that they are not to accept drinks from patrons. He added that Samara performed in costume on April 29, 1970, but was, at that time, auditioning for employment.

In rebuttal, Agent G testified that he had no glass in his hand; he did not touch or stop Samara; Samara stopped him as he was leaving; she did not walk away from him; and he and Samara were seated side by side at the bar.

Agent D testified in rebuttal that Agent G had nothing in his hands as he was leaving and that Agent G and Samara remained seated at the bar for approximately fifteen minutes.

It was stipulated by counsel that since Samara was unavailable to testify, her testimony on direct examination would be that she did not request a drink from Agent G; she did not consume any part of any drink purchased by Agent G; and she was not an employee of the licensee at the time of the alleged violation.

The licensee argued that the requirement that the licensee travel from Atlantic City to the Division hearing room in Newark is "... a hardship, an inconvenience and a violation of the inherent constitutional rights of a licensee..."

While it is not within the province of this Administrative Agency to deal with constitutional questions, Re F. & A. Distributing Co., et al., v. Canada Dry Ginger Ale, Inc., Bulletin 1205, Item 1, and cases cited therein, it has long been the established policy of this Division to hear all disciplinary matters instituted by the Division at the Division Offices in Newark.

The licensee further argues that "They [the agents] came there for the purpose of entrapment"; that there is insufficient evidence to sustain a finding of guilt, and that there is no proof that Samara was an employee.

In adjudicating this matter I observe preliminarily that, in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

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

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. Further:

"... Every fact or circumstance tending to show the ... the witness' relation to the case or the parties is admissible to the end of determining the weight to be given to his evidence." State v. Spruill, 16 N.J. 73, 78 (1954).

I have had an opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony.

After carefully considering all the evidence adduced herein, I conclude that the Division has established the truth of the charge herein by a fair preponderance of the believable evidence.

The testimony of Agent G, as corroborated in large part by Agent D, is to the effect that Agent G and Samara were seated side by side at the bar and that two drinks were served to Agent G and Samara and paid for by Agent G. There is no doubt, considering all the testimony, that Agent G and Samara were in close proximity, either side by side or one directly behind the other. Indeed, the testimony of several defense witnesses so indicate. The testimony preponderates to the conclusion that the barmaid served at least one round of drinks to Agent G and Samara and that the round of drinks was paid for by Agent G.

In exacting proof by the preponderance or greater weight of the evidence, the law does not prescribe the necessary quantum of the overweight or the degree or excess of its superiority in credibility. A preponderance is attained where the evidence in its quality of credibility destroys and overbalances the equilibrium. Re Perlowski v. Jersey City, Bulletin 1458, Item 1.

The rule cited in State v. Spruill, supra, is pertinent. Of the five witnesses who appeared for the licensee, three are present employees and a fourth is a principal stockholder. While it does not necessarily follow that persons in such position would designedly color or exaggerate their testimony, there is nonetheless the personal interest which serves as the basis for the above cited rule. On the other hand, I am satisfied that the agents acted in good faith and in pursuit of their duties.

I am satisfied that Samara was an employee of the licensed premises. It is undisputed that Samara entertained on the licensed premises on the night of April 29, 1970.

Indeed, it is agreed that she changed from theatrical attire to street clothes before arriving in the bar area.

"The commissioner (now Director) since the adoption of this regulation (ABC Reg. 20, Rule 22) ... has consistently construed the word 'employed' to embrace ... All persons whose services are utilized in furtherance of the licensed business, notwithstanding the absence of a technical employer-employee relationship." Kravis v. Hock, 137 N.J.L. 253.

Viewed in this light there is no question that Samara was an employee within the intendment of Rule 22 of State Regulation No. 20.

The licensee's defense of entrapment is untenable.

"Judicial abhorrence of entrapment does not mean that police officials cannot afford opportunities or facilities for the commission of criminal offenses ... Artifice and stratagem, traps, decoys and deceptions may be used to obtain evidence of the commission of crime or to catch those engaged in criminal practices." State v. Dulce, 41 N.J. 422 at p. 431 (1964).

Further:

"Mere solicitation by officers posing as private citizens and resulting in ordinary sales as between buyers and sellers have repeatedly been held not to give use to any entrapment issues." State v. Dennis, 43 N.J. 418 at p. 425 (1964) and cases cited therein.

The solicitation hereinabove described by agents of the Division, although planned in advance, merely afforded the licensee's employees the opportunity to perpetrate the violation which the evidence indicates they were prepared to do as a matter of practice. Re Cross Keys Hotel & Rest. Inc., Bulletin 1771, Item 1. I am satisfied that the agents did not lure or entrap the employees into committing an offense which they would not have committed where, as here, the opportunity presented itself.

Having carefully considered and evaluated all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by a preponderance of the believable evidence.

I, therefore, recommend that the licensee be found guilty of the charge. The licensee has no prior adjudicated record. I further recommend that the license be suspended for twenty days. Re Thomas Bucci, Jr., Bulletin 1832, Item 8.

Amended Hearer's Report

The above proceeding came on for hearing before the Division of Alcoholic Beverage Control.

Subsequent thereto this Hearer submitted a Hearer's report, dated January 18, 1971, to the parties and to the

Director wherein it was recommended that the licensee be found guilty of the charge set forth therein and, further, that the license be suspended for twenty days.

It was subsequently disclosed that the license herein was suspended by the Director for fifteen days effective February 26, 1968 for a similar violation. Re Equitable Titles, Inc., Bulletin 1787, Item 7.

The prior record of suspension of license for a similar violation within the past five years considered, it is therefore recommended that the license be suspended for forty days. Re Talvacchia, Bulletin 1833, Item 4.

Conclusions and Order

Written exceptions to the Hearer's report and the amended Hearer's report with supportive argument were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matter contained in the exceptions have either been fully considered by the Hearer or are without merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report, the Amended Hearer's report and the exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of February 1971,

ORDERED that Plenary Retail Consumption License C-157, issued by the Board of Commissioners of the City of Atlantic City to Equitable Titles, Inc., t/a Jockey Club for premises 5-9 S. N. Carolina Avenue, Atlantic City, be and the same is hereby suspended for forty (40) days, commencing at 7:00 a.m. Thursday, March 4, 1971, and terminating at 7:00 a.m. Tuesday, April 13, 1971.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Crystal Bay Inn, Inc. (A Corporation)
 t/a Crystal Bay Inn
 56 Lake Drive West
 Wayne Township, N. J.
 Holder of Plenary Retail Consumption License C-6, issued by the Municipal Council of the Township of Wayne.

CONCLUSIONS and ORDER

 Diamond, Diamond & Afflito, Esqs., by Lawrence Diamond, Esq.,
 Attorneys for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 24, 1970, it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Burntwood Den, Inc., Bulletin 1939, Item 7.

Accordingly, it is, on this 10th day of March 1971,

ORDERED that Plenary Retail Consumption License C-6, issued by the Municipal Council of the Township of Wayne to Crystal Bay Inn, Inc. (A Corporation), t/a Crystal Bay Inn, for premises 56 Lake Drive West, Wayne Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, March 25, 1971, and terminating at 3:00 a.m. Friday, April 9, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #331)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-3,) On Petition
 issued by the Township Committee of)
 the Township of Morris to)
) O R D E R
 Roman Kotlarz)
 t/a Lido Liquors)
 167 Speedwell Avenue)
 Morris Township)
 PO Morris Plains, N. J.)

August Maffei, Esq., Attorney for Licensee-Petitioner

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 28, 1971 the licensee-petitioner was fined \$100 in the Municipal Court of the Township of Morris after pleading guilty to a charge of sale of alcoholic beverages to a minor on November 11, 1970, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that the petitioner pleaded non vult to a charge of sale to a minor, in violation of Rule 1 of State Regulation No. 20, in disciplinary proceedings instituted by the municipal issuing authority against the said licensee.

It further appears that the municipal issuing authority has suspended the license for sixty days effective 7 a.m. February 1, 1971. Hence I shall lift the automatic suspension in anticipation of the service of the currently effective suspension. Re Kassner, Bulletin 1596, Item 5.

Accordingly, it is, on this 5th day of March 1971,

ORDERED that the statutory automatic suspension of License D-3 be and the same is hereby lifted effective 9 a.m. Friday, April 2, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #330)
 In the Matter of a Petition to)
 Lift the Automatic Suspension of)
 Plenary Retail Distribution License)
 D-12, issued by the Mayor and Council) On Petition
 of the Borough of Lodi to)
)
 Jeannette Calvacca & Paul Calvacca) O R D E R
 t/a J & P Liquors)
 112 Main Street)
 Lodi, N. J.)

Licensees, by Paul Calvacca, Pro se

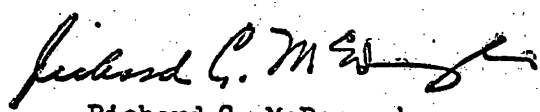
BY THE DIRECTOR:

It appears from petition filed herein and the records of this Division that on February 9, 1971 the co-licensee Paul Calvacca was fined \$100 and \$10 costs in the Lodi Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on Friday, January 22, 1971, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings by this Division are in contemplation but have not yet been instituted against the licensees because of said sale of alcoholic beverages to the minor. In fairness to the petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed.
Re Chizmar, Bulletin 1898, Item 8.

Accordingly, it is, on this 4th day of March 1971,

ORDERED that the aforesaid automatic suspension of Plenary Retail Distribution License D-12 be and the same is hereby stayed pending the entry of a further order herein.


 Richard C. McDonough
 Director