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

BULLETIN 2111 August 15, 1973

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ITEM

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

BULLETIN 2111 August 15, 1973

1. DISCIPLINARY PROCEEDINGS - LEWDNESS - IMMORAL DANCE - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against

Starshock, Inc.
t/a Lido
7980 South Crescent Boulevard
Pennsauken, N.J.,

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Pennsauken.

CONCLUSIONS and ORDER

Martin Margolit, 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

On March 22, 1973 the following charge was preferred against the licensee:

> "On Sunday, February 18, 1973, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises and allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, 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 and indecent manner; in violation of Rule 5 of State Regulation No. 20."

Thereafter, on April 12, 1973, an additional charge was preferred against the licensee as follows:

> "On April 10, 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."

The licensee pleaded not guilty to both charges and these matters were consolidated for hearing which took place in this Division on April 27, 1973. The Division's case was presented through the testimony of ABC agents who conducted investigations of alleged "topless" dancing at the licensed premises, pursuant to specific assignments.

With respect to the first charge Agent De gave the following account: On February 18, 1973, accompanied by Agent B, he entered the said licensed premises at about 7:45 p.m. The premises consist of a large room containing two circular type bars and a counter-type bar. In the rear of this room is a raised platform, on which the licensee provided entertainment on this occasion by female "go-go" dancers, in the presence of approximately one hundred twenty-five patrons. Two "go-go" dancers performed in the first sequence, and they "were attired in a 'G'-string type bottom, with their buttocks exposed with the exception of the string showing in the back." They were completely nude from the waist up, and their breasts were bare and unsupported.

There was a total of six "go-go" dancers performing on this occasion, in sets of two, and they danced to three or four musical numbers played on a recording machine. During the dance, one of the performers straddled a hand rail at the end of the stage and she rubbed her vagina area back and forth on the top of the rail. During this routine performance she bent over completely, as far as she could go, and she was sucking on the nipples of her breasts.

She then obtained a drink from one of the patrons, put her breast in the glass container and when she removed her breast "...the liquid would drop from her breast onto the stage or raised platform." She then lay on her back and "...with her hands back, she would raise her buttocks up and down, undulating her pelvic area, and turn over on her face and again do the same thing, going up and down with her buttocks" which the agent described as simulating sexual intercourse.

The other dancers performed in the same manner and during their acts of simulated sexual intercourse, "...their pubic hair was visible to patrons seated at the bar." The patrons responded by shouting "Take it off", and in other ways.

On this date, the licensee sponsored "amateur night" and four patrons performed on the stage. Each of these patrons performed completely nude from the waist up; their breasts were totally exposed and unsupported. In fact, one of the performers, at the end of her performance completely dropped her bottom attire, so that she was completely nude. One of the employees of the licensee announced that the winner would get $50 for her performance. The contest resulted in having two winners, so the prize money was divided equally between them.

The witness testified that, in his opinion, such performances were in violation of Rule 5 of State Regulation No. 20. He also asserted that the patrons were quite excited about the performance.

> "In fact, the patrons on the left-hand side in the booths were climbing on top of the booths and banging hard on the wall until a couple of gentlemen came over and attempted to stop them."

It was stipulated that the testimony of Agent B, on direct examination, would be corroborative of that testified to by the prior witness. On cross examination, he maintained that he interpreted the movements and actions of the dancers to be simulation of sexual intercourse. He explained that, in preparing his report, he was instructed to follow certain guidelines; if the breasts were unsupported and totally exposed, and the performers simulated sexual intercourse, his report would indicate that such performance was in violation of the relevant rule.

The agent had read Division bulletins which reported cases involving the same type of activity; and in those matters he noted that this Director and the courts have interpreted the same as being in violation of the said rule.

Samuel Gold, the Deputy Director of this Division, in charge of its licensing bureau, testified that this Division has published bulletins containing disciplinary proceedings instituted by this Division against liquor licensees since the Division was established in 1933. (N.J.S.A. 33:1-1 et seq.) These bulletins contain both contested, uncontested and appellate proceedings. They are always available for inspection at the Division office by licensees, attorneys and the general public and are distributed to subscribers and clerks of local issuing authorities.

Similarly, the published Rules and Regulations of this Division are also available and when any regulation is amended a copy of the same is sent to every licensee in the State. He noted that a preliminary statement in the Rules booklet advises that reference should be made to official bulletins for Division interpretation of the said regulations.

With reference to the second charge which alleges unlawful activity on April 10, 1973, Agent F testified as follows: On that date, at about 1:00 p.m. he entered the subject premises and joined Agent T, who had preceded his entry into the premises by about fifteen minutes. At that time there were approximately two hundred patrons, and two "go-go" dancers were engaged in their performance on the raised platform. One of the performers was dancing "topless", i.e., nude from the waist up. The other performer was totally nude, i.e., she was "completely topless and

bottomless", and wore nothing except boots. Their dance continued for about fifteen minutes, and they were followed by two other dancers who also danced completely naked. Their dance consisted of "...grinding, simulating the acts like intercourse". At this time these dancers received dollar bills from the patrons which they inserted in their boots. Then:

> "One of the dancers took a swizzle stick or pourer from one of the patrons and touched her vagina and gave it back to him."

These two dancers were followed by two other dancers, one of whom danced completely "bottomless", i.e., totally naked.

The agent remained in the premises for about an hour and fifteen minutes and then departed therefrom.

On cross examination, this agent reiterated that, in his opinion, these dances were immoral, indecent and lewd; and his opinion was reinforced both by his perusal of the Division bulletins and his own personal experience. He did not recall any specific case recorded in the bulletins relating to "bottomless" dancing, although he did recall reported cases relating to "topless" dancing.

It was stipulated that the testimony of Agent T, who was on vacation on the date of the hearing herein, would, if presented, be identical as to the observations of and substance to that testified to by Agent F.

John Shock, testifying on behalf of the licensee, gave the following account: He is the president of the corporate licensee. He asserted that no representative of this Division ever spelled out for him, or gave him, either orally or in writing, instructions as to what constitutes lewdness and immoral activity. He admitted reading the Rules and Regulations of this Division and was aware of the bulletins issued by this Division. Nevertheless, neither he, nor the attorneys with whom he consulted, have been able to spell out any standards to be applied, or the meaning and extent of the limitations imposed upon licensees in the conduct of licensed premises under the subject rule.

He explained that he cautioned his performers not to do anything "spectacular" but to conform to normal "go-go" dancing; in fact, he discharged several dancers who did perform in violation of his instructions. However, some of these girls came from other parts of the country where, he alleged, such dancing was permitted, and they performed these unusual dances "instinctively."

On cross-examination, he explained that he had been the manager of these premises under this license since July, 1972,

but that he had been affiliated with and employed by liquor licensees in New Jersey and in other states for the past fifteen years. During the period he never inquired of this Division as to whether this type of "topless" and "bottomless" entertainment was permitted at liquor licensed premises. It was his opinion that this type of activity was permissible.

He specifically denied that on a prior occasion ABC agent G informed him that "topless" entertainment was a violation of the rules of this Division. However, he admitted that he had, heretofore, been served with charges with respect to a prior violation involving "topless" dancing at these licensed premises, and that on behalf of the licensee, he received a Hearer's Report in that case wherein the Hearer recommended a finding of guilty on the charge of permitting "topless" entertainment at these premises, by finding that such entertainment was in violation of the said rule.

The said Hearer's Report was adopted by the Director who by order of April 11, 1973, suspended the subject license for fifty days. Re Starshock, Inc. t/a Lido, Bulletin , Item . He reasoned that, although he was familiar with the Division's interpretation of this rule that there were proceedings in the Federal court challenging the constitutionality of the subject regulation and, therefore, he did not consider that this licensee was bound by the Division's interpretation. Nevertheless, he was aware of the position of this Division on the dates charged in both charges. He then retreated to an admission upon being asked:

> "Q It is a fact, is it not, that you knew and countenanced, [but] provided completely nude dancing on those two days?
>
> A I was wholly responsible."

He further acknowledged that while he did not personally observe any of the other actions of the "go-go" dancers as noted hereinabove and detailed by the agents, he took no action to stop any of these performances on the dates alleged in these charges.

Further, he explained that he consulted with his attorneys from time to time, and they advised him that the subject regulation was "totally unenforceable".

He stated that he was not familiar with the Play Pen decision or the Club "D" Lane decision until it was pointed out to him that these decisions were embodied in the aforementioned Conclusions and Order, which resulted in the present suspension of the license. He concluded by affirming that, notwithstanding the said Order of suspension based upon the "topless" performances permitted at the licensed premises, the licensee not only continued to permit such dancing but also added "bottomless" dancing performances in this facility.

I

In his argument in summation, the attorney for the licensee contends that there are no standards set forth in Rule 5 of State Regulation No. 20 by which the licensee could be guided in determining the applicable limitations for the purpose of deciding whether or not it is violating the said rule. Further, he asserts that the rule is "over-broad, overly vague, and ambiguous", and is, therefore, unconstitutional.

Thus, he advocates that the licensee had no alternative except to test the regulation in the manner in which it did. I find this contention to be devoid of merit. Statutes and regulations of this Division may be deemed of sufficient certainty by the application of several criteria, the most pertinent of which in the instant matter is that there is "on-the-spot administrative interpretation by officials charged with responsibility for administering and enforcing the statute." Cox v. State of Louisiana, 379 U.S. 559, 569, 85 S. Ct. 476, 483. "The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement." Winters v. New York, 333 U.S. 507, 515, 68 S. Ct. 665, 670. Although many statutes "might be extended to circumstances so extreme as to make their application unconstitutional... a close construction will often save an act from vagueness that is fatal." Williams v. United States, 341 U.S. 97, 101, 71 S. Ct. 576, 579. And "If the statute should be construed as going no further than it is necessary to go in order to bring defendant within it, there is no trouble with it for want of definiteness." Fox v. Washington, 236 U.S. 273, 277, 35 S. Ct. 383, 348. With respect to words suchas "obscene, lewd, lascivious, filthy and indecent," see Roth v. United States, 354, U.S. 476, 77 S. Ct. 1304.

In the instant case, the words attacked are found in the following administrative rule of State Regulation No. 20:

> "RULE 5. No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy, indecent or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

It is noted that violation of the rule constitutes a civil offense, not a criminal one. Kravis v. Hock, 137 N.J.L. 252. Punishment thereof is by suspension or revocation of a liquor license. And the conduct interdicted is only that which takes place on the liquor licensed premises. Rule 5 has been construed in the State courts in numerous cases. See McFadden's Lounge, Inc. v. Division of Alcoholic Beverage Control, 33 N.J.

Super. 61, 66 and 67 (App. Div. 1954). In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971).

In Club "D" Lane, the court stated, 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. 489, 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 or immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for purposes of regulation or 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. 433, 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' entertainer or dances. The community has a right to protect itself against this kind of 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 has not been countenanced in liquor licensed premises by this Division or 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. See Hudson-Bergen etc. Ass'n v. Hoboken et al., 135 N.J.L. 502 (E. & A. 1947). 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.'" McFadden's Lounge v. Div. of of Alcoholic Bev. Control, supra; see Jeanne's Enterprises, Inc. v. Division of Alcoholic Beverage Control, supra; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

This licensee is presently under suspension upon conviction by the Director of a similar charge involving only "topless" dancing at its licensed premises. Re Starshock, supra. In the course of the Director's Conclusions in that matter he set forth in great detail the interpretation of Rule 5 of State Regulation No. 20, applicable to the said charge and cited numerous administrative rulings and court decisions affirming and upholding such interpretation.

In the prior Conclusions and Order in Starshock, the Director pointedly noted the admonition given by a former Director of this Division, in Play Pen Incorporation, Bulletin 1778, Item 5, reprinted in Bulletin 1805, Item 1, as follows:

> "In passing, however, I wish emphatically to advise all licensees that so-called 'topless' female employees, whether entertainers or otherwise, and whether with pasties described by Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State."

This statement was noted in In re Club "D" Lane, Inc. (112 Super. at p.580,581) where the court stated that all licensees are charged with knowledge of that admonition. Obviously, it follows that where "topless" entertainment will not be tolerated on licensed premises, the addition of "bottomless" dancing invokes even greater force to the said admonition.

Division determinations and Appellate Court decisions have consistently interpreted this rule with specific and articulated facts with respect to the denounced activity, and in fact, such interpretation has been constitutionally sustained in California et al v. Robert LaRue et al., U.S. 93 S. Ct. 390 (decided December 5, 1972). It is, therefore, incomprehensible for me to understand how the licensee could have misunderstood the fact that the conduct which it permitted on its licensed

premises was unenforceable. I find it inconceivable that his attorney would have advised him that the said rule was unenforceable, if, in fact, such advice was given to him. I am not persuaded that the licensee did, in fact, misunderstand the effect of the said rule. I find to the contrary.

It should have been quite apparent to this licensee that the many pronouncements and disciplinary proceedings 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. As the then-Director stated in Re DiAngelo, Bulletin 753, Item 4, in discussing what was meant by lewd and immoral activity within the intendment of the said rule:

> "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 interests of the industry... Nudity has no place in the liquor industry.

II

The attorney for the licensee next argues, by way of mitigation, that the certain acts as described herein performed by the entertainers during their dancing were not approved by the licensee, and that these dancers came from various parts of the country where such activities have been permitted. Under Rule 33 of State Regulation No. 20, it is sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent or employee of the licensee. The fact that the agent acted contrary to the instructions given to her by the licensee shall constitute no defense to the charges preferred in disciplinary proceedings.

Thus, the licensee was clearly responsible for and clearly inculpated by its actions even if the licensee did not know what was transpiring, or even if the agent acted contrary to its instructions. Greenbrier v. Hock, 14 N.J. Super. 449 (App. Div. 1951); In re Olympic, Inc., 49 N.J. Super. 299 (App. Div. 1958).

III

The licensee has testified that he had no knowledge of the specific rule hereinabove noted or of Division bulletins with respect to the proscribed activities. The facts are to the contrary. John Shock, the corporate licensee's president, admitted that he had read the Conclusions and Order in the prior matter involving the proscribed activity at this establishment, and was familiar with the Rules and Regulations of this Division. In the said Conclusions and Order, the Director cited the various administrative precedents and court

decisions relating to lewd and immoral activity on licensed premises, particularly with respect to "topless" entertainment.

Further, as was pointed out by Deputy Director Gold, the preliminary statement in the rules and regulations specifically advises licensees that "Reference should also be made to official bulletins, issued periodically by the Director for special rulings and findings, interpretations, decisions, various forms, and other material not contained herein (page 3 of the Rules and Regulations)." (emphasis supplied)

I am convinced that the licensee acted in contumacious disregard of the decisions of this Division and the relevant court decisions relating to the proscribed activity.

This is fortified by my conviction that the licensee deliberately embarked upon this activity because it conceived that this was a device to attract patronage to the licensed premises and increase its business. Not only did these nude performances attract a large patronage but the licensee conducted, as an added attraction, an "amateur night" at which time patrons were induced to perform and did perform "topless" dances by the offer of prizes for the best "topless" performance. I, therefore, find that the licensee had full knowledge of the relevant rule, and its legal effect. Thus, this contention of the licensee is entirely without merit and is rejected.

IV

In sum, I find that the charges with respect to both charges, have been established by substantive evidence, Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956) and that the legal contentions advanced by the licensee are without merit. It is, therefore, recommended that an order be entered adjudging the licensee guilty of both charges herein.

As noted above, the licensee has a prior adjudicated record for similar offenses and is presently under suspension for fifty days, effective April 12, 1973. Re Starshock, Inc., supra. Considering that this constitutes an aggravated situation, in view of the prior similar offense and the nature of the present violations, it is, further, recommended that the said license be suspended for one hundred twenty (120) days.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the summation of counsel 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 12th day of June 1973,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Pennsauken to Starshock, Inc., t/a Lido for premises 7980 South Crescent Boulevard, Pennsauken, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1973, commencing 2:00 a.m. on Thursday, June 14, 1973; and it is further

ORDERED that any renewal of the said license which may be granted be and the same is hereby suspended until 2:00 a.m. on Friday, October 12, 1973.

Robert E. Bower
Director

2. APPELLATE DECISIONS - RAMSEY v. JERSEY CITY.

Floyd Ramsey, t/a The Zodiac, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Louis E. Saunders, Esq., Attorney for Appellant
Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which by resolution adopted January 19, 1973, imposed a suspension of thirty days on appellant's plenary retail consumption license for premises 442 Grand Street, Jersey City, following a guilty finding of a charge alleging that on August 13, 1972, appellant sold alcoholic beverages to a minor, age 16, in violation of Rule 1 of State Regulation No. 20. The effective date of the said suspension imposed was thereafter stayed by order of the Director dated February 8, 1973, pending determination of the appeal.

The petition of appeal alleges that the Board's decision was contrary to the weight of the evidence and should be reversed. The Board denied this contention.

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

Appearing on behalf of the Board, Rosemarie --- testified that she is sixteen years old. She described at great length her itinerary during the evening of August 13, 1972. Pertinently to the issue, she stated that about or shortly after midnight on the said date she, in company of two other girls and a boy, visited appellant's tavern. She described the interior of the premises with some detail and indicated where she and her compatriots seated themselves. The boy remained standing and a waitress took their orders.

She ordered and received a rum-and-coke. Thereafter she had another similar drink which the boy obtained from the bar. They remained in the premises until closing time and then departed.

On cross examination she admitted that she could not recall the identity of the waitress nor could she describe her. She admitted further having consumed alcoholic beverages at other places previously during the evening, which beverages totaled three cans of beer. However, she insisted she was physically unaffected by these drinks.

Sharon --- testified that she is fifteen years old and was in the company of Rosemarie on the evening in question. She too described the visit to appellant's premises and her testimony was substantively corroborative of that of Rosemarie's. Sharon did drink an alcoholic beverage while in appellant's premises which too was a rum-and-coke.

Both witnesses were candid in their admission that they each knew it was illegal for them to drink alcoholic beverages at all in licensed premises and that they consumed such beverages on that evening both before and after the visit to appellant's premises.

The Board further produced testimony of Detectives John Sullivan and John Jackson who merely reported upon details occurring on the evening in question which had neither significance nor relevancy to the charge or to appellant's premises.

Appearing on behalf of appellant, Ivory Ramsey and Earlene Wallace both testified that they were the only waitresses on duty in appellant's establishment on the evening in question. They indicated that that evening was a busy one. Their patronage consists mostly of blacks and the presence of two young white girls would have been glaringly noticeable. Neither witness ever wears regular waitress costumes or dresses other than in street clothes while on duty. This latter point was elucidated in response to statements by the Board's witnesses that the waitress who served them wore an apron.

Appellant Floyd Ramsey testified that he was on duty behind the bar and had patrons at the tables under surveillance. He denied emphatically that either of the two minors was in these premises on the evening in question.

Lloyd Jordan, who described himself as a co-owner of appellant's establishment, testified that he was on duty as a front-doorman on the evening in question. As he checks persons entering the premises as a precaution against admittance of undesirables, drug addicts, criminals and minors, he would have seen the subject minors enter had they done so. He did admit it could be possible for some persons to gain admittance if his attention was diverted, but denied that such persons could remain

in the premises undetected for long.

In summation, counsel for appellant contended vigorously that the proofs offered by the Board were not buttressed by testimony of a third girl (Jean Jenkins) who had given testimony before it; that the Board should be compelled to produce this witness. He was asked for a proffer of such testimony and indicated that such witness would testify that the drinks allegedly served to the minor girls were obtained not from a waitress but by their male companion who secured them from the bar. Such proffer was accepted and is made part of the proofs herein.

Primarily, it should be observed that we are dealing with a purely disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a factual issue, the credibility of the witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be such as 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).

Although this Division deplores the conduct of the minor on the date in question, I am imperatively persuaded that her version had a substantial ring of truth with respect to the alleged consumption of the alcoholic beverages in appellant's premises. The unhesitatingly detailed response to the questions posed concerning the interior and activities in appellant's premises gives rise to no other conclusion than that such visit was made under the circumstances described.

While appellant and his witnesses testified frankly, all of the testimony revolved about a very busy night in the establishment and, while it might be conceded that open sales to minors would not be encouraged, such sales under circumstances described could occur. I conclude, on the basis of the entire record that the charge herein has been established by a fair preponderance of the credible evidence. Thus appellant has failed to meet his burden of establishing that the action of the Board was erroneous and should be reversed. 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 entry of the 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 transcript of the testimony, 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 12th day of June 1973,

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 my order dated February 8, 1973, staying the Board's action pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-374, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Floyd Ramsey, t/a The Zodiac, for premises 442 Grand Street, Jersey City, be and the same is hereby suspended for the balance of its term, viz., midnight June 30, 1973, commencing at 2 a.m. Tuesday, June 26, 1973; and it is further

ORDERED that any renewal of said license which may be granted be and the same is hereby suspended until 2 a.m. Thursday, July 26, 1973.

Robert E. Bower,
Director.