

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

BULLETIN 1888

December 11, 1969

TABLE OF CONTENTSITEM

1. NEW LEGISLATION - EXTENSION OF LICENSING PERIODS OF SEASONAL RETAIL CONSUMPTION LICENSE.
2. APPELLATE DECISIONS - R. H. MACY & CO., INC. v. WAYNE.
3. DISCIPLINARY PROCEEDINGS (Paterson) - PROCUREMENT FOR PROSTITUTION - LICENSE SUSPENDED FOR 210 DAYS.
4. DISCIPLINARY PROCEEDINGS (Newark) - FALSE BEVERAGE TAX BUREAU REPORTS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 1888

December 11, 1969

1. NEW LEGISLATION - EXTENSION OF LICENSING PERIODS OF SEASONAL RETAIL CONSUMPTION LICENSE.

On November 5, 1969, the Governor approved Senate No. 323 (1969) which thereupon became Chapter 183 of the Laws of 1969, effective immediately. The Act amends R.S. 33:1-12(2) as follows, deleted matter bracketed, new matter underlined:

Seasonal retail consumption license. 2. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises, during the summer season from May 1 until November ~~1~~ 14, inclusive, or during the winter season from November 15 until April ~~15~~ 30, inclusive; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except, subject to such rules and regulations established from time to time by the director, the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons, or the sale of distillers and vintners packaged holiday merchandise prepaced as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at 75% of the fee fixed by said board or body for plenary retail consumption licenses. The governing board or body of each municipality may, by ordinance, enact that no seasonal retail consumption license shall be granted within its respective municipality.

JOSEPH M. KEEGAN
DIRECTOR

Dated: November 24, 1969

2. APPELLATE DECISIONS - R. H. MACY & CO., INC. v. WAYNE.

R. H. MACY & CO., INC.,)	
Appellant,)	ON APPEAL
v.)	CONCLUSIONS
)	AND ORDER
MUNICIPAL COUNCIL OF THE)	
TOWNSHIP OF WAYNE,)	
Respondent)	

Lum, Biunno & Tompkins, Esq., by Joseph R. McMahon, Esq.,
Attorneys for Appellant
Jerome A. Vogel, Esq., by Robert S. Moraff, 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 respondent whereby on October 2, 1968, it denied an application for renewal of appellant's plenary retail consumption license for the 1968-69 licensing period for premises to be constructed at Willowbrook Shopping Center at Southside of Rt. 46 between Rt. 23 and Riverside Drive, Wayne.

No answer to the petition of appeal was filed by respondent.

Six of the nine councilmen voted to deny, whereas three voted in favor of the renewal application.

A brief history concerning the license in question will be helpful for a proper understanding of the matter under consideration.

Appellant acquired the liquor license by person-to-person and place-to-place transfer from All Gran Realty Corp. on June 6, 1962, subject to a completion-of-premises special condition. A resolution effective June 15, 1962 was approved for the sole purpose of permitting conditional grant of application for 1962-63 renewal. Applications for renewal of the said license to appellant were approved for the licensing years 1963-64 to 1967-68, inclusive, containing the completion-of-premises special condition.

The resolution dated October 2, 1968 denying the current application disclosed that respondent's action was based on the following grounds:

- "1. It encroaches on the circulation roadway.

"2. It encroaches on the parking spaces designed for the shopping center as a whole, and which expert planners testified for the applicant (in another matter) that not one parking space could be spared. The building would occupy at least 20,000 sq. ft. of the land area that is considered so vital for parking.

"3. Since the shopping center has been laid out, the land is no longer available for the building. This is now part of the parking area and circulation road."

Thereafter, appellant's application to rescind respondent's action taken on October 2, 1968 and to grant a rehearing in the matter, was denied on November 6, 1968.

The instant appeal was taken from respondent's denial of renewal of appellant's license and on June 13, 1969, when the matter was heard, the attorney for appellant appeared on its behalf.

Before proceeding with the matter, when respondent's attorney failed to appear, I, as Hearer, made several telephone calls to the office of Jerome A. Vogel, Esq., attorney for respondent, who then suggested that I proceed ex parte with the hearing. Pursuant thereto, Joseph R. McMahon, Esq., on behalf of appellant, marked as exhibits a plot plan (copy of which had been filed with respondent) disclosing the location of the proposed licensed premises and two letters, both dated September 16, 1968, one from Sears, Roebuck and Co. which operates a store in the shopping center, and the other from The Rouse Company, a developer of the center, in which was indicated that neither company objected to the location of appellant's proposed premises. Attorney McMahon stated for the record that although there is a parking lot presently on the site for the building to be known as the licensed premises, appellant can perform in accordance with the plan which was theretofore filed when the application for the transfer of the license to appellant was originally approved by respondent.

Sometime after completion of the hearing, attorney Robert S. Moraff appeared at this Division on behalf of respondent and left copies of the resolutions dated October 2 and November 6, 1968, aforementioned.

Upon examination of the transcript of the hearing on June 13, 1969, it appeared to contain insufficient facts to enable the Hearer to submit a report in the matter. As a result thereof, a supplemental hearing was scheduled and the attorneys for the parties herein were notified to produce witnesses at the time of the hearing who were able to give additional necessary information and also to produce surveys or plot plans depicting the area as it now exists.

At the said hearing held on July 28, 1969, the attorneys for the parties herein appeared but called no witnesses. However, an affidavit of Harold Grabino is marked in evidence without objection thereto, the pertinent part of which reads as follows:

"2. I am employed by the appellant corporation in the above-referred matter as Vice President-Legal and Assistant Secretary, and part of my duties during the course of my employment has involved the Willowbrook Shopping Center in the Township of Wayne.

"3. I have met with most of the officials from the various public agencies and the Town Council in the Township of Wayne from time to time concerning the over-all development of the shopping center.

"4. On June 6, 1962 R. H. Macy & Co., Inc. became the holder of Plenary Retail Consumption License No. C-23 in the Township of Wayne and on that date an application for the person-to-person and place-to-place transfer of the 1961-62 license was approved, subject to a completion-of-premises special condition. Thereafter, applications for renewal were approved for the ensuing license terms. However, the 1968-1969 license renewal was held up because of the objection of the then holder of a license at the Peacock Inn, immediately west of the shopping center. (The Peacock Inn license has since been transferred and the present holder has not voiced any objection to the Macy application.) The objector led the Town Council to believe that the site for the location of the restaurant to be constructed had been eliminated because of the fact that subsequent Site Plan approvals had shown that site as being used for parking. The objector also led the Council to the belief that the mere fact that a portion of this tremendous shopping center has been blacktopped would have voided the possibility of that area ever being used as the site of a future restaurant site to be constructed thereon, because of certain Zoning Ordinance and contractual requirements with respect to the number of parking spaces required for the shopping center.

"5. In truth and fact, while the construction of a restaurant on the site originally proposed would have diminished parking area and created parking demand on its own, such loss and additional demand could readily be provided elsewhere on the shopping center site or in decks so as to satisfy the parking requirements of the Zoning Ordinance and any contractual requirements.

"6. The site of the proposed restaurant was available for use by R. H. Macy & Co., Inc. at the time the Town Council denied the renewal in 1968 and could now be made available for our use."

The attorney for respondent stated that the site for construction of the restaurant which will constitute appellant's licensed premises did not actually lie within the circulation road, but he did not know "whether or not a zoning officer or another officer within the township which would have to approve the building would feel that it's too close to the roadway." Moreover, respondent's attorney stated, "the shopping center has ample parking spaces in toto," but that he was uncertain whether the intention was to consider total space for the whole complex or parking spaces for each individual building. He expressed an opinion that "in all fairness to the applicant [appellant], it was probably meant to include the total shopping center."

There has been no accusation in this matter that appellant had in any way whatsoever contributed to the delay in constructing the restaurant for which the license in question is sought.

I have examined the reasons given for the denial of license renewal for 1968-69 and find them insufficient to warrant the action taken by respondent herein. I am satisfied to accept appellant's contention that the site can be made available for the purpose intended in accordance with the plot plan originally filed. If not, any necessary permit for the construction of the licensed premises may be withheld.

Under the circumstances, I recommend that the action of respondent be reversed and that respondent be ordered to grant the application, subject, as before, to appropriate completion-of-premises special condition. Cf. The Chandelier Corp. v. Lindenwold, Bulletin 1668, Item 1.

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, including the transcript of the proceedings, the exhibits and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 16th day of October, 1969,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is hereby directed to grant the application for license subject to the special condition that the license shall not be issued unless and until the proposed premises shall have been duly completed in keeping with the filed plans.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION - LICENSE SUSPENDED FOR 210 DAYS.

In the Matter of Disciplinary Proceedings against)	
)	
NEW GLASS BAR, INC.)	CONCLUSIONS
t/a Frank's Club)	AND ORDER
197 Paterson Street)	
Paterson, New Jersey)	
Holder of Plenary Retail Consumption License C-176 issued by the Board of Alcoholic Beverage Control for the City of Paterson)	
)	

Diamond & Diamond, Esqs., by Michael K. Diamond, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On the nights of January 9, 10 and 13, 1969, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through a person employed as a bartender upon your licensed premises, allowed, permitted and suffered solicitation by ostensible female customers and/or patrons of male customers and patrons for prostitution and/or acts of illicit perverted sexual relations, the making of overtures and arrangements by said females with male customers and patrons for acts of illicit sexual intercourse and/or acts of perverted sexual relations and further on said night of January 13, 1969, you through said person employed on your licensed premises as a bartender, made offers to a male patron or customer on your licensed premises to procure a female to engage in acts of illicit sexual intercourse and/or in acts of illicit perverted sexual relations with said male patron or customer, and, in furtherance of such offers made arrangements with and procured a female to engage in acts of illicit sexual intercourse and/or in acts of illicit perverted sexual relations with said male patron or customer, as aforesaid; in violation of Rule 5 of State Regulation No. 20."

Several ABC agents participated in the investigation which resulted in the preferment of the charge.

Agent G testified that pursuant to specific assignment to investigate an allegation of prostitution, he entered the licensed premises (characterized as a neighborhood tavern) on January 9 at approximately 4:30 p.m. and positioned himself at the bar opposite the cash register. He had visited the licensed premises four times previously. He described the interior of the barroom thusly:

"As you walk in the door on the left wall there's a shuffle alley, a juke box; left rear is a telephone booth and ladies' room and a men's room in the rear; on the right is an L-shaped bar with a short leg in front extending to the rear with a break in the rear followed by a small, like a storage room; and behind the bar is shelves, a register halfway down the bar, and the far rear, right rear is a small stage."

The lighting is dim. Henry Brigliadoro (referred to as "Red") was tending bar. Upon entry, the patronage consisted of one female, identified as Loretta. Later, a male (referred to as Fred) entered the premises, engaged in conversation with Red and entered the men's room. Upon re-entry into the barroom, Red motioned to him to sit next to Loretta. After seating himself next to Loretta, Red introduced them to each other and served them a beverage. Shortly thereafter Fred departed the premises followed by Loretta. Red engaged Agent G in conversation and, after mentioning that Fred had a large sum of money in the glove compartment of his automobile, said, "He'll pay Loretta \$50 just to get laid." After mentioning that he had never gone out with a colored girl, Agent G asked whether or not white girls frequented the barroom. Red responded, "Yes, several come in, but the fellows scoop them up... They don't stay too long." Shortly thereafter he left the premises.

Agent G returned to the vicinity of the licensed premises on January 10 accompanied by Agent B. At approximately

5:00 p.m. Agent B entered the tavern alone. Shortly thereafter Agent G entered the tavern. Red (who was tending bar) waved to him and said, "Your friend's down the back." Agent G joined Agent B who was sitting in the rear. When Red served the agents a drink, Agent G introduced Agent B to Red as "Johnny." Upon entry, Loretta and two males were in the tavern. A male entered the tavern, conversed with Loretta and both departed the premises. A female (later identified as Rebecca, referred to as Twiggy and as Becky) entered the barroom at approximately 6:00 p.m., conversed with Red (who was tending bar) and sat at the last seat at the end of the bar. Agent G was positioned to Becky's right and Agent B was positioned to Agent G's right.

While Red was serving them a drink, Becky asked, "Are you State police?" The agents laughed; Red "made a little face and walked away." Thereafter Becky asked Agent G whether or not he wanted to go out. G responded that he didn't know. Later Red approached Becky and said to her, "Now, remember, the cigarette in my mouth means I don't know the guy and you're to leave and call back in about a half-hour, see if he's gone. But if I serve you a drink, it's a green light," and then walked away. Again Becky asked Agent G whether or not he wanted to go out. G replied that he didn't know, he had never gone out with a colored girl. From time to time Red returned to the area where the agents and the female were positioned, either to serve drinks or to converse with the female. On one occasion, he referred to the female as Twiggy and said, "Don't forget, when you see me put a cigarette in my mouth, you leave." Red then said to the agents, "I got a brother a detective in Paterson. I got to be careful pushing broads," and walked away. Becky again asked Agent G whether or not he had ever gone out with a colored girl. When the agent said "No", Becky (Twiggy) responded, "You don't know what you're missing." Continuing her conversation, Becky said, "I have to go out and make some money. I don't make money sitting here. The bar makes money on the drinks. I only make money if I go out." Becky having indicated that she was in a hurry, Agent G handed her \$10 for the purpose of keeping her in the tavern. Becky asserted that she would be available for "immoral purposes" for \$20 plus the cost of the room. They could use the hotel across the street or go to a "nice place." She stated that she frequented the tavern almost every afternoon.

Frank Brigliadoro (an officer of the corporate licensee) came in to tend bar. As Red was departing from the premises at approximately 7:00 p.m., he spoke to Becky as follows: "Twiggy, now, remember, when you see me with a cigarette, you leave, and when I give you a drink, he's okay." Shortly thereafter Becky left the premises and Agent G departed at 7:30 p.m.

Prior to proceeding to the licensed premises on January 13, Agent G rendezvoused with several ABC agents and Prosecutor's Detective John Pettinelli when two ten-dollar bills and one five-dollar bill were marked for use in the investigation. Agents G and B arrived at the vicinity of the licensed premises at approximately 4:15 p.m. and Agent B entered immediately. Agent G entered at approximately 4:40 p.m. and took a position at the far end of the bar, one stool removed from Agent B. Red was tending bar. At the time of entry the patronage consisted of four females and three males. Loretta was seated approximately five stools to the right of the agents. The other patrons were at the front end of the bar.

Red served the agents drinks and asked questions concerning their employment, which indicated that he was suspicious

of the agents' presence on the premises. The agents requested Red to serve Loretta a drink. Red served Loretta the drink and, upon returning to the place where the agents were positioned, Red was observed to be holding a cigarette in his mouth. The agent continued his observations as follows:

"At about 5:30, 5:45 a male was observed to enter the premises and go to Loretta, and a short time later the male departed and Loretta departed. Then at about just before 6:00 p.m. I had conversation with Mr. Brigliadoro and I asked him if the female Becky had been in yet, and I said to him, 'I'm going to change my luck tonight and let Becky take me out and'...It was almost immediately after that that she entered the premises. And Red, Mr. Brigliadoro, remarked, 'Here she is now'."

Red served the agents and a patron a drink. He was observed to approach Becky who was seated at the front of the premises and converse with her. Becky walked toward the rear and stopped to talk with a male approximately halfway up the bar and approximately five stools distant to the right of the agents. Upon Red's return to the agents' position, Agent G exclaimed to Red that Becky was taken. Red replied, "That's the way it is." Agent G asked of Red, "Can't you send her down?" Red replied, "I did." Agent G then asked Red, "Can't you get her over here?" Red replied, "I can't do that. You wouldn't want me to take her away from you, would you?" When questioned by Agent G as to whether or not the next female could be his, Red replied, "Sure. Buy her a drink and move on her." At this time the male seated with Becky left the premises and Becky joined the agents at the bar. Agent G asked her, "Did Red send you down to me?" Becky responded, "Yes." Becky asked the agent, "Do you want to go out tonight?" and the agent replied, "Where are you going now?" Becky informed Agent G that she was going out with the male, that she would return in fifteen minutes, that he should wait for her and that "I'll show you a good time. You won't be sorry you waited." Becky finished her drink and departed from the premises. Thereafter Red served the agents another drink. Red had a cigarette in his mouth. Agent G said, "Come on, Red, put the cigarette out." Red and the agents laughed and Red removed the cigarette from his mouth.

At approximately 6:20 p.m. Becky re-entered the tavern and sat between the two agents. Red served the trio a drink, took payment and walked away. At that time he did not have a cigarette in his mouth. Upon being asked, "What's the story?", Becky replied, "The same as I told you on Friday; it's \$20 for me and the room is extra." Becky suggested going to the Thunderbird Motel in Paterson. Agent G overheard Agent B ask Red, who was positioned directly across the bar, "Is he going to get laid or blowed, Red?" Red replied, "I don't know. Could be either."

Pursuant to Becky's instruction, Agent G left the tavern first, at approximately 6:35 p.m. Becky met Agent G at his automobile and together they drove to the motel, arriving there at approximately 6:45 p.m. Agent G registered, was given a key to a room, and returned to the car where Becky was waiting. Agent G gave Becky the marked money consisting of the two ten-dollar bills and one five-dollar bill. Both of them went to the motel room. Becky disrobed. At this point the room was raided by Detective Pettinelli and ABC Agents S, R, Ga and Ro. The marked money was recovered from Becky's person under her wig. The marked money was received in evidence.

After the group departed from the motel room, Agent G rejoined Agent B who had remained at the tavern. Frank Rotondo (identified as the president of the corporate licensee) was tending bar. Upon the arrival of the other ABC agents and the police officer, the agents identified themselves to Rotondo. Frank Brigliadoro was called to the licensed premises by Rotondo and the agents introduced themselves to him. Later, at police headquarters, Detective Pettinelli pointed to Agent G and asked Red "if he knew me." Red responded, "I never saw him before."

On cross examination, Agent G testified that in addition to serving and conversing with him, Red also waited on and conversed with other patrons. He did not recall, although he could have said to Red, "Aren't you a chain-smoker? You smoke a lot?" Concerning Red, the agent observed that "there were times when he had cigarettes and then there were stretches of times he didn't have cigarettes." The ladies' room was located in the far left rear of the barroom almost directly behind where the agent was positioned on January 13. In order for a patron to go to the ladies' room, she would have to pass by him. Upon being questioned as to whether he had consumed about ten drinks on January 13, the agent testified, "I would say not more than ten. Less than ten." Consuming the alcoholic beverages had no effect upon him. Prior to entering the police station, he stopped for a frankfurter because he had not eaten. After entering the police station, he heard a comment concerning his state of sobriety.

Agent G did not recall hearing the local police officers question Becky as to whether or not Red (the bartender) introduced her to him. It was "very possible" that, when questioned by Frank Brigliadoro, he told him that Red did not introduce the female to him. On January 13, upon mentioning to Red something about he "wanted to change" his luck, Red did not reply; he walked away.

On redirect examination, Agent G testified that he was sober and that no one challenged his sobriety.

He met Becky for the first time on January 10 when she approached him to purchase her a drink. He knew her name because he heard the bartender mention the name.

ABC Agent B participated in the investigation of the licensed premises in collaboration with Agent G on January 10 and January 13. His testimony concerning the major points of inquiry relative to the charge filed herein was corroborative of the testimony offered by Agent G.

Concerning the occurrences of January 13, Agent B testified that Red was smoking a cigarette and Agent G said to him "Why don't you put the cigarette out? You're chasing all the girls away." Red "sort of laughed and took the cigarette and threw it on the floor and put it out." At approximately 6:20 p.m. Becky re-entered the tavern and sat between the two agents. Red served them a round of drinks. He was not smoking at that time. Agent G asked Becky, "What's the story?" Becky responded, "The same thing as Friday, 20 for me and extra for the room." At that time Red was "about two feet away by the back, backstage." Agent B said to Red, "What do you think, he's going to get laid or blowed?" Red replied, "I don't know. Could be either." Agent G and Becky left the barroom at approximately 6:40 p.m. Agent G left first, followed by Becky. Agent B remained in the premises. Red said to Agent B, "I thought you were leaving," to which he responded, "No. I'm going to stick around and see

when Frank [Agent G] gets back, see how he made out." Red was relieved of tending bar by Frank Rotondo at approximately 7:00 p.m. Later the various ABC agents and Detective Pettinelli entered the licensed premises and identified themselves to the bartender. Agent B did not participate in the questioning either at the tavern or later at local police headquarters. Agent G appeared to be sober at all times.

On cross examination, Agent B testified that he did not tell Red that he was a chain-smoker, nor did he recall Agent G telling Red that he was a chain-smoker. Becky entered the licensed premises on January 13 at approximately 6:00 p.m. Neither he nor Agent G motioned to Becky to come over to them. Neither of them requested Red to serve Becky a drink.

When the group entered the barroom after the motel episode of January 13, Agent B was requested to watch over Becky. He and Becky sat next to each other at the rear of the bar. No one spoke with her prior to going to the police station. In particular, Frank Brigliadoro did not ask Becky, "Did Red introduce you to this guy?" He did not participate in the questioning at the police station. He was positioned at the opposite side of the room.

Agent S testified that on January 13 he rendezvoused with ABC Agents R, Ga and Ru and County Investigator Pettinelli in the vicinity of the Thunderbird Motel. After observing Agent G and the female enter the motel, he ascertained the room number assigned to Agent G. Upon being admitted to the room by Agent G, he found Becky disrobed and the marked money was recovered from beneath her wig. The entire group proceeded to the licensed premises and from there to the police station in order to complete the investigation at the police station. Upon being questioned by Agent S, Red denied knowing or ever seeing Agent G in the barroom.

On cross examination, the agent testified that he did not recall hearing Frank Brigliadoro ask Becky in the barroom after the raid of the motel room on the night of January 13 whether or not Red introduced her to the agent. He did not hear Becky say anything. "She was just crying."

At the tavern he waved Agent G aside in order to prevent his being involved in the questioning because he "didn't want tempers to flare." He denied telling Agent G "to go sit down."

At the police station he "saw the huddle between Frank, Henry and Rebecca." He did not hear anyone mention that Agent G should be given a sobriety test. He did not overhear the conversation between Pettinelli and Becky, nor did he overhear the conversation between Lt. Esposito and Frank Brigliadoro. He did not at any time overhear Becky say that Red did not introduce her to Agent G or any other agent.

On redirect examination, Agent S expressed an opinion that Agent G was sober at all times on January 13.

In defense of the charge, Lieutenant Joseph M. Esposito of the Paterson Police Department testified that he was on duty on the night of January 13. He recalled Frank and Henry Brigliadoro, Investigator Pettinelli of the County Prosecutor's office, several ABC agents and Rebecca (Becky) --- coming into the police station that night at approximately 8:30 p.m. Investigator Pettinelli informed him that Rebecca was brought to

the police station because "she was under arrest and involved in soliciting for purposes of prostitution" in the licensed premises. In the presence of Detectives Pettinelli and George Morgello, he spoke briefly with Becky concerning her involvement in prostitution at the licensed premises. He did not know whether or not the ABC agents were able to hear the conversation. Becky told Lt. Esposito that Agent G, who was seated at the bar, called to her to have a drink. She conversed with Agent G momentarily and then proceeded to the ladies' room. Upon leaving the ladies' room, she sat next to Agent G and had a few drinks. Agent G offered her \$25 to have sexual intercourse with him. Red did not introduce her to Agent G. She had met the agent at the tavern on a prior occasion. Frank Brigliadoro told Lt. Esposito that he thought Agent G was drunk. He was not given a test for drunkenness.

On cross examination, Lt. Esposito testified that he was not in the tavern on the evening in question. He knew only what was told to him by the agents, by the bartender and by Rebecca. He had no knowledge as to whether or not the statements made to him by Rebecca were true. He was not aware as to whether or not Red made arrangements for Becky to go to the agents. Agent G appeared to him to have been drinking; however, he was not intoxicated; he knew "what he was doing."

George D. Morgello (a detective in the Police Department of the City of Paterson) testified that he was present when Lt. Esposito questioned Becky and that he heard her responses. His testimony was corroborative of the testimony offered by Lt. Esposito concerning the questioning of Becky.

John J. Pettinelli (an investigator in the office of the County Prosecutor) testified that Frank Brigliadoro asked Becky at the police station "if Red procured for prostitution." Becky replied in the negative. He did not convey that information to anyone.

On cross examination, the witness admitted that he did not know whether or not Becky's response to Frank Brigliadoro's inquiry was truthful.

Henry Brigliadoro testified that on the dates mentioned in the charge, he was employed as a bartender by the corporate licensee. He recalled Agent G (known to him as "Bob") coming into the tavern on January 9 and serving him a drink. There were three other patrons in the barroom. Later, Twiggy (Becky) entered the barroom and conversed with a female. Agent G waved to Twiggy to sit with him. Twiggy sat alongside Agent G, who said, "Red, give my friend Twiggy a drink." At Twiggy's request, she was served a Coke and later another Coke. On this day Agent G came into the tavern alone.

On January 10 Agent G again entered the tavern alone. He sat at the rear of the bar and asked, "Have you seen some fellow looking for me?" Red answered, "No." When Agent B (known to the witness as "John") entered the tavern, Agent G waved to him and Agent B joined Agent G at the rear of the bar. Red denied informing Agent B, "Go in the back. Your friend is there." At Agent G's request, Red served Agent B a drink. They had three or four drinks each. They entered the tavern at approximately 6:00 p.m. There were no other patrons in the tavern. Later, a patron named Ronny came in. Red did not have much conversation with either agent on January 9 or 10. Nothing else occurred on January 10.

On January 13, Agent B entered the licensed premises at approximately 4:45 p.m., sat toward the rear of the bar, asked for "Bob" and ordered a drink. Approximately ten minutes later Bob (Agent G) entered the tavern, sat alongside Agent B and ordered a drink. John (Agent B) mentioned that he had lost money on the Jet game. Red had no conversation with Agent G. Loretta entered the barroom and sat "right near John." Bob said, "Give my friend Loretta a drink." Red served her a drink and, after consuming it, she departed from the premises. He did not see her converse with the agents. "She [Loretta] didn't want to even bother with them." Twiggy entered the barroom and conversed with a male known as Bonny who was positioned at the middle of the bar approximately six or seven stools distant from where Agent G was seated. Agent G leaned back on his stool and waved to Twiggy to go to him. She didn't move. Approximately ten minutes later, Twiggy entered the ladies' room and, upon emerging therefrom, Agent G grabbed her and seated her between the two agents. At Agent G's request, Red served the agents two rounds of drinks and Twiggy two Cokes. Twice he said, "Give my friend Twiggy a drink." He then entered the men's room and, upon emerging after three or four minutes, he observed that Twiggy and Agent G had departed from the tavern, leaving only Agent B at the bar. At Agent B's request, he served him a drink. Upon the arrival of his brother Frank Brigliadoro, Red left the tavern.

Red denied that he, in the presence of the agents, arranged with Twiggy a signal involving the use of a cigarette. He denied ever giving Twiggy or any other female a signal to meet the agents. He denied that, upon emerging from the men's room, Agent B said to him, "What's going to happen? Is she going to blow him or lay him tonight?"

Finally, he testified that he smokes three packs of cigarettes daily, that he smokes while tending bar, including the times both male and female patrons are in the premises, and that on none of the dates mentioned in the charge did he ever have any conversation with Rebecca wherein the agents were at all mentioned.

Frank J. Rotondo (president and one of the major shareholders of the corporate licensee) testified that he reported for duty at the tavern on January 13 at approximately 6:45 p.m. and observed that Henry Brigliadoro, Agent B and another patron were in the barroom. Twiggy was not in the barroom. He did not know who she was at that time. She had "been in the place a few times."

At approximately 8:30 p.m. several Division agents, Investigator Pettinelli and Twiggy entered the barroom. The agents identified themselves. Frank and Henry Brigliadoro were summoned to the tavern by Rotondo. Rotondo was informed that Red was charged with procuring and Twiggy was charged with soliciting. He questioned Twiggy as to whether Red had introduced her to anyone. She replied, "No", that Agent G pulled her over when she was going to the ladies' room. He heard Frank Brigliadoro question Twiggy as to whether Red had introduced her to the agents. She replied, "No."

On cross examination, the witness reiterated that Frank Brigliadoro had used the word "introduce" in questioning Twiggy.

Frank Brigliadoro (the secretary of the corporate licensee) testified that he immediately proceeded to the

licensed premises upon being summoned by his partner Frank Rotondo on the night of January 13. The Division agents identified themselves to him. After learning something of the nature of the charge, he asked Twiggy, who was seated at the rear of the bar between agents G and B, "Did Red introduce you to these fellows?" The female replied, "No." Concerning Red's smoking habits, the witness declared, "Red's a chain-smoker." Agent G staggered in the police station. He requested Lt. Esposito to administer a sobriety test of Agent G. At the police station, he again asked Twiggy, in the presence of Lt. Esposito and Investigator Pettinelli, "Did Red introduce you to these agents?" She responded negatively.

On cross examination, the witness asserted that they are on the lookout for females who attempt to solicit patrons. They would evict any female caught soliciting a patron. It was his opinion that Agent G was intoxicated.

In rebuttal, Agent G testified that he did not request Red to serve Becky a drink on January 9 because he did not recall seeing her in the premises on that date.

In brief, licensee argued that the Division had failed to sustain the burden of proving the charge by a preponderance of the believable evidence.

Preliminarily, it should be observed that in matters of this nature, 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, Inc. 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. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (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.

Unquestionably, an arrangement was made on January 13, 1969 between a female (Becky, also known as Twiggy) and a male (Agent G) in the licensed premises for illicit sexual intercourse, which was followed up by their visit to the motel for the purpose of consummating the arrangement. However, I have summarized with considerable detail the testimony adduced herein in order to properly and fairly adjudicate the remaining dispositive issues, namely, (a) did the licensee "allow, permit or suffer" the act of lewdness and immoral activity in and upon the licensed premises and (b) did the licensee, through an employee, make offers to a male patron to procure a female to engage in acts of illicit sexual intercourse, all in violation of Rule 5 of State Regulation No. 20.

In reviewing the testimony, I find that the bartender Henry Brigliadoro made an offer to a male patron on the licensed premises to procure a female to engage in an act of illicit intercourse within the proscription of Rule 5 of State Regulation No. 20.

I deem credible Agent G's testimony that on January 9, 1969, he and the bartender (Red) indulged in talk whereby it was apparent that Red was aware that females frequented the tavern for the purpose of soliciting male patrons. It is apparent that Red was aware that a female identified as Loretta solicited a male patron on this day.

It is also apparent that on January 10, 1969, Twiggy solicited Agent G for an act of illicit intercourse in the licensed premises and that Red had arranged signals with Twiggy as to when it was safe or unsafe to engage in soliciting.

It is apparent, too, that on January 13, 1969 (prior to the motel episode involving Twiggy and Agent G), Red was aware that Twiggy had "picked up" a male patron and left the tavern with him. Red admitted to Agent G that he had sent Twiggy to Agent G prior to the time that Twiggy and the aforesaid male patron departed from the premises.

Unquestionably, Red was aware of the reason why Agent G and Twiggy left the tavern on January 13. I deem credible Agent B's testimony that he asked Red (who was positioned across the bar from the two Division agents and Twiggy at the time) as to the type of relations Agent G and Twiggy were going to indulge in. Red's response indicated that he was fully aware of their purpose in leaving the tavern.

It has long been held that the solicitation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2; aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953). In fact, where it has been established that the licensee or its employees actually procured a female or made offers to male patrons to procure a female to engage in acts of illicit sexual intercourse with them and made arrangements therefor, this Division has unhesitatingly revoked the license. See Re Tiny's Bar & Grill, Inc., Bulletin 1718, Item 1; Re Soto Pruna, Bulletin 1713, Item 1. This dimension is embodied in the charge against this licensee.

An additional basic principle is worthy of emphasis. In disciplinary proceedings the licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

I am of the opinion that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt of the charge alleged, and I so find.

Licensee has a previous record of suspension of license by the Director for ten days effective December 10, 1951, for sale to minors. Re New Glass Bar, Inc., Bulletin 922, Item 4. In addition, the licenses then held by Frank Brigliadoro, a stockholder of the licensee-corporation, in partnership with Sam Moskowitz, for premises 86½ Market Street, Paterson, were

suspended by the Director for fifteen days effective November 12, 1947, for possession of illicit liquor, and for sixty days effective October 7, 1948, for permitting indecent entertainment and hostess activity on the licensed premises. Re Moskowitz & Briglidore, Bulletin 817, Item 9.

It is recommended that the prior record of suspensions of license for dissimilar violations occurring more than five years ago be disregarded, and that in view of the nature of the offense, i.e., procurement for prostitution, the license be suspended for two hundred ten days. Re McCarthy, Bulletin 1870, Item 2.

Conclusions and Order

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

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.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibit, the memorandum of counsel for the licensee, the Hearer's report and the exceptions and argument 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 16th day of October, 1969,

ORDERED that Plenary Retail Consumption License C-176, issued by the Board of Alcoholic Beverage Control for the City of Paterson to New Glass Bar, Inc., t/a Frank's Club, for premises 197 Paterson Street, Paterson, be and the same is hereby suspended for two hundred ten (210) days, commencing at 3:00 a.m. Thursday, October 23, 1969, and terminating at 3:00 a.m. Thursday, May 21, 1970.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - FALSE BEVERAGE TAX BUREAU REPORTS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 JOAA CORP.)
 t/a Gus & Spence Alibi Inn)
 29 Sherman Avenue)
 Newark, N. J.)
 Holder of Plenary Retail Consumption License C-715, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

CONCLUSIONS AND ORDER

Licensee, by Mae Blatch, President, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that for the months of April, May and June 1969 it filed false Beverage Tax Bureau reports, in violation of R.S. 54:45-1 and 47-3.

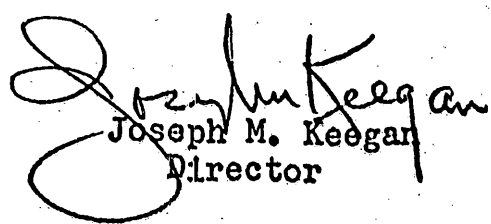
Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Club 232, Inc., Bulletin 1882, Item 6.

Accordingly, it is, on this 24th day of November 1969,

ORDERED that Plenary Retail Consumption License C-715, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joaa Corp., t/a Gus & Spence Alibi Inn, for premises 29 Sherman Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, December 1, 1969, and terminating at 2 a.m. Saturday, December 6, 1969.

5. STATE LICENSES - NEW APPLICATIONS FILED.

Mr. Boston Distiller Corporation
1010 Massachusetts Avenue
Boston, Massachusetts
Application filed December 8, 1969
for plenary wholesale license.



Joseph M. Keegan
 Director