

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

December 10, 1963

BULLETIN 1539

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In the Matter of Disciplinary Proceedings against)
 CLUB HARLEM INC.)
 t/a CLUB HARLEM INC.)
 32 N. Kentucky Avenue and rear of) CONCLUSIONS
 34 N. Kentucky Avenue and) AND ORDER
 37-39 Mt. Vernon Avenue)
 Atlantic City, N. J.)
 Holder of Plenary Retail Consumption License C-192, issued by the Board of Commissioners of the City of Atlantic City.)

 Clarence Blitz, Esq., and Maceo H. Turner, Esq., Attorneys for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleaded not guilty to the following charges:

"1. During the early morning hours of Saturday, September 29, 1962, and on Saturday night, November 3, and early morning hours of Sunday, November 4, 1962, you allowed, permitted and suffered prostitutes in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.

"2. On the occasions aforesaid you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of overtures and arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

"3. On Saturday night, November 3 and early Sunday morning, November 4, 1962, you sold, distributed and possessed and allowed, permitted and suffered the sale and distribution and possession for the purpose of sale or distribution of prophylactics against venereal disease and contraceptives and contraceptive devices in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20.

"To substantiate the charges the Division produced ABC Agents G, Z and O, who participated in the investigation of the licensee's business. Their testimony is substantially as follows: At about 11:00 p.m., Saturday, September 29, 1962, they entered the licensed premises and were escorted to the bar of the front lounge by a man, later identified as Eddy Woodbury (hereinafter Eddy), who was observed performing the same service for other patrons. Eddy called to the barmaid to serve the agents after which he spoke briefly to a group of seven females at the bar and departed. Later the aforesaid females joined the agents, two or three at a time, consumed drinks at the agents' expense and when some of them were

asked if they 'went out' they replied in the affirmative, stating that 'all the girls charge \$25'. However no arrangements were made with the girls to engage in illicit sexual relations.

"When the agents departed they told Eddy, who was standing outside the front door, that they would see him again and he replied 'next time you're down see me and I'll take care of you.'

"At about 11:00 p.m., Saturday, November 3, 1962, the three agents returned to the licensed premises and seated themselves at the front bar where they were served drinks by the barmaid who had previously served them. Agent G asked her 'if Eddy was working tonight' and she replied that he was working in the rear and that she would get him, which she proceeded to do. When Eddy arrived the agents greeted him and at his suggestion followed him to a bar in a large room in the rear where entertainment was in progress and where he said he 'had two nice ones'. As they proceeded to the bar the agents told Eddy that they 'just wanted to get laid' and he assured them that he knew what they wanted. After the agents seated themselves at the bar, Eddy departed.

"Two couples and a female, later identified as Dolores L--- (hereinafter Dolores), were seated at the bar which was being tended by barmaids later identified as Helen P--- (hereinafter Helen) and Gloria M---. Helen served the agents and as they were watching the entertainment Dolores turned toward them and asked if Agent G would buy her a drink. Agent G nodded affirmatively after which Dolores joined the agents and ordered a scotch and soda. During the agents' conversation with Dolores, Agent G asked her if she went out and she replied in the affirmative stating that her price was \$25 and that the price of the room would be extra. Agent G then asked if she could accommodate the three of them and she said she could but if he preferred she could call another girl. Agent G then inquired of Helen if all the girls charge \$25 and she said 'yes' and 'you don't have to worry about any girls that come in here.' Agents G and Z went to the men's room and noticed therein a sign on the mirror which read 'Rubber Coats for Odd Jobs'. Agent Z left and Agent G asked the attendant, who was identified as George Howard (hereinafter Howard), if he had any prophylactics. Howard unlocked a small cabinet and took therefrom a glass jar containing several types of prophylactics and handed Agent G two of the articles and accepted \$1.00 in payment. Returning to the bar Agent G showed his purchase to Agent Z, who having previously announced that he had a date with another girl, left the premises at 12:15 a.m. At 12:40 a.m. Agents G and O, followed by Dolores, left the premises and proceeded to Agent G's car, which they entered, and following Dolores' directions they arrived at the Jamaica Motel in which Dolores and Agent G registered and were assigned to Room 701. Agent O remained in the car in the parking lot.

"When Agent G and Dolores entered the room she disrobed and when she asked for the money he handed her a \$20 bill, the serial number of which had been previously recorded and a \$5 bill. Shortly thereafter Agent G, responding to a knock on the door, opened it and admitted Agents Z and O and Atlantic City Police Officer Grice who responded to a phone call to police headquarters by Agent Z when that agent left the licensed premises. After Agent G told the other agents and the officer that he had given Dolores money for the purpose of having illicit

relations with her, Officer Grice searched her purse and among the contents found the identifiable \$20 bill given to her by Agent G. Officer Grice took Dolores into custody and Agents G, Z, O and Police Officer Tyner, who later joined them, proceeded to the licensed premises, arriving there at about 1:30 a.m. Identifying themselves to Eddy, who was at the front door, the agents requested him to get the manager or the person in charge of the premises. Eddy complied and returned with Clifton Williams, vice-president of the corporate licensee, to whom the agents made known their identities. Agent G told Mr. Williams that they had, with the assistance of Eddy, made arrangements with a prostitute on the licensed premises to have illicit relations with her. He also told him about Helen's statement that all the girls in the club charged \$25 and about the purchase of prophylactics from the attendant in the men's room. Mr. Williams said that he didn't know of anything like that going on in the premises; that Eddy does odd jobs, is not employed by the club and doesn't get paid. Helen, who had joined the group, admitted that she made the statements attributed to her by the agents but Eddy refused to say anything other than to give his name and address. The agents then asked Mr. Williams to accompany them to the men's room where they identified themselves to Howard who admitted selling the prophylactics to Agent G. The agents then seized a jar containing the remaining prophylactics and they also seized the sign affixed to the mirror.

"Twelve males, most of them seasonal employees of the Club Harlem, and two police officers appeared as witnesses for the licensee. Among the employees were an elementary school principal, two elementary school teachers and a school custodian. The other witnesses were post office employees, the officers of the corporate licensee and Helen the barmaid. However, none of the employee witnesses other than the school principal, Clifton Williams, (vice-president of the corporate licensee) and Helen were in the licensed premises on the dates alleged. The other witnesses testified with respect to their duties in the Club Harlem, the magnificence of the club premises, the high-type entertainers engaged by the club, the calibre of its clientele, referred to by one witness as 'the minks and diamonds', the security measures taken to exclude undesirable patrons and the efforts of the management to make the patrons feel comfortable and at home. The school principal testified that he was the floor captain in charge of the back room of the establishment on November 3 and 4, 1962; that he didn't see Eddy or Dolores in that section of the premises but recalls seeing the agents when they were conversing with Clifton Williams. One of the school teachers and the school custodian testified that Eddy just runs errands and gets coffee and sandwiches outside of the licensed premises for the employees.

"Clifton Williams testified in substance that when the agents identified themselves 'They told me they picked a girl up in the club'; that he knew Dolores and her parents for the past fifteen years but didn't know that Dolores was a prostitute; that Eddy 'runs errands for the bartenders, and he got sandwiches and things for me. Outside of that he wasn't nothing around there'; that Helen, in his presence and in the presence of the agents, denied saying what the agents attributed to her; that Howard and his wife operate the toilet facilities in the club as concessionaires; that he had never seen the sign in the men's room and didn't know that Howard was selling contraceptives.

"Helen testified in substance that on November 3, 1962 the three agents and Eddy came to the bar at about 10:50 p.m. and stood there talking; that Eddy left and the agents (whom she didn't know) seated themselves at the side of the bar; that Dolores was seated at the front section of the bar where she had consumed a scotch and soda and was about to leave; that she (Helen) saw one of the agents beckon to Dolores to join them; that one of the agents left the premises and Dolores went over and sat between the other two; that the floor show commenced at 11:00 p.m. and lasted for about 1 and 3/4 hours, during which time she served three drinks of V.O. and coke to each agent and two scotch and sodas to Dolores; that Dolores left the premises and that later the two agents paid their bill and departed. She further testified that when the agents returned they told her 'You don't have to worry because you didn't have anything to do with it'; that later she was called upstairs and, in the presence of Clifton Williams, Eddy and Officer Tyner, she was asked by one of the agents 'Do you remember me asking you are all the girls clean?' and that she replied 'I remember that***I told you that all the girls are clean in the Club Harlem', and she continued 'The show went on and we have some very nice looking girls, and they asked me are they clean. Well, I resented it. I figured because of my race that they asked me whether we were clean, like we are inferior to them. So I said all the girls are clean at the Club Harlem and didn't say anything else.' Helen further testified that she has known Eddy all her life, that he is a bootblack and occasionally runs errands for the bartenders.

"Detective Shepperson testified that he had been employed by the Club Harlem from 1955 to 1960; that the State ABC instituted disciplinary proceedings against the licensee because of his employment; that he was reprimanded by the Chief and an order was issued precluding police officers from working on liquor licensed premises and that during his employment with the club no known prostitutes, gamblers, or pickpockets ever patronized the club. He further testified that Dolores is a known prostitute 'How this one got in there, I don't know'; and that Eddy is a 'panhandler***He's a character. We try to keep him on the run.'

"Officer Grice testified in substance that he was directed by his superior to go to the Jamaica Motel and render every assistance to the ABC agents there; that he met Agent O who was seated in a parked car and was told that another agent was in Room 701 with a female; that they both proceeded to the motel, knocked on the door and having gained admission he searched through Dolores' purse and found a \$20 bill, the serial number of which compared with the number recorded on a form in Agent O's possession; that he took Dolores into custody; preferred a charge against her of soliciting for prostitution and that she was later tried and acquitted.

"In lieu of summation the licensee's attorney submitted a brief in which he contends that (1) in the absence of specific authorization the Director had no authority under the law to legislate against the sale or possession of contraceptives, (2) the rules and regulations are unenforceable against the licensee because they have not been 'disseminated in pamphlet form for six years' and the licensee and its agents had no knowledge of them, (3) the violation alleged in Rule 9 of State Regulation No. 20, if committed by anyone, was committed by a concessionaire without the licensee's knowledge or consent.

"As to (1) in Boller Beverages, Inc. v. Davis, 38 N.J. 138 at 150, reprinted in Bulletin 1467, Item 1, Hall, J. delivering the opinion of the Court said inter alia:

'The statute provides for the details of regulation by two methods. First, it specifies with particularity how many of the varied aspects of the business shall be conducted and controlled. Second, it reposes in the Director legislative power to fill in the gaps and add to the precise statutory mandates through the exercise of comprehensive rule-making powers, N.J.S.A. 33:1-39, -39.1 and -39.2. These powers enable the Director to effectively carry out his duty "to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner" as to accomplish the objects of the law, N.J.S.A. 33:1-3, "to administer and enforce" the chapter, and "to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" thereof, R.S. 33:1-23.

'The delegation of rule-making authority is broad indeed. Section 39 spells it out: "The (Director) may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith***." It then goes on in a second paragraph to specify some 30 detailed categories which general rules and regulations may cover, some of which relate to matters also the subject of specific statutory sections and others of which are not otherwise mentioned in the act, and winds up with sweeping authority to promulgate regulations relating to "practices unduly designed to increase consumption of alcoholic beverages *** and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration" of the law. The Director has exercised this power fully through the making of voluminous regulations and the courts have consistently and sympathetically sustained them in view of the nature and inherent evils of the business, the policies and aims expressed by the Legislature and the broad grant of authority. e.g., X-L Liquors v. Taylor, supra (17 N.J. 444); Mazza v. Cavicchia, supra (15 N.J., at pp. 506-509).'

"As to (2) - While it is true that rules and regulations of the Division were last published under a single cover and filed with the Secretary of State on December 27, 1956, effective as of January 1, 1957, there is no claim that the licensee herein never received a copy thereof in which the rules and regulations governing the specific violations charged herein are included. Furthermore, in its license application, the licensee agreed 'to abide by and comply with the provisions of R.S. Title 33, c.1, and any rules and regulations promulgated heretofore and hereafter by the Director of the Division of Alcoholic Beverage Control pursuant thereto, and with the provisions of all duly enacted municipal ordinances and resolutions.' In any event, it is the responsibility of all licensees affirmatively to familiarize themselves with the regulations under which they are permitted to operate the licensed business, and not the responsibility of the municipal issuing authority or the Division affirmatively to advise them of such regulations.

"As to (3) - In Howard Tavern, Inc. v. Division of Alcoholic Beverage Control of the State of New Jersey, N.J. Super. (App.Div.) decided December 4, 1962 (not officially reported but printed in Bulletin 1491, Item 1) Kilkenny, J.A.D. delivering the opinion of the court said:

'The word "suffer" as used in the regulations of the Division of Alcoholic Beverage Control imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947); Benedetti v. Bd. of Com'rs of Trenton, 35 N. J. Super. 30, 34 (App. Div. 1955).'

"Having carefully considered the evidence herein, I find as facts and conclude that the Division has established by the necessary preponderance of the believable evidence that a prostitute was suffered in and upon the licensed premises; that she arranged therein with two of the agents to have illicit sexual relations with them and that a person on the licensed premises with the licensee's permission and authority, possessed and sold contraceptive devices. See Greenbrier v. Hock, 19 N.J. Super 39 (App. Div. 1950), reprinted in Bulletin 907, Item 1. In view of the aforesaid, I recommend that the licensee be adjudged guilty as charged.

"The licensee has a prior adjudicated record. Effective January 26, 1960, the license was suspended by the Director for forty-five days for (1) indecent entertainment, (2) hindering investigation and (3) employing an unqualified employee. Re Club Harlem, Inc., Bulletin 1327, Item 5.

"Considering all of the facts and circumstances I further recommend that the license be suspended for sixty days on charges 1 and 2 (Re 315 Halsey, Inc., Bulletin 1495, Item 5) and for ten days on charge 3, (Re Toleno & Nagren, Bulletin 1512, Item 2) and that an additional five days be imposed because of the record of suspension for prior dissimilar violations within a five year period (Re Asselta, Bulletin 1527, Item 4), making a total suspension of seventy-five days."

The licensee, through its attorneys, has waived its right to file written exceptions to the Hearer's Report as provided by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the memorandum submitted by the licensee's attorneys in lieu of summation at the close of the hearing, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 14th day of October 1963,

ORDERED that Plenary Retail Consumption License C-192, issued by the Board of Commissioners of the City of Atlantic City to Club Harlem Inc., t/a Club Harlem Inc., for premises 32 N. Kentucky Avenue and rear of 34 N. Kentucky Avenue and 37-39 Mt. Vernon Avenue, Atlantic City, be and the same is hereby suspended for seventy-five (75) days, commencing at 7 a.m. Thursday, October 17, 1963, and terminating at 7 a.m. Tuesday, December 31, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE
REGULATION NO. 38 - HINDERING INVESTIGATION - LICENSE
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary)
Proceedings against)

BURKE'S TAVERN, INC.)
t/a BURKE'S TAVERN)
873 New Brunswick Avenue)
Rahway, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-16, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Rahway.)

Lyness & Bedell, Esqs., by Joseph I. Bedell, Esq., Attorneys
for Licensee.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

- '1. On Wednesday, May 15, 1963, at about 10:55 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Wednesday, May 15, 1963, you, through Earl Ruppert, an officer, director and shareholder of your corporation, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35.'

"ABC agents D and J participated in a continuing investigation of the licensed premises, which resulted in the preferment of the charges for the violations hereinabove set forth. Their testimony may be summarized as follows: On Wednesday, May 15, 1963, at about 10:35 p.m., the agents arrived at the licensed premises. Agent J entered the said premises alone and Agent D remained at a point of observation on the outside thereof. Agent J seated himself at the bar, noting a bartender (later identified as Joseph Ignar) on duty. The manager of the premises (later identified as Earl Ruppert, secretary-treasurer of the corporate licensee) was also in the barroom and then entered the rear stockroom. Shortly thereafter two persons arrived in a Chevrolet truck and parked across the street from this tavern. One Levi Valentine got out of the said truck, entered the tavern and asked the bartender for a 'fifth of

Fleischmann's.' The bartender replied, 'See Earl (Ruppert). He'll let you have it,' and motioned that Ruppert was in the rear stockroom.

"At about 10:50 p.m. Agent J observed Ruppert and Valentine emerge from the stockroom and heard Ruppert say to Valentine, 'Go ahead out. I'll bring the Fleischmann's to you.' At the same time Valentine was carrying a quart bottle of soda in a brown paper bag. Valentine carried the soda to the Chevrolet truck, entered the truck and seated himself beside the driver (later identified as Augustus McKenzie).

"At 10:55 p.m. the agent noted that Ruppert left the tavern carrying an article in his right hand under the left side of his sweater and walked across the street to the truck where he handed Valentine a bottle. The bottle was described by the agents under cross examination as having a sealed top and the appearance of a bottle of whiskey.

"While Ruppert was still standing alongside the truck in which McKenzie and Valentine were seated, the agents approached the passenger's side of the truck, identified themselves as 'ABC' while holding their credentials in their hands. At this point, Ruppert, apparently seeing the said credentials, grabbed the bottle of whiskey, ran in front of the Chevrolet truck and dashed back into the tavern. The agents shouted after him 'ABC' and ordered him to stop. Ruppert replied, 'Yeah. Wait a minute' but did not stop. Agent J then followed him into the tavern and observed that Ruppert was out of breath and panting loudly. The agent asked him, 'Where is the bottle of whiskey you just had out at the truck?' Ruppert replied, 'What bottle? I didn't have any bottle. I was out there talking to that guy about a job I wanted him to do for me.'

"In the meantime Agent D requested McKenzie and Valentine to accompany him into the tavern. Instead, McKenzie, who was at the wheel of the truck, started the motor and put the truck in gear, driving directly toward this agent as if to run him down. He was persuaded to stop the truck when Agent D pulled his gun, and the agents interrogated them with respect to this transaction. They particularly wanted to know what happened to the bottle of whiskey, and Valentine answered, 'He took it with him.' Asked whether 'he' referred to Ruppert, Valentine replied 'Yes.' A search of the truck thereupon disclosed a quart bottle of soda, and both men were permitted to continue on their way.

"Agents D and J re-entered the tavern and found Ruppert in the rear stockroom 'very nervous and sweating.' They questioned him as to why he ran away, and Ruppert said that he thought they were police officers; that Agent J looked like one of the local policemen. Ruppert further explained that the reason he ran back into the tavern was that the bartender had called him to the telephone. Both agents denied that such an occurrence took place or that they had heard any telephone ring during this incident.

"Earl Ruppert, testifying on behalf of the corporate licensee, gave the following version of what occurred on this night: At about 10:45 p.m. Valentine came into the stockroom of the tavern where Ruppert was seated. The purpose of his visit was to discuss the organization of a protest by neighbors

against the transfer of a tavern license to the neighborhood. This conversation took about ten minutes and he then walked out with Valentine to the truck in which McKenzie was seated. While he engaged in conversation with McKenzie, Valentine returned to the tavern and purchased a bottle of soda. Shortly after Valentine emerged from the tavern, the bartender called out 'Phone, Earl.' He returned to the tavern and was told by the bartender that the party had apparently hung up. He decided to go out to the truck but was ordered by Agent D to return to the inside of the tavern, which he did because he was 'scared.' The agents followed him into the tavern and started to look through the cabinets in the kitchen. When he asked them to identify themselves, they refused to do so. He thought they were local police officers. Agent D then showed him identification and asked him what he had done with the bottle that he had sold to the two men in the truck. He replied, 'I didn't sell no bottle.' His explanation for running back into the tavern was that he went to answer the telephone. He denied the sale of any alcoholic beverages to either McKenzie or Valentine.

"On cross examination Ruppert admitted that Fleischmann's whiskey is sold at this tavern. He also admitted that he has known Valentine for about five years as a customer and neighbor, and is acquainted with McKenzie for about a year. He stated that Valentine actually bought a bottle of 7-Up and did not seek to purchase any liquor. The main reason for his going out to the truck was to discuss the protest hereinabove referred to because 'I didn't like to discuss the meeting in the tavern.' When asked why he hesitated to discuss the meeting in the stockroom when only Valentine and he were present, he repeated the reason as above stated, without explanation.

"On further cross examination he admitted that, when he was practically across the street on his return to the tavern, he heard the agent say, 'Hey, you! Come back here!' Nevertheless he continued on his way back to the tavern and disregarded the order to stop.

"Augustus McKenzie, on behalf of the corporate licensee, testified that he is the owner of the truck referred to in these proceedings; that he was at Valentine's home about fifty yards from the tavern, and that Valentine requested that he drive him to the tavern to buy a bottle of ginger ale. Shortly after Valentine entered the tavern, Ruppert emerged, came over to him, and they engaged in a conversation regarding the transfer of a liquor license to a neighboring tavern. After about ten minutes Valentine returned to the truck with a bottle of soda, and Ruppert was called to return to the tavern. However, he did not know who called him. At that point McKenzie noted that the two ABC agents appeared at the scene and told him to halt. They questioned him with respect to a bottle of whiskey and, after he showed them the bottle of soda in the paper bag, the agents searched the truck. He denied that there was any bottle of whiskey in the truck at any time or that Ruppert had handed him any liquor.

"On cross examination he admitted that the reason Ruppert left the truck was that the conversation was finished and 'he (Ruppert) left in a hurry.' He further admitted that, when Agent D shouted 'Halt,' Ruppert was close to the other side of the street or about fifteen feet from the agent and twenty-five to thirty feet from this witness.

"Levi Valentine testified on behalf of the corporate licensee that he lives about five houses from the tavern, and on the night of May 15 had a party of friends at his home. He discovered that he needed some ginger ale and asked McKenzie to drive him to the licensee's tavern. Upon entering the tavern he went to Ruppert's office (the stockroom heretofore referred to) and engaged Ruppert in a business discussion. Ruppert also stated to him that he wanted to discuss with McKenzie some business relating to carpentry, so he accompanied him to the truck. While McKenzie and Ruppert were in conversation, Valentine returned to the tavern to pick up the ginger ale. He then returned to the truck and participated in the conversation. At this point Agent D came to the truck and asked, 'Where is the bottle?' He denied that there was any whiskey, and in fact invited the agent to return to his home and join his friends in a drink.

"This witness insisted that he had liquor at home and did not need to purchase any additional stock. He was questioned as to whether he had heard Ruppert being summoned back to the tavern, and stated that he was quite a distance away and did not hear anyone calling Ruppert.

"On cross examination he admitted that he is a member of a civic organization and that Ruppert cooperates with this association in its activities. He also denied that he had ordered Fleischmann's liquor or that he had ever drunk that brand of beverage. He was asked why he did not purchase the ginger ale when he first entered the tavern, if that was the specific purpose of his visit. His explanation was that he first wanted to finish his conversation with Ruppert before making such purchase.

"Joseph Ignar (the bartender at these premises on the night in question) testified that, when Valentine entered the tavern, he asked for Ruppert and went directly to the stockroom. Shortly thereafter Ruppert and Valentine went outside, and in about five or ten minutes Ruppert returned. Then Valentine returned to the tavern and purchased a bottle of ginger ale. He further related that, when Ruppert was standing near the truck engaged in conversation, he received a telephone call from a woman who 'I figured it was Earl's wife but I wasn't sure.' He called Ruppert, and when he went to the 'phone booth the alleged caller had hung up. Ruppert did not make a telephone call but proceeded instead directly to the stockroom. This witness continued playing darts.

"On cross examination Ignar stated that he informed Ruppert that a woman had called but did not tell him who she was. He admitted that, in the eight years that he had been employed at these premises, he had spoken to Ruppert's wife on the telephone 'a couple of times' but did not recognize her voice. He was asked whether he knew that Ruppert's daughter had been ill, and he replied that Ruppert told him that he would call his wife back a little later.

"Odd Olufsen, a principal stockholder of the corporate licensee, was called upon to present a description of the inside and outside of the premises.

"On rebuttal Agent D denied that he had been invited to Valentine's home but remembers Valentine's stating that he had had a drink at home. He further emphasized that he was able to

recognize the bottle from his post of observation as being a sealed bottle of whiskey. This was corroborated by Agent J who was also re-examined in rebuttal.

"Before commenting upon the testimony of the witnesses, it might be well to restate some general rules applicable to these proceedings. As counsel for the licensee pointed out in his carefully prepared and articulate brief, submitted in summation at the conclusion of this hearing, we are dealing with purely disciplinary measures and their alleged infractions, and such measures are civil in nature and not criminal. Kravis v. Hock, 135 N.J.L. 252 (Sup. Ct. 1948).

"Thus the Division must establish its case by a fair preponderance of the credible evidence. Freud and Pittala v. Davis, 64 N.J. Super. 242; Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373. In other words, the finding must be based on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, Sec. 1042. By a preponderance of the evidence is meant evidence which is of greater weight or more convincing than that which is offered in opposition. 32 C.J.S. Evidence, Sec. 1021, at p. 1051, and cases therein cited. Cf. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 503.

"The additional principle should also be stated. Testimony, 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 circumstance. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1. The accepted standard of persuasion relating to testimony governing the trier of facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508, 511.

"Bearing these principles in mind, I have analyzed and evaluated the testimony given both on behalf of the Division and of the licensee and have observed the demeanor of the witnesses as they testified. The narrative by the licensee's witnesses appears to me to be so incredible as to suggest violence to realistic experience.

"The core of Ruppert's testimony is that the visit of Valentine to the tavern on May 15 was for the purpose of discussing a prospective meeting with reference to an imminent transfer of a nearby tavern license. This in itself appears highly improbable because of the lateness of the hour and the frame of reference within which Valentine came to the tavern.

"On the other hand, Valentine and McKenzie agree that the purpose of their visit to the tavern was to buy a bottle of soda for a party then in progress in Valentine's home. Does it seem logical that these men would leave their party of friends and ride in the truck to a tavern located four or five houses away for the purpose of buying a bottle of soda?

"Valentine states that he entered the tavern and asked for Ruppert without making any purchase. The normal course that any person would take, if in fact this testimony is to be believed, is that upon entering the tavern he would make the purchase for which he came. We have, in direct contradiction

to this, the affirmative testimony of Agent J (who admittedly was present in the premises) to the effect that when Valentine entered the tavern he asked for a bottle of Fleischmann's and was then directed by the bartender to speak to the manager who presumably would comply with his request.

"The account of the purchase as related by Agent J and corroborated by Agent D with respect to the delivery of the whiskey by Ruppert is much more believable and consistent with human behavior. It is also credible that, when the confrontation was made by the agents, Ruppert, frightened, failed and refused to obey the command of the agents to halt and, instead, ran back into the tavern and into the stockroom. Both agents testified that, when they confronted Ruppert in the stockroom at that time, he was panting, out of breath and sweating. This was not denied by Ruppert.

"In his memorandum counsel for the licensee advocates that 'The irrefutable proof would be the production of the bottle which is the subject of the first count of the charges.' He suggests that the absence of such empiric proof creates a fatal defect in the Division's first charge.

"The well established rule in these matters is that such evidence need not be produced as a prerequisite for conviction, especially where such proof has been wilfully and deliberately secreted and withheld from agents upon their demand for its production. The rationale sought to be employed by licensee has a sense of sophistry. In fact, Ruppert's refusal to obey the command of the agents and his subsequent refusal to deliver up to the agents the bottle in question generated the second charge of hindering and failing to facilitate the investigation by these agents. Cf. Re 188 Boyd St., Inc., Bulletin 1518, Item 2.

"Ruppert stated that the reason he hastened back to the tavern was to answer a telephone call. However, none of the defense witnesses could recall hearing the bartender call him back for that purpose, although they were within hearing at that time. Ruppert insists that he had expected a telephone call concerning his daughter who was seriously ill with the measles. However, the bartender testified that, when Ruppert returned to the tavern, he did not make a telephone call to his home but indicated that he would make a call later.

"Does it not appear to be consistent with ordinary human behavior that, if Ruppert were summoned to respond to a telephone call at a time when, as he testified, his child was seriously ill, he would have instantly phoned his home to inquire whether his wife had called him to update him on the condition of his child? Instead, he proceeds to the stockroom. In this connection, it is also significant that, upon cross examination, the bartender could not recall whether the telephone caller was Ruppert's wife. This is rather unusual, for this bartender had been in the employ of the licensee for almost eight years. The story, therefore, does not have the required 'ring of truth.'

"Contrasted to the conflicting stories of the defense witnesses is the straight-forward, forthright and thoroughly credible accounts given by the Division's witnesses. These agents, who were certainly not in a conspiracy against the

licensee so far as the record discloses, and had no reason to perjure themselves, presented a clear, factual account of what had occurred. The actions of McKenzie, which for several moments even endangered the life and safety of one of the agents, were a manifestation of the consciousness of guilt rather than a deliberate attempt to do bodily harm. We also have the additional statement of Agent D that Valentine admitted at the time of the initial confrontation at the side of the truck that Ruppert had taken the bottle of whiskey with him when he returned to the tavern.

"In evaluating the testimony of the witnesses it is my obligation to credit as much or as little as I find reliable. 7 Wigmore, Evidence, sec. 2100, (3rd Edition 1940). The reasonableness or probability of a witness' testimony bears on his credibility. 98 C.J.S., Witnesses, p. 340, and cases cited therein. Tierney v. Hotz, 141 N.J. Eq. 114; cf. State v. Guida, 118 N.J.L. 289; aff'd 119 N.J.L. 464. Applying this principle, I find the testimony of the Division's witnesses more credible and consistent with common experience.

"I do not believe that McKenzie and Valentine left their party of friends for the purpose of buying a bottle of soda at this tavern. I also reject the defense version that the visit by these men to the tavern was made for the purpose of discussing civic affairs or other business. I find as a fact that Valentine visited the tavern on this evening after 10 p.m. for the purpose of purchasing a bottle of liquor, and that Ruppert sold and delivered the said bottle to him in the manner hereinabove set forth.

"Counsel vigorously argues in opposition to the charge of 'hindering' the licensee 'can't be charged with failure to facilitate hindering and with delaying an investigation when you have no reasonable grounds to believe or know that an investigation was in process by investigators of the Division.'

"The proofs developed by the Division argue irrebuttably to the contrary. Ruppert was clearly within hearing distance of both agents when they commanded him to halt and return. Instead, he fled into the premises, and was 'panting' and winded when finally confronted by the agents. Such conduct did not suggest absence of 'reasonable grounds to believe' nor evince a desire to cooperate as licensees are enjoined to do under the Alcoholic Beverage Law.

"I therefore further find that the actions of Ruppert in failing and refusing to obey the direct order of the agents after they had identified themselves, and his continued refusal to cooperate with them in the tavern thereafter constituted a clear and flagrant violation of the Alcoholic Beverage Law.

"I am satisfied that the Division has proved these charges by a fair preponderance of the credible evidence and, indeed, by substantial evidence. I recommend, therefore, that the licensee be found guilty as charged.

"The licensee has no prior adjudicated record. It is recommended that an order be entered suspending the license on the first charge for a period of fifteen days (Re Logan & Francis, Bulletin 1528, Item 9) and on the second charge for an additional period of ten days (Re 188 Boyd St., Inc., supra),

making a total suspension of twenty-five days."

Pursuant to Rule 6 of State Regulation No. 16, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the licensee.

Having carefully considered the entire record herein, including the exhibits, the Hearer's Report and exceptions and written argument thereto, I concur in the conclusion of the Hearer and adopt them as my conclusions herein. Hence I find the licensee guilty as charged.

Accordingly, it is, on this 14th day of October 1963,

ORDERED that Plenary Retail Consumption License C-16, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Burke's Tavern, Inc., t/a Burke's Tavern, for premises 873 New Brunswick Avenue, Rahway, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, October 21, 1963, and terminating at 2 a.m. Friday, November 15, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

J-MARK, INC.)
t/a "GREEN PARROT INN")
1927 Corlies Avenue)
Neptune Township)
PO Neptune, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Neptune.)

Saul C. Schutzman, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.


BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 10, 1963, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

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 Robert-Alan Hotel, Inc., Bulletin 1532, Item 4.

Accordingly, it is, on this 17th day of October, 1963,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Neptune to J-Mark, Inc., t/a "Green Parrot Inn", for premises 1927 Corlies Avenue, Neptune Township, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, October 21, 1963, and terminating at 3:00 a.m. Saturday, October 26, 1963.


Emerson A. Tschupp,
Acting Director.