

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

BULLETIN 2226

May 24, 1976

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STATE OF NEW JERSEY
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1. DISCIPLINARY PROCEEDINGS - LEWD ACTIVITY - PROSTITUTION - LICENSE
SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary
Proceedings against

Green Duck, Inc.
t/a Mallard Inn
Route 73
P.O. Moorestown
Mt. Laurel Township, N.J.,

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consump-
tion License C-2, issued by the
Township Committee of the Township
of Mt. Laurel.

Fogelson and Brew, Esqs., by Dennis M. Brew, 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

Licensee pleads "not guilty" to the following amended
charge:

"On the night of February 25, 1975, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for prostitution and assignation for illicit sexual intercourse, in violation of Rule 5 of State Regulation No. 20; and you allowed, permitted and suffered your licensed premises and licensed business to be used in furtherance of and accessible to an illegal activity and enterprise, viz., the rental and use of a room in the motel adjacent to your licensed building for the purpose of acts of prostitution, lewdness and assignation and illicit sexual intercourse; in violation of Rule 4 of State Regulation No. 20."

Two ABC Agents participated in the investigation of alleged solicitation for prostitution at the licensed premises, pursuant to a specific assignment. Agent W gave the following account: On the date charged herein, at about 8:55 p.m., in the company of Agent C, he visited the said premises, a night

club-type restaurant facility, and both agents took seats at the bar. There were four bartenders on duty servicing approximately thirty patrons seated or standing around the barroom. During the course of their visit, the patronage increased substantially.

At about 9:30 p.m., a female, later identified as Mrs. Diana C--, sat down next to him at his left and engaged him in conversation. After she ordered a beer, she informed him that she had come from Georgia and was here on "business". At 9:55 p.m., the witness asked Diana to dance, and during the course of her dancing, she informed him that she was, in fact, a prostitute; that she had been arrested in Georgia about three weeks before that for prostitution, so that she had to be very "careful." She stated that she would charge him \$25.00 to have sexual intercourse with him and that, if he was "very quick", she would only charge him \$20.00.

They then returned to their seats at the bar. He informed Agent C of their conversation and then introduced Agent C to the woman. They continued their conversation and she stated that she would also engage in sexual intercourse with Agent C for the same price, namely \$25.00, after she was finished with Agent W. He asked this female whether she had a "place", and she said she did not.

The Agent waited until the band stopped playing, and called over one of the bartenders, (later identified as Al Scrivani) and engaged in a conversation with him. He asked Al: "Al, this broad here wants to get laid for \$25.00. Where is a good place?" Al raised his finger and said, "wait a minute." He walked away, went to the cash register which was located nearby, and obtained a coaster. He wrote the words "Al sent me" on the coaster, returned to the place where Agent W was seated and said to him: "take this next door, they will take care of you". By that he referred to the Quality Inn Motel which is located adjacent to these premises, and is owned and operated by the same principal stockholders and officers of this corporate licensee.

The witness informed Agent C that he was going to go with Diana next door to get a room in the motel, and instructed Agent C to contact the Mt. Laurel Police Department. In accordance with the plan, after he entered the room in the motel with this female, Agent C together with the local police officers were to enter.

Thereupon, he left these premises with Diana and walked across the driveway to the Quality Inn Motel. He went into the side entrance to the lobby. He informed the female clerk that he wanted a room, and filled out a registration card with a fictitious address, his own name, and the license plate of his motor vehicle. She then handed him keys to a room and he proceeded to go into the room with Diana.

In the room, he handed her a \$20.00 and a \$5.00 bill, the serial numbers of which had been previously recorded; and she placed them in her pocketbook. Approximately two or three minutes thereafter, there was a knock at the door and upon

opening the door, he observed Agent C accompanied by Police Officer Edward Ryan and Detective Sgt. Raymond J. Burgess of the local Police Department. He informed them that he had handed the "marked" money to Diana and she had placed it in her pocketbook. With her permission, they retrieved the money. She was placed under arrest and taken to Police Headquarters.

The two Agents, accompanied by Ryan, returned to the licensed premises; the witness spoke to Scrivani and told him that he had been solicited for prostitution and would like to discuss this matter with the manager. Scrivani then led them to a side room and introduced them to James M. Lake, who is a 50% stockholder and secretary-treasurer of the corporate licensee. He informed Lake that he had been solicited for prostitution, and repeated the conversation that he had with Scrivani, which included the fact that Scrivani had given him the coaster.

Scrivani, at this time, said that he remembered the witness asking about going next door with this female "to get laid", but he did not recollect hearing any specific sum mentioned. He stated that he only heard part of the conversation. At that point, Lake told Scrivani to "shut up, don't say anything". Agent C thereupon charged Scrivani that he knew that he heard the entire conversation between Agent W and himself.

ABC Agent C testified in substantial corroboration of that given by the prior witness. He stated that, at approximately 9:30 p.m., Diana took a seat at the bar next to and to the left of Agent W; Agent C was seated next to at the right of Agent W. When Agent W and Diana returned from the dance floor, Agent W confided that he had been "propositioned" by said female. He stated that her price for engaging in sexual intercourse was \$25.00. She was, thereupon, introduced to him and informed him that she could also take care of him after her session with Agent W. When the music stopped, Agent W summoned the bartender, and while the bartender stood in front of Agent W, Agent W said to him "this broad wants to get laid for \$25.00. Where can I go?" The bartender went to the cash register, picked up a coaster, which had the Mallard Inn insignia on it, and wrote something on it and handed it to Agent W. This witness was then instructed to summon the Mt. Laurel Police Department after Agent W left the premises with Diana.

Shortly thereafter, he met with Police Officer Ryan and Det. Sgt. Burgess and went to the motel, identified themselves to the clerk, and obtained the room number assigned to Agent W. They went to the room, identified themselves, and removed the two "marked" bills which were found in Diana's purse. Det. Sgt. Burgess placed her under arrest and she was taken to Police Headquarters.

He returned with Agent W, Burgess and Ryan to the licensed premises where the confrontation took place with Scrivani and James Lake; and the witness corroborated the conversation as stated hereinabove by Agent W. Scrivani stated that he knew that Agent W "was going to get laid, but I didn't know it was for money, something to that effect"; at which point Lake told Scrivani to keep quiet.

On cross examination, the witness insisted that Agent W did not ask Scrivani whether he would have any problem getting a room; the conversation was limited to what is set forth hereinabove. Furthermore, he stated that he did not engage in any argument, nor was he reprimanded by Lake. Lake specifically directed his remark to the bartender who was interrupting Agent W.

Det. Sgt. Raymond J. Burgess, of the Mt. Laurel Police Department, testified as follows: He visited these premises twice on the date charged herein. His first visit took place at about 1:00 p.m. in the company of Director Howard G. Graff. It appears that there were problems with respect to prostitution and gambling in this municipality and

"we had made it a practice at that time to go to each licensed premises within the township to advise them of the problems with prostitution and in general any violations that may occur in regards to prostitution and gambling or anything like that."

At that time, he engaged in a conversation with Lake and informed him that the police department received complaints with respect to several facilities in the Township. Lake stated that he would give him his full cooperation. These complaints related to prostitutes who frequented several facilities, including these licensed premises.

The second visit was made at about 9:30 o'clock in the evening when he received a call to assist the two ABC Agents. He arrived at the motel with Police Officer Ryan and, in the company of ABC Agent C, who explained the circumstances, they proceeded to the motel room.

Agent W informed him that he had been solicited for prostitution at the licensed premises by Diana. She was informed of her constitutional rights and was placed under arrest, after the serial numbers on \$25.00 in bills corresponded with those on the list of serial numbers that Agent W had on him. After she was received at police headquarters, this witness returned to the licensed premises and participated in the confrontation with James Lake and Scrivani.

Police Officer Edward Ryan corroborated the testimony of Det. Sgt. Burgess and added the following: when he returned with Agents W and C, to the licensed premises,

he went into the office and heard the following conversation of Agent W, Scrivani and Lake: Agent W informed Lake that the female had propositioned him and that they would go next door to have sexual intercourse for \$25.00, and he informed the bartender of what had transpired. "Then the bartender stated, 'I heard him say, I'll go next door and get laid, but I didn't hear anything about the money' ". On cross examination, the witness recalled that Scrivani was talking, and Lake directed him to be quiet. "The way the bartender was talking, it seemed that he was incriminating himself, and Mr. Lake wished him to be quiet at the time."

Testifying on behalf of the licensee, James M. Lake, stated that he is 50% stockholder, principal officer and operator of both the licensed premises herein and the Mallard Inn Motor Lodge, Inc. The Mallard Inn Motor Lodge (known as the Quality Inn Motel) is the motel located next door to the licensed premises and is also a liquor licensed facility.

At 3:00 p.m., on the date charged herein, he was visited by Director Graff and Det. Sgt. Burgess for the sole purpose of commending him for handling a situation involving stolen property. During that conversation, nothing was stated with respect to "alleged complaints of prostitution".

On the evening of that date, there was the conference referred to hereinabove by the prior witness, at which time Agent W informed him of the conversation between him and Scrivani. In this conversation, Scrivani stated that Agent W confided that "this girl that was sitting with me wanted to get laid for \$25.00...I did not hear \$25.00".

On cross examination, he stated that there were two 50% stockholders who controlled and operated both the subject premises and the motel. Eugene S. Miller is the other 50% stockholder and is president of the corporate licensee. There is an intercom phone that connects these premises with the motel, so that patrons of these premises may be referred to the motel thereby. He did not specifically recall whether anything was mentioned at the afternoon conference with respect to prostitution. However, he insisted that he did discuss the problem of prostitution with his bartenders on a regular basis.

The witness then stated that he had prepared certain notes on February 25th and 26th with respect to the alleged incident. He was then asked how he can account for the fact that the notes reflected the subject of prostitution in the discussion with Director Graff on the afternoon of February 25th. He explained that these notes included various things "not just prostitution things".

The witness added that, about a week before the date of this hearing, namely, on October 15th or 16th 1975,

he visited Police Director Graff because he disagreed with Det. Sgt. Burgess's recollection of what was discussed on the afternoon of February 25th. He recalls that Director Graff agreed with him that the matter of prostitution was not discussed at that time.

He acknowledged that, in his notes, he wrote that at the confrontation with Agent W, Agent W said he leaned over and said to the bartender "she wants to get screwed for \$25.00?" and, in parenthesis, he wrote, "Al, the bartender, differs with this statement." Finally, he admitted that in his discussion with Director Graff, the week before the hearing date, he did not ask him whether, in fact, there was a discussion of prostitution on the afternoon of the date charged herein; "it was never brought up".

William R. Lake, the manager of these premises, testified that he was employed on the premises on the date charged herein, and was present at the conference with Director Graff and Det. Sgt. Burgess and himself on the afternoon of that date. During that conference, Director Graff never discussed the problem of prostitution in his facility or in the general area.

He was also present at the conference with Director Graff which was held a week before the date of this hearing. On cross examination, he insisted that the question of prostitution was never discussed on February 25th with Director Graff and Det. Sgt. Burgess.

Louis A. Casanova, who is employed as a musician on the licensed premises on the date charged herein, testified that the music that is played is amplified music, although some of the selections that are played are slow music, and are played not as loudly as "rock".

Areee DeFrates, the clerk employed at the motel, testified that she also includes, as part of her duties the operation of the switchboard. She recalls that when Agent W came in to the motel, she informed him that she only had a studio room available and had him register. While he was registering, she went to answer a call on the switchboard; and when she returned, she found he had filled out the registration card, left it on the desk, and had taken the key. She was certain that the registration took place before 10:00 p.m. because she locks the doors at 10:00 p.m.

Alfred Scrivani testified as follows: He is presently employed as a bartender, has been so employed at these premises for nearly thirteen years. Agents W and C entered the premises, and sat at that portion of the bar serviced by him. During the course of their visit, they each ordered several drinks of alcoholic beverages. He noted that some time after 9:30 p.m.,

a female took a seat to the left of Agent W and also ordered a drink. He found it a little difficult to hear her, and had to lean over the bar in order to hear her order. He explained that he has a little difficulty hearing because he has a perforated eardrum which required medical treatment two or three times a year.

After he served this female, Agent W (whose identity he was not aware of at that time), asked him about a room. Agent W then started to dance with the female and, when he returned, he ordered another drink. Agent W resumed the conversation and asked whether he would have any difficulty getting a room. The witness told him that there would be no problem; that, in fact, the motel next door was available, and he could arrange to get him a room next door. During this conversation, he was "right on top of (Agent W)".

He then obtained a coaster and wrote on the coaster, "Al sent me", which he handed to Agent W. He insisted that the Agent never indicated that he wanted the room for the purpose of sexual intercourse or that the female wanted to engage in sexual intercourse for \$25.00.

When Agent W returned to the premises, he spoke to this witness, informed him of the alleged conversation, and they proceeded to the side office. At that time, Agent W said, "I got you on prostitution". He specifically denied the Agent's version, stating that he "knew you were going to get laid, but not for \$25.00".

On cross examination, this witness acknowledged that he was informed by both the manager and the principal stockholder, that there was a drive on to "catch prostitution on the strip"; and that if he knew of any prostitution in the premises, that he was to notify the manager immediately. He also acknowledged that his hearing on this date was approximately the same, qualitatively, as it was on the night of February 25th. He had no difficulty at the hearing herein, in hearing the questions propounded to him by both counsel. He also insisted that he never had the opportunity to see clearly the face of Diana, because she was always faced sideways, and often remained behind the cash register. In fact, when Diana and Agent W returned from the dance floor, "She was following behind him, I think, and he stood there and she went behind the register again and sat there, and then called me".

He insisted that the only question put to him by the Agent was; "where could I get a room", and the Agent did not indicate for what purpose the room was to be used. He added,

"I got up closer to him. I said, 'We have rooms next door. We have a motel next door. If you want a room, I'll get you one. I can't call.'"

I got a coaster and put on it, Al sent me.

I said, 'You'll get a room.'

I walked away and that was the end of it."

He explained that the reason he gave him the coaster was that this would enable the agent to get a nice room and, if he came there after 10:00 p.m. without the coaster, he would be unable to get a room. Finally, with respect to the confrontation, he admitted that there was something said to him, "about prostitution and I started to get a little boisterous and Mr. Lake told me to shut-up and get outside".

Mt. Laurel Township Police Director Howard G. Graff, who appeared at the continued hearing in this matter, testified that he visited the premises on the afternoon of the date charged herein. He was accompanied by Det. Sgt. Burgess who is in charge of the local Detective Bureau. This was a follow-up from a previous visit made to this facility and to other facilities in order to enlist the cooperation of licensees with respect to the problem of "vice or undesirables that may frequent the places".

In the course of this visit, the subject of prostitution was probably discussed along with other problems. Finally, the witness stated that the primary purpose in visiting the premises, on the afternoon of February 25th, was to discuss the matter of "vice which includes prostitution, undesirable elements, gambling, or whatever it may entail".

I have set forth in considerable detail a summary of the testimony adduced herein so that a proper perspective may be developed of the incidents on the date in question. We are dealing with a purely disciplinary measure and its alleged infraction, which is civil in nature, and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); The Panda v. Driscoll, 135 N.J.L. 164 (E. & A. 1946). Thus, the Division is required to establish the truth of this charge by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of all of the evidence. 32 C.J.S. Evidence, sec. 1042.

In my assessment and evaluation of the record herein, I have had the opportunity to observe the demeanor of the witnesses as they testified. It is a fundamental principle that no testimony need be believed but, rather, the hearer may credit as much, or as little, as he finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

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). This is clearly a case that involves essentially the issue of credibility. In evaluating the testimony, it is fundamental that the interest or bias of a witness is relevant. In re Hamilton State Bank, 106 N.J. Super. 285, 291 (App. Div. 1969).

Applying the crucible of these principles, I am persuaded that the version presented by the Division agents, which was corroborated in substantive respects by the testimony of Det. Sgt. Burgess and Police Officer Ryan, is credible, forthright, factual, and remained unshaken under vigorous cross examination.

The violation charged herein is embraced within Rules 4 and 5 of State Regulation No. 20; Rule 5 of the said Regulation provides as follows:

"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."

Rule 4 in pertinent part sets forth that:

"...nor shall any licensee allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of, or accessible to any illegal activity or enterprise."

Our courts have consistently maintained that

"the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is, in itself, an immoral activity comprehended by the scope of the regulatory rule."

In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). See in re Olympic, Inc., 49 N.J. Super. 299 (App. Div. 1958); Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

The main thrust of the Division's case was the testimony of the two ABC Agents who testified that, after being solicited for prostitution by the female prostitute at the licensed premises, they brought this fact to the attention of the bartender Scrivani. The testimony is incontrovertible

that, while the Agents were seated at the bar, this prostitute came over to the bar, seated herself next to the Agent, and in due course, solicited them for the purpose of having illicit sexual intercourse. Since they sat there for at least an hour at the station serviced by Scrivani, it is unrealistic to believe that he did not observe them and the female, notwithstanding his denial that he actually saw the face of this female.

When Agent W returned to the bar with the female after dancing with her, he informed the bartender that this female wanted to have sexual intercourse with him for \$25.00 and asked the bartender where he could obtain a room. It was then that the bartender went over to the register, picked up a coaster, wrote on the coaster, "Al sent me", handed the coaster to Agent W and told him that this would be his entree to a room in the adjoining motel.

According to the Agents' testimony, Scrivani admitted at the time of confrontation, hearing that part of the conversation relating to his wanting to have sexual intercourse at the motel, but he denied hearing anything about \$25.00. The fact is that even James Lake corroborated that conversation. Scrivani's denial that he made any such statement is highly incredible. If the testimony of the Agents is to be believed, Scrivani admitted hearing part of the conversation except for that part relating to the price to be charged by the prostitute. Isn't it consistent with reality that the Agent, who visited these premises, specifically to investigate the prostitution activity, should relate to the bartender the fact that he was solicited for money, by the prostitute, and inquire where there was an available facility? I think so. I am persuaded that Scrivani heard the entire conversation and volunteered to use his influence to make sure that the agent got a "nice room" at the motel.

I have observed Scrivani as he testified, and find that notwithstanding his complaint that he was hard of hearing, he had no difficulty in hearing questions propounded to him in a normal tone of voice. In fact, he testified that his hearing on the night of the investigation was the same as it was on the date that he testified. In my assay of Scrivani's testimony, I find that he was inconsistent, evasive and contradictory in many of the answers. I find his testimony to be incredible and, indeed, unbelievable.

Another significant conflict in the testimony of the witnesses for the licensee was developed. Several of the licensee's witnesses testified that the problem of prostitution was never discussed on the afternoon of February 25th. To support these positive assertions, the licensee subpoenaed Director Graff, who had visited the premises with Det. Sgt. Burgess on that afternoon. Director Graff forthrightly and

directly contradicted such testimony, and testified that the problem of prostitution was one of the primary purposes for his visit. This kind of contradictory testimony seriously affects the credibility of both James and William Lake.

I find as a fact, from the testimony of the Agents, buttressed by the other witnesses for the Division, that the bartender was made aware of the fact that the Agents were solicited by the prostitute. I further find that he encouraged such solicitation by directing them to the adjoining motel, which is owned and operated by the same principals as that of the licensed premises, and aided them by handing the Agent the coaster with the legend "Al sent me". The said activity is denounced by the aforesaid regulations.

A licensee is the master of his establishment and it is its duty and obligation acting, in this case, thru its employee, (Rule 33 of State Regulation No. 20), to take affirmative action to discourage such activity. Essex Holding Corp. v. Hock, supra; Cf. Benedetti v. Trenton, 35 N.J. Super. 30,34 (App. Div. 1955). Nevertheless, as indicated hereinabove, not only did the bartender not do so, but he aided and abetted in the said arrangements. Such failure to take affirmative preventive action was clearly an abrogation of his responsibility under these circumstances.

From my evaluation of the totality of the evidence, I reach the irresistible conclusion that the said licensee, through its employee, allowed, permitted and suffered the immoral activity, as set forth in the said charge herein; and that the Division has established the truth of this charge by a fair preponderance of the credible evidence, indeed, by substantial evidence. I, therefore, recommend that the licensee be found guilty as charged,

Licensee has no prior adjudicated record. It is, further, recommended that the license be suspended for sixty (60) days.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by the licensee and Answering Argument to the said Exceptions was submitted on behalf of the Division pursuant to Rule 6 of State Regulation No. 16.

In its Exceptions, the attorney for the licensee asserts that he is "unaware of any grant authority whereby the Attorney General's Office can prefer (sic) charges against a licensee."; that such amendment is "contrary to Law, N.J.S.A. 52:17B-17 and 52:17A-4(e) and, therefore, without effect."

Charges against licensee are in fact, preferred by the Director of this Division and not by the Attorney General. The statutes cited by licensee are not pertinent or applicable to this issue. N.J.S.A. 52-17A-12 expressly authorizes the Attorney General to as-

sign a Deputy Attorney General "to serve in any legal capacity" for any State Agency. Surely the amendment of a disciplinary Charge is legal in nature within the meaning and intendment of the said statute.

Furthermore, it is common practice to amend such a charge during the course of a hearing. It is clear that this surely may be done prior to a hearing; and the licensee has been given ample opportunity to meet the said amended charge. I hereby affirm that amendment.

Licensee next contends that, in order to sustain the charge of "renting of rooms for acts of prostitution", and that the "licensed premises were used in the futherance of such alleged illegal activity", the Division is required to "prove knowledge on the part of one renting such room." Not so.

It was sufficient, as the Hearer found from the credible evidence produced herein, that the licensee's bartender engaged in activity which aided such rental while knowing of such purpose. This contention is without merit.

Finally, the licensee argues that the Hearer erred in accepting as more credible the testimony of the Division agents over that of the denial by the licensee's bartender. However, it is a fundamental principle that no testimony need be believed, but, rather, the Hearer may credit as much, or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, Sec. 201 (16th Ed. 1899). Modla v. U.S. 151 F. Supp. 198 (D.C.N.J. 1957); Spagnuolo v. Bonnet 16 N.J. 546 (1955); Gallo v. Gallo, N.J. Super (App. Div. 1961).

The Hearer had the opportunity to observe and evaluate the demeanor of the witnesses as they testified. I find that he accurately determined the credibility issue. See 98 C.J.S. Witnesses, Sec. 468, p. 336. Cf. State v. Conyers, 58 N.J. 123, 145 (1971); Reynolds v. United States, 98 U.S. 145, 156-157.

Licensee's request for oral argument before me is unwarranted and is, accordingly, denied.

I have examined and assayed the other exceptions and find that they have either been considered and clearly resolved in the Hearer's report or are devoid of merit.

Thus, having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report, the Exceptions filed thereto by the licensee, and the Answering Argument to the said Exceptions submitted on behalf of the Division, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein. I find the licensee guilty as charged.

Accordingly, it is, on this 9th day of March, 1976

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Mount Laurel to Green Duck, Inc., t/a Mallard Inn, for premises Route 73, PO Moorestown, Mount Laurel Township, be and the same is hereby suspended for sixty (60) days, commencing at 3:00 a.m. on Tuesday, March 23, 1976 and terminating at 3:00 a.m. on Saturday, May 22, 1976.

LEONARD D. RONCO

2. DISCIPLINARY PROCEEDINGS - APPLICATION TO DIRECTOR TO PAY FINE IN LIEU OF SUSPENSION BY MUNICIPAL ISSUING AUTHORITY - PAYMENT OF FINE ACCEPTED.

In the Matter of Disciplinary)
Proceedings against)

Willner Industries)
t/a Willner's Bar and Liquors)
829 Route 10)
Township of Hanover)
PO Whippany, N.J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consump-)
tion License C-13, issued by the)
Township Committee of the Township)
of Hanover.)

Fox and Fox, Esqs., by Martin S. Fox, Esq., Attorneys for
Licensee

BY THE DIRECTOR:

Licensee pleaded non vult before the local issuing authority, on January 22, 1976, to a charge alleging that, on November 21, 1975, it sold and delivered alcoholic beverages, directly or indirectly, to two seventeen year-old minors; in violation of Rule 1 of State Regulation No. 20. In consequence thereof, the license was suspended for thirteen days, effective February 2, 1976.

The aforesaid suspension was stayed by the Director of this Division on January 30, 1976, pending my consideration of licensee's application for the imposition of a fine, in compromise, in lieu of suspension of license, in accordance with the provisions of Chapter 9 of the Laws of 1971.

N.J.S.A. 33:1-31 (Chapter 9 of the Laws of 1971) states as follows:

"The Director may, in his discretion and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may in the discretion of the Director be proper under the circumstances in lieu of any suspension of any license by the Director or any other issuing authority. Any sums of money so collected by the Director shall be paid forthwith into the State Treasury for the general purpose of the State."

While the sole discretion with respect to the acceptance of a fine in lieu of suspension is vested in the Director, I have, as a matter of policy and normal procedure, solicited the views of local issuing authorities before arriving at my determination whether or not to approve such application. Such views are given serious consideration,

and where I consider the objection to be meritorious, I have denied such applications.

In the instant matter, the Township Committee of the Township of Hanover has set forth its objection to my approval of the said application for the payment of a fine, as follows: (a) that alcoholic beverages were sold to these minors "without proof of age being requested" of the said minors. (b) The Committee considered in its computation of penalty, "The past record of violations by the licensee for similar offenses in other parts of the State where it owns similar types of establishments." (c) That a fine in such cases is "of doubtful effect and little impact."

I have given careful consideration to the said objection by the Committee and have determined, on the basis of the facts herein, that its objection is unreasonable and lack merit for the following reasons:

(1) While the licensee, by its plea of non vult has admitted the said charge, a mitigating circumstance, as revealed by the Committee's letter to me, is the fact that one of the said minors "wore a moustache and full beard" so that his appearance apparently was that of a person above the statutory age.

(2) The mere fact that this corporate licensee has a prior record of violations in some of its other facilities in other parts of the State may not, in fairness and by established Division policy, be considered as a chargeable prior record in assessing the penalty for the violation of these premises. According to Division records, this facility has been operated for fourteen years and has no prior adjudicated record of violations.

(3) By the passage of the aforesaid statute, the legislature, in its wisdom, has manifested that a fine may be a valid substitute for suspension of license, and has vested such authority in the discretion of the Director as aforesaid.

(4) I have computed to be imposed herein in the sum of \$650.00 which I consider to be a substantial and reasonable penalty under the circumstances. The objection of the Township Committee is without merit and is hereby rejected.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$650.00 in lieu of suspension of license for thirteen days.

Accordingly, it is, on this 9th day of March 1976,

ORDERED that the payment of \$650.00 fine by the licensee is hereby accepted in lieu of suspension of license for thirteen (13) days.

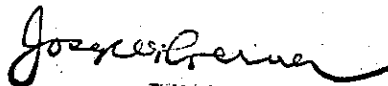
Leonard D. Ronco
Director

3. MISCELLANEOUS SEIZURE CASES - ENUMERATED LIST.

- SEIZURE CASE #13,057 - On April 28, 1974 at 35 Ryle Avenue, Paterson, cash of \$70. and miscellaneous personal property seized, forfeited. Hearing ex parte.
- SEIZURE CASE #13,237 - On May 10, 1975 in unlicensed club at Trenton Road, Pemberton, cash of \$89.95 and sum of \$300. posted by vending machine company and \$400. posted by owner, all forfeited on ex parte hearing.
- SEIZURE CASE #13,249 - On June 7, 1975 on Interstate Highway #295 of 1970 Buick - \$700. posted as its value, returned.
- SEIZURE CASE #13,252 - On June 13, 1975 in restaurant at 61 Ferry Street, Newark, cash of \$50.49 and \$400. posted by owner and \$300. posted by vending machine company, both forfeited.
- SEIZURE CASE #13,255 - On June 21, 1975 at 163 - 20th Street, Paterson, cash of \$32.67 and \$300. posted by vending machine company forfeited; typical speakeasy operation.
- SEIZURE CASE #13,265 - On July 11, 1975 at 960 Frelinghuysen Avenue, Newark, cash of \$21.70 and \$250. posted forfeited - unlicensed club.
- SEIZURE CASE #13,267 - On June 20, 1975 in candy store at 148 Brunswick Avenue, Trenton, claim for return of \$50 posted and \$35.60 seized be denied; claim for return of \$400. posted recognized.
- SEIZURE CASE #13,287 - On August 23, 1975 in unlicensed premises at 341 West Spicer Avenue, Wildwood, cash of \$28.30 and \$150. posted by owner forfeited on ex parte hearing.
- SEIZURE CASE #13,291 - On August 28, 1975 in candy store at 672 Springfield Avenue, Newark, cash of \$35.79 and \$75. posted by owner forfeited; \$500. posted by vending machine company returned.
- SEIZURE CASE #13,292 - On August 28, 1975 at Montville Volunteer Fire Company cash of \$101.31 and \$300. posted, both forfeited.

SEIZURE CASE #13,297 - On September 6, 1975 at 397 Market Street, Newark, cash seized and \$600. posted, forfeited. Hearing ex parte.

SEIZURE CASE #13,298 - On September 7, 1975 in unlicensed club at 316 New York Avenue, Trenton, cash of \$4.81 and \$1,000. posted forfeited on ex parte hearing.



Joseph H. Lerner
Acting Director