STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. ROUTE 1-9 (SOUTHBOUND), NEWARK, N.J. 07114

BULLETIN 2280 April 12, 1978

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ITEM

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BULLETIN 2280 April 12, 1978

1. COURT DECISIONS - 333 CLUB, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1393-76

333 CLUB, INC., t/a 333 CLUB,

Defendant-Appellant,

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF NEW JERSEY,

Plaintiff-Respondent.

Submitted November 9, 1977 - Decided November 18, 1977

Before Judges Lora, Seidman and Milmed

On appeal from the Division of Alcoholic Beverage Control

Mr. Ronald Matzner, attorney for appellant

Mr. William F. Hyland, Attorney General of New Jersey, attorney for respondent (Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. Mart Vaarsi, Deputy Attorney General, on the brief).

PER CURIAM

(Appeal from the Director's decision in Re 333 Club, Inc., Bulletin 2250, Item 2. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against 333 Club, Inc. t/a 333 Club 533 Shaler Boulevard Ridgefield, N.J. 07657 subsequently transferred to T.J. Cirillo, Inc. t/a 333 Club 533 Shaler Boulevard Ridgefield, N.J. 07657 Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Ridgefield.	SUPPLEMENTAL ORDER

Samuel R. De Luca, Esq., by Joseph W. Gallagher, Esq., Attorneys for Licensee.
Carl A. Wyhopen, Esq., Appearing for Division.

BY THE DIRECTOR:

On December 10, 1976, Conclusions and Order were entered herein suspending the subject license for one hundred and twenty (120) days, commencing January 3, 1977, after finding the licensee guilty of charges alleging that: (1) between April 12, 1975 and May 31, 1975 it allowed, permitted and suffered gambling activity upon its licensed premises, in violation of Rule 6 of State Regulation No. 20; and (2) on May 31, 1975, it allowed, permitted and suffered upon the licensed premises slips, tickets, and other documents pertaining to unlawful gambling, in violation of Rule 7 of State Regulation No. 20. Re 333 Club, Inc., Bulletin 2250, Item 2.

Prior to the effectuation of the said suspension, on appeal filed, the Appellate Division of the Superior Court, by Order dated December 29, 1976, stayed the operation of the suspension until the outcome of the appeal. On November 18, 1977, the Court affirmed the action of the Director. 333 Club, Inc., t/a 333 Club v. Division of Alcoholic Beverage Control (App. Div. 1977, Docket No. A-1393-76). The suspension may now be reimposed.

Accordingly, it is, on this 29th day of December 1977,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Ridgefield to T.J. Cirillo, Inc., t/a 333 Club for premises 533 Shaler Boulevard, Ridgefield, be and the same is hereby suspended for one-hundred twenty (120) days, commencing at 3:00 a.m. Wednesday, January 11, 1978 and terminating at 3:00 a.m. Thursday, May 11, 1978.

JOSEPH H. LERNER
DIRECTOR

3. SPECIAL RULING - RE JEANNE'S ENTERPRISES, INC.

IN THE MATTER OF THE APPLICATION FOR THE TRANSFER OF LICENSE FROM	)	
JEANNE'S ENTERPRISES, INC.,	)	SPECIAL RULING
HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE NO. C-191 ISSUED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY.	)	

Pursuant to the Emergency Rule regarding retail licenses within the City of Atlantic City, 9 N.J.R. 487(c), an investigation into the application for transfer of retail consumption license C-191 issued by the Board of Commissioners of the City of Atlantic City from the present holder Jeanne's Enterprises, Inc. to a partnership comprised of Frank John Narducci, Jr. and Salvatore Angelo Testa has been concluded and I have been furnished with a report of such investigation. The investigation included depositions of the principal officer of the transferor corporation and of the transferee applicant partners.

Having considered the report of the investigation including a review of the depositions of the aforementioned individuals, it is my finding that an approval of this application for transfer would be contrary to the public interest.

This is a preliminary finding based on the report of the investigation submitted to me. This preliminary finding is subject to the right of the applicant transferees to a hearing on their application for transfer. This hearing shall be afforded to the applicants should they desire one through an appeal to the Division from the municipal denial of their application for transfer. Should no appeal be filed after action by the municipal body within the time provided by N.J.S.A. 33:1-22, this finding shall be considered final.

The investigative report on which this preliminary finding is based shall be provided to the attorney for the applicant transferees but its contents shall not otherwise be made public except to the extent necessitated by a hearing requested by the applicants.

The Board of Commissioners of the City of Atlantic City shall be immediately informed of this finding for its action in accordance with 9 N.J.R. 487(c).

Joseph H. Lerner
Director

Dated: November 3, 1977

4. SPECIAL RULING - RE CASA RENZI, INC.

IN THE MATTER OF THE APPLICATION FOR THE TRANSFER OF LICENSE FROM

CASA RENZI, INC.

HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE NO. C-180 ISSUED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY.

SPECIAL RULING

Pursuant to the emergency rule regarding retail licenses within the City of Atlantic City, 9 N.J.R. 487(c), an investigation into the application for the transfer of retail consumption license No. C-180, issued by the Board of Commissioners of the City of Atlantic City, from the present holder, Casa Renzi, Inc. to Glen Archer, Inc. is pending. During the pendency of the investigation, it has been established that one of the principals of the corporate transferee, Edwin H. Helfant, is under indictment by a State Grand Jury for conspiracy to obstruct justice, obstruction of justice, aiding and abetting and compounding of an indictable offense and false swearing before a State Grand Jury. I have been advised that the trial on this indictment is now peremptorily scheduled for November 14, 1977.

In view of the fact that the crimes charged in the indictment involve moral turpitude, and a conviction of the applicant transferee's principal would statutorily disqualify the corporation from holding a liquor license, I find that it would be contrary to the public interest to approve the application of transfer at this time without a proper consideration of the evidence supporting the indictment. On the other hand, with the trial on the indictment imminent, any consideration of the facts underlying the indictment by the Division of Alcoholic Beverage Control whether by way of formal hearing or otherwise, would as a practical matter be coterminous with the criminal trial, and the result of the criminal trial may well render such effort by the Division unnecessary. Therefore, I will defer action on this application until the conclusion of the trial on the indictment at which time I shall take such further action as is appropriate.

Accordingly, the Board of Commissioners of the City of Atlantic City shall withhold action on this application until such time as I issue a finding pursuant to 9 N.J.R. 487(c).

The Board of Commissioners of the City of Atlantic City and the applicant transferee shall be immediately informed of this special ruling.

Joseph H. Lerner
Director

Dated: November 14, 1977

5. SPECIAL RULING - RE SAMHAR, INC.

IN THE MATTER OF THE APPLICATION FOR THE TRANSFER OF LICENSE FROM)
)
Samhar, Inc.)
) SPECIAL RULING
HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE C-199 ISSUED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY.)

Pursuant to the Emergency Rule regarding retail licensees within the City of Atlantic City, 9 N.J.R. 487(c), an investigation into the application for transfer of retail consumption license C-199 issued by the Board of Commissioners of the City of Atlantic City from the present holder, Samhar, Inc., to John Hermley has been concluded and I have been furnished with a report of the investigation.

Having considered the report of the investigation, it is my finding that an approval of this application for transfer would be contrary to the public interest.

This is a preliminary finding based on the report of the investigation submitted to me. This preliminary finding is subject to the right of the applicant transferee to a hearing on his application for transfer. This hearing shall be afforded to the applicant should he desire one through an appeal to the Division from the municipal denial of his application for transfer. Should no appeal be filed after action by the municipal body within the time provided by N.J.S.A. 33:1-22, this finding shall be considered final.

The investigative report on which this preliminary finding is based shall be provided to the attorney for the applicant transferee but its contents shall not otherwise be made public, except to the extent necessitated by a hearing requested by the applicant.

The Board of Commissioners of the City of Atlantic City shall be immediately informed of this finding for its action in accordance with 9 N.J.R. 487(c).

Joseph H. Lerner
Director

Dated: November 21, 1978

6. APPELLATE DECISIONS - RIDGEWOOD BAR, INC. v. NEWARK.

Ridgewood Bar, Inc., t/a Lloyd's Ridgewood Bar, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	ON APPEAL ORDER FOR REMAND

Schechner & Targan, Esqs., by Edward Weisslitz, Esq., Attorneys for Appellant.
Milton A. Buck, Esq., by John C. Pidgeon, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which, on May 17, 1977, revoked appellant's Plenary Retail Consumption License, C-532, for premises 120 Avon Avenue, Newark, in consequence of a finding that appellant had violated Rules 5 and 6 of State Regulation No. 20.

Upon the filing of the appeal, appellant requested a stay of the revocation order of the Board pending appeal, which was opposed by the Board. Following a hearing thereon, appellant's application for stay was denied by the Director by Order dated June 8, 1977.

An appeal de novo held in this Division, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. However, counsel stipulated that in lieu thereof, the parties would rely upon a transcript of the testimony presented before the Board, jointly offered in accordance with Rule 8 of State Regulation No. 15. The transcript of the testimony before the Board included the testimony of four Newark Police Detectives assigned to the narcotics squad.

Detective Leonard McGee testified to the execution of a search warrant at the licensed premises on March 4, 1977. The search revealed a glassine envelope containing cocaine,

which was discovered in the desk of the principal owner of the corporate stock of the appellant.

Detective Donald Deans testified that, on March 4, 1977, he discovered a quantity of lottery slips secreted in a "Kool" cigarette package located above a recessed ceiling panel.

Detective James Cappola described a discovery he made, as part of the aforesaid raid on March 4, 1977, of a glassine envelope containing narcotic drugs above an air conditioner switch located in a locked room used for storage. The remaining witness confirmed that the drugs seized were illegal controlled dangerous substances.

Darnell H. Lloyd, Jr., who owns the majority of the corporate stock of the appellant, testified that he had no knowledge of how the narcotic drugs got into his desk, or how the lottery slips were placed in the aperture in the ceiling of the licensed premises.

Detective McGee was recalled and testified to a subsequent raid at the appellant's establishment on March 24, 1977, after being informed that persons were selling drugs within the premises. On this occasion, his partner discovered a quantity of heroin secreted in an aperture in the ceiling. This ceiling aperature was in plain view of the bartenders and could be reached only by standing on the bar or ladder. The search occurred in mid-afternoon.

Darnell H. Lloyd, Jr. could not explain how the narcotics got into the ceiling.

Following the hearing in this Division, counsel for the Board filed a motion with the Director for leave to amend the charges against appellant to conform to the proofs adduced by the Board at the hearing; to wit, that appellant "permitted possession" of narcotic drugs and lottery slips within the licensed premises on the dates set forth in the original charges.

A hearing on the motion was held in this Division with counsel advancing support for their respective positions.

Counsel for the Board contends that when the charges were drawn and served upon appellant, it was then believed that the proofs would amply support a charge of "sale of narcotic drugs" within the premises. It then asserts that by logical inference, the possession of the subject drugs would be a concomitant to the charge, and although a sale was not proven, abundant proof supports a finding of possession. The same argument in connection with the making of the gambling bets is advanced.

The appellant maintains that the charges as originally

served upon appellant cannot support a finding based upon possession of drugs and gambling slips. The appellant was specifically charged with sale of narcotic drugs and the making of gambling bets, and was prepared to defend against those charges. Appellant further urges that it would be manifestly unfair to permit a finding of guilt for other offenses not charged.

There is support for the position of the Board that, the appellant had knowledge of the underlying factual basis precipitating the disciplinary action which was proved; albeit not as specified, and hence an amendment of charges to conform to the evidence is appropriate. Christiansen v. Christiansen, 46 N.J. Super. 101, 107 (App. Div. 1957); Grodjest v. Jersey City Medical Center, 135 N.J. Super. 393, 419-420 (Chan. Div. 1975); Tanella v. Rettagliata, 120 N.J. Super. 400, 406 (Bergen Cty. Ct. 1972).

However, unlike situations where evidence is developed resulting in variances from the issues as specified, but proofs are satisfactory toward the development of related illegal or illicit acts or issues, and motion is timely made to amend such charges, the matter sub judice had imposed within it an additional aspect. At the conclusion of the hearing before the Board, counsel for appellant urged that "...[Again], I don't think the charges have been sustained as they have been drawn...."

In its petition of appeal, appellant repeated its contention that the proofs did not substantiate a "sale" of the narcotic drugs or lottery slips. In response thereto, the Board did not amend the charges to conform to the proofs presented; but rather, relied upon the abundance of proofs to the related, but uncharged, offense of possession.

In consequence, the present issue, in view of the motion and argument thereon, is narrowed to the singular question of prejudice, if any, to the appellant in the preparation and presentation of its defense to the proposed amended charges.

That narcotic drugs are found in a licensed premises does not, per se, warrant a finding against a licensee. Clarence's Music World, Inc. v. Newark, Bulletin 1925, Item 1. It must be proved that the licensee knew or should have known of the presence of the narcotic. Knowledge, either actual or constructive, by the licensee is the essence of the charge. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); Benedetti v. Board of Commissioners of Trenton, 35 N.J. Super. 30 (App. Div. 1955). It is further well settled that a licensee is fully responsible for the activity of its employees and agents during their employment on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

In the matter sub judice, the elements of both proof and defense differ from the charges proffered and those sought by amendment. It is elementary that "[the] minimal requirements of 'due process of law' include reasonable notice of the nature of the proceedings and a fair opportunity to be heard therein." Fantony v. Fantony, 36 N.J. Super. 375, 378 (Chan. Div. 1955).

The contention of the Board that the proofs are over-abundant to sustain the proposed amended charges is not dispositive. The nature of proofs required varies. Cf. In re Darcy, 114 N.J. Super. 454 (App. Div. 1971). A party has full right to lay all the facts before its jury. State v. Black, 97 N.J.L. 361 (Sup. Ct. 1922).

The absence of opportunity afforded appellant to respond to the charges now proposed by the Board, cannot, however, absolve the appellant from the substantial evidence already produced, revealing the potentiality of very serious offenses. The authority delegated to the Director to make licensees responsible for activities on their licensed premises mandates further inquiry into the subject premises and the facts so far adduced. Mazza v. Cavicchia, 15 N.J..498 (1954).

The primary responsibility for enforcement of laws pertaining to retail licensees rests upon the municipality. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

So that the appellant may have a full right and opportunity to advance its defense to the charges proposed by the Board, it is recommended that an Order be entered by the Director remanding the matter to the Board for hearing. The Board shall serve upon the appellant a copy of revised charges and hold a hearing thereon after the lapse of at least five days, giving full opportunity to appellant to cross-examine witnesses and present testimony on its behalf. It is further recommended that no stay of appellant's order be granted pending rehearing and further order of the Director.

ORDER FOR REMAND

No Exceptions were filed to the Hearer's Report pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 28th day of October 1977,

ORDERED that the within matter be and the same is

hereby remanded for a rehearing before the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, consistent with the procedures hereinabove set forth in the Hearer's Report and incorporated herein; and it is further,

ORDERED that, pursuant to N.J.S.A. 33:1-31, the application of the appellant for an Order staying respondent's Order of revocation pending the rehearing ordered herewith, be and the same is hereby denied.

JOSEPH H. LERNER
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE NOT RENEWED - CHARGE NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against Coterie, Inc. t/a Roman Forum 30 Andrews Drive West Paterson, N.J. 07424 Holder of Plenary Retail Consumption License C-1 for the 1975-1976 licensing period issued by the Municipal Council of the Borough of West Paterson.	CONCLUSIONS and ORDER

Kaufman, Franconero, Riccardelli & Erde, Esqs., by Meyer L. Rosenthal, Esqs., Attorneys for Licensee.

BY THE DIRECTOR:

Licensee had a charge preferred against it by Notice, dated March 10, 1976, alleging that, on October 20, 1975, it possessed a bottle of alcoholic beverage which bore a label which did not truly describe its contents; in violation of Rule 27 of State Regulation No. 20.

The license was not renewed for the 1976-1977 license term.

A motion was made on behalf of the Division to nolle pros the charge. Under the circumstances, I shall grant the motion.

Accordingly, it is, on this 28th day of October, 1977,

ORDERED that the charge herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT ENTERTAINMENT - CHARGES UNPROVEN - DISMISSED.

In the Matter of Disciplinary Proceedings against Hap, Inc. t/a Center Lounge 1719 Pacific Avenue Atlantic City, N.J. 08401 Holder of Plenary Retail Consumption License C-166, issued by the Board of Commissioners of the City of Atlantic City.	CONCLUSIONS AND ORDER

David S. Piltzer, Esq., Attorney for Licensee.
Mart Vaarsi, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads "not guilty" to a charge alleging that, on Saturday, March 19, 1977, it allowed, permitted and suffered lewdness and immoral activity in and upon its licensed premises, viz., solicitation for prostitution; in violation of Rule 5 of State Regulation No. 20.

Two ABC agents, who participated in the investigation of alleged solicitation for prostitution at the licensed premises pursuant to a specific assignment, testified at the hearing in this Division. Agent G gave the following account: On the date charged at about 10:15 p.m., in the company of Agent D, he visited the said premises, which is a night-club type tavern with go-go girl entertainment and juke box music. Both agents took seats at one of the bars. There were two barmaids on duty servicing this, the main bar within the premises. Two other ABC agents seated themselves at a smaller bar located at the rear of the premises. These other agents were not involved in the charge preferred herein, and shortly after entering, left the premises.

While seated, the agents observed a man and a woman seated at the bar nearby. Shortly thereafter, the man departed, leaving his female companion alone. The female, later

identified as Melinda Ann Massa, smiled at the Agent, who began to engage her in conversation. She initially identified herself as "Barbara".

At Barbara's instigation, the conversation turned to her invitation to the agents to engage in a sex act for $25.00, with additional cost for the room to be rented.

After these arrangements were finalized, Agent D engaged the barmaid, later identified as Kathy Power, in conversation. He first indicated that both men were going to have sexual relations with Barbara at the Convention Hotel, adding "You know, I don't want to get in any trouble or get hit in the head or anything like that." The barmaid's reaction to this statement was: "Kathy just started to laugh."

The female indicated that she would not leave the premises with the agents, but they were to leave first and she would follow. A further query was made to the barmaid by Agent D:

> "As soon as we finish our drinks, we are going to leave and Barbara is going to take care of us for $25. You sure it will be alright?"

The barmaid's response to this statement was similar to her prior reaction:

> "Kathy again looked at both of us and started to laugh."

The testimony of Agent D was generally corroborative of that of Agent G. He further acknowledged visiting the subject premises the previous night.

Barmaid Kathy Power testified on behalf of the licensee. She described her duties during the evenings when the agents were present, and recalled that Agent D had attempted, repeatedly, to make a date with her for "breakfast." She initially declined, giving as her reason that her "boy-friend wouldn't like it." He repeated his invitation with such frequency that she then paid little attention to his attempts at conversation, stating "After a while I just got to the point where I would just smile at him, and walk away from him."

In explaining the practice of serving, or not serving, unescorted female patrons, the witness stated that the management had warned her of the prevalence of prostitution in the

area and, in consequence, no unescorted females were to be served; or if service to them could not be avoided, it was to be made as difficult as possible.

She denied ever knowing the alleged prostitute whom the agents called "Barbara", and averred that, had the agents referred to any arrangements being made for illicit relations with a "Barbara", she would have made inquiry immediately of her companion barmaid, who was also named Barbara. Thus, she denied ever hearing Agent D's statements respecting the arrangements for prostitution made with "Barbara" or with anyone else.

In response to questions relevant to voice volume needed for conversation within the establishment while music was playing on the juke box, Agent G was asked: "In other words, he raised his voice because the juke box was going on so that she could hear?" His response was "Could have been." And to the next question, "Well did he raise his voice?", he replied "It was rather loud."

Agent D's characterization of his voice level when he talked to the barmaid was, "It was a normal tone of voice that she could hear me with no problem."

The barmaid, Kathy, testified that she did not hear Agent D refer to arrangements he had made with the female for, as has been previously indicated, "...I would just smile at him and walk away from him." In response to a question that the barmaid could hear a customer speak at a distance of two feet she replied, "Not always. It depends on the music. I ask people to please repeat every night."

The other barmaid, Barbara Fell, in response to the question, "If you want to make yourself heard across the bar, can you do so?", stated "Yes, I must lean forward."

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, 254 (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 of the probabilities arising from a fair consideration of all of the evidence. 32A C.J.S. Evidence,

seq. 1042 (1964).

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 mouth 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).

As stated, the Division has the duty of establishing the charge by a "preponderance of the credible evidence". Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956). By a preponderance of the evidence is meant evidence which is of greater weight or more convincing than that which is offered in opposition. 32A C.J.S. Evidence, sec. 1021 (1964), and cases cited therein.

I have particularized in considerable detail the testimony of the witnesses adduced herein in order to present a full and objective picture and to develop a perspective reflective of the charge. The testimony produced by the Division and by the licensee is markedly similar, except in the critical area of whether the licensee's employees were cognizant of the statements the agents testified were directed to the barmaid.

I find that the Division was unable to prove by a preponderance of the evidence that the licensee, through its barmaid, knew or should have known of the arrangements for illicit relations. The attempt of Agent D to obtain the confidence of the barmaid by appearing to be personally interested in her had an opposite result. She merely became annoyed, ignored his comments and, if, indeed, she heard of his prospective relationship with the female, could well have considered it solely in conjunction with his dating attempts. Hence, the testimony of the opposing parties is equiponderant.

I therefore conclude that the Division has failed to sustain its burden of proof, and recommend that the charge herein be dismissed.

Conclusions and Order

No Exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 27th day of October, 1977,

ORDERED that the charge against the licensee herein, alleging violation of Rule 5 of State Regulation No. 20, be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

Foreign Brands, Inc.
157 Hobart Street
Hackensack, New Jersey
Application filed March 7, 1978
for place-to-place transfer of
Wine Wholesale License WW-8 from
99 Hook Road, Bayonne, New Jersey.

Publicker Distillers Products, Inc.
1429 Walnut Street
Philadelphia, Pennsylvania
Application filed March 14, 1978
for place-to-place transfer of
Plenary Wholesale License W-35
to include a salesroom at Martin
Building, 2204 Morris Avenue,
Union, New Jersey.

Joseph H. Lerner
Director