

Director

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

BULLETIN 1857

May 22, 1969

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two stools or four feet to the right of B. G was some distance to the right of CG. The patronage consisted of "approximately twenty-five male and female patrons." A person identified as Alfred E. Crudele (Al) and another male were tending bar.

Upon being requested to state his observations concerning female patrons, the agent responded, "I observed several females approach male patrons at the bar and engage in conversation, and they would ask a bartender to call them a cab, and when the cab driver arrived they would leave with the gentleman they were talking to." The female would ask the bartender to call a cab.

As he was entering the licensed premises he observed Rose --- leaving the premises with a male. Approximately twenty-five minutes later she returned to the tavern alone and sat directly opposite B and "she sort of scanned the bar and came around and approached me." It was at this point that the female solicited B for an act of prostitution including acts of perverted intercourse. After testifying that Rose ordered a drink from the bartender Al, the testimony proceeded as follows:

"Q When you started this conversation with Mr. Crudele where was [Rose] ?

A Seated on a stool right next to me.

Q In what tone of voice did you have this conversation with Mr. Crudele?

A A little louder than I am talking right now because of the music.

Q Continue.

A I told Al, 'I got lucky. I got a girl who is costing me \$25 for a French job or half and half.' And Al said, 'That's not bad. She looks like she's worth it.' I said, 'Yes, she doesn't look bad. She told me for \$40 I could ball her as many times as I could make it.' Mr. Crudele said, 'Man, keep thinking of the \$40 you are giving her and maybe you can go 4 or 5 times.' He further said, 'If I was going to pay \$40 to trim her bush I would make sure I got my money's worth.' He said, 'I would get French, laid, and everything.' I said, 'If I am going to give her \$20 for once I may as well give \$40 and go the whole route.' He said he had seen her leave with guys before and then come back, and he never heard one complaint about her. He said, 'She must be worth it.' He said, 'Keep thinking of the \$40. It will give you drive.'

Q What was the next thing you said to Mr. Crudele?

A I told him she wanted to call a cab, and I said, 'Do you think it is O.K.?' He said, 'Sure. Cabbies are in and out of here all night and nothing ever goes wrong. You don't have anything to worry about.' He pointed out a man at the bar, and he said, 'He had just gone out with a girl, and he is back.'

Q Was a cab ordered?

A Yes.

Q What were the details of that?

A [Rose] asked Mr. Crudele to call a cab for us, and he picked up the phone and called a cab."

After Crudele completed the telephone call (one telephone being located next to the cash register), he said the taxicab should arrive soon. At Rose's suggestion that B should leave a tip for the bartender for calling a cab, B placed a dollar on the bar for him and departed from the barroom accompanied by the female at approximately 12:10 a.m. As he was leaving he informed Al that he was leaving and Al responded, "O.K., see you later."

At approximately 12:45 a.m. B returned to the licensed premises accompanied by Rose, Agent C and a Captain of the local Police Department. The agents identified themselves to Attilio Rocco Castellani (the manager of the licensed premises) and Crudele. The questioning revealed the following:

"Q Tell us what happened.

A We made them aware of the violation, and he was informed of the conversation I had with Mr. Crudele. And Mr. Crudele said, 'What conversation?' And we told him what the conversation was, what was going to happen for \$25, and what was going to happen for \$40. And at this point [Rose] had interjected that Al didn't come in the arrangements, she made the arrangements herself, and he only called the cab.

Q What, if anything, did Mr. Crudele say when you confronted him with these facts?

A He said he had remembered talking but he did not deny or admit anything else.

Q What, if anything, did Mr. Castellani say about this when he was informed of it?

A He said, 'Sure, he had conversation with him. He is a new man, and he is looking for tips.'

The Police Captain pointed out to Castellani that there were known prostitutes in the premises. Castellani replied, "I know it but what can I do? They are over twenty-one."

On cross examination B testified that the barroom was approximately forty-five feet long and twenty or twenty-five feet wide. The barroom contained a juke box. One speaker connected to the juke box was located approximately fifteen feet from where the agent was positioned. The volume of the juke box was louder "than an average bar."

While engaging in conversation with Rose, in order to make himself heard he turned his head sideways and spoke in a tone which was characterized as being more or less just above a conversational tone. He repeated to Al the conversation he had with Rose for the purpose of apprising Al of the activity going on on his side of the bar. Due to the noise emanating from the juke box and the distance across the bar (the bar being approximately thirty inches wide), the agent spoke to the bartender in an "extremely loud

voice" and in a louder voice than the tone of voice he was using in his conversation with Rose. Neither the bartender nor Rose admonished B to lower his voice.

At the time that the agents confronted Rose, Castellani and Al, Rose said that she made all the arrangements with B, "the bartender didn't make any of the arrangements except to call the cab."

The agent conceded that the telephone was near the cash register and was used to get taxicabs for anyone who asked.

The cross examination concluded as follows:

"Q The calling of the cab, I assume you saw that happen before both here and at other bars where the bartender calls a cab at the request of a patron. Isn't that correct?

A That is what happened that night.

* * * * *

Q What do you remember Mr. Castellani saying in the rear, by the way?

A He said, well, when Captain Donnellan told him there were known prostitutes on the premises at this exact time he said, 'So what can I do about it? They are over twenty-one', and he said that the bartender did have conversation with me because he was a new man and he was looking for tips, and he was talking to people."

On redirect examination B testified that Al did not request that he repeat anything that he had said to him. B did not have any difficulty in hearing Al's responses.

Division Agent C (who had the licensed premises under surveillance on the outside thereof) was present with other ABC agents, local law enforcement officers, Rose, Castellani and Crudele at the confrontation in the rear room of the licensed premises after the alleged act of solicitation took place. He informed Castellani that B had been "solicited for prostitution and that [Rose] had been placed under arrest by the Atlantic City police, and he said he had no knowledge of any solicitation in the premises."

C identified himself to Al and, upon being asked to relate his conversation with Al, he responded, "I proceeded to ask Mr. Crudele his involvement in conversation with respect to the soliciting, and at this point Mr. Castellani interrupted and said, 'What conversation?' At this point I asked Agent B to repeat a portion of it, and he repeated a portion concerning the price, \$25 for 1 shot, something in essence, and \$40 to stay an hour and go as many times as he could, or something similar to that, and now [Rose] interrupted and said, 'All of the said conversation' -- something -- 'All of us had conversation but Mr. Crudele had nothing to do with the arrangements. He only made the phone

call.' Mr. Crudele made no comment at this point except the fact that he admitted making the phone call but would neither admit or deny any knowledge of the arrangements."

The interrogation then proceeded as follows:

- "Q Did you overhear any other conversation between Mr. Castellani and any other police officer?
A Yes. Captain Donnellan informed Mr. Castellani that prostitutes frequented the place regularly, known prostitutes with criminal records, and Mr. Castellani said -- previous to this Captain Donnellan said, 'There are some in the bar right now', and Mr. Castellani said, 'I know but' -- something like that -- 'that is none of my business. They are over twenty-one. I don't know what they are doing.'"

On cross examination C, who had stationed himself approximately fifty yards from the front of the licensed premises, testified that he had seen Agent B walk out of the licensed premises with a female; that he could not identify the female; that he could not identify Rose as being the same person who accompanied B out of the licensed premises or as being the same person "that had gone in and out of the premises."

Agent CG testified that he was among the group of Division agents and local law enforcement agents that arrived in the vicinity of the licensed premises on July 12, 1968 at 11:15 p.m. He entered the licensed premises alone immediately upon arrival and positioned himself at the bar. Approximately two or three minutes later Agent G entered and positioned herself approximately eight stools to CG's right. No one sat between them. A male identified as Alfred Crudele was tending bar.

He observed the female identified as Rose approach from the rear of the barroom and sit next to a male seated at the bar. Rose conversed with the male, motioned to the bartender and conversed with the bartender. The bartender made a telephone call, shortly thereafter a taxi driver entered the barroom and "both of them left." As Rose was leaving the premises, Division Agent B came in and sat two stools to the left of CG. Approximately twenty-five or thirty minutes thereafter Rose re-entered the barroom alone and sat at the bar opposite B and CG.

He observed an unknown female who was at the bar with another female at the rear of the premises approach an unknown male who entered the licensed premises and converse with him. He then observed the female converse with the bartender and then "the bartender go to the telephone again, and in a short time both of these people left." He did not overhear any of the conversation.

Returning to his observations of Rose, the agent testified that he observed her leave her position at the bar and seat herself between B and CG. He overheard Rose solicit B for an act of prostitution. He then heard B and the bartender Crudele engage in conversation. At this point the questioning revealed the following:

"Q When was it with respect to the conversation [i.e., the conversation between B and Rose] you just detailed for us?

A Well, the bartender, Mr. Crudele, came over and Agent B ordered some drinks, and he says to Mr. Crudele, 'Hey, Al. I got lucky. I have a girl here who is only going to cost me \$25 for half and half or a French job, and she says for \$40 I can stay with her an hour and go as many times as I want.' Mr. Crudele says, 'Just think of that \$40 you are giving her, and you might be able to go 4 or 5 times.'

Q Did you hear Mr. Crudele say anything else to B?

A Well, later Agent B said to Mr. Crudele that she wanted to go in a cab, 'Do you think that is all right?' He said, 'Sure. Cabs are in and out of here all night.' Then he pointed to a fellow across the bar, and he says, 'See that guy over there? He left with a girl, and they went in a cab, and he is back. There is nothing to worry about.'

Q Anything else after that?

A Shortly after that [Rose] motioned to Mr. Crudele, he came over, and she says, 'Call us a cab', and Mr. Crudele went to the telephone and called a cab."

On cross examination the agent testified that Rose and B conversed in a louder than normal conversational tone. At times the juke box played. However, he did hear the conversation. When speaking to the bartender he spoke in a louder tone of voice than in speaking with Rose. Depending upon the record being played, the music emanating from the speaker connected to the juke box (between twelve and fifteen feet distant from where the agent was seated) was oppressively loud.

In defense of the charge the licensee called as its witness Rose ---. She admitted that she pleaded guilty to the charge of prostitution in the local municipal court based upon the activity she engaged in the licensed premises with Division Agent B on the night in question. She admitted that Agent B's testimony concerning the conversation had between her and the agent was basically correct.

However, she denied that she had been in the tavern prior to approaching B. She did not inform Castellani or any of the bartenders as to what activity she was going to engage in that evening. She did not have any agreement with anyone connected with the licensee concerning her activity.

The juke box was playing very loud. Carrying on a conversation was difficult. Their heads were approximately five or six inches apart. The bartender did not converse with her while she was seated next to B. When questioned as to whether the bartender came over to speak to Agent B, Rose replied, "The only thing he said is when the agent asked Al how he was doing -- 'Hi, Al! How are you doing?' -- Al said, 'Fine.' That was it. Then he said, 'Would you order this girl a

drink?' and he gave me a drink. That was it."

Rose was present at the confrontation between the various law enforcement officers and Castellani on the night in question. When asked, "What do you remember being said by the various parties in attendance", she replied, "Well, they asked Rocky [Castellani] if they could see his license, and he got his license. They said, 'Do you know this girl was soliciting for prostitution? She is under arrest in your bar.' Rocky said to me, 'How old are you?' I said, 'Twenty-two.' He turned around to the agent and said, 'What do you want me to do?'"

Finally, she denied informing any officer of the corporate licensee that she was going to solicit for prostitution.

On cross examination the witness testified she had engaged in prostitution a period of approximately five months, and during that period of time she solicited in this particular licensed premises "maybe three times." On the night in question she had solicited only Agent B.

Occasionally she and her male companion would walk to a hotel and occasionally she would request a bartender to call a taxicab. She had never requested Crudele to call a taxicab prior to the night in question. Crudele was not behind the bar on any prior occasion when she took men out of the tavern. On this occasion she requested Al to call a cab and he replied, "Sure."

Crudele and B engaged in conversation no more than "a minute, two minutes." B said, "Hi, Al! How are you doing?" Al responded, "All right." They engaged in no other conversation. Although the music was loud, she and B could hear each other. Al had no knowledge of the arrangements which she made with B on the night in question. She and the bartender were not acquainted with each other.

She denied that at the confrontation among the various law enforcement officers, the Division agents, Crudele and Castellani, she said that Al heard the conversation concerning the arrangements made for intercourse but that he did not have anything to do with the actual solicitation and that all he did was to call the cab.

Alfred E. Crudele admitted being employed as a bartender at the licensed premises on the night of July 12 into the morning of July 13. He had been employed by the licensee corporation ten days prior thereto. Castellani had warned him that "there was a lot of prostitution going on in Atlantic City, and he said if I seen anything of this order going on to have them removed from the bar immediately." The same admonition was given to the other bartenders.

He had not seen Rose prior to July 12. Up to midnight he was the only bartender in attendance. Rose was seated "a couple of stools" removed from B. B offered Rose a drink. Thereafter they sat next to each other. He had no conversation with B such as described by B relating to Rose. He heard no conversation between B and Rose. He

had no knowledge that Rose was soliciting B for prostitution. The barroom contains a direct line for a bartender to call a taxicab as a service to its patrons. Although he was not positive, it was his impression that Rose requested the cab. When he was questioned as to what was said at the time of the confrontation in the back room, he responded, "Well, when I was brought back there something about she was arrested for prostitution, and Rocky asked me what did I say. I said, 'I didn't say nothing.' I said, 'What am I supposed to have said?' The answer I got is, 'You will find out when you go to court.'"

The juke box was playing, as customary, very loud.

On cross examination Crudele testified that "a lot of couples and a lot of single girls" patronize the licensed premises.

Upon being questioned as to what conversation was had between him and B at the time the cab was ordered, Al responded, "He [B] asked me how long the cab would be. I said, 'Probably be about ten minutes.' Then he said, he was saying something about, 'Is the cab all right? The cab driver all right?' or something like that." Al then responded, "I doubt it" or something to that effect. At no time did he and Agent B engage in conversation referring to sex. At no time did he point out a female to B. He denied saying, "See that guy over there? He went out with a girl in a cab and he is back, so why are you worrying about?" He had no recollection as to whether or not B left him a gratuity of a dollar for calling the cab. He denied hearing Agent C (at the confrontation with the various law enforcement officers) accusing him of participating with B in language referring to B and Rose having sexual relations.

Karl Molnar testified that he had been employed as a bartender by the licensee for approximately six years. He is usually on duty from midnight to closing time. When asked as to whether he was given instructions by Castellani concerning the possibility of the presence of prostitutes in the barroom, he replied, "Yes, he did quite a few times. He told us a lot of prostitution going on in Atlantic City; if we see any girl making any moves in the bar to call him or tell the girl to leave."

Martin L. Parker, who was employed as a bartender at the licensed premises for approximately "a year and a half, two years", testified that on several occasions Castellani instructed him that if he saw any "girls prostituting get them out, flag them."

On cross examination the witness testified that he "flagged a few girls" whom he knew or suspected of being prostitutes. They had appeared "to be like going on bothering customers." He did not know whether they were soliciting for drinks or immoral purposes. He had seen a few females come in alone and left the premises with men. They might have been "meeting their boy friends or somebody else", he didn't know.

Attilio Rocco Castellani, Jr. testified that he had been the manager of the licensed premises for a period of ten years.

His attention was drawn to the incident in question by Division Agent C, when he entered the premises with members of the vice squad and Rose. When informed that his bartender Crudele was involved, he called Crudele into the back room. Al denied that he was acquainted with the female or that he conversed or had anything to do with her. Upon ascertaining that the female was twenty-two years of age, he exclaimed to the agent, "What the [obscenity] do you want from me?" Upon being informed by the bartender that he and Rose "didn't have anything to do with each other", he asked the agent why he was called into the rear of the premises. The agent responded, "You'll hear in court what we have to say, but there was conversation with the bartender and talk." When queried as to what extent prostitution was a problem in the municipality, Castellani replied, "There is plenty of it." To guard himself against the problem he has instructed the bartenders "if they see anything moving or hustling in the bar or suspect anything to flag them." He personally has checked the barroom for evidence of soliciting for prostitution. He has on many occasions ejected patrons when he was suspicious of their activities.

On cross examination the witness testified that unaccompanied ladies frequent the tavern to a large degree. He would not admit known prostitutes in the tavern. He has instructed the bartenders likewise.

The questioning then revealed the following:

- "Q During your time in this particular place have you seen unaccompanied ladies come into the bar, join men at the bar, and leave with them?
 A Yes.
 Q To what extent?
 A Well, a guy get lucky with a broad. I have been lucky.
 Q Do you have any policy or practice against so-called girls playing checkers or moving from one man to another?
 A As soon as I see that I get rid of them.
 Q Why?
 A Because I know they are making a move and jeopardizing my license.
 Q When you seen these young ladies leave with men have you also seen them come back into your tavern the same night?
 A I didn't pay attention to it too much.
 Q Have you ever questioned these young ladies as to why or their reason for having so-called picked up men who became lucky by social engagement? Have you ever questioned them as to why they left your place with these men?
 A No. It isn't none of my business.

* * * * *

- Q Do I take it these unaccompanied ladies whom you say you saw leave with men with whom they did not come in you saw them in your place that night or some other night, did you not?
- A Not that night; some other nights, yes.
- Q When you saw them another night did you say to them, 'Look, I got a liquor license. I saw you pick up a guy in here the other night. Why did you pick him up? Where did you go?'
- A No. If I suspected she was a whore I would flag her right then and there.
- Q You never questioned any of them?
- A No.
- Q Can you tell us any reason for not having questioned them having seen them engage in such activity?
- A What activities?
- Q A woman who comes in unattended and picks up a man who becomes lucky and going out with him.
- A I seen plenty of them get lucky. Plenty of men in many bars. Why can't it happen in my bar?"

The charge herein is based on Rule 5 of State Regulation No. 20 which provides:

"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."

The specific charge herein alleges that the licensee had violated this rule by allowing, permitting and suffering the solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse. 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). The court stated in Schneider, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity...."

See In re Olympic, Inc., 49 N.J. Super. 299.

Since the act of solicitation for prostitution has been admitted by Rose, a defense witness, and is not in controversy, I have summarized in considerable detail the testimony adduced herein in order to properly and fairly adjudicate the sole remaining dispositive issue, that is, did the licensee

"allow, permit or suffer" the act of lewdness and immoral activity in and upon the licensed premises.

Preliminarily, it should be observed that in matters of this nature we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Applying these principles, I am strongly persuaded that the more probable version and the truth lie in the testimony of the Division agents. I am convinced that B's testimony of his conversation with the bartender concerning his arrangements with Rose (amply corroborated in its salient features by the testimony offered by Agent CG) was not a fabrication and preconceived in order to falsely and maliciously inculcate an innocent licensee. Although the Division witnesses were subjected to an intensive cross examination by counsel for the licensee, their testimony remained unshaken.

On the other hand, after hearing the testimony offered by the corporate licensee's manager and upon reviewing his testimony (a part of which I have set forth in full), I am impressed that his philosophy of operating the barroom is that if males can get "lucky" with females in other barrooms in the city, why can't they get lucky in his barroom.

It is apparent that his failure to inquire into or closing his eyes to the activities of the large number of unaccompanied females was tantamount to an abdication of his duties to discourage and prevent immoral activity on the licensed premises.

From the evidence presented it is manifest that the licensee permitted and suffered the solicitation for prostitution to take place on the licensed premises as charged.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it 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. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

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

An additional basic principle bears repetition and is worthy of emphasis. In disciplinary proceedings the licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, supra.

I am of the opinion that a fair evaluation of the evidence in concatenation with all of the circumstances in the case clearly and reasonably preponderates in favor of a finding of guilt of the charge alleged and I so find.

Licensee has a previous record of suspension of license by the Board of Commissioners of the City of Atlantic City for fifteen days, effective October 14, 1964, for sale to minors, and by the Director for ninety-five days, effective May 15, 1967, for permitting immoral activity (solicitation for prostitution). Re Rocky Birch, Inc., Bulletin 1724, Item 2; Bulletin 1739, Item 4.

I further recommend that, the record of suspension for similar violation within the past five years considered, the license be suspended for one hundred eighty days (Re O.K. Corral, Inc., Bulletin 1718, Item 2) and for an additional five days by reason of the record of suspension for dissimilar violation within the past five years (Re Hi-De-Ho Corp., Bulletin 1832, Item 7), or a total of one hundred eighty-five days.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, the licensee filed exceptions to and written argument concerning the Hearer's report. In essence the licensee contends (1) R.S. 33:1-31, containing the statutory authority under which this proceeding was instituted, is unconstitutional in so far as it authorizes a merger of prosecutive and decisional powers in the Director of Alcoholic Beverage Control, contrary to procedural due process requirements, in a disciplinary proceeding to suspend or revoke a license, (2) the evidence in the record herein preponderates in favor of a not-guilty finding, and (3) the recommended penalty of one hundred eighty-five days license suspension is excessive and unreasonable.

As to the due process issue, it appears that the licensee instituted an action in the New Jersey Superior Court (Rocky Birch, Inc. v. Atlantic City and Div. of ABC, Law Division, Atlantic County, Docket No. L-15687-68) wherein it sought a declaration of invalidity of R.S. 33:1-31 upon this same ground. It further appears that such action was decided adverse to the licensee's contention and that an appeal from such decision is presently pending in the Superior Court, Appellate Division. In any event, it is beyond the province of this administrative agency to adjudicate the constitutionality of the organic statute under which it operates. The proper forum for such determination is the courts, not the Division. Schwartz v. Essex County Board of Taxation, 129 N.J.L. 129 (Sup.Ct. 1942), aff'd 130 N.J.L. 177 (E. & A. 1943). See also Abbott v. Beth Israel Cemetery Ass'n of Woodbridge, 13 N.J. 528, 546 (1953).

As to the factual issue, the licensee argues that there is insufficient evidence to support a determination that it allowed, permitted or suffered the immoral activity in question, which it admits took place on the licensed premises. It contends that the testimony of the Division agents, that Agent B openly communicated to the licensee's bartender the illicit arrangements with the prostitute, is unbelievable because it is inconsistent with human experience. With this I do not agree.

I have carefully examined the entire record herein and concur in the recommended finding of the Hearer that the licensee's bartender knew of the prohibited activity taking place in his presence at the bar, but failed to take any steps to attempt to prevent its occurrence. In fact, the bartender facilitated the unlawful arrangements by encouraging the agent's participation therein and securing a taxicab for him and the prostitute to consummate the transaction.

I find that the licensee's guilt of the charge herein has been established by more than a preponderance

of the believable evidence presented. I further find that the recommended penalty of one hundred eighty-five days license suspension is not excessive or unreasonable but, on the contrary, is in accord with established precedent and is fully warranted under the circumstances, particularly considering the licensee's previous record which includes a ninety-five day suspension effective only a little more than a year prior to the date of the instant offense for the self-same type of violation involved herein. In this connection, the licensee is warned that any future similar type violation may well result in revocation of its license.

Under the circumstances, I concur in the findings and conclusions of the Hearer and shall impose the recommended penalty of one hundred eighty-five days suspension.

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

ORDERED that Plenary Retail Consumption License C-208, issued by the Board of Commissioners of the City of Atlantic City to Rocky Birch, Inc., t/a Rocky Castellani's Sports Bar, for premises 2203 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1969, commencing at 7 a.m. Monday, March 31, 1969; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7 a.m. Thursday, October 2, 1969.

JOSEPH M. KEEGAN
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOSE NIEVES GUZMAN AND)
ROBERTO NIEVES GUZMAN)
1034 Willow Avenue)
Hoboken, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-77 issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken)

-----)
Maurice Gottlieb, Esq., Attorney for Licensees
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to charges (1) and (2) alleging that on December 31, 1968 and January 22, 1969, they permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the municipal issuing authority for five days effective December 3, 1967, for sale during prohibited hours.

The prior record of suspension of license for dissimilar violation within the past five years considered, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days. Re Wall, Bulletin 1837, Item 5.

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

ORDERED that Plenary Retail Consumption License C-77, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Jose Nieves Guzman and Roberto Nieves Guzman for premises 1034 Willow Avenue, Hoboken, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, March 31, 1969, and terminating at 2:00 a.m. Friday, May 30, 1969.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

LEONARD MARCUS)
t/a FALLER BOWL-O'DROME)
872 River Rd.)
New Milford, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of New Milford.)

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Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

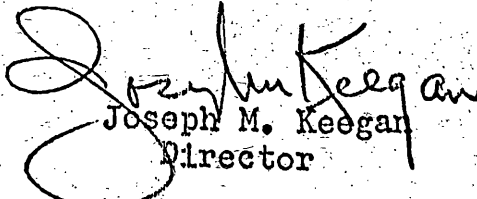
Licensee pleads non vult to a charge alleging that on December 27, 1968 he possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license as an individual, the license of Lyon's Cage, Inc., for premises 471 Lyons Avenue, Irvington (in which corporation he was an eighty per cent. stockholder), was suspended by the municipal issuing authority for ten days effective December 23, 1961, for permitting gambling on the licensed premises.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, 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 Juniewicz, Bulletin 1822, Item 13.

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

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of New Milford to Leonard Marcus, t/a Faller Bowl-O'Drome, for premises 872 River Rd., New Milford, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, March 31, 1969, and terminating at 2 a.m. Saturday, April 5, 1969.


Joseph M. Keegan
Director