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

BULLETIN 2180 April 10, 1975

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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25 Commerce Drive Cranford, N. J. 07016

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1. APPELLATE DECISIONS - MARTIN MAZIE ENTERPRISES, INC. v. WESTVILLE.

Martin Mazie Enterprises, Inc.
Appellant,
v.
Borough Council of the Borough of Westville,
Respondent.

On Appeal

CONCLUSIONS and ORDER

Klein, Melletz & Klein, Esqs., by Paul R. Melletz, Esq., Attorneys for Appellant
Hannold, Caulfield & Zamal, Esqs., by Harold W. Hannold, 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 Borough Council of the Borough of Westville (Council) which, on June 27, 1974, denied appellant's application for renewal of its Plenary Retail Consumption License C-5, for premises 500 Gateway Boulevard, Westville, for the 1974-75 licensing year.

Appellant's petition of appeal contends that said action was arbitrary and capricious and should be reversed. The Council denied this contention, and maintained that its action was warranted because of serious incidents occurring within the appellant's licensed premises.

The resolution adopted by the Council enumerated the several incidents upon which it based its action, as follows:

1. Licensee permitted a brawl, act of violence and disturbance on licensed premises on February 17, 1974, at approximately 1:22 a.m. This disturbance was serious enough to require an ambulance to be summoned.

2. Licensee allowed and permitted a brawl, act of violence and disturbance on licensed premises on March 23, 1974, at approximately 11:50 p.m.

3. Licensee allowed and permitted a brawl, act of violence and disturbance on licensed premises on April 25, 1974, at approximately 11:30 p.m. Upon arrival of police, an individual had to be removed from the premises by force.

4. Licensee allowed and permitted a brawl, act of violence and disturbance on licensed premises on May 10, 1974, at approximately 2:07 a.m.

5. Licensee allowed and permitted a brawl, act of violence and disturbance on licensed premises on May 16, 1974, at approximately 9:49 p.m.

6. Licensee allowed, permitted and suffered the consumption of alcoholic beverages upon its premises by person or persons actually or apparently intoxicated, on June 11, 1974.

7. Licensee allowed and permitted a fight, act of violence and disturbance on licensed premises on June 11, 1974, which disturbance resulted in many shots being fired, one or more of which caused the death of an individual named Otway.

8. Licensee allowed and permitted a brawl, act of violence and disturbance on licensed premises on June 14, 1974, at approximately 1:50 a.m. Upon arrival of police officers, a brawl was occurring involving approximately 25 people. Chairs, tables, bottles and glasses were being thrown around the interior of licensee's premises. The place was almost a total wreck. Police officers broke up the fight and dispersed the people. On this date, which was only approximately two days from the shooting death which occurred on this property, the licensed premises were under the control and supervision of a nineteen year old youth.

9. Licensee allowed and permitted a brawl, act of violence and disturbance on licensed premises on June 21, 1974, at approximately 1:14 a.m. When police arrived approximately 30 individuals had to be removed from the premises.

10. In addition to the charges enumerated above and since October 1, 1973, police have been called to licensee's premises on the following dates and for the following reasons:

October 29, 1973 at 9:39 p.m. fight on parking lot of licensee.

November 6, 1973 at 1:49 a.m. fight in licensee's premises.

November 10, 1973 at 6:00 p.m. fight in licensee's premises.

January 1, 1974 at 1:07 a.m. motor vehicle had been stolen from parking lot of licensee.

January 1, 1974 at 11:45 p.m. several persons were removed from licensee's premises apparently because they refused to pay for drinks and created a disturbance.

March 23, 1974 at 1:48 a.m., suspicious characters in licensed premises and licensee feared a robbery might take place.

April 19, 1974 at 1:25 a.m. accident in parking lot of licensee.

April 19, 1974 at 2:20 a.m. accident in parking lot of licensee.

An appeal de novo was heard in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses.

By order of the Director of this Division dated July 1, 1974, appellant's license was extended for the 1974-75 licensing period pending the determination of this appeal.

The Council introduced the testimony of several police officers of the Borough in substantiation of the incidents related in its resolution. Police Sergeant Parker C. Smith related the circumstances of the first item of the resolution which occurred on February 17, 1974. Smith detailed a fight that occurred among the "go-go" girls employed on the licensed premises, which resulted in one of them being hospitalized. In connection with the alleged brawl which occurred on March 23, 1974, Smith stated that a call was received from the licensed premises requesting police aid, but, by the time the police arrived, the brawl had dissipated, and there was no need for police action.

Police Sergeant John D. Young recounted the circumstances giving rise to the incident which occurred on April 25, 1974, and listed as Item 3 in the resolution. Upon arrival, he found two men fighting near the stage in the premises. One of the combatants was removed, and the dispute in the bar was brought under control.

Police Sergeant Smith related the circumstances surrounding the incident listed as Item 5, in the resolution. On May 16, 1974, he had responded to information that a fight was in progress in the parking lot of appellant's premises. Upon arrival he found that one of the participants had departed; however, another was rowdy and had to be taken to police headquarters.

Neither Smith nor any other witness on behalf of the Council offered testimony in support of Item 6 of the resolution; that charge was the result of Item 7, to which Smith and Police Officer John Burkhardt did testify.

On June 11, 1974 Sergeant Smith was summoned to appellant's premises by a radio call, which indicated that a man had been shot. Arriving about five o'clock in the afternoon, he entered by a rear door and immediately observed "bar stools...glasses,ashtrays, whatever was on the bar, looked like somebody swept down the bar and knocked everything on the floor."

He found a man lying on his back who was the victim of a shooting. This person was still alive but was unable to identify the person or persons who shot him. The appellant's manager gave Sergeant Smith a piece of paper with "three people's names on it he said were the people in there and did the shooting." The victim was shot by a patron apparently who had displayed a gun, was advised to leave and did so. However he re-entered the premises and fired several shots, one of which struck the victim, who later died.

In reference to the incident designated as Item 8, in the resolution, Police Officer Tolleson M. Powers testified that, on June 14, 1974, shortly before 2:00 a.m. he responded to a call to proceed to appellant's premises, where he found a "full scale riot" in progress. In a matter of seconds, the police quelled the fighting, and began to restore order. He learned that the fighting erupted when a black patron began dancing with a white "go-go" girl to which some patrons took umbrage; someone was hit on the head by another patron wielding a beer bottle which was followed by a melee.

Sergeant Young recounted an incident which took place on June 21, 1974 and is designated as Item 9, in the resolution. He had responded to a call from appellant's premises requesting aid in quelling a disturbance then in progress. At arrival, appellant's employee requested that he eject several patrons who were disorderly, one of whom had "pulled his pants down and kicked a go-go girl". As there were only twenty minutes left before the mandatory closing hour, Young directed the offending patrons to leave, and he then departed from the premises.

Ten minutes later, a flare-up of the disturbance had reoccurred, so he and an associate officer upon being summoned, re-entered the premises after calling upon the assistance of the police from neighboring municipalities. The disturbance was then quelled and the participants were led outside. He noted that the entire premises was under the charge of a young man, age nineteen, who had summoned the assistance. The manager of the establishment was not present on that evening.

In reference to the several items enumerated in Item 10, of the resolution, copies of the police records of the Borough were introduced into evidence. Additionally, Police Officers William J. Bittner and Tolleson M. Powers testified to three of the incidents therein listed. These related to a fight, and to cars which were damaged in appellant's parking lot.

Police Chief Harry Weinhardt of this Borough testified that, although he was aware of numerous calls the Police Department had received relative to appellant's premises, he was unaware of their magnitude or numbers until the aforementioned incident which resulted in the death of a patron. At the time, he normally would have reviewed appellant's record with the Council, he was away, and depended upon a sergeant to discuss appellant's record with the Council.

Committeemen John Miller, Charles E. Owens, William H. Bilger and Francis J. Duer affirmed their vote against the renewal of appellant's license, although Committeeman Duer did qualify his response with an explanation that were the matter to come before the Council he would refrain from voting until the manager of this facility had been heard.

Appellant introduced the testimony of its assistant manager, Arthur Rodia, who described the incident which occurred on February 17, 1974 (and designated as Item 1 in the resolution) as a sudden outbreak between two "go-go" girls, one of whom struck the other with a shoe. The victim was hospitalized and the belligerent girl, was, thereupon summarily discharged.

Robert Szwak, Sr. and Bryan Thompson, a patron and a manager of appellant's premises, testified concerning the "riot" which occurred on June 14, 1974 (designated as Item 8 in the resolution). Szwak indicated that Thompson tried to put an end to the fighting, but both were struck during the melee. One patron was "banged up pretty bad" but, other than that, there were no serious injuries. He admitted that the general manager was a friend of his.

Thompson corroborated Szwak's description of the incident; he admitted that he [Thompson] was then nineteen years of age.

Testifying with respect to the incident which involved the "shooting" on June 11, 1974 (Item 7 in the resolution) John R. Gunning asserted that the general manager escorted a patron to the door who allegedly had a gun. A fight ensued which lasted until the shooting and embraced a period of ten to fifteen minutes. In response to the question "Was there a real brawl?", he answered "I would say so."

The appellant's general manager, Martin Mazie, testified that his wife owns the "business", which is presumed to mean that she is the principal stockholder of the corporate appellant. Part of the establishment is a liquor store which he attends during the day hours. Describing the shooting incident of June 11, 1974 (Item 7 in the resolution) he stated that he had gone into the bar-room when an alarm bell sounded, and saw a man with a gun in his belt and patrons in an altercation. He ordered the man with the gun to depart. The person with the gun re-entered shortly there-after, and the fight was resumed. He was also threatened by this individual. He added:

> "...That is when I realized this is a real gun. I backed off at that time. People were running around. I hollered somebody to call the police. As far as my knowledge, I didn't know whether anybody called the police at that time. I ran into the liquor store. I have a combination there. When I got in the liquor store there were

> customers there...When I got out there I called the police...By the time I got back in, I was conducting business, I got caught with customers coming in the liquor store, I tried to excuse myself to a number of them to get in the barroom, I had a little argument, all the excitement going on. By the time I got to the bar the police were there and ambulance was there and they were taking the victim on a stretcher...."

Mazie further alluded to the murder victim, Otway who was once his employee, as having been previously shot, but the circumstances relating to the prior shooting were not explored. He further admitted that he had previously received a complaint by the Chief of Police relative to the state of undress of his "go-go" dancers, to which his response was "Well, I tried to tell them to cover up."

He was asked:

> "Have you had any trouble with undesirable elements in your establishment"

to which he replied:

> "I don't know what you call undesirable elements, not that I am familiar with. Because of an altercation or fight breaking out, I don't call them undesirable elements...."

Later, admitting that motorcyclists visited the premises, he added:

> "They did come back and I checked with the State police from Bellmawr, and then they told me I couldn't show discrimination, that they [referring to the motorcyclists] would beat the pulp out of me. I told them they couldn't wear the clothes or hats, come in four at a time, four one side, and four the other. They said 'If that is the way you feel about it, Marty, we won't come in.'"

Describing his work day, Mazie explained that he begins work at 8 a.m. and stops about 7 p.m., during which he spends the majority of the time in the liquor store portion of the business. He has no day manager in the barroom, as it would be "too expensive. I couldn't stay in business."

Admitting his night manager was a boy of nineteen, he believed he personally had sufficient control of the premises, although he resides fifteen miles away.

At the outset of the hearing, counsel for appellant contended that, as appellant was not afforded a plenary hearing before the Council prior to the adoption of the offending resolution, such failure constituted reversible error, citing Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). However, neither Nordco, supra, nor Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957) supports this contention. To the contrary, as objection was not raised, no hearing need be had before the Council. See Rule 8 of State Regulation No. 2. In any event, appellant was afforded full opportunity to be heard at this de novo hearing on appeal. See Cino v. Driscoll, 130 N.J.L. 535.

The crucial issue in the matter may be simply stated: did the Council in denying renewal of appellant's license act unreasonably or arbitrarily?

The ultimate question presented by the record in this appeal, therefore, is one of fact. Notwithstanding the de novo character of this appeal, the Director in his determination of the issues, should affirm where there is competent evidence in the record to support the conclusion of the local issuing authority. Vajtauer v. Commissioner of Immigration, 273 U. S. 103, 106. The primary responsibility in the first instance, for enforcement of laws pertaining to retail licensees rests upon the municipality. Benedetti v. Trenton, 35 N.J. Super. 30 (App. Div. 1955); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

Whether a license should be renewed rests within the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates a clear abuse of that discretion. 279 Club v. Newark, 73 N.J. Super. 15 (App. Div. 1962); Nordco, supra.

To sustain the Board's denial all that need be established is that the Board was reasonably persuaded that the renewal of the license would be contrary to the public interest. Sharp's Lounge, Inc. v. Lakewood, Bulletin 1842, Item 1. The determinative consideration is the public interest in the creation or continuance of the licensed operation. Blanck v. Magnolia, 38 N.J. 484.

The Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his own personal view. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960). The privilege of selling alcoholic beverages at retail, which is granted to the few and denied to the many must be exercised in the public interest. Paul v. Gloucester County, 50 N.J.L. 585.

In evaluating the totality of the evidence presented herein and the argument of counsel, I find that the action of the counsel was neither unreasonable nor arbitrary, but, on the contrary, resulted from a conscientious review of appellant's record.

Applying the test as set forth in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970), i.e., Did the decision of the local board represent a reasonable exercise of discretion on the basis of the evidence presented? -- It is quite apparent that the response is in the affirmative.

It is, therefore, concluded that appellant has not met the burden imposed upon it under Rule 6 of State Regulation No. 15, requiring that it prove that the action of the municipal issuing authority was erroneous and should be reversed. Hence, I recommend that the action of the Council be affirmed, and the appeal be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument were filed on behalf of appellant, and an answer to the said exceptions were filed on behalf of the respondent, pursuant to Rule 14 of State Regulation No. 15.

The appellant contends that since some of the calls to the police were made by appellant's employees, and that its employees did not instigate the disturbances, it should not be held responsible for the large number of police calls in response to the recorded incidents which occurred at the licensed premises. This argument was considered in a similar factual context in Nordco, Inc. v. State, 43 N.J. Super. 277, 281, 282 (a case cited by the Hearer, and by appellant in its exceptions).

In Nordco, the appellant maintained that the fifty-nine calls for police assistance, including the disturbances and brawls referred to therein, "should not figure in the case since no claim is made that Nordco was in any way to blame for these incidents." The court pointed out that, when the Division came to consider Nordco's present application, it noted that "the frequency of the calls upon the police demonstrated of itself that the tavern had become a trouble-spot." Said the court:

> "It seems to us entirely proper for both the local and the state agencies, when passing on such applications, to take into account not only the conduct of the licensee, but also conditions, not attributable to its conduct, which render a continuance of a tavern in a particular location against the public interest."

It is crystal clear from the totality of the record that the appellant's facility was, indeed, a "trouble spot." Further, the Council properly found, as set forth in its resolution denying the said application for renewal, that "the charges listed in this Resolution indicate a lack of supervision and the failure or inability of licensee to properly conduct his [its] business and control the use of licensed premises."

There is ample support for the finding in the record.

Nordco also restates the well-established principle (at p.282) that, whether or not a license should be renewed rests in the sound discretion of the local issuing authorities, and of the Division on appeal. Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946); N.J.S.A. 33:1-38. The courts will interfere in the exercise of that discretion only in case of manifest error, clearly unreasonable action or some untoward impropriety. Rajah Liquors v. Division of Alcoholic Bev. Control, 33 N.J. Super. 598, 600 (App. Div. 1955).

I cannot see in view of the many incidents which were set forth in the Council's resolution, which were supported by the evidence, and the fact that this is a trouble spot that the Council's action constitutes manifest error or an abuse of discretion.

Lyons Farms Tavern v. Newark, supra (55 N.J. 292 at p. 303) defines the above principle as follows:

> "When the lawmakers delegated to local boards the duty to enforce primarily the provisions of the Act, it invested them with a high responsibility, a wide discretion, and intended their principal guide to be the public interest. Lubliner v. Paterson, 33 N.J. 428, 446 (1960)."

And further:

> "Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Hearer's report and the exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of February 1975,

ORDERED that the action of the respondent Borough Council of the Borough of Westville be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order, dated July 1, 1974 extending the term of appellant's 1973-74 license pending the determination of this appeal be and the same is hereby vacated.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - CHRIS-CRESCENDO CORP. v. NEWARK.

Chris-Crescendo Corp.,)

Appellant,) CONCLUSIONS and

v.) ORDER

Municipal Board of Alcoholic Beverage Control of the City of Newark,)

Respondent.)

Paul E. Parker, Esq., Attorney for Appellant
Milton A. Buck, Esq., by Andrew A. McDonald, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which, on September 16, 1974 suspended appellant's Plenary Retail Consumption License, C-286, for premises 713-715 Springfield Avenue, Newark, for one hundred days, effective October 21, 1974 after finding it guilty of charges alleging that on December 23, 1970, appellant permitted and suffered the presence of narcotic drugs, i.e., controlled dangerous substances as defined by N.J.S.A. 24:21-1 et. seq, in violation of Rule 4 of State Regulation No. 20, and permitted an employee to offer such drugs for sale, in violation of Rule 5 of State Regulation No. 20.

Appellant's petition of appeal denied these charges. The Board, in its answer contended that its findings were based upon sufficient evidence and its action was proper. The suspension imposed by the Board was stayed by Order of October 18,1974 pending the determination of this appeal.

The appeal de novo was heard in this Division, with full opportunity afforded the parties to introduce evidence cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15. Additionally, a transcript of the proceedings before the Board was introduced into the record in accordance with Rule 8 of State Regulation No. 15. By stipulation of counsel, it was agreed that,in lieu of additional

testimony to be presented at the said hearing, the determination on this appeal would be based solely on the transcript of the proceedings before the Board.

A review of such transcript discloses the testimony of Detective William J. Segarra of the Newark Police Department. He stated that on December 23, 1970, he entered appellant's premises and observed a woman, later identified as Zelestina Green, also known as "Tina", tending bar.

Upon inquiry by him, "Tina" agreed to sell him heroin for $10.00. She reached for her pocketbook behind the bar and took from it five glassine envelopes which she gave to the witnesss, in return for the money.

Thereafter, the detective conducted a "field-test" of the contents of the envelopes at Police Headquarters, and determined that their contents were an opium derivative suspected of being heroin. Two months later "Tina" was arrested at a different place on further charges of selling narcotic drugs.

On cross examination, he admitted that he did not return to appellant's premises nor did he verify "Tina's" connection with it. Moreover, he was unable to produce a report of analysis of the narcotic seized and relied upon his recollection of his "field-test".

Christine Mills, sole stockholder of appellant corporation, testified that, in May of 1971, she first learned of the alleged purchase of a narcotic from "Tina" in the establishment and immediately discharged her.

Proof that the sale of the glassine envelopes was a sale of narcotic drugs was determined by Detective Segarra at Police Headquarters where he conducted the "field test"; he concluded that the test gave "positive results for opium derivative" which he described to mean "suspected heroin". He characterized the contents as "Well, for 1970, I would say, from my recollection, I would say it was halfway decent stuff."

No positive chemical analysis was made, or, if one was made in conjunction with any later criminal proceeding in the matter, no report was offered or made available. There was no testimony respecting the Dectective's training or ability to conduct a "field-test" or accurately analyze its results. There was no testimony with respect to the length of time he had been a member of the narcotics squad of the Police Department or as to his expertise in the field of narcotic activity.

The guiding rule in disciplinary matters is that the finding must be based upon 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. Disciplinary proceedings against liquor licensees are civil in nature, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956) By a preponderance of 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 at p. 1051.

While there is no set formula for determining the quantity or quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Hornauer, supra. In order for appellant to prevail in the instant matter, it must appear that the evidence did not preponderate in support of the determination of the Board. Feldman v. Irvington, Bulletin 1969, Item 2; Controlled Systems Corp. v. North Bergen, Bulletin 2113, Item 4.

It is noted that the charges against appellant alleged the infraction to have occurred on December 23, 1970, and the record reveals that the hearing on the matter before the Board was not held until September 16, 1974, almost four years thereafter. Disciplinary proceedings are instituted against a license and not against an individual, and the cloak of constitutional protection does not inure to the benefit of parties to administrative proceedings. Cf. In re Bufanio, 119 N.J. Super. 302 (App. Div. 1972). The Administrative Procedure Act (N.J.S.A. 52:14B-10) and its concomitant regulations (N.J.A.C. 32:1-1 et. seq.) make no provision respecting extraordinary delays in bringing disciplinary charges. However, N.J.S.A. 52:14B-10 does provide that:

> "That the presiding officer may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will ...create substantial danger of undue prejudice or confusion."

Appellant vigorously maintained that the long delay was highly prejudicial to it particularly in that the barmaid "Tina" could not be located when the hearing finally was scheduled, and, hence, was unavailable as a witness. Additionally the lack of notice prejudiced appellant because the delay served to render appellant incapable of ascertaining what witnesses were present when the incident occurred, from whom relevant evidence may have been elicited.

Neither at the hearing before the Board nor at this Division was any reason given by the Board for the long delay in bringing the matter to hearing. The ancient axiom "justice delayed is justice denied" is clearly applicable.

From an examination of the testimony presented to the Board, I conclude that the charges have not been proven by a fair preponderance of the credible evidence. I, therefore, find that the appellant has met its burden of establishing that the action of the Board was erroneous and should be reversed.

Accordingly, it is recommended that the action of the Board be reversed, and the charges herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is on this 24th day of February, 1975

ORDERED that the action of the Board be and the same is hereby reversed, and the charges herein be and the same are hereby dismissed.

Leonard D. Ronco,
Director

3. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY - PERMITTING SOLICITATION FOR PROSTITUTION - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against	)	
Eugenio Ramos 4107 Park Avenue Union City, N.J.,	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Union City.	)	

Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that, on August 28,29 and 30, 1974, he permitted lewdness and immoral activity in the licensed premises, viz., the solicitation for prostitution and the making of arrangements for illicit sexual intercourse, in violation of Rule 5 of State Regulation No. 20.

The licensee and his attorney, who had entered an appearance on his behalf, were duly served with notice of the hearing set herein by certified mail, but failed to appear at the date and hour, nor did the licensee request an adjournment. Thereupon, the Division moved the matter ex parte.

ABC agent C testified that on August 28, 1974, in the company of two fellow agents, he visited the premises about ten o'clock in the evening. Shortly thereafter, they engaged one Sarai Restrepo in conversation from whom they learned that she was the manager of the premises, and was in charge thereof. (Agent P had previously ascertained that Sarai Restrepo, a female in her early thirties, was the daughter of the licensee.)

Sarai introduced the agents to two females called Elba and Laura, later identified as Elba Negron and Laura Osoria, and learned that these females would individually engage in acts of prostitution for the sum of fifty dollars. Agent P complained to Sarai that the price was excessive, and the men would not have funds adequate for that purpose until the following night. Arrangements were then made for Agent C and Agent McN to return the following evening. Sarai smiled and responded that the arrangements with the girls would have to be made directly with them.

On the following evening, August 29, 1974, Agents C and McN reappeared at the licensed premises, and spoke to the two females, Elba and Laura, who informed them that they had to see Sarai (who had not yet arrived), before they could leave for the intended purposes.

After midnight, Sarai appeared, and the two girls repaired to one portion of the bar to talk to her. Shortly thereafter, they agreed to go with the agents; before departing, the agents informed Sarai of the purpose for which they were then leaving with the girls.

Agents C and McN, accompanied by the girls, thereupon left the premises and were followed by Agents D and Ch and a detective of the local police department, who had been awaiting outside. The agents, armed with marked money, escorted the girls to a local motel where rooms were secured. Shortly after the agents and the girls were in the rooms, a raid ensued, the marked money was retrieved and the girls were placed under arrest.

ABC agent McN substantially corroborated the testimony of agent C, adding only that the females involved in the prostitution were escorted to the police station and there charged with a statutory violation.

ABC agent P testified that he had visited the licensee's premises about four times prior to August 29, 1974, and developed an acquaintance with Sarai, who is known as Sandra, in the establishment. He recounted the discussion with Sandra following her introduction of the two girls to the agents.

He described his protests relative to the amount about to be charged by the females of his fellow agents, and recalled that Sandra's comments relative to agent C were that he should not have to pay anything as he is young, implying that only older men were charged. He informed Sandra that the men would return on the following evening and Sandra indicated that the girls were there every night except for Saturdays and Sundays.

ABC agents D and Ch testified that they followed agents C and McN and the females from the premises to the motel on August 30, about 1:00 a.m. Agent Ch ascertained the respective room numbers and, after a very few minutes were let into the rooms rented. There they observed the girls disrobed and retrieved money which had been previously marked on a "marked money" list to be used for the purposes of proof. They had been accompanied by detectives of the Union City Police Department, who eventually placed the girls under arrest, and accompanied them to Police Headquarters.

Agent Ch then returned to the licensed premises, notified Sandra of the violation, demanded to see the license and the employee list. Sandra could not produce the latter. She revealed that her father is the licensee, and that she owned or managed another licensed premises nearby.

It has long been held that 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. In Re 17 Club, Inc., Bulletin 949, Item 2, aff'd 26 N.J. Super 43 (App. Div. 1953); Re Boulevard Oasis, Bulletin 2147, Item 4.

The testimony of the agents was forthright and convincing. The arrangements testified to could not have been made as described without the intercession of the manager. The licensee is clearly inculpated by the misconduct of its employee. Such conduct constitutes a grave threat to the public welfare and morals and, unless eliminated, tends toward abuse and abasement. Kravis v. Hock, 137 N.J.L. 252 (1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

After carefully considering and evaluating the testimony adduced and the applicable legal principles, I conclude that the Division has established the truth of the charge herein by a fair preponderance of the credible evidence. Therefore, I recommend that the licensee be found guilty of the charge.

It is noted that Sarai Restrepo, identified as Sandra, is the daughter of the licensee and took a proprietary interest in the establishment; hence her acquiescence, if not outright participation in making the arrangements for the prostitutes, constitutes more than an employee's disregard of a licensee's instructions. It becomes similar to the licensee himself being a participant. Accordingly, it is recommended that the license be suspended for ninety days. Cf. In re Fernandes, Bulletin 1251, Item 4.

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 and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 24th day of February, 1975

ORDERED that Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Union City to Eugenio Ramos for premises 4107 Park Avenue, Union City, N.J. be and the same is hereby suspended for ninety (90) days commencing at 3:00 a.m. Tuesday, March 11, 1975 and terminating at 3:00 a.m. Monday, June 9, 1975.

Leonard D. Ronco,
Director