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

BULLETIN 1543

JANUARY 6, 1964

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1. APPELLATE DECISIONS - DOMAPP, INC. v. NEWARK.

Domapp, Inc., Appellant,	)	
v.	)	On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	CONCLUSIONS and ORDER

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Wilentz, Goldman & Spitzer, Esqs., by Morris Brown, Esq., Attorneys for Appellant
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark whereby on August 14, 1963, it denied the application for renewal of appellant's plenary retail consumption license for premises at 110 - 12th Avenue, Newark.

"In its petition of appeal the appellant alleges that the action of the respondent was erroneous for reasons which may be summarized as follows:

1. There was no factual basis for such denial;

2. A penalty had been imposed for the alleged violation upon which the respondent grounded its refusal to renew;

3. The penalty imposed by this Division for the said violation was based in part upon the consideration that the appellant had no prior adjudicated record;

4. The action of the respondent was excessively harsh and constituted double jeopardy; and

5. The action of the respondent was arbitrary, capricious and unreasonable, and in violation of the constitutional rights of the appellant.

"The respondent in its answer admits the jurisdictional allegations and denies the substantive charges. It contends that its decision was based on the factual testimony before it, and it acted with sound discretion in its determination.

"Upon the filing of the appeal an order was entered by the Acting Director on August 22, 1963, extending the term of appellant's 1962-1963 license, subject however to the then currently effective order of suspension expiring at 2 a.m. Tuesday, October 1, 1963, and until further order herein. Rule 12 of State Regulation No. 15.

"This is an appeal de novo pursuant to Rule 6 of State Regulation No. 15 and was based entirely upon the transcript of the proceedings before the respondent pursuant to Rule 8 of said regulation. Although the appellant had the right to produce additional witnesses, it chose not to do so. Cf. Sidoroff et als. v. Jersey City and Niebanck, Bulletin 1310, Item 1.

"Subsequent to the Division's order of suspension dated February 26, 1963 (Re Domapp, Inc., Bulletin 1504, Item 1), the respondent served upon appellant an Order to Show Cause why its application for renewal license should not be denied 'for the reason that said licensee, by its agents, servants or employees, did allow immoral activities upon the subject licensed premises for which violation said licensee is presently under suspension and which suspension shall not terminate until October 1, 1963; and for the further reason that the Police Department of the City of Newark has recommended that said application for renewal of the subject license be disapproved on the grounds that Benjamin Rubenstein, by reason of his actions which resulted in the present suspension, is not qualified to operate a tavern in the City of Newark.'

"The hearing before the respondent was limited entirely to summation by competent counsel representing the applicant. The thrust of his argument at that time was that the penalty imposed by the Acting Director of this Division was sufficiently severe and that the appellant 'shouldn't be penalized any further.' It was also pointed out that, in the opinion of the Acting Director, 'considering the gravity of the violation' and 'considering the licensee's long clear previous record,' no revocation was ordered but instead the penalty as hereinabove set forth.

"Mr. Paul Parker, representing the City, noted that in 1961, although there had been two informal appearances on police reports, the respondent preferred no charges, and that in 1962 there were several police reports but no charges filed. Mr. Parker further remarked, 'I think two hundred and ten days is a severe and substantial penalty to inflict,' to which the Board Chairman added, 'Also a very serious charge.' Thereafter, as aforesaid, it voted to deny said renewal application.

"It appears from the transcript that the primary evidence upon which the respondent based its determination not to renew the license was the record of appellant's license suspension by this Division for two hundred ten days upon conviction on the following charge:

> 'On July 18, 19 and 20, 1962, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through Benjamin Rubinstein, your president and holder of fifty per cent (50%) of your corporate stock, made offers to male patrons and customers on your licensed premises to procure and did procure females to engage in acts of illicit sexual intercourse with said male patrons and customers and participated in and allowed, permitted and suffered the making of overtures and arrangements, in and upon your licensed premises,

by said females with male patrons and customers for acts of illicit sexual intercourse, as aforesaid; in violation of Rule 5 of State Regulation No. 20.'

Re Domapp, Inc., supra.

"The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of its license falls upon the appellant to show manifest error or abuse of discretion by the local issuing authority. Downie v. Somerdale, 44 N.J. Super. 84, 87 (1957); Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (1957).

"The fundamental operative principle in the matter of issuance of renewal licenses, just as in the issuance of new licenses, is that an applicant must satisfy the issuing authority that it is worthy of such action. As Commissioner Burnett said in Hodanish v. Trenton, Bulletin 121, Item 6:

'... it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy.'

See also Florence Methodist Church et als. v. Florence and Christy. Bulletin 1074, Item 2.

"Decisional authority reiterated in this Division and expressed in the opinions of our courts adds force to the established doctrine that there is no inherent right to a license. Zicherman v. Driscoll, 133 N.J.L. 586; Bumball v. Burnett, 115 N.J.L. 254; Kleinberg v. Harrison, Bulletin 984, Item 2. No one has a right to demand a license. A license is a special privilege granted to the few and denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

'... There is no inherent right in a citizen to thus sell intoxicating liquors by retail.... As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority.'

"In a letter dated October 2, 1963, submitted on behalf of appellant in supportive argument on this appeal, counsel points out that the conviction hereinabove referred to was the only one suffered by the appellant; that in fact the attorney for the issuing authority 'was of the opinion, and recommended, that the term of the suspension should have been sufficient.' He advocates further that this case differs from Zicherman v. Driscoll, supra; Nordco, Inc. v. State, supra, and Downie v. Somerdale, supra, in that in those cases there was a history of bad conduct on the part of the licensee as distinguished from the single offense committed by the appellant.

"Plainly, the respondent did not agree with its counsel but felt that the offense committed by the president and 50% owner of the corporate appellant was of such grave consequence that it warranted revocation. In this connection respondent may well have been influenced by the fact that he actively participated in the offers to male patrons on the premises to procure and did procure females to engage in acts of illicit sexual intercourse with said male patrons and 'allowed, permitted and suffered the making of

overtures and arrangements, in and upon the said licensed premises. The respondent may also have been further influenced by the fact that this was not a single occurrence but, as the report of the Hearer of this Division pointed out, and as the evidence abundantly reflected, this unlawful activity appeared to take place on a continuing basis. It is to the credit of the respondent that it acted vigorously and conscientiously in accordance with what it considered its clear obligation to the public interest.

"As was pointed out in Zicherman v. Driscoll, supra, the Director's function on appeal is to sustain the action of the municipal issuing authority in the absence of a clear abuse of discretion. 'The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses.' Cf. Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

"Counsel also advocates that, since the Acting Director, having considered the fact that appellant had no prior record, suspended its license for two hundred ten days instead of revoking it, the issuing authority should be guided and indeed be bound by such action. He states that refusal to renew the license appears to be extremely harsh and unreasonable, and 'although double jeopardy does not apply in this case, it would appear that something akin to double jeopardy should apply.'

"I do not agree with that reasoning. Perhaps the direction and perspective of the respondent vis-a-vis the Director was best delineated in Tumulty v. Dunellen et al. (App.Div. 1963, not officially reported, reprinted in Bulletin 1519, Item 1) where the court in a per curiam decision stated:

> '...The problem before the Director was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's "Conclusions and Order" of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed; and that the Director was justified in holding, as he did, that Dunellen "exercised its discretion reasonably, circumspectly, and in the best interests of the community in refusing to renew appellants' license."' (Emphasis supplied.)

"The reasoning applied in that case is dramatically applicable to the situation herein presented.

"Implicit in the contention of counsel on this point is that the Acting Director, in suspending appellant's license rather that in revoking it, considered such suspension an adequate penalty and therefore should not sustain respondent's action (which he equates with revocation).

"However, as was pointed out hereinabove, respondent took into consideration other factors which helped to mold its determination. One of these was the fact that, as the result of police

investigations, the appellant was summoned to two informal conferences relating to objectionable activity at the licensed premises. Also, respondent received an unfavorable recommendation from police authorities with reference to said application for renewal.

"Thus it has been consistently held that the Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Cf. Broadley v. Clinton and Klinger, Bulletin 1245, Item 1; Weiss v. Newark, Bulletin 1079, Item 1; Northend Tavern, Inc. v. Northvale et als., Bulletin 493, Item 5.

"Another argument raised by appellant's counsel in his letter, and also suggested at the hearing before the respondent (although not included in the petition of appeal) is that the appellant 'would be willing to divest himself of any interest in the license' (in the event that the action of the respondent were reversed).

"I do not believe that the facts and circumstances of this case warrant the exercise of that prerogative by this Division since such action in this case would do violence to the principle upon which the respondent apparently acted in its determination.

"A similar request was made in Downie v. Somerdale, at the hearing before this Division (Bulletin 1135, Item 1). In answer to the request the Director said:

> 'In effect, appellant is requesting me to reverse respondent's action and to order renewal of the license so that an application for transfer to another party may be considered. Were I to follow this procedure as a general practice, a desirable reduction in the number of licensed places would never be accomplished. In this case respondent might have renewed the license on condition that it be transferred to another person within a stated time. After the appeal was filed respondent might have indicated its consent to a reversal by me for such limited purpose. Instead, respondent chose to stand upon its answer and the record of the licensee. I find nothing unreasonable or unduly harsh in respondent's action.'

"In Nordco, Inc. v. State, supra, a similar point was raised as in this case when Nordco argued that the decision should be reversed or modified because it was not afforded a reasonable opportunity to transfer its license and realize on the good will built up by it in connection with the place where the tavern was located. Judge Clapp, speaking for the court, disposed of this contention in the following language:

> '...we are not going to hold, as a general matter, that the Division and the local board abuse their discretion in not allowing a licensee such an opportunity when his application to renew his license is about to be rejected.'

He held that such refusal did not reveal any abuse of discretion. R.R. 1:5-3(b); R.S. 33:1-24, 38.

"In view of the violation which the respondent considered of grave consequence, and in view of the recommendation of the Police Department of the City of Newark that the subject license

be disapproved on the ground that the majority stockholder, by his action was not 'qualified to operate a tavern in the City of Newark', it cannot be said that the motivations which resulted in the determination of the respondent constituted manifest error or an abuse of discretion. Oak Inn, Inc. v. Elizabeth, Bulletin 1483, Item 4, aff'd App. Div. July 12, 1963, not officially reported, reprinted in Bulletin 1523, Item 2; 279 Club, Inc. v. Newark, Bulletin 1405, Item 2, aff'd 73 N.J. Super. 15, reprinted in Bulletin 1438, Item 1; Paul v. Brass Rail Liquors, 31 N.J. Super. 211; Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501.

"I have carefully considered the transcript and the competent letter in support of appellant's position submitted by its counsel, and I conclude that the respondent exercised its discretion reasonably and in the best interests of the community in its determination to deny renewal of appellant's license for the current licensing period.

"Since the appellant has failed to prove by a fair preponderance of the evidence that the action of the respondent was improper, it is recommended that respondent's action be affirmed and the appeal herein be dismissed and the order extending the term of the license be vacated. Rule 6 of State Regulation No. 15."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorneys for appellant. Their request for oral argument has been duly considered, is deemed unwarranted, and is accordingly denied.

After carefully considering the entire record herein, including the transcript of the proceedings, the exhibits, the Hearer's Report and the exceptions to the said report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

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

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark in denying the appellant's application for renewal of its license for the 1963-64 licensing year be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on August 22, 1963, extending the term of appellant's 1962-63 license pending determination of the appeal herein, be and the same is hereby vacated, effective immediately.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - PRIOR SIMILAR AND DISSIMILAR RECORD - NO REMISSION FOR PLEA ENTERED AT HEARING - LICENSE SUSPENDED FOR 110 DAYS.

In the Matter of Disciplinary Proceedings against	)	
JOCKEY CLUB, INC. t/a JOCKEY CLUB 5-7-7 1/2-9 S. North Carolina Ave. Atlantic City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City.	)	

Harry Castelbaum, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

After partial hearing, licensee pleaded non vult to charges alleging that on November 10-11, 1962, it (1) permitted indecent entertainment (strip tease accompanied by suggestive movements and posturing), in violation of Rule 5 of State Regulation No. 20, and (2) permitted female entertainers to drink at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

Licensee has a previous record of suspension of license (1) by the Director for the balance of its term, effective January 5, 1959, for permitting apparent homosexuals and foul language on the licensed premises (Re Jockey Club, Inc., Bulletin 1259, Item 5), (2) by the municipal issuing authority for ten days, effective June 24, 1960, for permitting apparent homosexuals on the licensed premises, and (3) by the Director for seventy-five days, effective November 28, 1962, for permitting aggravated indecent entertainment and hostess activity on the licensed premises (Re Jockey Club, Inc., Bulletin 1488, Item 1).

The minimum suspension customarily imposed for a first offense as involved in the first charge is thirty days and for that in the second charge twenty days, or a total of fifty days. Re Jockey Club, Inc., Bulletin 1488, Item 1. However, where, as here, the offenses charged are second similar offenses within a period of five years, the minimum, in accordance with established policy, will be doubled to one hundred days, to which will be added ten days by reason of the two previous suspensions for dissimilar violation occurring within the past five years (Re Oliveri, Bulletin 1532, Item 3), making a total suspension of one hundred ten days. No remission will be granted for the plea entered after partial hearing. Re Ten Acres, Inc., Bulletin 1535, Item 7.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City to Jockey Club, Inc., t/a Jockey Club, for premises 5-7-7 1/2-9 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for one hundred ten (110) days, commencing at 7:00 a.m. Monday, November 25, 1963, and terminating at 7:00 a.m. Saturday, March 14, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against	)	
ANTHONY GEORGE CAPPUCCIO t/a THE PADDOCK INN 24 South Warren St. Trenton 8, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton.	)	

Edward A. Costigan, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleads not guilty to a charge as follows:

'On March 22, 29, 30, April 19 and 20, 1963, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"The factual setting for the Division's case was developed through the testimony of two ABC agents. Acting upon a specific assignment to investigate alleged homosexual activities at the above licensed premises, they first entered the tavern on March 22, 1963, at about 9:15 p.m. During their stay, which was concluded at 10:45 p.m., they observed that there were twenty-eight patrons at the height of activity, of whom seven were females and twenty-one were males. Ten of the males particularly attracted their attention because they congregated in one area at the rear of the bar and had characteristics, similar actions, demeanor and behavior. These were described as follows: Some of them would touch the others on the face and hands very 'lightly, softly;'

they looked at each other and fluttered their eyes as they spoke; those who were attached to another would run their fingers through the hair of their companion; they spoke in high, lispy tones but in a soft manner. As they walked, their gait was a decided effeminate gait; 'they walked on the balls of their feet and shifted from side to side in a swishy fashion.'

"They smoked their cigarettes in a dainty, effeminate manner; they used a limp wrist action when in conversation or even when sitting in a relaxed position with their elbow on the bar. In holding their drinks they extended their little fingers and held the glass very effeminately as they sipped the contents of the glass. Even in their play at the bowling machine they appeared to bowl in an effeminate manner, holding their cigarettes high as a female would. Based upon their actions, mannerisms and demeanor, it was the opinion of the agents that they appeared to be males who were impersonating females and 'I think they were fags or queers.'

"The agents returned to the licensed premises late in the evening of March 29th and stayed into the early morning of March 30, 1963. They made note of the fact that the licensee was also tending bar on this night; associated with him was another bartender known as Larry. At the height of the activity there were thirty patrons, of whom twenty-five were males and five females. Of the males, twenty attracted their attention because they manifested the same behavior as hereinabove described and also congregated in one group at the rear of the bar. The agent particularly noted on this night that they spoke in high-pitched, lispy tones, and as they walked to and from the juke box 'they swished their hips from side to side.' The agents also noted that a number of these were paired off in couples and were seated close to each other and looked into each other's eyes 'more effeminately and sang into each other's face, face to face, as a female would sing perhaps to a male.'

"On one occasion on this evening, a young patron came into the premises and apparently was suspected of being an ABC agent. One of the apparent homosexuals seated near one of the ABC agents was heard to say, 'I think that he's an ABC man', and another apparent homosexual replied, 'Oh, "F" him, I'm behaving myself.' One of the agents then commented to Larry (the bartender), 'I see that you have all the girls down at your end of the bar, but I wouldn't want to dance with that kind.' Replied Larry laughingly, 'Yes, I do.'

"A little later in the evening one of the agents asked the licensee, 'Where do all the fags come from?' to which the licensee answered, 'From here and from there.' The agent then asked when some real girls were going to come to the place, and the licensee assured him that he expected some real girls, 'not fags', on the following week.

"The last visit was made by these agents on the evening of April 19th extending into the early morning of April 20th. After the agents were in the premises for a while, it became quite obvious to them that they had been recognized as such agents because they were 'isolated' from the rest of the patrons who had been fore-warned of their presence. On this occasion there were twenty-four patrons at the height of activity, twenty of whom were males. Of this number seventeen of the males seated in the rear portion of the bar fitted the description of

apparent homosexuals as hereinabove described.

"After it became very clear that they had been recognized, the agents engaged in a conversation with the licensee and questioned him about the 'fags' in the rear portion of the bar. The licensee stated that he wasn't interested in what acts they committed outside the premises 'as long as they behaved themselves while in the premises.' The agent then advised him that, so long as these 'fags' came into the place, they wouldn't have regular girls come into his establishment. The licensee then stated that he didn't care about that as long as he had the business and they behaved themselves. When it was pointed out that those persons were definitely 'fags,' the agent testified that the licensee shouted, 'how do you know that they are fags? Can I tell positively that they are fags, and that if I can't I should keep my mouth shut--I should be quiet.'

"At 12:30 a.m. on April 30, 1963, agents followed the licensee to the exterior of the premises and identified themselves. In a discussion regarding the nature of the activity, the licensee stated that he was aware that the prior owner had a record of homosexual activity on these premises; that in fact, since he bought the license, he 'threw out' six of these apparent homosexuals who were 'acting up' and wouldn't allow them to come in. So far as the others were concerned, as long as they behaved themselves he permitted them to patronize the tavern. He also pleaded ignorance of the fact that he was not permitted to allow the congregation of apparent homosexuals as long as theybehaved themselves.

"On cross examination it was developed that Agent D did not have any particular training in psychology or had taken any courses pertaining to homosexuality. However, he stated that he had been with the Division for four years; had participated in a number of investigations of alleged homosexual activity for this Division, and had had some experience even prior to becoming associated in his present capacity in observing apparent homosexuals.

"The agent admitted that these apparent homosexuals were on their best behavior and 'didn't flaunt their perversions in a loud manner.' He was asked to define what he meant by 'lispy' in describing the tone of voice in which these apparent homosexuals spoke. He defined it as follows: 'They use a lispy tone and that would be when they carry out the "S's" and words they are talking about in an effeminate manner. The only way to say it is like a very effeminate person would talk.' He also described the rolling of their eyes as follows: 'I said on some I saw their eyes roll and the fluttering of eyelashes in a very effeminate manner.'

"It should be noted that the testimony of ABC agent S on direct examination was, by stipulation of counsel, entirely corroborative of the testimony of Agent D. On cross examination he merely admitted that none of the apparent homosexuals had 'propositioned' him nor did he directly question them on the occasion of his visits to these premises.

"Testifying on behalf of the licensee, Hugh E. Langcaskey, a detective employed by the Police Department of Trenton, stated that he recalled the investigation resulting in the suspension of license of the former licensee of these premises for similar violation (Re Haje, Bulletin 1342, Item 1). After the present licensee took possession of these premises on March 12, 1963, this witness visited the said premises on one occasion and observed that there were three patrons in the tavern, all of whom were

known to him personally. He would also 'drop in to see who was in the place' occasionally on a Friday evening or a Saturday evening when he was working, and didn't observe any illegal activity. He particularly noted that on a Saturday evening, when there was a 'grand opening,' he found the place extremely crowded and the patronage consisted mostly of local businessmen. On cross examination he admitted that he was not present on the nights set forth in the charge herein or, if he did visit there, he was there for just a few minutes. He added that he was positively not in the premises on the night of April 19th or the early morning of April 20th. He was then asked with respect to the particular night on which the detective testified as to the large number of patrons that visited these premises in the following way:

'Q Then, my question is on that particular night did you see any persons in there who appeared to you to be homosexuals?

A I couldn't say on that night.

Q You couldn't say?

A I couldn't really say that night.'

"Anthony George Cappuccio (the licensee), testifying in defense of the charge herein, generally denied its essential allegations. More specifically, he stated that, when the ABC agents accused him of having 'a bunch of fags all the way down the line,' he replied, 'You'd better shut your mouth unless you can prove it.' He also asserted that, after he purchased this tavern from Mrs. Haje, he did his best to clean about sixteen or seventeen out of there and, if there are any more left in there, he doesn't know who they are. He insisted that he could not tell who was a female impersonator and that, if he tried to accuse them, they would probably sue him.

"On cross examination he stated that he had been engaged in the alcoholic beverage industry for about six months, and prior to that had been a butcher. He again vigorously denied that there were any so-called 'fags' in his premises and he insisted that, when he was accused of having these apparent homosexuals, he told the agents that they had better prove it by identifying them. However, those persons who were pointed out by the agents were, in his opinion, normal people and did not fit the description of apparent homosexuals. He was then asked whether he would conclude that persons possessed of the characteristics, mannerisms and behavior described by the ABC agents might 'possibly be homosexuals' and he answered, 'Well, who am I to prove that? After all I hold a cigarette this way. I flick it this way. I'm one too?' The witness insisted that in his entire lifetime he came into contact with only one homosexual. Finally, the witness denied that the persons fitting the descriptions given by the agents ever came into his tavern on the nights in question.

"Alexander S. Engi, testifying on behalf of the licensee, stated that he frequents the licensed premises every night and did not see any apparent homosexuals on the premises.

"In rebuttal testimony, both agents stated that the licensee informed them that, after he purchased these premises and took over the license, he threw out of the premises six or seven of the homosexuals who were 'acting up.' The licensee also informed them that he was well aware of the fact that Mrs. Haje's license had been suspended for permitting the congregation of homosexuals

and that he was trying to do the best that he could to remedy the situation; he felt, however, that, as long as they were behaving themselves, they 'couldn't help themselves being what they were.'

"I have detailed much of the testimony of both the witnesses for the Division and of the licensee in order to develop an objective perspective of the facts upon which the charge herein is based. My careful analysis and evaluation of the testimony, together with my observation of the demeanor of the witnesses as they testified at the hearing, lead me to the considered conviction that the version as presented by the agents of what transpired on the dates in question is a credible, forthright and true version.

"On the contrary, I was singularly unimpressed with the credibility and the demeanor of the licensee. He operates under the mistaken impression that the congregation of apparent homosexuals is perfectly permissible as long as they don't commit any overt acts or cause a disturbance. The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. The licensee at one point testified that he has only met one homosexual in his entire life. Yet, on the other hand, he asserts that, after he purchased the licensed premises from Mrs. Haje, he 'cleaned out' at least sixteen or seventeen homosexuals who were habitues of these premises.

"The licensee knew that these premises had had a reputation for permitting the congregation of apparent homosexuals. This was a poorly kept secret. It thus became the obligation and prime responsibility of the licensee to see to it that this type of violation was not repeated on these premises after he assumed operation thereof. But if he was going to continue to operate upon the premise that these apparent homosexuals could not be evicted unless there was positive proof that they were homosexuals, then, of course, this condition would never be changed.

"The licensee has reiterated that he had no way of proving that these apparent homosexuals were in fact homosexuals and admitted that he stated to the agents that, unless they could prove the fact, he should not be charged with such offense. However, if the description of the manner, conduct and characteristics of these apparent homosexuals as given by the agents is accurate, then it was the duty of the licensee to recognize that these persons were apparent homosexuals, as charged. The testimony also is persuasive that the bartender employed by the licensee was fully aware of the fact that these large numbers of persons congregating in the rear portion of the bar and acting in the manner as described hereinabove were apparent homosexuals. The conversation which I have set forth hereinabove buttresses that conclusion. I am equally persuaded that the licensee was fully aware of their presence and, in the interest of doing more business, permitted that condition to exist and to continue.

"In a letter to the Director, supplementing the oral summation at the conclusion of the hearing, counsel for the licensee advocates that the licensee has not been given enough time to 'completely convert the type of trade at this well known location;' that more time should have been given to the licensee or some warning should have been given to him before he was actually charged as hereinabove; 'that at least two or three months should be allowed a new licensee under these circumstances to convert the previous type of business before charges are made against him for violations which he has not caused.' This reasoning must, of course, be summarily rejected. As was pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6:

'Rigid enforcement of the regulations ... is essential to the preservation of decency and the protection of the public morals ....'

"Since the licensee was well aware of the conditions that existed, he should have acted with determination, firmness and promptness and not have suffered the condition to continue. As Justice Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, at p. 52, said:

'The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support.'

"I am further convinced that the licensee was fully aware of the conduct, mannerisms and behavior of apparent homosexuals -- otherwise, he would not have excluded the sixteen or seventeen of the more flagrant violators from his premises, as he testified. It is also clear that he should have been able to recognize that the large numbers of persons congregated at the rear of the bar were apparent homosexuals, as described. As the court stated in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957):

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"The mannerisms and behavior of the individuals described by the agents clearly come within the purview of that definition. While it is true that these individuals did not wear female garb, such garb is not necessary for the finding that they were apparent homosexuals. Re Kaczka and Trobiano, Bulletin 1063, Item 1; Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2.

"As the Director stated in Re Hoover, Bulletin 1521, Item 1:

'Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge.'

To permit such persons to congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected.

"After reviewing the evidence, the exhibits and the oral and written arguments of counsel, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence. I recommend that the licensee be found guilty of the said charge.

"Licensee has no prior adjudicated record. I further recommend that, in view of the relatively large number of apparent homosexuals without evidence of any overt acts of indecency, an order be entered suspending the license for a period of sixty days. Re Rutgers Cocktail Bar, A Corp., supra; Re Kobble, Bulletin 1529, Item 2; Re Ashen, Bulletin 1495, Item 7."

Pursuant to Rule 6 of State Regulation No. 16, the attorney for the licensee filed written exceptions to the Hearer's Report, supported by written arguments thereto.

Having carefully considered all the evidence, argument of the attorneys, the Hearer's Report and the written exceptions and arguments filed by the attorney for the licensee, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton to Anthony George Cappuccio, t/a The Paddock Inn, for premises 24 South Warren Street, Trenton, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, November 25, 1963, and terminating at 2:00 a.m. Friday, January 24, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
PAUL PINTO t/a SHADOW CLUB 55 Durant Avenue Clifton, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.	)	

Friend, Friend & Martin, Esqs., by Israel Friend, Esq., Attorneys for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 8, 1963, he possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Canopy Club, Inc., Bulletin 1536, Item 8.

Accordingly, it is, on this 25th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Paul Pinto, t/a Shadow Club, for premises 55 Durant Avenue, Clifton, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, December 2, 1963, and terminating at 3:00 a.m. Saturday, December 7, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
JOSEPH R. WOJASCUK t/a LOCUST BAR & GRILL 32 Locust Avenue Wallington, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-42, issued by the Mayor and Council of the Borough of Wallington.	)	

Licensee, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 28, 1963, he possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Canopy Club, Inc., Bulletin 1536, Item 8.

Accordingly, it is, on this 25th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-42, issued by the Mayor and Council of the Borough of Wallington to Joseph R. Wojascuk, t/a Locust Bar & Grill, for premises 32 Locust Avenue, Wallington, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, December 2, 1963, and terminating at 3:00 a.m. Saturday, December 7, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Trenton Malt Beverage Co.
80 Parker Ave.
Trenton, N. J.
Application filed December 26, 1963 for person-to-person transfer of Limited Wholesale License WL-60 from Trenton Beverage Company.

Emerson A. Tschupp
Acting Director