

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

BULLETIN 2127

January 16, 1974

TABLE OF CONTENTS

ITEM

1. NOTICE TO ALL LICENSEES - NOTICE OF APPROVAL OF NEW LEGISLATION
ELIMINATING REQUIREMENT OF BI-MONTHLY BEVERAGE TAX REPORTS.
2. DISCIPLINARY PROCEEDINGS (Cliffside Park) - LEWDNESS ON LICENSED
PREMISES - IMMORAL SOLICITATION - SALE TO MINOR - RECOMMENDED
SUSPENSION OF LICENSE FOR 130 DAYS MODIFIED BY DIRECTOR TO 80 DAYS.
3. NOTICE TO ALL LICENSEES - MEAL PRICES MAY INCLUDE COMPLIMENTARY FREE
DRINK IN RESTAURANTS.

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

BULLETIN 2127

January 16, 1974

1. NOTICE TO ALL LICENSEES - NOTICE OF APPROVAL OF NEW LEGISLATION
ELIMINATING REQUIREMENT OF BI-MONTHLY BEVERAGE TAX REPORTS.

TO ALL LICENSEES:

I am very happy to inform you that Assembly Bill No. 2180 which eliminates the filing of bi-monthly Beverage Tax reports (green sheets) was signed into law by Governor Cahill on December 4, 1973.

With the repeal of Prohibition, it was deemed advisable for licensees to regularly report sales and purchases of alcoholic beverages so that the appropriate authorities could keep an ever-watchful eye on the industry. In recent years, our industry has raised its image to such an extent as to warrant the discontinuance of this report.

Feeling convinced that it has lost its effective purpose in our industry and merely consisted of senseless paper work, I was one of the champions of this legislation and strongly urged the elimination of the report. This was one of the many reforms which demonstrates my confidence in licensees.

The approved legislation may require either amendments to or exclusion of certain rules of this Division covering the necessity for releases with applications for transfers of licenses. After thoroughly digesting the entire section covering releases and tax reports, such amendments or exclusions will be made.

It might be noted that this legislation in no way affects the need for a special permit to transfer title in stocks of alcoholic beverages upon transfer of a license. (Rule 15 of State Regulation No. 20). However, the method of obtaining such permit, when necessary, will need revision. Likewise, the legislation will not cancel any indebtedness to the Beverage Tax Bureau, Division of Taxation, for violations of their statute committed prior to the effective date of the legislation (December 4, 1973).

IT IS IMPORTANT TO NOTE THAT YOU SHOULD HAVE FILED THE BEVERAGE TAX REPORT (GREEN SHEET) FOR THE PERIOD ENDING OCTOBER 31, 1973. AS USUAL THIS REPORT WAS DUE ON OR BEFORE NOVEMBER 20, 1973. THIS IS YOUR LAST FILING.

With the continued cooperation of this Division, our trade associations and all of the licensees, I propose to make many changes in our industry and seek the assistance of everyone to update the industry and place it on the same level as our modern business society.

The approval of the legislation at this particular time of the year gives me the opportunity to wish all segments of our great industry, a most happy, healthy and prosperous holiday season.

ROBERT E. BOWER
DIRECTOR

Dated: December 7, 1973

2. DISCIPLINARY PROCEEDINGS - LEWDNESS ON LICENSED PREMISES - IMMORAL SOLICITATION - SALE TO MINOR - RECOMMENDED SUSPENSION OF LICENSE FOR 130 DAYS MODIFIED BY DIRECTOR TO 80 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Vito Enterprises, Inc.)
t/a Danny's Cocktail Lounge)
771 Palisade Avenue)
Cliffside Park, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-32, issued by the Mayor and
Council of the Borough of Cliffside)
Park.)

-----)
Fierro, Fierro & Mariniello, Esqs., by Joseph R. Mariniello, Esq., Attorneys for
Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On March 26, 1972, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation by and the making of overtures and arrangements by a female person on your licensed premises, with female customers or patrons thereon for her to engage with them in illicit perverted sexual acts and relations; in violation of Rule 5 of State Regulation No. 20.
- "2. On Friday night, March 10, into Saturday morning, March 11 and on Friday night, March 17 into Saturday morning March 18 and on Saturday night, March 25 into Sunday morning March 26, 1972 you allowed, permitted and suffered lewdness, immoral activity and foul, filthy, indecent and obscene language and conduct in and upon your licensed premises, and allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulation No. 20.
- "3. On Saturday night March 25 into Sunday morning, March 26, 1972, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Michael T. B.---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises, in violation of Rule 1 of State Regulation No. 20."

Three ABC agents participated in the investigation which resulted in the charges being preferred against the licensee.

Agent G testified that accompanied by agent P (a female) he proceeded to the licensed premises on March 10, 1972 at approximately 10:30 p.m. The licensed premises are situated in a building and contain two bars located in each of two rooms, an upper level room and a lower level room. The agents entered the premises and seated themselves at the upstairs bar. One of the two bartenders then on duty was identified as Roberto Lazardo (Bobby). The patronage consisted of approximately ten males. Two of the males were observed holding hands and kissing each other while seated at the bar. He observed other males swish and move their hips from side to side as they walked. Bobby referred to some patrons as "Dear", "Sweetheart" and "That Bitch." It was his opinion that these male patrons were apparent homosexuals. Parenthetically, it should be noted at this time that the licensee conceded that its licensed premises were predominantly patronized by homosexuals.

The agents then proceeded to the downstairs bar. Upon entry, agent G observed approximately fifteen males and three females either seated at tables or standing at the bar. The patronage increased to approximately forty males and six females. He identified the bartenders then on duty as Mike and Chuck.

Agent G observed males dancing with each other to both fast and slow music on the stage in the rear of the room. While dancing to slow music they would embrace each other, rubbing the front part of their bodies back and forth and grinding their bodies with each other. He observed several of the males kiss each other while dancing, including "... soul kissing by inserting one's tongue into the other's mouth." The agent described a particular incident as follows:

"I observed another male to come over to him and talk behind him, grab him from behind. The male who was in back put his hands on the male's chest and to ram his penis into this male's buttocks. At this time the male says, 'I'll give you a year to stop.' The bartender Mike at this time was at that position, and he says, 'You know you love it.'"

Agent G then testified that he observed the following activity at the bar:

"A couple of the males were holding each other, kissing, soul kissing again, putting their tongues into each others' mouths, and certain times I observed one male reach down and grab another by his penis, fondle it, and continue in embrace."

Pertaining to the females, agent G testified that he observed one leaning over her chair onto another female's shoulder or arm. They would blow into each other's ear and kiss on the neck. He observed females dancing with each other, tightly embracing each other, moving their bodies back and forth and rubbing the front part of their bodies. As one female patron passed a table, he observed another female grab her leg, buttocks and, on another

occasion, another female's private part. This occurred approximately four or five feet from the bar. It was the agent's opinion that some of the patrons in this barroom appeared to be homosexuals and some were lesbians.

Returning to the upstairs barroom he observed two males seated in a booth. One male had both legs extended. The other male kissed him and ran his left hand up and down his leg and on his penis.

Neither of the bartenders took any steps to terminate any of the activity which he described.

Agents G and P returned to the licensed premises on March 17 at 10:00 p.m., entered the upstairs bar and observed Bobby tending bar. Agent G observed eight male patrons in the room. Some were holding hands and kissing on the cheek. Proceeding to the downstairs bar he observed Mike and Chuck again tending bar. The patronage of four later increased. He observed males dance together. One male would grind the lower front portion of his body into the lower front portion of the other male's body. He also observed these males soul kissing, that is, one would insert his tongue into the other's mouth while dancing.

Agent G then observed two males to agent P's right at the bar. He described their actions as follows:

"One male was seated on a stool; the other male was standing up. I observed these males to kiss for approximately fifteen minutes, steady kiss, stopping just to blow in each other's ears. This was really soul kissing, tongue kissing. As these males were kissing the male that was standing had his hand on the penis of the male that was seated."

Mike, one of the bartenders, remarked to the agents, "Isn't love wonderful."

Thereafter Mike called several patrons to the bar and, while Mike was behind the bar, he pulled down his trousers displaying underwear with black embroidery on the front.

Seated to his left agent G observed Vito Albanese, a fifty per cent. stockholder of the corporate licensee. Albanese exclaimed to Mike in a loud voice, "The next time that f--- guy does that to me I'll hit him in the f--- mouth. Who the f--- does he think he is, anyway?"

Albanese invited both agents upstairs for corned beef and cabbage. He requested agent P to go into the kitchen with him. As they entered the kitchen area, agent G, through a glass in the door, observed Albanese grab agent P by the buttocks and give her a "goose." Agent P departed from the kitchen shortly thereafter.

Later, while the agents were at the upstairs bar, Bobby asked agent P whether she was waiting for her girl friend. Agent P responded in the negative. Bobby then said that he would go downstairs and see whether he could find her one. Upon returning shortly thereafter Bobby informed the agents that "there were only a few dikes [lesbians] left but they were trash." Continuing,

he informed them that there was a female named Monique who would probably take her to her apartment in New York and whom he would like agent P to meet on the following Saturday night.

ABC agents G and P returned to the licensed premises on Saturday, March 25, 1972, at approximately 10:00 p.m. This witness observed ABC agent S sitting to the right of entry. A male, later identified as Michael B--, was stationed at the door collecting a dollar admission charge. Bobby and another bartender, identified as Daniel King, were working behind the upstairs bar.

Agent G observed a glass containing a liquid on a table next to the door. Michael appeared to him to be a minor. Between 10:30 p.m. and midnight he observed Michael receive two drinks and consume one of them before and the other after midnight. Bobby poured a drink for Michael consisting of a liquid from a vodka bottle and a liquid from a mixer bottle.

Bobby questioned agents G and P concerning their whereabouts the previous night and said Monique was there waiting all night. The questioning then revealed the following:

"Q Did you [agent G] say anything to Bobby?

A I then asked Bobby if Monique would -- if she would be good in bed for Carol because she needed some good sex from a good lover. Lazardo told me, 'Don't worry. Monique would make a good partner in bed for Carol.'"

At approximately 12:30 a.m. agent G visited the downstairs bar. The patronage between both bars was approximately one hundred fifty males and six females. The males would bump each other's body, including their privates. At times one male would hold another by the buttocks.

At approximately 12:45 a.m. Bobby went downstairs and informed agent G that agent P had found a girl. Agent G asked whether Monique had come in. Bobby said "No", however, there was someone "just as good." Upon proceeding upstairs, agent G was introduced to a female identified as Jerry S--- who resided in Brooklyn, New York. Jerry informed the agents that "she had just lost her lover and she was looking for another lover." Agent G requested Jerry "to take good care of Carol, she would make a good lover for her."

When Bobby approached the agents' position at the bar, agent P informed him that Jerry was going to take her to her apartment in New York; that they were going to make love and engage in sex, and that she wanted to know if Jerry was clean so that agent P wouldn't "catch" anything. Agent G then said to Bobby that he hoped that Jerry engaged in sex to such an extent that agent P wouldn't be able to walk. Bobby replied, "Don't worry. Jerry will make a good lover for Carol."

Agent P and Jerry departed from the upstairs bar and proceeded downstairs. Agent P rejoined agent G and informed him that she was going to leave the premises with Jerry. Prior to leaving, agent P informed Bobby that she and Jerry were going to Jerry's apartment in New York and that "they were going to have sex and were going to go to bed together." Bobby smiled. By means of a prearranged signal, agent G signaled to agent S to leave the premises and enlist the assistance of the local police department.

Shortly after agent P's and Jerry's departure from the premises, agent G followed them to a driveway where they were stopped by agent S and a local police officer. The group returned to the licensed premises where the three ABC agents identified themselves to Albanese and informed him of what had transpired in the premises.

On cross examination agent G testified that he was assigned to investigate allegations of immoral activity, serving minors, and closing-hour violations at the licensed premises.

On March 10, 1972, the agent was positioned at the downstairs bar approximately ten or fifteen feet distant from the raised stage. He described the lighting as "ample" and he could observe one male's tongue entering the other male's mouth while dancing on the stage.

Agent G was questioned as to the activity of some of the male patrons as follows:

"Q Were any of these men on either of these occasions you were in the bar -- at any time were their privates exposed?

A No, sir.

Q In other words, when you say they were holding each other by the penis, you are referring to they were holding each other by their front, by their crotch, if we can say it that way; is that correct?

A No. They were holding each other by the penis. The crotch is lower than the penis.

Q You couldn't see the penis?

A No, but I could see where the hand was located, and it was where the penis would have been. It was not in the crotch."

The hand was located in the area of the zipper. He observed this activity on numerous occasions. He conceded that the zipper was closed.

The male couple that kissed each other for fifteen minutes was seated directly to the right of agent P. He saw the tongues enter each other's mouth. Once he moved close to the couple and he observed them from a distance of approximately two feet.

On March 26 agent G, in the presence of agents P and S, two police officers and Jerry, confronted Albanese, Bobby and Michael in the kitchen and informed them of the charges.

In behalf of the Division Michael B--- testified that he was born on December 18, 1951. Thus he was twenty years of age on March 25, 1972.

On cross examination Michael testified that he worked at the door because the regular doorman got sick while on the job and he replaced him. All he had to drink that night was Seven-Up. He does not recall whether he was questioned concerning his age or to execute any written representation with respect thereto. He did not remember observing patrons kissing or fondling the privates of others.

Prior to that night he had never met either Albanese or the bartenders. Upon being questioned as to his reason for patronizing the licensed premises, Michael replied "It was one night I decided not to drink because I usually can drink like crazy." He didn't drink that night because he had been "drinking like crazy" the previous night. He admitted that on occasions he drinks Vodka and Seven-Up and scotch and water.

The witness explained that he replaced Richie at the door. He had never met Richie prior thereto. Richie requested Michael to take over collecting admission fees because they had been engaging in conversation with each other. He was not paid for performing this service.

Bobby served Michael the Seven-Ups. He did not see Bobby make up the drink.

The testimony of agent P, who accompanied agent G to the licensed premises on each of the dates mentioned in the charges, was essentially corroborative of the testimony elicited from agent G relative to matters germane to the charges.

Specifically, referring to the matters involving her personally and which are the subject matter of the first charge, agent P corroborated the goosing incident of March 17 wherein Albanese was involved. The agent further testified that during her visit of March 17 the bartender, Bobby, asked whether she was waiting for a girl friend. Upon replying that she wasn't, Bobby said, "Maybe I can find a nice girl for you." Bobby then departed for the downstairs bar, asserting that he was going there to find a girl for agent P for the evening. Upon returning, Bobby stated that the females were paired off and were otherwise unsuitable. However, he had a lovely girl named Monique that he wanted to introduce to her. He indicated that Monique would be good in bed for her, and that he would have her there the following Saturday.

Accompanied by agent G, agent P returned to the licensed premises on March 25 at 10:00 p.m. Agent S had preceded the agents G and P therein. Bobby inquired about her whereabouts the previous evening because he stated that Monique had sat there all night waiting for her. Agent P informed him that Bobby had asked her to return on Saturday, not on Friday. Bobby replied that Monique would return that evening. Agent G asked whether Monique would be a good lover for agent P because she needed a good lover. Bobby replied that she would be very good for her and an excellent partner in bed.

Shortly thereafter agent G proceeded to the downstairs bar. Agent P remained upstairs. A female (later identified as Jerry Smith) asked whether she was waiting for a lover. Agent P replied she was not. Jerry asked whether she had anybody. Agent P replied that she did not. Jerry then stated that she had lost her lover and was looking for another.

Jerry asked agent P if she was looking for a permanent relationship. Agent P replied that she hadn't been in bed with anyone for quite a while. Jerry replied that she hadn't either and that she was sure that they could get together and see how it worked out.

In the meantime, Bobby proceeded to the downstairs bar in order to inform agent G that agent P found someone.

Concerning a specific conversation agent P had with Bobby, she testified as follows:

"I asked Bobby at one point if -- you know, he told me previously I was a very nice girl -- I asked him, you know, I said, 'Bobby, is she a clean girl, you know, because,' I said, 'I am going to her apartment for the night, you know, and she will probably go down, and I want to know if she is all right.'"

Q What did Bobby say?

A He indicated she would be fine...."

Thereafter Jerry invited agent P to go to the downstairs bar where Jerry invited agent P to dance. They danced to a slow number. Jerry rubbed her hand on agent P's groin, blew in her ear and kissed her on her cheek.

Jerry asked whether agent P was ready to leave and mentioned that she didn't have a car. Agent P informed her she would drive agent G's car and make sure he had a ride home. Upon returning upstairs she borrowed agent G's car keys and indicated to Bobby that Jerry was a nice girl, and said, "We are going to her apartment and spend the night in bed, you know, and not sleeping."

Agent P estimated that, of the approximately one hundred fifty male and fifteen female patrons, about eighty-five or ninety per cent. were apparent homosexuals.

Upon crossing the street to where the car was parked, they were approached by two other ABC agents. All identified themselves to Jerry and returned to the premises where Albanese was informed of the violation.

In her testimony agent P also corroborated that Michael was served two mixed drinks which contained a liquid poured from a vodka bottle bearing a red label.

On cross examination agent P testified that, after the agents had identified themselves in the kitchen of the licensed premises, they departed for the local police station. No charges were brought against Jerry.

Agent S testified that he entered the licensed premises on March 25, 1972 at 9:55 p.m. and observed Michael B---, who

appeared to him to be a minor, collecting one dollar admission charges at the door. He observed that Michael had in his possession a glass containing a liquid.

At 10:00 p.m. he observed ABC agents P and G enter the premises and position themselves at the bar opposite to where he was located and not within hearing distance.

At 10:30 p.m. he observed Michael place an empty glass on the bar. Without being asked, Bobby, the bartender, poured a liquid into the glass "from a bottle which appeared to be alcoholic beverages." After soda was also poured into the glass, Michael took the drink which was placed in front of him to the table at his position at the door. He observed Michael consume the liquid from time to time. The agent observed the same action repeated at midnight.

At 12:30 a.m. agent S observed agent G leave this bar and proceed to the downstairs bar. Agent P remained upstairs. At 12:45 a.m. he observed a female, identified as Jerry S---, take a position to agent P's left. Later he observed Bobby, agent P and Jerry engage in conversation which he could not hear. He then observed agent G join agent P and Jerry at the bar and then agent P and Jerry depart for the downstairs bar and later return to the upstairs bar. Upon receiving a pre-arranged signal, agent S departed from the premises at 1:15 a.m., proceeded to a parking lot across the street and requested assistance of a local police officer. Shortly thereafter agent S observed agent P and Jerry approach the parking area. He identified himself to Jerry and they were then joined by agent G. The entire group thereupon proceeded into the licensed premises where Albanese was informed of the violations. The bartender, Bobby, and Michael were placed under arrest.

On cross examination agent S testified that, although Jerry was taken to police headquarters, she was not placed under arrest.

He had spent all of his time in the upstairs bar of the licensed premises. The male patronage appeared to be homosexuals. From his position he did not witness any lewd activity.

In defense of the charges Michael Flores testified that he is employed by the licensee as a "working manager." On March 10 he was working behind the downstairs bar. He did not recall engaging in conversation with or seeing agents P and G on that date. He did not observe any kissing, tongue kissing, or males or females fondling each other or any "grinding." He did observe males dancing with males and females dancing with females. The patronage is mainly male. On that night he did not observe two males soul-kissing. In the past, upon observing males kissing, he has stopped it. He did not observe any male holding another male's penis.

He denied that he pulled his trousers down and displayed his underwear. He denied wearing flowery underwear. He denied hearing Albanese using the foul language hereinabove attributed to him by the ABC agents. He did not see agents P and G until they identified themselves. At no time did he or any other bartender attempt to set anyone up with a sexual partner. The upstairs bartender Danny King no longer resides in New Jersey. He does not know where Bobby is located presently. Chuck is no longer employed by the licensee and he doesn't know his present whereabouts. He is not acquainted with a female named Monique.

On cross examination the witness admitted that he had no special reason for recalling the events of March 10. The first day that he noted the presence of agents G and P was the day of the confrontation with the police and the agents. He may have served the agents without recalling that fact. He also did not remember whether Albanese ever used profane language in the premises. He would "at times" observe the patrons dancing. Flores conceded that males greeted each other by kissing each other on the lips but denied that they engaged in open-mouth kissing.

Vito A. Albanese, who is a principal officer of the corporate licensee, testified that he is part of the management of that establishment and that he usually arrived at midnight every night.

Fondling, kissing or any other improper activities are prohibited on the licensed premises, and he has never seen any such activity therein. He denied ever using any profane or indecent language in the establishment. Referring to dancing in a "sexual manner", Albanese testified:

"That is immediately out. My bartenders' instructions are to halt it, my floor manager to halt it, and I halt it if I see it. Absolutely we do not condone what we call improper and indecent dancing, absolutely not."

He has never seen any bartender pull his pants down behind the bar, nor would he countenance such activity. He never observed, nor would he permit a male to touch another male's penis. He added that the patronage is predominantly homosexual. Albanese conceded that he invited both agents G and P into the upstairs kitchen in order to show the preparation of the corned beef and cabbage on March 17. He denied that he grabbed or goosed agent P.

Sergeant Robert Fisher of the local Police Department testified that on March 26, 1972, at 2:00 a.m., he became involved in the subject investigation. Referring to his conversation with agent P, the witness testified as follows:

"Well, she had said she wanted to sign a complaint against one of the patrons, a woman, in Danny's. She said that she had propositioned her. I said, 'Tell

me what happened.' She said, 'Well, she invited me to her apartment in New York, and she said we'll have a party.' I said, 'What else did she say? Did she say anything immoral?' 'No', she said, 'she didn't say anything else.'

Agent P did not sign a complaint.

Mildred Seamon, an instructor in sociology (defined as the scientific analysis of the development, structure and function of human groups conceived as processes of interaction or as organized patterns of collective behavior) at Bergen Community College in Paramus, New Jersey, testified that, during the course of pursuing a doctorate in sociology, she has made observations of homosexual behavior. It was her opinion that the conduct ascribed to some of the patrons in the licensed premises by the ABC agents was not normal of a group of homosexuals socializing in the barroom. On the dozen occasions that she patronized the licensed premises during the course of a year, she did not observe the conduct described by the agents. The witness did not patronize the establishment on any of the dates charged herein.

On cross examination the witness testified that on occasions she visited the licensed premises both for social purposes and in pursuit of her sociological studies. She was personally acquainted with Albanese for four or five years.

Maureen Collazuol testified that she is employed as a waitress and, after finishing work, she would patronize the licensed premises perhaps five nights a week, including the week of March 17, 1972. She generally patronized both the upstairs and downstairs barrooms from approximately 11:00 p.m. to closing time. She was acquainted with the bartenders. At no time did she witness any of the activity described by the ABC agents which is encompassed in the second charge brought against the licensee. She described the dancing as "slow to the pace of the music."

The witness was acquainted with Albanese for the past five years. Albanese was her family acquaintance for many years. She almost always visited the establishment accompanied by Lynn Kennedy, a co-employee.

Lynn Kennedy, a waitress, testified that she visited the licensed premises every night during March 1972 except for two nights, namely, March 27 and 31. She did not observe any of the activity described by ABC agents relating to the second charge herein.

It was stipulated that, if the Mayor of the Borough were called to the witness stand, he would testify that he has visited the licensed premises on many occasions; that he was not present on any of the dates mentioned in the charges; that he never saw any of the alleged activity as described by the agents, and that the establishment had a good reputation.

At the close of the hearing the attorney for the licensee asserted that he was unable to secure the presence of Daniel King, Robert Lazardo, the bartenders Chuck and Norman, and Jerry because he was unable to ascertain their present whereabouts.

I

Licensee argued that, due to the delay in the institution of charges against it and the delay in the hearing of the charges, it was denied due process and the charges should, therefore, be dismissed.

I find that the lapse of four months from the last day of the investigation conducted by the Division to the day of the institution of the charges to be not unreasonable under the circumstances. The licensee was made aware of subject investigation by agents on their final visit to the establishment and, therefore, could have commenced marshaling its witnesses and preparing its defense to the anticipated charges.

Fully one-half of the adjournments of the hearings scheduled herein were at the specific request of the licensee. In any event, I find that licensee has sustained no prejudice by reason of the adjournments granted herein. I therefore recommend that licensee's motion that the charges be dismissed because it was denied due process be denied as devoid of merit.

II

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and, therefore, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

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 common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). 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. "Every fact or circumstance tending to show ... the witness' relation to the case or the parties is admissible to the end of determining the weight to be given to his evidence." State v. Spruill, 16 N.J. 73, 78 (1954). "It is fundamental that the interest or bias of a witness is relevant in evaluating his testimony." In re Hamilton State Bank, 106 N.J. Super. 285, 291 (App.Div. 1969).

I have had the opportunity to observe the demeanor of the witnesses as they appeared before me and have carefully evaluated the testimony herein both on behalf of the Division and on behalf of the licensee. My evaluation of the entire record gives

rise to the inescapable conclusion that all charges have been amply established by the credible and forthright testimony of the agents.

The agents' version, of what occurred on the dates in question is a factual and believable account. On the contrary, I was unimpressed with the credibility of the licensee's bartender and its witnesses. It should be borne in mind that the agents investigated activities on these premises pursuant to a specific assignment, and there is no reason to infer, nor was it even suggested, that they had any improper motivation in testifying as they did.

The blanket denial of the incidents relating to the first charge is entirely unconvincing and incredible in view of the details presented by the agents.

Referring to the first charge, I have set forth in detail the testimony of agent P with respect to the offer made to her by the bartender Bobby Lazardo and agent P's testimony of her conversation with Jerry. This was corroborated by agent G's testimony of his conversation with Bobby relative to Bobby's having found a "girl" for agent P.

I find that the licensee, through its employee, permitted and suffered the immoral activity as therein charged.

In determining the validity of the second charge, I find that the acts attributed to some of the patrons of the licensed premises constituted lewd and immoral activity and come within the proscription of the cited rule. In fact, any one act described would constitute activity of such nature as would support the charge made by the Division.

Witnesses for the defense, however, denied each and every alleged act of indecency and they did so in concert.

I am convinced that the complete denial of any lewd acts by all of the licensee's witnesses is incredible and unbelievable and I find as factual the agents' graphic, detailed and explicit portrayal of the acts participated in by patrons in the licensed premises.

It is apparent that the failure of the corporate licensee's employee to take steps to preclude or prevent the continuance of the immoral acts was tantamount to an abdication of their duty to discourage and prevent immoral activity on the licensed premises.

A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin

527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1.

From the evidence presented it is manifest that the licensee permitted and suffered the alleged immoral activity to take place on the licensed premises.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947), 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."

An additional basic principle 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, 12 N.J. Super. 449 (App.Div. 1951).

Concerning the third charge, I conclude that the evidence clearly preponderates in a finding that the minor was served and consumed a mixed drink containing vodka.

I find that the Division has established the truth of all charges by a fair preponderance of the credible evidence and I therefore recommend that the licensee be found guilty thereof.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended on charges 1 and 2 for one hundred twenty days (Re The Bunny Hutch, Bulletin 1722, Item 2; Re Subar, Inc., Bulletin 1586, Item 2) and for ten days on charge 3 (Re Framargim, Inc., Bulletin 1944, Item 8), or a total of one hundred thirty days.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the attorneys for and on behalf of the licensee pursuant to Rule 6 or State Regulation No. 16. Written Answer to the said Exceptions with supportive argument was filed by the attorney for and on behalf of the Division.

I find that the matters contained in the Exceptions have either been fully considered and resolved by the Hearer in his report, or are lacking in merit.

Having carefully considered the entire record herein, including the transcripts of testimony, the Hearer's report, the Exceptions filed with reference thereto, and the Answer to the said Exceptions, I concur in the findings and recommendation of the Hearer as to the guilt of the said charges, and adopt them as my conclusions herein. However, after a careful evaluation of all of the circumstances herein, I conclude that the one hundred-twenty day suspension recommended by the Hearer with reference to charges 1 and 2 is excessive. I shall, therefore, modify the same to a suspension of license for seventy days with respect to charges 1 and 2, and ten days on charge 3, or a total of eighty days.

Accordingly, it is on this 7th day of November, 1973

ORDERED that Plenary Retail Consumption License C-32 issued by the Mayor and Council of the Borough of Cliffside Park to Vito Enterprises, Inc., t/a Danny's Cocktail Lounge for premises 771 Palisade Avenue, Cliffside Park be and the same is hereby suspended for eighty days commencing at 3:00 a.m. Tuesday, November 20, 1973 and terminating at 3:00 a.m. Friday, February 8, 1974.

ROBERT E. BOWER
DIRECTOR

3. NOTICE TO ALL LICENSEES - MEAL PRICES MAY INCLUDE COMPLIMENTARY FREE DRINK IN RESTAURANTS.

Under the Alcoholic Beverage Law, it is the Director's express duty, inter alia, to supervise the sale of alcoholic beverages in such a manner as to promote temperance (R.S. 33:1-3) and in furtherance of this objective the Director is expressly empowered (R.S. 33:1-39) to adopt rules and regulations with respect to practices unduly designed to increase the consumption of alcoholic beverages; viz., Rule 20 of Division Regulation No. 20.

Accordingly, this Division has consistently prohibited plenary retail consumption licensees from engaging in such practices as:

- (1) Organized pattern of giving away free drinks or
- (2) Package deal which included alcoholic beverages within the total price of a dinner, exception, however, for New Year's Eve.

Obviously, since the practice was prohibited the advertising of the practice was also prohibited, Division Regulation No. 21.

I am not unmindful of the view of my predecessors who concurred that such practices fell within the prohibition against the undue promotion of alcoholic beverages. In screening the large number of previous rulings dating back to repeal, I have been led to the conclusion that a great many of such rulings, by virtue of economic and social changes, over the course of time, become anachronistic. My study clearly indicates that this Division should not prohibit the reasonable promotion of other mercantile business permissibly conducted by a licensee in his premises. Specifically in my view, restaurateurs

and hotel operators should not be precluded from normal competition because they hold liquor licenses. It is well known that restaurant and hotel operators, including many who do not hold a liquor license, offer patronage inducements in connection with their restaurant and hotel operations, e.g., issuance of meal tickets; seasonal reductions on food and hotel rates for holiday weekends; the furnishing of small special attentions to their patrons and guests such as gifts of flowers to the wives accompanying their husbands, etc.

Consequently, I have determined that hereafter, the regulatory prohibition against the inclusion of alcoholic beverages with a dinner at a single overall price should be relaxed to the extent that a restaurateur or hotel/motel operator may include an after dinner drink as part of the menu with the regular dinner at the overall price and may also include alcoholic beverages within the quoted overall price of a "package deal" for special occasions and affairs such as weddings, testimonial dinners, bar-mitzvahs, etc.

Additionally, such a licensee conducting a bona-fide dining room or restaurant business may advertise such practices on dinner menus, in newspapers or other media so long as there is no reference to the price or size of the drink itself, and so long as the advertisement is not improper in other respects. It is to be noted that a distinction is made between the continued prohibition against the advertising of size and price of drink and the advertisements which merely quote price for a regular meal which, among its courses, includes an after dinner drink.

If in the future, it is determined that this partial relaxation of the regulatory prohibition against practices unduly designed to increase the consumption of alcoholic beverages has been seriously abused, I shall immediately take the necessary steps to protect the public interest.


Robert E. Bower
Director

Dated: January 14, 1974