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

BULLETIN 1713 February 14, 1967

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ITEM

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1. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION - GAMBLING (NUMBERS BETS) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against	)
ABELARDO RAUL SOTO PRUNA t/a The Trotters Club 5816 Hudson Avenue West New York, New Jersey	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the Town of West New York	)

Anthony P. Peduto, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

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 and April 16, 1966, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through persons employed on your premises as bartenders and in other capacities, made offers to male patrons and customers thereon to procure females to engage in acts of illicit sexual intercourse with them and in furtherance of those offers made arrangements with a female and procured said female to engage in acts of illicit sexual intercourse with patrons and customers, as aforesaid; in violation of Rule 5 of State Regulation No. 20.

"2. On April 16, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"3. On April 16, 1966, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.

"4. On Wednesday, April 6, 1966, at about 11:40 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12-ounce cans of Schaefer beer, at retail, in their original containers for consumption

off your licensed premises and allowed, permitted suffered the removal of said alcoholic beverages in their original containers from your licensed premises in violation of Rule 1 of State Regulation No. 38."

Pursuant to specific assignment to investigate alleged prostitution by female patrons at the licensed premises, ABC agents visited the said premises on five occasions. The charges herein were based on certain alleged proscribed activities which occurred on the last three occasions.

On March 26, 1966, Agents D and M entered the licensee's premises at approximately 9:45 p.m. and noted approximately fifteen males and one female therein. Seating themselves at the bar, they engaged in conversation with two bartenders, one called Luis (later identified as Enelio, or Illio, Cacares) and the other known as Rico. When the agents asked Enelio about a certain female known as Ida, he explained that she was not in the premises at the time but that he expected six females in the following week who would be amenable to having sexual intercourse with the agents. Enelio said he was leaving the premises shortly and "he would take us with him and try to fix us up with a female." The agents accompanied the bartender to several taverns but he was unsuccessful in making any arrangements for the agents, and finally said, "I'm sorry I can't fix you up tonight. However, I'll have the girls at the tavern in a week or so and at that time I will see if I can fix you up."

The agents returned to the premises on April 6, 1966, at about 10:15 p.m. and seated themselves at the bar. There were about ten male and two female patrons in the premises, and a bartender called Louis (last name unknown) tending bar alone. While the agents were playing a game of pool, they observed Louis effecting a sale of packaged alcoholic beverages to a patron for off-premises consumption. At approximately 11:40 p.m. Agent M thereupon purchased a 6-pack of Schaefer's beer which Louis obtained from a beer cooler, placed in a brown paper bag and handed to the agent with the admonition "to be careful, to watch out." After paying Louis therefor, the agents left the premises.

The final visit to the licensed premises was made on April 16, 1966, at about 1:30 a.m. Enelio Cacares and Miguel Hernandez were acting as bartenders. Enelio was observed in conversation with several male patrons during which he took money from one of the patrons, recorded some figures on a piece of paper which he took from his pocket, and put the paper back in his shirt pocket. He thereupon returned to his position behind the bar and continued serving other patrons.

Agent M told Enelio that he wanted to place a numbers bet and Enelio replied, "I can take it." The agent then said, "Let me have 864 for a buck." Enelio took a slip of paper from his shirt pocket, recorded the number and one dollar after it. After taking the money, he placed it with the slip in his pocket. Agent D then said, "I think I'll put a number in too. Let me have 614." Enelio took the slip out of his pocket again, recorded another number on the paper, took one dollar from the agent, and put it with the slip in his shirt pocket. Agent D testified that on the basis of his long investigative experience with gambling matters, he recognized this transaction as clearly booking a numbers bet based upon a three digit number. He also noted that there were a dozen numbers on the slip of paper reflecting similar bets. Upon accepting their bets, Enelio told

the agents that "these will go in for tomorrow."

During this transaction, the agents further observed a female (later identified as Miss D) seated at the bar to the right of Agent M. Miss D was identified by the agent at the hearing. Engaging Enelio in conversation regarding Miss D, Agent M asked him, "How much will it cost me" to have sexual intercourse with this girl. The answer was "Ten, fifteen maybe." The agent asked whether Enelio would arrange it for him and Enelio said he would try. Enelio spoke to Miss D and shortly thereafter returned, nodded his head up and down and said "Okay."

At this point, Agent D left the tavern, made contact with local police officers and returned to the tavern at 2:10 a.m. Agent M then took from his pocket two $10 bills, the serial numbers of which had been previously recorded, and sought to give them to Miss D. She said, "No. Give it to him," pointing to Hernandez. Agent M attempted to give the money to Enelio and Enelio said, "Give it to him," pointing to Hernandez. Thereupon Agent M took out another $10 bill (unmarked) and asked Enelio for change. Enelio took two $5 bills from the cash register and placed them in front of Agent M, who handed one of the $5 bills to Enelio saying, "This is for fixing me up." Enelio accepted the $5 and said, "Thank you, any time" and handed the marked $10 bill and the $5 bill to Hernandez, who put them in his pocket.

While several drinks were served by Enelio to Agent M and Miss D, there was a discussion with respect to the place where they might go for the purpose of having sexual intercourse. Adrian Hurtado, a patron who was standing nearby, said "Use my place" and handed Miss D the keys to his apartment. They left the tavern, went to Agent M's automobile which was parked across the street from the tavern, and he drove to that apartment. During the ride, he handed Miss D the marked $10 bill.

Upon entering the apartment, they went immediately to the bedroom where Miss D completely undressed. About five minutes after they entered, at 2:30 a.m. Agent D, accompanied by the local police officers, was admitted to the apartment by Agent M and observed Miss D lying on the bed in the nude. A marked $10 bill was found in her clothing; she was thereupon placed under arrest.

The agents and the police officers returned to the licensed premises and Miss D remained in an automobile with a police officer outside the premises. By this time Enelio had left the said premises. The agents identified themselves to Soto Pruna, the licensee, and informed him of the alleged violations. The licensee informed them that Enelio had gone home and he (Soto Pruna) knew nothing about the said incidents. He was taken to police headquarters and questioned.

During the questioning, Enelio appeared at headquarters and was questioned about the numbers bets. When he denied taking any such bets, Agent D said, "Well, then, you should give us the money back"; "he said no, he wouldn't." Enelio was questioned about the arrangements made with Miss D and he denied making such arrangements. Agent D then asked, "Well, then, why did we give you the five dollars for fixing us up?" and Enelio answered, "That was for good service." Agent D replied, "'That's ridiculous. We only had a couple of beers' and we wouldn't pay him five dollars for that, and he just laughed it off."

Miss D was also questioned at police headquarters about why she accompanied Agent M and she replied, "I liked him."

It should be noted that at police headquarters, the licensee requested the use of an interpreter and one of the local police officers, who spoke Spanish, acted as an interpreter.

Abelardo Raul Soto Pruna, the licensee, testified that he purchased this tavern on February 4, 1966, and that Miguel Hernandez is his only employee. He denied making any sales of package goods for off-premises consumption after hours or taking any numbers bets at the tavern at any time. He also specifically denied knowing of any of the activities of Miss D.

On cross examination, he further denied that Enelio was employed by him, stating that Enelio has only one hand and cannot work. Asked "Did you ever see him behind the bar working?", he replied, "He go behind the bar sometime for take the beer for him or fixing some empty beer, empty bottle beer." Enelio is not paid in money but is permitted to obtain free drinks whenever he wants them.

With respect to the incidents on April 16, he explained that he had been drinking in other taverns that evening and returned to his premises at about 2:30 a.m. He stated that Miguel Hernandez was the only bartender on duty and that he did not see Enelio on that occasion. He further stated that Enelio was not at the hearing because he had left for Florida and his whereabouts were unknown.

Miguel Hernandez, called by the licensee, requested the aid of an interpreter and one Joseph L. Martinez, a friend of the licensee, was sworn as an interpreter for him. He gave the following account: He is employed as a bartender by the licensee and has been so employed since the licensee purchased this place of business. He denied that Enelio is employed and stated that he is only a patron at these premises. He specifically denied any knowledge of gambling or numbers betting at the premises and also specifically denied selling a 6-pack of beer to any patron on the date and time charged. He also denied receiving $15 from the agent for the purpose of making arrangements for illicit relations with Miss D. He did not see her leave the tavern with Agent M. His explanation was that he was too busy serving patrons to observe her activities.

On cross examination, Hernandez insisted that Enelio was merely a patron; that although he would help him out occasionally when the bar was very busy, Enelio has never acted as a bartender at these premises. He admitted that Enelio was in the premises on April 16 and had a conversation with the agents. "Outside of that I don't know what transpired or what happened."

Before analyzing the testimony with respect to each of the charges herein, it might be well to state the general principles which guide us in the determination of disciplinary matters. These proceedings are civil in nature and merely require proof by a preponderance of the credible evidence. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Atkinson v. Parsekian, 37 N.J. 143 (1962). No testimony need be believed in these cases, but rather the Hearer must always credit as much or as little of the testimony as he finds reliable. 7 Wigmore Evidence, Sec. 2100 (3d Ed. 1940); Greenleaf Evidence,

Sec. 201. Evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1. The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth.

With respect to the first charge: I have carefully evaluated the testimony herein, both on behalf of the Division and on behalf of the licensee, and have had the opportunity to observe the demeanor of the witnesses as they appeared before me. A study of the entire record gives rise to the inescapable conclusion that this charge has been amply supported by the credible and forthright testimony of the agents.

Rule 5 of State Regulation No. 20 provides as follows:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The agents' version of what occured on the dates in question is a factual and believable account. On the contrary, I was singularly unimpressed with the credibility of the licensee and his 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 in view of the details presented by the agents. More particularly with reference to the occurrence on April 16, there was clear and empiric evidence, which was undenied, that Miss D, after meeting and conversing with the agents in the licensed premises, proceeded therefrom to an apartment of one of the patrons and was prepared to engage in sexual intercourse therein. There is also no denial that "marked" money of the agents was found in her possession.

Miss D sat in the hearing room throughout these proceedings but was not called upon by the licensee to contradict any or all of the testimony of this Division. Thus, the unexplained failure of the licensee to call this witness, who was in the hearing room, to rebut the testimony of the Division agents, gives rise to the inference that such testimony, if given and produced, would have been unfavorable to the licensee. Hickman v. Pace, 82 N.J. Super. 483 (1964); O'Neil v. Bilotta, 18 N.J. Super. 82; aff'd 10 N.J. 308 (1952).

It is also significant to note that Enelio was not produced as a witness herein. The licensee testified that he does not know his present whereabouts and that, some time "before", Enelio told him he was going to Florida. However, Hernandez testified that Enelio presently resides at a stated address in West New York with his aunt. No evidence has been offered to show that a reasonable attempt was made to subpoena this witness,

whose testimony might have been influential on these issues.

I am further persuaded and find that Enelio was actually performing services on these premises as an employee of the licensee (Kravis v. Hock, supra, p. 255) and his conduct, as well as the conduct of Miguel Hernandez, the other bartender, in performance of duties on the licensed premises is the responsibility of the licensee. It is a well established and fundamental principle that a licensee is, therefore, responsible for the misconduct of his employees and is fully responsible for their activities during their employ on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299; In re Schneider, 12 N.J. Super. 449; Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Division of Alcoholic Beverage Control, 36 N.J. 34 (1961)

I therefore conclude, on the basis of the overwhelming testimony, that the licensee's employees made offers to the agents on the licensed premises to procure and did, in fact, procure this female and made arrangements for acts of illicit sexual intercourse. I recommend that the licensee be found guilty as to the first charge.

With respect to the second and third charges: I have detailed the occurrence involving the acceptance of the numbers bets by the licensee's employee. Both agents testified that each paid $1 for a specific bet which was accepted by the employee, who informed them that the bets would be placed on the following day. Since the licensee was not present on the premises at the time, his denial of any knowledge with respect thereto cannot legally counteract his responsibility for the illegal acts of his employee. Under all of the circumstances appearing herein, I find that the licensee allowed, permitted and suffered gambling upon the licensed premises, that is, the making and accepting of bets in a lottery, and that he allowed, permitted and suffered participation rights to be sold in a lottery commonly known as a numbers game in and upon the licensed premises. Since the Division has established the truth of these charges by a fair preponderance of the believable evidence, I recommend that the licensee be found guilty of the second and third charges.

With respect to the fourth charge: The agents testified that they observed the sale of alcoholic beverages in their original containers, namely, six 12-ounce cans of beer, at retail for consumption off the licensed premises during prohibited hours; and, indeed, one of the agents was also sold a 6-pack of beer by the licensee's employee at 11:40 p.m. on April 6. This charge has been established by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty thereof.

The license to sell alcoholic beverages at retail to the public is a privilege granted to the few and denied to the many (Paul v. Gloucester County, 50 N.J.L. 585) and must be exercised in the public interest. It is apparent by the manner in which the licensed premises have been conducted that this licensee has shown a lack of appreciation for an understanding of the fundamental proprieties in the operation of his licensed business. Although with respect to some of these charges it is

apparent that the licensee did not personally participate, it was his responsibility to see that his establishment was conducted in a manner conducive to the best interests of the liquor industry.

In view of the nature of the principal offense, i.e., offers to procure and procurement for prostitution which occurred on two separate dates, and considering the other offenses as well, the only proper and justifiable penalty is revocation of license, which I, therefore, recommend. Re New Peppermint Lounge, Inc., Bulletin 1666, Item 1; Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953), reprinted in Bulletin 970, Item 1; Re Charle's Tavern, Bulletin 1619, Item 2.

Conclusions and Order

Exceptions to the Hearer's report were filed by licensee's attorney pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the proceedings, the Hearer's report and the exceptions thereto which I find to be lacking in substance and without merit, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 5th day of December 1966,

ORDERED that Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the Town of West New York to Abelardo Raul Soto Pruna, t/a The Trotters Club, for premises 5816 Hudson Avenue, West New York, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - FOUL LANGUAGE - HOSTESS ACTIVITY - SOLICITATION FOR PROSTITUTION - LICENSE SUSPENDED FOR 180 DAYS - NO REMISSION FOR PLEA ENTERED TO ONE CHARGE WHEN ANOTHER CONTESTED.

In the Matter of Disciplinary Proceedings against YOUR GIRLS, INC. 402 Federal Street Camden, N. J., Holder of Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The Division filed charges against the licensee as follows:

"1. On June 11 and 12, 1966, 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.

"2. On June 11 and 12, 1966, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.

"3. On June 11 and 12, 1966, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.

"4. On August 13, 1966, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illcit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

The licensee pleaded non vult to Charges 2 and 3, and pleaded not guilty to Charges 1 and 4.

Agent C testified that, pursuant to specific assignment and accompanied by ABC agents J and G, they arrived in the vicinity of the licensed premises on June 11, 1966, at approximately 11:10 p.m. He entered the premises (which he described as a "neighborhood-type bar") first and positioned himself at the bar. A barmaid (identified as Yvonne Brooks) was tending bar. A person identified as Emil Brandt appeared to be acting in a managerial capacity. Agent J entered the barroom at 11:30 p.m. and positioned himself alongside C. Agent G entered the barroom at 11:20 p.m. and sat at a table about six feet away from the bar. The patronage consisted of about twelve male patrons and three female patrons.

Ten of the males attracted his attention. As to them he testified as follows:

"A number of them had their hair piled high on their head and they had, some of them had jewelry on and pancake makeup and mascara. They wore tight chino pants, low-cut sneakers, female-type loafers, and their actions were walking lightly on the balls of their feet, high feminine-type voice, embracing each other from time to time.

They used terms "like Dear and Honey and Doll" to each other. They held their cigarettes and drinks in a "limp-wrist fashion,

much like a female would." As to this conduct towards each other, he testified:

> "They would be in low conversation with each other and they would roll their eyes, raising their eyebrows in a seductive gesture and they'd put their arms around each other's waist, pulling in tightly like an affectionate hug at each other."

This conduct was carried on openly and lasted throughout the course of the investigation from 11:10 p.m. to 12:30 a.m. He particularized the appearance and conduct of one male thusly:

> "He had his hair piled very high on his head and he had a spitty curl on his forehead, he had pancake makeup and mascara makeup on his eyebrows. He had a blouse-type top. It was satin, and very tight trousers and low-cut sneakers....He held his cagarette in a limp-wrist fashion, he had a very high feminine voice, made flirting gestures with his eyes to other males, stepped away from the bar occasionally as a girl model fashion goes, had one hand on his hips, would turn a few times and make eyes at other patrons and then sit down."

He referred to male patrons as "Dear" and "Darling". At approximately 11:35 p.m. this male greeted another male entering the doorway who wore his hair in an upsweep fashion, was made up with pancake and mascara and wore rhinestone earrings. This last described male joined the "number one man" and their actions were then described as follows:

> "As he moved alongside of number one man he patted the number one man on the buttocks and sat alongside of him and they made flirting glances towards each other and then they held each other's hands, ordered a drink and were having low conversation, soft conversation rather, and during the conversation number one reached over and kissed the other on, lightly on the side of the neck."

Their conduct was much the same during the remainder of the investigation. Yvonne Brooks continued to tend bar. Brandt was also behind the bar. At approximately 11:30 p.m. Agent J told Brandt, "You realize that you have about ten homosexuals in the premises." Brandt responded, "Yes, I know I have a lot of them and they carry on."

It was the agent's opinion that the males appeared to be impersonating females and they appeared to be homosexuals. Prior to departing from the tavern they identified themselves to Yvonne Brooks and to Brandt. Brandt admitted that the majority of the patrons were apparent homosexuals.

On cross examination the agent admitted that the manager stated that he was trying to get rid of the "queers", that the tavern was mainly patronized by a working-class group, and that he observed no overt act of homosexuality other than the manifestations he had referred to on direct examination.

It was stipulated that Agent J's testimony as to the occurrences of June 11 and 12, 1966 would be the same as the testimony given by Agent C.

Agent J then testified that he proceeded to the vicinity of the licensed premises on August 13, 1966 with Agents

C and B. Agent B entered first, "a little after 10 o'clock", and J entered a few minutes later. Agent B positioned himself "just past the center of the bar" and J "behind him, about three or four feet." Mrs. Brooks and a Harry Summers were tending bar. There were eight or nine females in the group of approximately thirty patrons.

The agent observed a female identified as Ethel S--- introduce herself to Agent B and ask him to buy her a drink. Mrs. Brooks served her a drink. When the agent was asked as to whether or not he overheard any conversation between Ethel S--- and Agent B, he responded:

> "I heard her ask him if he was there looking for a girl, if he was looking for some fun. [Agent B] said, 'Yes. What type of fun are you talking about?' And she said, 'Well, you know, a girl to get laid.' So he says, 'Well, I might be interested. How much?'"

Ethel responded, "it would cost ten dollars and three." In response to the agent's inquiry as to what was involved for the money, Ethel responded that he would get "s--- and f---" (abbreviations mine), referring to acts of sexual misbehavior. As to where they were going, Ethel indicated Raymond's Pad on Second Street. The agent replied, "I don't like to go to strange houses. I don't want to go some place and get laid and get knocked in the head while getting laid." The agent heard Agent B inform Mrs. Brooks that Ethel wanted to take him out for ten dollars to get laid; however, he "don't want to go to some strange house and get knocked on my head." Mrs. Books replied, "Well, we don't allow those type of girls to work in here. She said, if I thought it wasn't all right, I wouldn't tell you." Thereafter arrangements were made to go to the Oasis Motel. Prior to leaving, Agent B ordered another drink and informed Mrs. Brooks that he was going to the Oasis Motel with Ethel. Mrs. Brooks said, "Well, you won't get hurt. You don't have to be afraid of Raymond's."

Agent J departed from the tavern at approximately 10:25. Agent B and Ethel departed therefrom a "couple of minutes later" and got into the agent's car and drove away. ABC Agents J and C and two officers connected with the Camden Police Department followed. Agent J then testified as follows:

> "I saw [Agent B] park his car near the end of the motel unit, get out of the car, go into the office, return shortly after and rejoin Miss S--- and the two of them then went upstairs to -- or disappeared into the motel unit. We then went into the office of the motel unit where we met the manager and identified ourselves to him and asked him which room was just given. He told us. Detective Guieroz remained with him and then he went up to the room on the second floor and a few minutes later knocked. At that time the door was opened by [Agent B], who was partly disrobed, and we entered and there I observed Miss S--- completely nude on the bed."

The agents identified themselves and observed a ten-dollar bill with Ethel's pocketbook (the serial number of which was previously recorded and had been in Agent B's possession) on the dresser. The agents, police officers and Ethel S--- returned to the licensed premises. The agents identified themselves to Mrs. Brooks and Mr. Summers who were still tending bar. Agent J advised Mrs. Brooks that Ethel "had just been arrested for soliciting for prostitution which had occurred in the bar and in

her presence", whereupon Mrs. Brooks responded that all she knew was that Agent B and Ethel had been talking.

Agent B testified that he participated in the investigation and that he preceded Agents J and C in entering the licensed premises on the night of August 13, 1966. His testimony concerning the conversations had with Ethel S--- and the barmaid Yvonne Brooks, and his testimony relative to the events leading to him and Ethel S--- going to the Oasis Motel and being found in a room together by the other ABC agents and members of the Camden Police Department, substantially corroborated the testimony offered by Agent J.

Additionally he testified that during the time he was at the bar conversing with Ethel he was approached by a female identified as Rose Marie Davis, whom he had met approximately a year before this incident while he was employed at a furniture store. After the agent purchased a drink for her, and having noted that the agent and Ethel had met, she proceeded to another area of the barroom. She was in the agent's company "a minute and a half, two minutes."

On cross examination the agent testified that Agent J was standing behind him while he was conversing with Ethel. Mrs. Brooks heard the conversation he had with Ethel relative to the payment of the ten dollars. The voices were not lowered during the usage of the language concerning the transaction.

Additionally he admitted that he went to the licensed premises for the purpose of uncovering soliciting.

Agent G testified that he entered the licensed premises on June 11, 1966 at 11:20 p.m. and departed therefrom shortly after Agents J and C left on June 12th.

It was stipulated that Agent G's testimony would be substantially the same as the testimony of Agents C and J concerning the occurrences of June 11th into the 12th, 1966.

On cross examination he testified that he observed no overt act.

In defense of the charges the licensee called as its first witness Rose Marie Davis who testified that she is acquainted with Ethel S--- and saw her in the barroom on August 13, 1966. She saw Agent B enter and, recalling that he had been her "furniture collector", she approached him and greeted him. She noticed Ethel ease up to where they were standing. The witness remained there approximately five minutes. Ethel asked her as to whether or not she was acquainted with him and Mrs. Davis replied in the affirmative. She heard no filthy words used. Agent B and Ethel spoke to Yvonne for the sole purpose of ordering a drink. Concluding, she testified that Agent B did not inquire about Ethel and she informed that agent that Ethel was a friend of hers.

On cross examination Mrs. Davis testified that she saw Agent B and Ethel together and going between the pair. After receiving a drink, purchased by B, she moved away. She admitted saying to them, "Oh, I see you two have met already." She may have stayed with them about five minutes, she was not concerned with what they were talking about. She remained in the tavern about fifteen minutes after she had walked away from them.

Yvonne Brooks testified that she was employed as a

barmaid by the licensee corporation on the dates in question and had not met Agents J or B prior to June 11, 1966. She recalled that the agents conferred with her relative to the homosexuals on June 11 or June 12. She denied speaking with Agent J concerning the occurrence of August 13.

She was introduced to Agent B by Mrs. Davis. Mrs. Davis stated that B was a furniture salesman. She admitted that Agent B asked her as to whether or not Ethel S--- was good for ten dollars. She replied, "I don't know. I don't know anything about her, that well." It was her impression that Ethel S--- wanted to purchase furniture of B. She heard no filthy language at all used by either B or Ethel S---. The witness admitted being asked by Agent B, "What about Raymond's Pad", but denied that it was in connection with going there with Ethel S---.

Andrew J. Jackson, Jr. testified that he and his wife (Mrs. Margaret Jackson) and his aunt (Sophie Buss) purchased the tavern business conducted at the premises in question in December 1965. He discharged the manager (Emil Brandt) upon learning of the alleged violations. He had ordered Brandt to keep out homosexuals gradually. He was fearful of ordering all of them out at one time because of Civil Rights demonstrations being held in the municipality at the time. He had no knowledge of any other violations. He was engaged in the plumbing business for fifteen years and, due to the alleged violations, he intends selling his interest in the tavern business.

On cross examination Mr. Jackson admitted that he was occupied with his plumbing business daily. He visited the tavern daily for short periods of time. For the first four or five months, and until he hired a new manager (Theodore Horan), he worked there every Friday night from 9 p.m. to closing. When he ascertained that homosexuals were frequenting the licensed premises some time in May 1966, he advised his manager to get rid of all of them and, when they (the homosexuals) threatened to "tear the place apart", he advised getting rid of them one at a time. Additionally, he testified that they did break his windows. When they commenced patronizing the tavern again, he ordered them out "one by one."

Mrs. Margaret Jackson (the wife of the previous witness) testified that she held a twenty-five per cent. interest in the licensee corporation, and she was not aware of any misconduct until she received a notice of the charges. On cross examination she admitted to going into the tavern for a very brief interval, once or twice, with her husband. She wouldn't go by herself.

Theodore Joseph Horan testified that he managed the licensed premises since July 1, 1966, and that he was given the job because the previous manager failed to carry out his assignment. He maintains the tavern in an orderly and decent manner. He was not in the premises at the time of the alleged violation on August 13, 1966.

In evaluating the testimony we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

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

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

In considering the first charge, I must emphasize that ABC Agent C's testimony, which was presented in a detailed, graphic and direct manner, was not only factual and credible, but also uncontradicted. His testimony undeniably demonstrated that an inordinate number of the patrons congregated at the tavern, displayed the facial makeup, mannerisms, speech and gestures commonly associated with male homosexuals.

It has been consistently held, since the earliest days of the Division, that the congregation of such persons upon liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of State Regulation No. 20. As was 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."

See also Re Carelis, Bulletin 1393, Item 2, affirmed Carelis v. Division of Alcoholic Beverage Control (App.Div. 1961), not officially reported, reprinted in Bulletin 1430, Item 1; Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App.Div. 1961), reprinted in Bulletin 1395, Item 3.

The licensee argued, in effect, that it was fearful of barring homosexuals from the licensed premises because of some civil rights demonstrations and anything other than a gradual elimination or weeding out of this type of patronage would lead to violence and, therefore, this should be considered in mitigation of the offense.

In the case of Re Plaza Hotel-O'Leary, Bulletin 188, Item 9, Commissioner Burnett ruled that this argument is groundless because it can only apply to an action under the Civil Rights Act where a person was refused liquor because of his race, creed or color, or previous condition of servitude, or for some cause or reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude", citing Shubert v. Nixon Amusement Co., 83 N.J.L. 101 (Sup.Ct. 1912). He concluded that a licensee has an absolute right to refuse to sell or serve liquor to anybody provided only that such refusal is not made on account of race, creed or color. He further cited his early decision in Re Dorflinger, Bulletin 136, Item 12, as follows:

> "The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law ...."

and further cited Re Rollka, Bulletin 142, Item 4:

> "The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

In Re Dorsey, Bulletin 226, Item 11, it was held further that there was nothing in the Alcoholic Beverage Law which defines licensed places as public places. Neither the term "tavern" nor "saloon" is used in the law (Re Phillips, Bulletin 200, Item 5), let alone a definition as to whether or not they are public places. The Commissioner cited in that case State v. Lynch, 23 N.J.L.J. 45, wherein Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." He said:

> "A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

His ruling was followed by Justice Parker in State v. Colgan (Sup. Ct. 1919), 92 N.J.L. 307. The Commissioner then stated that, so far as the Alcoholic Beverage Law was concerned, he has consistently treated taverns as being "private places" and hence has held the proprietor responsible for whatever goes on therein and has sustained his power, commensurate with such responsibility, to maintain order and decency, citing Re Tait, Bulletin 188, Item 9; Re Craster, Bulletin 198, Item 6. See Re Minetti, Bulletin 264, Item 14. A similar contention that apparent homosexuals cannot be barred from licensed premises has most recently been rejected in Re Jo Stem Corp., Bulletin 1625, Item 2, and in Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5, affirmed One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1966), not officially reported, recorded in Bulletin 1695, Item 1.

A licensee who, for reasons of his own, prefers either to encourage this type of patronage or acts in a vacillatory or irresolute manner in that he fails to exclude this type patronage does so at his peril.

My evaluation and consideration of the testimony and the law applicable thereto lead me to the inevitable conclusion that the licensee is guilty of the first charge, and I so recommend.

As to the fourth charge, I have circumspectly reviewed all of the evidence elicited herein.

The evidence is overwhelming that a female patron solicited Agent B for an act of illicit sexual intercourse and that the barmaid (Mrs. Brooks) was well aware of the solicitation and permitted it to occur.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, 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.

An additional basic principle is worthy of emphasis. In disciplinary proceedings, a 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).

I therefore conclude that the Division has met the burden of proving the fourth charge by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of Charge 4.

With respect to the second and third charges, as to which the licensee pleaded non vult, reports of investigation disclose that the foul language was used by many of the patrons and that the barmaid accepted several drinks at the expense of male patrons.

Licensee has no previous record of suspension of license.

I further recommend that an order be entered suspending the license on the first charge for sixty days (Re One Eleven Wines & Liquors, Inc., supra); on the second charge for ten days (Re Rudy & Frank, Inc., Bulletin 1695, Item 14); on the third charge for twenty days (Re Urbanowski, Bulletin 1647, Item 5), and on the fourth charge for ninety days, without remission for the plea entered to Charges 2 and 3 in view of the contest to the first and fourth charges (Re Marinaccio, Bulletin 1688, Item 6), making a total suspension of one hundred eighty days.

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 transcript of the proceedings and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is on this 30th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Your girls, Inc. for premises 402 Federal Street, Camden, be and the same is hereby suspended for one hundred eighty (180) days, commencing at 2:00 a.m. Wednesday, December 7, 1966, and terminating at 7:00 a.m. Monday, June 5, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Michael Moniello
42 Sherman Ave.
Jersey City, New Jersey,

Holder of Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS and ORDER

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, September 25, 1966 he sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for forty-five days effective June 24, 1963 for sale to minors, sale in violation of State Regulation No. 38, and permitting wagering on pool games on the licensed premises. Re Moniello, Bulletin 1521, Item 4.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Alsto Enterprises, Inc., Bulletin 1686, Item 5.

Accordingly, it is, on this 14th day of November 1966,

ORDERED that Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Michael Moniello, for premises 42 Sherman Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, November 21, 1966, and terminating at 2 a.m. Friday, December 16, 1966.

4. STATE LICENSES - NEW APPLICATION FILED.

Garden State Beverage Co.
N.W. Cor. Sherman Ave. & Boulevard
Vineland, New Jersey
Application filed February 6, 1967 for place-to-place transfer of State Beverage Distributor's License SBD-33 from 200 Chestnut Avenue, Vineland, New Jersey.

Joseph P. Lordi
Director