STATE OF NEW JERSEY

Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA - P.O. BOX 2039
U.S. ROUTE 1-9 (SOUTHBOUND), NEWARK, N.J. 07114

BULLETIN 2281 April 25, 1978

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA - PO BOX 2039
U.S. ROUTE 1-9 (SOUTHBOUND), NEWARK, N.J. 07114

BULLETIN 2281 April 25, 1978

1. APPELLATE DECISIONS - CHOICE BAR & PACKAGE LIQUORS, INC. v. CAMDEN, et al.

Choice Bar & Package Liquors, Inc. Appellant, vs. Municipal Board of Alcoholic Beverage Control of the City of Camden and Joseph and Lillian Simpson, t/a Diamond Lil's, Respondents.	ON APPEAL CONCLUSIONS AND ORDER

Isaiah Steinberg, Esq., by Norman L. Ginsberg, Esq., Attorneys for Appellant.
Michael DiCola, Esq., by Patricia Prunty, Esq., Attorneys for Respondent Board.
John A. DeFalco, Esq., Attorney for Respondents-Simpson.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Camden (hereinafter Board) which, on July 26, 1977, approved a place-to-place transfer application of respondents, Joseph and Lillian Simpson, t/a Diamond Lil's, of Plenary Retail Consumption License, C-161 to premises 3403 Westfield Avenue, Camden.

In its Petition of Appeal, the appellant contends that the action of the Board was erroneous in that: (a) the location of the proposed site was within 200 feet of a school, in violation of N.J.S.A. 33:1-76; (b) the area to which the transfer was approved is presently saturated with other plenary retail licenses, and the saturation has been exacerbated by a decline in population of the area; (c) no written explanation of its determination was furnished by the Board; and (d) the Board Chairman was involved in a conflict of interest.

The Board in its Answer to the appeal categorically denies each of these contentions and sets forth various affirmative defences and rebuttal.

A de novo hearing on the appeal was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity provided all of the parties to introduce evidence and to cross-examine witnesses.

However, the appellant elected to offer oral argument of counsel only, and no witnesses or other evidence, exclusive of the pleadings and correspondence in the Division file, were produced.

Prior to the date of the hearing, counsel for the appellant furnished the Division with a copy of an extensive letter-memorandum, which has been submitted to the Clerk of the Board prior to its determination. Attached thereto was a copy of an area survey showing the respondents' proposed location and the neighboring school, with distances noted thereon. From these distances it appeared that the survey was based upon a scale of approximating forty feet to the inch.

In its finding of facts and decision, the Board articulated its determination to approve the transfer in a lengthly and well-detailed exposition of its reasoning. By its resolution, it obviously confronted the conflicting values of the approval, and responded to the several critiques raised by the appellant at the hearing before it.

At the hearing in this Division, no proof whatever was offered in substantiation of any of the allegations offered by appellant. To the contrary, the challenge that N.J.S.A. 33:1-76 applied lacked substance by virtue of the measurements contained on the survey supplied by appellant.

Further, the charge of conflict of interest on the part of the Board Chairman was similarly without merit. It was resolved by the uncontroverted explanation that, upon the Chairman learning that the transferor, or one of them, was the "stepfather-in-law of his niece" immediately withdrew from the matter and did not participate therein, or vote thereon.

Appellant's counsel admitted that, a few days following the filing of the appeal, he received the written determination by the Board; hence, he abandoned that charge.

Thus, appellant's objections are reduced to the claim that, by approving the transfer, the Board abused its descretion and permitted another license in an already saturated area.

In its well detailed Answer, the Board addressed the allegation of saturation of licenses in the area. It maintained that the nearest license to the proposed location was that of appellant, two hundred feet to the east; adding that, "[the] next nearest tavern Eastward is 11 blocks in the borough of Pennsauken.

Westward, the nearest licensee premises is Stockton Liquors approximately 5 blocks to the West and Boulevard Grill approximately 12 blocks to the West. Waldorf Tavern is the nearest establishment within the City of Camden approximately 12 blocks to the South. Engles Cafe on River Road is the nearest tavern approximately 20 blocks to the North".

None of the above allegations were contredicted by appellant. Clearly, a reasonable bases existed for the Board not to consider the "saturation" allegation as an impediment to the transfer under the aforereferenced facts.

The appellant cited Fanwood v. Rocco, 33 N.J. 404 (1960) in support of its position, without recognizing that this decision ennunciates an underlying principle that, in review of applications for transfers of plenary retail licenses, the action of the municipal issuing authority is to be affirmed by the Director on appeal, if such action was reasonable and properly motivated.

In short, the Director's function on appeal is not to substitute his personal judgment for that of the municipal issuing authority, but merely to determine whether reasonable cause exist for its opinion and, if so, to affirm irrespective of his own personal view. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970); Two Nicks, et al. v. Jersey City, Bulletin 2248, Item 4.

The burden of establishing that the action of the Board in granting the transfer was erroneous and should be reversed rests with appellant, in accordance with Rule 6 of State Regulation No. 15. The decision as to whether or not a license will be transferred to a particular locality rests in the first instance within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Ass'n. v. North Bergen, Bulletin 997, Item 2.

Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disburbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954).

I find no clear abuse or unreasonable or arbitrary action by the Board in approving the transfer, I, therefore, find that, the appellant has not met its burden of establishing that the action of the Board was erroneous and should be reversed, as required under Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board in approving the subject transfer be affirmed, and the appeal herein be dismissed.

Conclusions and Order

No Exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, written summations of the parties, and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of November, 1977,

ORDERED that the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - PETER, SAUL AND MARY, INC. v. POINT PLEASANT BEACH.

Peter, Saul and Mary, Inc., t/a The New Rip Tide, Appellant, v. Mayor and Council of the Borough of Point Pleasant Beach, Respondent.	ON APPEAL AMENDED ORDER

Barrett, Jacobowitz & Bass, Esqs., by Peter B. Bass, Esq., Attorneys for Appellant.
McGlynn, McGlynn & McCormack, Esqs., by Edward R. McGlynn, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

On April 22, 1977, Conclusions and Order were entered herein affirming, as modified therein, the action of the respondent, Mayor and Council of the Borough of Point Pleasant Beach which, by Resolution dated July 12, 1976, renewed appellant's plenary retail consumption license, subject to the imposition of ten (10) special conditions.

Upon the entry of said Order, the respondent appealed the modification of the special conditions by the Director to the Appellate Division of the Superior Court; and, during the pendency of the appeal, continuing negotiations between the parties to reach an amicable resolution of the issues in dispute resulted in an application being made for a remand to the Director for the purposes of review and approval of a proposed settlement agreement. Peter, Saul & Mary, Inc., t/a The New Rip Tide v. Division of Alcoholic Beverage Control, (App. Div. 1977, Docket No. A-3758-76).

The terms of the proposed settlement include the affixing of the following special conditions and terms upon the license of appellant, Peter, Saul & Mary, Inc., t/a The New Rip Tide:

1. No package liquor will be sold after 10:00 P.M.

2. Music will be stopped on Saturday morning at 1:30 A.M.

3. Personnel from the Rip Tide will clean the entire area leased by the Rip Tide and also will pick up trash on all sides of Ocean Avenue to Central Avenue and to the Perkins Parking Lot.

4. The Rip Tide will purchase large trash barrels at least four in number and advertise thereon the request to place all litter in same and will place these barrels both in their parking lot and along Ocean Avenue.

5. The Rip Tide will post a sign in their parking lot indicating that parking is for Rip Tide patrons only and will post another sign indicating that no loitering whatsoever shall be permitted.

6. During the summer months from Memorial Day until Labor Day two employes will be strategically located at all times in the parking lot of the Rip Tide when same is open in the evenings commencing at 8:00 and ending upon closing. During the rest of the year one employee will be strategically located in the parking lot on weekends when the Rip Tide is opened from the hours of 8:00 until closing and these employees whether in the summer or the winter will assist in seeing that no loitering is permitted and that the parking lot is used by Rip Tide patrons only.

7. All physical altercations or violations shall be reported immediately to the police department if known to the employees of the Rip Tide.

8. Upon closing of the Rip Tide two employees during the summer months from Memorial Day until Labor Day will be assigned to the parking lot in addition to the two employees already at same, and those employees shall assist with crowd dis-bursal. During the rest of the year one employee shall be assigned to the Rip Tide parking lot upon closing in addition to the previous employee already assigned to the lot to assist with crowd disbursal.

9. The Rip Tide will comply with the resolution passed by the Borough of Pt. Pleasant Beach for the 1976 license as it pertains to items 2, 4, 5 6 and 8.

10. The Rip Tide will send at least two employees every 15 minutes up and down Central Avenue, and said employees will wear identifying clothing that they are employees of the Rip Tide and will pick up litter along Central Avenue and assist generally

in attempting to keep the noise level down.

11. The rear door facing Ocean Avenue shall not be used for ingress and egress by any patrons of the Rip Tide, however, deliveries shall be permitted to be passed through said doors and the band members up until January 2, 1978 will be permitted to use the doors to bring their equipment through same. However, these doors will not be used during the hours of 8 p.m. until the closing at any time either for patrons or for deliveries or for musical equipment.

12. The Rip Tide will supply two men patrolling up and down Central Avenue at the closing of the Rip Tide.

13. The Rip Tide will close on January 2, 1978 for the purposes of changing the entire operation.

14. A Kitchen will be installed by the Rip Tide.

15. The VIP room downstairs will be removed and a package store installed.

16. The name of the business will be changed and advertised.

17. The Rip Tide shall have prepared an architectural drawing from an architect of their own choosing indicating the changes that are to be made and will apply for all building permits and/or variances, site plans, etc. prior to November 1, 1977.

18. The Rip Tide shall supply to Edward R. McGlynn a letter from the attorney representing the present landlord no later than September 1, 1977 indicating that approval for the construction of a kitchen has been granted. The Rip Tide will supply to Edward R. McGlynn, Esq. no later than September 1, 1977 a copy of the lease and all also a letter from the attorney for the present landlord indicating that the term of the lease has been extended for a period of five years.

19. The Rip Tide shall supply to Edward R. McGlynn proof that adequate financing has been obtained to accomplish all changes that have been indicated by the architectural drawing no later than October 1, 1977.

I have carefully analyzed and considered the special conditions proposed herein, in light of the record developed in this

Division, and, I find that the said special conditions and terms set forth therein are necessary and proper.

I shall, therefore, approve the aforestated special conditions and terms, and the respondent shall forthwith file with the Appellate Division of the Superior Court, a Stipulation of Dismissal of the pending appeal.

Good cause appearing, I shall enter an Amended Order incorporating and approving the proposed settlement agreement of the parties.

Accordingly, it is, on this 15th day of November, 1977,

DETERMINED and ORDERED that my Conclusions and Order, dated April 22, 1977, in the above matter be and the same is hereby amended as follows:

(1) ORDERED that the special conditions hereto imposed upon appellant's license be and the same are hereby modified to comport with and include the nineteen (19) special conditions and terms heretofore set forth and incorporated herein, as if set forth at length; and it is further

(2) ORDERED that the special conditions, as herein modified, shall take effect immediately; and it is further

(3) ORDERED that with the conditions as so modified, the action of the Council herein be and the same is hereby affirmed; and the appeal herein be and the same is hereby dismissed; and it is further

(4) ORDERED that the respondent shall forthwith, upon the entry of this Order, withdraw and discontinue its appeal in this matter, now pending in the Appellate Division of the Superior Court.

Joseph H. Lerner
Director

3. APPLICATION FOR STATE BEVERAGE DISTRIBUTION LICENSE - OBJECTIONS THERETO - APPLICATION GRANTED WITH PROHIBITION AGAINST OVER THE COUNTER SALES.

In the Matter of Objections to an Application for State Beverage Distribution License by Velardi Associates, Inc. 312 Allwood Road & 43 Samworth Road Clifton, N.J.	CONCLUSIONS AND ORDER

Anthony Velardi, President of Velardi Associates, Inc., Appellant, Pro se.
Frank J. Calise, Esq., Attorney for Objectors, Municipal Board of Alcoholic Beverage Control of the City of Clifton.

BY THE DIRECTOR:

On July 25, 1977, Velardi Associates, Inc. filed an application with the Director requesting the issuance of a State Beverage Distribution License for premises to be located at 312 Allwood Road and 43 Samworth Road, in the City of Clifton, New Jersey.

The Municipal Board of Alcoholic Beverage Control of the City of Clifton (hereinafter Board) adopted a resolution on September 14, 1977, a copy of which was forwarded to this Division, opposing the granting of the within license application.

At the hearing in this Division, Anthony Velardi appeared in behalf of the corporate applicant. He is the president and owner of one-half of its corporate stock. He stated that the applicant has offices in a building located in the industrial section of Clifton. In these offices and an adjacent storage area, he seeks to establish a beer distributing business. He has arranged for the Statewide distribution of a brand of beer about to be imported into New Jersey. No on-premises retail sales of beer would be made, and the license could be so conditioned.

Counsel for the Board appeared at the hearing to express its objections.

One other objection to the granting of the aforesaid application was filed with the Director by the North Jersey Package Stores Association. Notice of the hearing had been furnished to this objector, but no one for, or on behalf of, this organization appeared to support its written objection.

Counsel for the Board expressed its initial objections that prevailed when notice of the application was first received. Its objection was, in essences, a lack of public need for another on premise retail distribution license in the area proposed to be licensed. However, upon ascertaining that no on premise retail sales of beer and delivery therein were contemplated within the license premises to patrons, its objections were withdrawn.

At the conclusion of the hearing, the parties present waived the receipt of a Hearer's Report and requested that the Director made a determination as soon as practicible.

It is well settled that the Director has the discretionary authority to grant or deny the issuance, renewal or transfer of SBD licenses based upon public need and necessity, and the good faith of the applicant. Re Mystic, Bulletin 1883, Item 3.

The applicant will possess adequate facilities for the distribution of the imported beer as described; it will not make retail sales within its premises; and the grant of the license would be in the public interest.

Accordingly, it is, on this 16th day of November 1977,

ORDERED that the application of Velardi Associates, Inc., for the issuance of a State Beverage Distribution License by the Director of the Division of Alcoholic Beverage Control, for premises to be located at 312 Allwood Road and 43 Samworth Road, in the City of Clifton, in accordance with sketch of the proposed location supplied to this Division, be and the same is hereby granted; and it is further

ORDERED that such State Beverage Distribution License granted hereunder be and the same shall contain a special condition prohibiting "over the counter" sales of beer within the licensed premises.

JOSEPH H. LERNER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT ENTERTAINMENT - OFFERING CASH PRIZES ON LICENSED PREMISES - LICENSE SUSPENDED FOR FORTY (40) DAYS.

In the Matter of Disciplinary Proceedings against Lardon Associates, Incorporated t/a Charley's Brothers 225 Pennington Road Hopewell Township, New Jersey Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Hopewell.	CONCLUSIONS AND ORDER

Strauss, Wills and Baxendale, Esqs., by Gordon C. Strauss, Esq., Attorneys for Licensee

Mart Vaarsi, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads "not guilty" to the following charges:

"(1) On September 22 into September 23, 1976, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., you allowed, permitted and suffered female persons on your licensed premises to engage in conduct of a lewd, indecent and immoral manner and to commit and engage in acts, gestures and movements of and with their hands, legs and other parts of their bodies, in a manner and form having lewd, indecent and immorally suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.

(2) On the aforesaid dates, you directly or indirectly offered and furnished a cash prize in and upon your licensed premises; in violation of Rule 20 of State Regulation No. 20."

In behalf of the Division, former ABC Agent S, now employed by a municipal Police Department in Middlesex County, testified that on the evening of September 22, at 9:40 p.m., accompanied by ABC Agent B, he entered licensee's premises and descended the stairs to the lower level bar area. In the foyer, at the base of the staircase, two men seated at a desk collected a one dollar admission fee from each patron for admittance into the bar, band and dance floor area.

Adjacent to the desk was a chalk board which contained the following legend: "Wet Tee-Shirt contest 1-$50.00, 2-$25.00, 3-$15.00."

After paying the admission fee, they entered the barroom and observed approximately sixty patrons, two waitresses and four bartenders. There was a long bar running the length of the right side wall. On the left side, rear, were tables and chairs; on the left side towards the front, there was a large dance area with a slightly elevated stage.

A band performed throughout the evening. Several times a musician announced the Tee-shirt contest, and that any female wishing to enter should see Bob, subsequently idenfified as Robert Bowman, an employee of the corporate licensee.

At 11:45 p.m. the contest was announced for the last time and all entrants were told to go upstairs. At 11:55 it began, after six "judges" seated themselves at a table. Seven female contestants took the stage and began to dance, attired in slacks or skirts and a new, white Tee-shirt. It was apparent that they wore no bras. The manner of dancing was not noteworthy.

The music played for a brief period, and stopped. Then two girls were eliminated. The remaining girls were given scissors, a spray bottle with liquid and instructed to go upstairs. At 12:08 a.m. they returned to the lower level.

It was observed that the Tee-shirts were altered and some parts of the shirts were wet. One girl cut slits up the side; another had cut a side panel; the third had cut a large "U" shaped piece out of the front; and another cut a large circle over the breast area.

The music began and they danced again for a brief period, after which two more were eliminated. Of the three remaining contestants, one had the large "U" shape cut out, the second had the circle cut out and the third had slit panels cut out on the side.

Once again the band played, and the girls danced. During this session Agent S observed that both of the females who had cut out parts of the shirt in the breast area had at various times, one or both breasts completely exposed while dancing.

The girl with the circular cut-out, used her hands to "flash" (a deliberate, momentary exposure) by moving the material in the breast area aside, exposing same to audience view and replacing it.

The young lady with the large "U" shaped cut out danced for a few minutes with both breasts completely out of the Tee-shirt.

The third finalist apparently did not expose her bare breasts during the performance.

Later, as the manager announced the winners, the young lady who was awarded first prize stood beside him with both breasts uncovered, for at least thirty seconds.

ABC Agent B testified in corroboration of the testimony of Agent S. His description of the evening was substantially identical to that of his fellow agent.

In defense of the charges, Merrill Zinder, the president and sole stockholder of corporate licensee, testified that he was not present that evening. He related his prior efforts to ascertain the ABC's attitude towards wet Tee-shirt contests, stating that his lawyer requested an opinion letter from the Division. Additionally, he related the orders given to his supervisory personnel relative to the avoidance of possible indecent exposure by contestants during a contest of this type.

Pearce Stark, the licensee's manager, testified that these contests are "fun events" which evoke laughter and are in no way lewd. Exposure is neither encouraged or permitted and, indeed, other then a momentary, accidental exposure, which was immediately related to the girl who then corrected it, none was observed that night by him.

Carol Jean Zoog, a regular patron of the establishment, and friend of Pearce Stark, testified that she was present as a guest (not having paid the admission fee) that evening, and witnessed no exposure by any contestant in the manner related by the agents.

It is apparent that a purely factual question has been presented for determination.

Preliminarily, I observe that, 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, thus, 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 observations of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (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 jury 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 (App. Div. 1969).

I have carefully evaluated the testimony herein, and have had the opportunity to observe the demeanor of the witnesses as they testified. My evaluation of the entire record gives rise to the inescapable conclusion, and I find, that charge No. 1 has been amply supported by the credible and forthright testimony of the agents.

The agents' version of what occurred on the date in question is a factual and believable account. On the contrary, I was unimpressed with the credibility of the corporate licensee's stockholder and its manager. Carol Zoog's testimony likewise lacks the ring of credibility due in part, to her admitted friendship with management, as further evidenced by free admission to the bar.

It should be borne in mind that the agents' investigated activities on these premises pursuant to a specifice assignment, and there has been no showing, nor was it even alleged, that they were improperly motivated.

The blanket denial of the incidents relating to the charge is entirely unconvincing in view of the minutely detailed account of the performances presented by the agents.

It is basic that in disciplinary proceedings, a licensee is fully accountable for any violation committed or permitted by its agents, servants or employees. Rule 33 of State Regulation No. 20; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). See also In re Olympic, Inc. 49 N.J. Super. 299 (App. Div. 1958). Clearly the instructions of the owners of taverns to their employees, or their absence from the premises or their non-involvement in the incident does not absolve the licensee when a violation does occur, as happened in the subject case.

In considering the status of the contestants, it has been consistently held that salary or compensation is not a requisite to employment within the intendment of Rule 33 of State Regulation No. 20. In re Jacobs, Bulletin 935, Item 3; Re Neim, Bulletin 1772, Item 2; Middle Earth, Inc. v. Clifton, Bulletin 2254, Item 2.

In adjudicating this matter, I note the logic used by Judge Jayne speaking for the court in McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 62 (App. Div. 1954), wherein he stated:

> "Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession."

The Division's unrelenting policy of prohibiting "topless" females, whether entertainers or otherwise, has been affirmed by the courts. See In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971).

Accordingly, after examining the various precedents cited, I am persuaded by the clear and convincing proof in this case, that charge (No. 1) has been sustained by a fair preponderance of the credible evidence.

There has been no evidence brought forth by the licensee to refute the testimony of the agents that prizes were offered, in violation of Rule 20 of State Regulation No. 20. The only defense offered is that the prizes were drawn from a cash pool established by the patrons' admissions, and were, therefore, not offered by the licensee, but rather, by and on behalf of all the non-participant patrons.

I find this argument to be without merit, and similarly am persuaded by the clear and convincing proof in the case, that this charge (no. 2) has been sustained by a fair preponderance of the credible evidence.

The licensee has no record of prior chargeable offenses. I, therefore, recommend that the license be suspended for thirty days on the first count and ten days on the second count, totaling forty days.

Conclusions and Order

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

In its Exceptions, the licensee advances the same arguments set forth in its written summation submitted prior to the preparation of a Hearer's Report; to wit, a momentary exposure of the female breast is not lewd, indecent or immoral conduct, in violation of Rule 5 of State Regulation No. 20; topless entertainment per se should not be considered lewd; and the offering of cash awards does not constitute a "prize", in violation of Rule 20 of State Regulation No. 20, but rather, compensation for dancing entertainment.

The Division's decisions denouncing "topless" entertainment express a well-settled social and moral policy, consistently upheld as reasonable and valid. See In re Club "D" Lane, Inc., supra; McFadden's Lounge v. Div. of Alcoholic Bev. Control, supra.

The commonly designated "Wet Tee Shirt Contest", as practiced sub judice, constitutes a clear and deliberate course of conduct, directly designed to foster nudity or impermissible appearances thereof, identical to or substantially similar to actual "topless" entertainment.

By furnishing instruments and suggesting alterations to the tee shirts, the licensee knew or should have have known that the direct and proximate result thereof would be exposure of the female breasts. I do not perceive this activity

consistent with a claim of momentary exposure. It is most obviously a planned corrollary to such activity.

I reject the contention that the Division's policy must be changed or that any of the regulatory agencies dealing with casino gambling in Atlantic City permit such activity. (The Chairman of the Casino Control Commission has recently expressed his opposition to topless performances in casinos).

I have analyzed and assayed the Exceptions herein and find that they have been either fully considered and resolved in the Hearer's Report, or are devoid of merit.

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

Accordingly, it is, on this 2nd day of November, 1977,

ORDERED that Plenary Retail Consumption License C-3 issued by the Township Committee of the Township of Hopewell to Lardon Associates, Incorporated, t/a Charley's Brothers, for premises 225 Pennington Road, Hopewell Township, be and the same is hereby suspended for forty (40) days commencing at 2:30 a.m. Wednesday, November 16, 1977 and terminating 2:30 a.m. Monday, December 26, 1977.

Joseph H. Lerner
Director