

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

BULLETIN 1778

February 8, 1968

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PRIOR SIMILAR AND DISSIMILAR RECORD OF LICENSEE AND CORPORATIONS
WITH COMMON STOCKHOLDINGS - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary)
Proceedings against)

OAK TAVERN (A CORP.))
193-195 Stuyvesant Avenue)
Newark, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-81, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Newark.)

Joseph Brody, Esq., Attorney for Licensee
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 18, 1967 it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective May 7, 1962, and for fifteen days effective July 27, 1964, both for sale to a minor. In addition, Division records disclose the following with respect to Herman Hochberg and Edward Hennion, respectively 89 and 10 per cent. stockholders of the licensee corporation:

1. License then held by Herman Hochberg and Abraham Weiss for premises 236 Market Street, Newark, suspended by the Commissioner for ten days effective June 3, 1942, and for premises 81 Main Street, Madison, for fifteen days effective October 11, 1948, both for sale below minimum consumer price. Re Weiss and Hochberg, Bulletin 514, Item 10; Bulletin 817, Item 8.
2. License then held by Bloomfield-Adams, Inc. for premises 65 Washington Street, Bloomfield (in which Hochberg and Hennion were 89 and 10 per cent. stockholders), suspended by the municipal issuing authority for five days effective October 19, 1960, for thirty-five days effective February 24, 1962, and for thirty-five days effective May 17, 1965, all for sale to minors.
3. License then held by Count Cafe Corporation for premises 39-41 East Milton Avenue, Rahway (in which Hochberg and Hennion were 89 and 10 per cent. stockholders), suspended by the Director for thirty-five days effective September 28, 1965, for possession of an alcoholic beverage not truly labeled, and for ninety days effective June 16, 1966, for sale in violation of State Regulation No. 38 and permitting foul language on the licensed premises. Re Count Cafe Corporation, Bulletin 1643, Item 3; Bulletin 1686, Item 1.

- 4. License then held by M 66 Bar (a corporation) for premises 66 South Orange Avenue, Newark (in which Hochberg and Hennion were 89 and 10 per cent. stockholders), suspended by the municipal issuing authority for ten days effective January 6, 1964, for permitting a brawl on the licensed premises.

All of the circumstances considered, including the nature of the violation charged, the confessional plea entered and particularly the lengthy prior record, especially the number of suspensions in recent years, the license will be suspended for ninety days.

In addition, the licensee is pointedly warned that continuing disregard for the alcoholic beverage regulations may well result in outright revocation of the license.

Accordingly, it is, on this 26th day of December 1967,

ORDERED that Plenary Retail Consumption License C-81, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Oak Tavern (A Corp.), for premises 193-195 Stuyvesant Avenue, Newark, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Tuesday, January 2, 1968, and terminating at 2 a.m. Monday, April 1, 1968.

JOSEPH P. LORDI
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS AND WAGERING) - LOTTERY (FOOTBALL POOL TICKETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
YALE TAVERN, INC.)	CONCLUSIONS
t/a YALE TAVERN)	AND ORDER
80 Mallory Avenue)	
Jersey City, New Jersey)	
Holder of Plenary Retail Consumption License C-213 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)	
-----))	
Licensee, by Ann Shanley, Vice-President, Pro se.)	
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control)	

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on October 4 and 11, 1967, it variously permitted acceptance of numbers bets, wagering on a baseball game, and possessed lottery tickets in a football pool on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license, the license then held for the same premises by Charles Palestis, 98 per cent. stockholder of the licensee

corporation, was suspended by the municipal issuing authority for fifteen days effective March 29, 1959, for employing a person without identification card required by municipal ordinance, and by the Director for fifteen days effective September 28, 1959, for sale in violation of State Regulation No. 38. Re Palestis, Bulletin 1304, Item 8. In addition, the license then held for the same premises by Raymond M. Shanley and Anna Shanley, the latter being a 1 per cent. stockholder of the licensee corporation, was suspended by the Director for ten days effective February 19, 1962, for sale in violation of State Regulation No. 38. Re Shanley, Bulletin 1441, Item 8.

The prior record of suspensions of license for dissimilar violations occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Cf. Re J & M Tavern, Inc., Bulletin 1691, Item 7.

Accordingly, it is, on this 27th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-213, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Yale Tavern, Inc., t/a Yale Tavern, for premises 80 Mallory Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Wednesday, January 3, 1968, and terminating at 2:00 a.m. Tuesday, February 27, 1968.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JESSWELL, INC.
285 West Market Street
Newark, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-387 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

Schanerman and Schanerman, Esqs., by Nathan A. Schanerman, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on September 30 and October 3, 1967, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Nehoc Tavern, Inc., Bulletin 1765, Item 10.

Accordingly, it is, on this 27th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jesswell, Inc. for premises 285 West Market Street, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Wednesday, January 3, 1968, and terminating at 2:00 a.m. Tuesday, February 27, 1968.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

PLAY PEN INCORPORATION
t/a PLAY PEN, INC.
789-791 Palisade Avenue
Cliffside Park, New Jersey

Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park.

Daniel Amster, Esq., and Andora & Baron, Esqs., by Anthony D. Andora, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

*Approved
Jan 14/68
Sup ch (affidavit)
Burl 1805-1*

CONCLUSIONS
AND ORDER

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday night, February 3 and early Saturday morning, February 4, 1967, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered a female person to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20."

The Division's case was developed through the testimony of two ABC agents who were specifically assigned to investigate an allegation that a topless go-go dancer was performing in the licensed premises.

The essential or main factual issues were not in substantial controversy.

The Division agents entered the licensed premises on February 3, 1967, at approximately 10:30 p.m.

The large barroom (characterized as having the appearance of a night club) contained a large bar and a small bar, both U-shaped, some tables and two elevated stages. At the time of entry there were approximately one hundred patrons in the barroom; that number remained substantially unchanged throughout the agents' stay on premises.

Upon entry the agents were greeted by a male who requested payment of a dollar admission charge. In response to one of the agents' inquiry as to the reason for the admission charge, the male responded, "Well, just look" and pointed in the direction of a stage where a female performing a go-go dance appeared to be nude from the waist up.

The agents positioned themselves at the main bar to the left of the premises at a point approximately fifteen or twenty feet from the dancer. In the two minutes remaining before the dancer concluded her performance, the agents noted that the performer (later identified as Miss Mildred Dotson and known professionally as Nickie Robinson) was attired in bikini-type brief pants, knit stockings, high heels and two pasties "about an inch or inch and a half that covered the nipples of her breasts."

At approximately 11 p.m., after the band played a number, the leader announced, "First time in New Jersey; Miss Nickie; topless go-go." For this performance Miss Robinson changed stages, she performed on the stage at the main bar, approximately two or three feet removed from the agents. She wore the same type attire except that the pasties covering the nipples of her breasts were approximately "two to two and a half inches" and had "white fur material on them." It was agreed that neither the breasts nor the pasties were supported by any material or contrivance.

The dancer performed for approximately five minutes, and one of the agents described her performance thusly:

"She did the go-go dances that are observed today normally, and throughout these dances as she was doing these type of dances, her breasts would be jumping and bouncing all over the place because of no support. At times during this dance, she would bend over facing the audience sort of like touching her toes, more or less, and she would sway her breasts back and forth like in a pendulum fashion, whatever you want to call it."

For the performance the lighting was changed from "bright" to a "bluish tint", "black light" which in the opinion of the agents permitted a clear vision of the performance.

After viewing the complete performance and part of another performance, the agents identified themselves to the manager of the night club John J. Marano who ushered them into the kitchen. At the agents' request the performer was brought into the kitchen where it was observed that she was wearing "two two-and-a-half inch white fur pasties covering the nipples of her breasts," and nothing else covering the upper portion of her body. The agents testified that, upon request to produce the pasties which she wore for the first performance, the dancer produced three sets of pasties, including one set of pasties measuring approximately an inch or an inch and a half which she wore when the agents first entered the premises.

It was the agents' opinion that, because the performer's breasts had no support at all and were "bouncing around", the performance was suggestive and lewd. It was generally admitted that most of the patrons continued to drink and engage in conversation during the performance and no vocal or other apparent manifestation of enthusiasm was demonstrated or exhibited by the patrons.

In defense of the charge, John J. Marano (who is employed as the manager of the business conducted by the licensee corporation and who had employed the dancer through an agency) testified that he was in the licensed premises on February 3, 1967 from 7 p.m. until closing time the next morning. He observed all of the dance performances. In describing the dances performed by the female dancers (including Miss Robinson), the testimony revealed the following:

"Q Was there any difference between any one performance and the other?

A The performances were exactly the same from one end to the other all through the evening. It is a continuous performance.

Q Will you describe the performance and the performers that evening?

A Yes, sir; go-go girls or discoteque dancers. They do go-go or discoteque dances. Each individual girl has a different style of dancing, but it is all the same routine. Most of them move their arms and their legs and toss themselves around according to the music.

Q Now, you are describing their movements. Do you mean that they are swaying from side to side?

A Right, right."

Additionally, Marano testified that the pasties worn by the dancer were exactly similar to the pasties received in evidence, and the dancer wore the same pasties throughout the evening. The black light could give the pasties a luminous sequins appearance.

On cross-examination the witness testified that the performer was wearing "fluffy, feathery-type" pasties, approximately "four and a half inches in diameter", sequin briefs, stockings and high heels and no other clothing. Although he observed every performance, he did not see her stoop over and sway her breasts in the manner of a pendulum.

When the witness was asked "And when she Miss Robinson danced around, did you see her unsupported breasts flop around in the air?", he responded, "I imagine it would have to be slightly anyhow while she is dancing. In the performance of her dance she has to have some sort of movement."

Mrs. Marilyn Marano (the wife of the previous witness) testified that she was at the licensed premises on the night of February 3, 1967 into the morning of February 4, 1967, attending to various minor details. She observed the performance of Miss Robinson which she described as "regular normal discoteque dancing" and further, "mostly the movement was all in the feet and legs and arms." She did not see any dancer bend down and cause her breasts to sway in the manner of a pendulum. In so far as the

covering over her breasts is concerned, Miss Robinson was wearing pasties similar to the pastie received in evidence, which the witness described as being "about four inches in diameter, white, fur, fluffy." No other pasties were worn throughout the course of the evening. She did not hear any "unusual commotion on the part of the audience observing this dance or these dances."

Michael D. Cleveland (who was employed as a newspaper reporter by the Hudson Dispatch at that time) testified that he went to the licensed premises on the night in question for the reason that his employers "had gotten a tip that there was going to be a topless performance, and they wanted a story on it, so I was sent."

The witness first entered the premises at 8 p.m. and advised Marano of the fact that he was sent there by his employer "To do the story." Cleveland saw Miss Dotson perform from approximately 9 p.m. to 9:45 p.m. He described the dance performed by Miss Robinson as "normal go-go dances" and, further, that "she was wearing a bikini bottom and pasties, and there was a bouncing action, and this constituted the whole show."

When the witness was asked to compare the pasties worn by the performer with the pastie received in evidence (which I report to measure three and one-half inches in diameter, is white in color, and is covered with fur), he testified "...she was wearing a pastie that didn't have the fur on it, but in my opinion, at least, it was just about the same size. I describe them in the story as rather large." He did not see the performer bend down and sway her breasts. It was the reporter's opinion that Miss Dotson's performances were not lewd. All of the witnesses who testified in behalf of the licensee corporation voiced the same opinion.

Joseph Ciccone (a patrolman with the police force of the Borough of Cliffside Park) testified that he was in the licensed premises on the night in question as a patron and saw the dance performances from 10 p.m. to 12 midnight. He stated that he did not see anything unusual about the performance other than it was "a topless Go-Go girl" who wore pasties and "She didn't have a bra on." During the course of the evening he did not notice a change in the pasties worn by Miss Robinson. He identified the pasties worn by Miss Robinson as being similar to the pastie received in evidence.

The questioning of Ciccone then proceeded as follows:

"Q Were there any major motions in so far as the breasts were concerned, as you observed?

A Yes, they were moving.

Q Was it going back and forth in any speed or anything of this nature?

A The way she was dancing they would have to, yes, sir."

On cross-examination the following testimony was elicited of the witness:

"Q Would you say, with any degree of certainty, that she had white fluffy pasties on at 10:30, or aren't you sure, or don't you know?

A Well, John has a color light there so I couldn't tell. I believe they were white, like everybody-- but I don't know if these were the pasties or not that she was wearing that night, because it was a different color light he had."

There were times during the evening when his back was turned to the dancer, therefore, he did not observe her performances in full. In so far as to bending down, he saw her bend down only once toward the audience and then she "only leaned over a few inches." He did not see her touch her toes.

The dancer involved in the controversy, Miss Mildred Dotson (who performed under the stage name of Nickie Robinson), testified that on the night in question her attire for the performances consisted of "Black fishnet stockings, sequin briefs, white pasties." The white pasties were the same as the pastie received in evidence. She wore the same pasties throughout each of her performances. She described her performance as a "regular discotheque dance" and, when she was asked what is a "discotheque dance" she responded "a discotheque dance, you move your arms, your legs, your hands. At various times you may use your head."

On direct examination the attorney for the licensee asked the witness the following question:

"Now, on the night in question, there is testimony before the Court to the effect that you allegedly bent down, showed your buttocks to the audience and caused your breasts to sway back and forth in the form or manner of a pendulum. Is this so?"

to which the witness responded "No, it isn't."

I find and report that there was no evidence adduced at the hearings which indicate that the dancer "showed her buttocks." Other than that, the question correctly incorporated the testimony of the Division agents.

Miss Dotson denied she showed any pasties to the Division agents other than the pasties she wore that evening, one of which was received in evidence.

Referring to her confrontation with the agents in the kitchen of the licensed premises, Miss Dotson testified that she had removed the white pasties that she had worn and replaced them with a "sequin top" in order to enable the agents to measure the white pasties. The testimony heretofore elicited by the licensee indicated that the measuring was done with a match-book cover and not with a measuring tape. The agents did not recall using any device for measuring the pasties.

Finally, the witness denied that she swung her breasts in the manner of a pendulum.

On cross-examination the following testimony was elicited concerning the pasties worn by Miss Dotson:

"Q What would you say was the diameter of that pastie, cross-ways?"

A Three and a half, four inches perhaps.

Q How much of your body did that cover?"

A It covers the entire nipple.

Q Just the nipple?

A Yes, sir."

Hyman Balic (who operated an agency which furnished professional entertainers to various night clubs and who engaged the services of Miss Dotson for the licensee herein) testified, in essence, that the purpose of the pasties was to cover the nipples of the breasts and very little of the surrounding anatomy. Balick expressed his opinion of the difference between a "go-go" dancer and a "topless" dancer thusly: "Well, you see, the Go-Go girls wear costumes. They have a bra and briefs. Now, topless girls wear pasties and briefs. That's the only difference."

While Miss Dotson was on the witness stand, the attorney for the licensee offered to have the dancer demonstrate the dance she performed on the night alleged in the charge, attired in similar clothes and using the "black light" that was employed during her performances. This Hearer reserved decision, and subsequent to the conclusion of the hearing advised the licensee's attorney that his offer of demonstrative evidence was rejected.

The courts have held in Sedlack v. General Motors Corp., 69 A.L.R. 2d 420, 253 F. 2d 116, that the admissibility of demonstrative evidence is largely within the discretion of the trial judge. We find the court in Hampton v. Rautenstrauch, 83 A.L.R. 2d 1260 (Mo.), 338 S.W. 2d 105, was in accord with this above statement.

In Kunzman v. Cherokee Sils Co., 95 A.L.R. 2d 673, 253 Iowa 885, 114 N.W. 2d 534, the court held that the determination of relevancy and explanatory value of demonstrative evidence primarily rests within the discretion of the trial court.

After reviewing the testimony, I am of the opinion that the factual complex was sufficiently bared by the witnesses to the controversy. In view thereof, it is my opinion that the offer of demonstrative evidence should be denied because it is unnecessary and would serve no useful purpose in the determination of this matter.

In essence, a narrow issue is presented for determination, specifically, did the "topless" dancer perform in a lewd and immoral manner in contravention of Rule 5 of State Regulation No. 20 as charged?

Preliminarily, it should be noted that the rule was originally promulgated in 1937 and has consistently been enforced by all of the Division Directors ever since. The enforcement thereof has met the approbation of the courts.

Although statutes penal in character normally must be strictly construed, the Legislature enjoined the courts otherwise in R.S. 33:1-73 which provides:

"Intention and construction of law. This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

Vide, Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947), reversed on other grounds, 136 N.J.L. 161 (E. & A. 1947). Further, Chief Justice Case, speaking for the court in Hudson Bergen etc. Ass'n v. Hoboken et al., 135 N.J.L. 502 (E. & A. 1947), at pp. 506-507 said:

"The sale of intoxicating liquor has from the earliest history of our state been dealt with by legislation in an exceptional way. In its legal significance it is sui generis. 'It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.' Paul v. Gloucester County, 50 N.J.L. 585, 595. 'The sale of intoxicating liquor is in a class by itself.' Bumball v. Burnett, 115 Id. 254. 'The right to regulate the sale of intoxicating liquors by the legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless. It may extend to the prohibition of the sale altogether. A license is not a contract. It is a mere privilege.' Meehan v. Excise Commissioners, 73 Id. 382; affirmed 75 Id. 557. 'There is no inherent power in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils.' Crowley v. Christensen, 137 U.S. 86; 34 L. Ed. 620. 'The liquor business is peculiarly subject to strict governmental control.' Franklin Stores Co. v. Burnett, 120 N.J.L. 596."

Later the court stated, at pp. 507-509:

"The reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes from early colonial times Thus, through nearly 250 years the legislature has struggled with the conditions arising out of the sale of liquor. The current statute is to be construed in the light of the long series of statutes of which it is the culmination and of the decisions of the courts regarding those statutes. Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil. The state authorities should be given every reasonable opportunity to work out the mandate of the legislature"

This language was quoted by the court in deciding Greenbrier v. Hock, 14 N.J. Super. 39 (App. Div. 1951), at p.43. See also, In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61 (App. Div. 1954); Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957).

Historically, nudity or semi-nudity has not been countenanced in liquor licensed premises by the Division of Alcoholic Beverage Control. See Re Melchiorre, Bulletin 578, Item 3, where a licensee exhibited moving pictures of a female posing nude; Re DiAngelo, Bulletin 753, Item 4, where a dancer performed a "strip-tease" dance, accompanied by suggestive motions; Re Sharpe, Bulletin 1112, Item 5, also a "strip-tease" with suggestive motions; Re Flo-Mae, Bulletin 1119, Item 2, a "strip-tease" accompanied by "bumps and grinds." Although there was no suggestion that the performer in the instant case engaged in a "strip-tease" dance, it is abundantly clear from the evidence that the performer was

"stripped" from the waist up upon entering the stage and remained so during her performances. It is uncontradicted that the performer wore no bra either to cover or support her breasts. This, of course, permitted the performer's breasts full freedom of movement, unhampered and unrestrained by any article of apparel, and caused what was rather expressively described as a "bouncing action."

It cannot be argued with justification that the pasties worn by the dancer clothed her sufficiently to remove her from the stigma of a semi-nudity. It was generally admitted that the pasties were worn merely to cover the nipples and very little else. The performer was billed as a "topless" dancer. The size of the pasties worn (see L-1 in evidence) buttresses my view as to the semi-nude appearance of the dancer.

Assuming that I were to determine that I attached full credibility to the testimony of the licensee's witnesses that the performer's breasts did not swing in the "manner of a pendulum", it is nonetheless my view that the performance given by the "topless" dancer fell squarely within the interdiction of Rule 5 of State Regulation No. 20 which has been uniformly interpreted to proscribe nudity or semi-nudity.

Although the standards in the field of entertainment may have changed in the theaters, the standards have never been lowered in liquor licensed premises. I am mindful of logic used by Judge Jayne in McFadden's Lounge v. Alcoholic Beverage Control, supra, wherein, at p. 62, 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...."

Accordingly, I am persuaded by the clear and convincing proof in this case that the charge has been sustained by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charge, and that an order be entered herein suspending the license for thirty days. Cf. Re Venetian Bar and Grill, Inc., Bulletin 1687, Item 6.

Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof were filed with me on behalf of the licensee pursuant to Rule 6 of State Regulation No. 16. Additionally, I heard oral argument in response to request by the licensee's attorney.

The licensee argues: (1) the facts herein do not establish "complete nudity" on the part of the entertainer in question, apparently because of the pasties worn, so as to constitute lewd or immoral conduct, (2) standards of dress have changed drastically in recent decades so that abbreviated attire, such as beach-wear and even ordinary daily dress-wear, which would have been considered "shocking and scandalous" a few short years ago, today is accepted without question, and (3) no "standard or definitive regulation has been supplied to the licensees defining what is permissible and what is not other than the previous adjudicated cases which do not countenance the present situation."

Having carefully considered the entire record herein, I find that on the night in question the entertainer known as "Miss Nickie", while performing "go-go" dances, wore a costume which exposed her breasts entirely, except for sequin pasties approximately $1\frac{1}{2}$ inches in size worn during the first performance observed by the Division agents and fur-covered pasties approximately $2\frac{1}{2}$ inches in size worn during the second performance viewed by the agents, and that the natural effect of such exposure upon the patrons was erotic excitation. The testimony by this entertainer and other witnesses of the licensee that she wore only one set of fur pasties that night is difficult to accept in view of the testimony of the licensee's own witness, Michael Cleveland, that she wore sequin, non-furred pasties. I am further persuaded that the agents' description of the pasties is accurate because they were at the licensed premises for the express purpose of observing a reported "topless" go-go dancer there and the unlikelihood that they were completely mistaken in their observation of three sets of pasties in the kitchen of the premises.

I further find that this entertainer did, in fact, bend over towards the audience and sway her breasts in a manner calculated to stimulate the sexual passions of the patrons. It is noted, in this connection, that one need not be a physiologist or an anatomical expert to be aware that even without such bending over the execution of the usual go-go type of dance would result in the extensive movement of unsupported female breasts, with such movement becoming more pronounced and accentuated by the forward inclination of the upper part of the female body.

As to the points raised by the licensee, the fact that complete nudity is not involved here is, as stated by the Hearer, no defense to the charge. Also, while standards of dress at other than licensed premises have changed in recent years, there has been no lowering of the standard applicable to female entertainers on licensed premises. "The conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location may lawfully be tightly restricted to limit to the utmost the evils of the trade." Jeanne's Enterprises, Inc. v. Division of Alcoholic Beverage Control, 93 N.J. Super. 230 (App. Div. 1966), affirmed 48 N.J. 359 (1966).

The many pronouncements and disciplinary decisions rendered through the years by this Division in delineating the boundaries beyond which licensees may not permit questionable entertainment to proceed constitute adequate and sufficient notice to guide conscientious licensees. See Re Paddock International, Bulletin 1429, Item 2, wherein, referring to entertainment by females who stripped to "a very brief net bra and panties" or "a brief pair of panties and a tiny gold bra" and who "gyrated in a lascivious manner", it was said: "It has been repeatedly pointed out to licensees that such entertainment will not be tolerated on licensed premises." See also Re DiAngelo, Bulletin 753, Item 4, holding that a dance performance "executed in a manner to appeal to and arouse and inflame the passions of its male spectators" was "lewd and immoral" within the intentment of Rule 5 of State Regulation No. 20; that "Entertainment, if presented upon licensed premises, must be of such character as not to be inimical to the public welfare and morals or to the best interests of the industry"; and "The question involved is not whether the performance was entirely nude, but whether the appearance of nudity, accompanied by public disrobing, was a suggestive and improper form of entertainment."

It is my finding that the performance in question, because of the state of dress and physical movements of the performer,

was geared to appeal to the sexual instincts of the customers beyond the normal bounds of propriety and, as such, was lewd, indecent and immoral within the meaning and intendment of Rule 5 of State Regulation No. 20. The fact that one or both of the Division agents were not sexually excited is not determinative, provided, as here, "the predominant object and natural effect upon the observers-patrons of one portion of the performance was erotic excitation." Davis v. New Town Tavern, 37 N.J. Super. 376, 377 (App. Div. 1955).

I therefore conclude that the licensee's guilt has been established by more than a fair preponderance of the reliable evidence herein and I will accept the Hearer's recommended findings and penalty. In passing, however, I wish emphatically to advise all licensees that so-called "topless" female employees, whether entertainers or otherwise, and whether with pasties described by the Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State. Moreover, future similar violations will result in more stringent penalties.

Accordingly, it is, on this 27th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park to Play Pen Incorporation, t/a Play Pen, Inc., for premises 789-791 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Monday, January 15, 1968, and terminating at 3:00 a.m. Wednesday, February 14, 1968.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR RECORD OF STOCKHOLDER AS INDIVIDUAL - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SOUTH AMBOY THUNDERBIRD INN, INC.)
t/a THUNDERBIRD INN)
Highway 35)
South Amboy, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-29, issued by the Common Council of the City of South Amboy)

Wilentz, Goldman & Spitzer, Esqs., by Douglas T. Hague, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 10, 1967, it sold a drink of beer to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license, the license then held by Stanley V. Labenski (president and 50% stockholder of the licensee corporation) in partnership with Walter Pazda was suspended by the municipal issuing authority for ten days effective November 19, 1962, for sale to minors.

The prior record of suspension of license for similar violation within the past five years considered (Re Golden Boy's Bar, Inc., Bulletin 1668, Item 3), the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Kerwin, Bulletin 1726, Item 3.

Accordingly, it is, on this 28th day of December 1967,

ORDERED that Plenary Retail Consumption License C-29, issued by the Common Council of the City of South Amboy to South Amboy Thunderbird Inn, Inc., t/a Thunderbird Inn, for premises on Highway 35, South Amboy, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Thursday, January 4, 1968, and terminating at 2 a.m. Wednesday, January 24, 1968.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHERYL-ANN, INC.)
t/a WAGON WHEEL)
32-34 Carr Avenue)
Keansburg, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-33 issued by the Mayor and Council of the Borough of Keansburg)

Richard C. Leahey, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

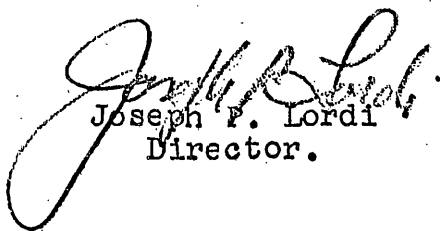
Licensee pleads non vult to a charge alleging that on June 12, 1967, it sold drinks of beer to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days effective January 4, 1966, for possessing alcoholic beverages not truly labeled. Re Cheryl-Ann, Inc., Bulletin 1655, Item 2.

The prior record of suspension of license for dissimilar violation occurring within the past five years considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Arcieri, Bulletin 1532, Item 9.

Accordingly, it is, on this 27th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-33, issued by the Mayor and Council of the Borough of Keansburg to Cheryl-Ann, Inc., t/a Wagon Wheel, for premises 32-34 Carr Avenue, Keansburg, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, January 3, 1968, and terminating at 2:00 a.m. Thursday, January 18, 1968.


Joseph P. Lordi
Director.