

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2411

September 10, 1981

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STATE OF NEW JERSEY
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1. DISCIPLINARY PROCEEDINGS - LICENSEE CHARGED WITH ALLOWING PERMITTING AND SUFFERING POSSESSION OF NARCOTICS UPON LICENSED PREMISES IN VIOLATION OF N.J.A.C. 13:2-23.5(b) and 23.6 - ADMINISTRATIVE LAW JUDGE RECOMMENDED FINDING OF NOT GUILTY - REJECTED BY DIRECTOR - 90 DAYS SUSPENSION.

In the Matter of Disciplinary Proceedings against:)
Hackensack Melody Bar, Inc.) S-12,405
169 Hudson Street) X-33,794-F
Hackensack, N. J.) H-7179-447
) OAL DKT. #5818-79
) CONCLUSIONS
) AND ORDER
Holder of Plenary Retail Consumption License No. 0223-33-026-001 issued by the City Council of the City of Hackensack.)

Draesel, Sunshine & Atkins, Esqs., by Jay R. Atkins, Esq., Attorneys for licensee Kenneth I. Nowak, Esq., Deputy Attorney General, for Division

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: May 7, 1980

- Received: May 9, 1980

BY THE DIRECTOR:

Written exceptions to the Initial Decision below with supportive argument, were filed on behalf of the Division pursuant to N.J.A.C. 13:2-17.14.

In the exceptions, it is contended that the Initial Decision dismissing the charges be reversed because:

1. The Administrative Law Judge erred in ruling that the licensee did not allow, permit and suffer the unlawful possession of narcotics on the licensed premises, as alleged in the charges; and,

2. That the defense of entrapment, relied upon by the Administrative Law Judge in arriving at his conclusion is not applicable in these administrative proceedings; or, even if assuming arguendo, it is applicable, that there was no entrapment based upon the facts herein and the relevant law.

I have carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Initial Decision, and the Exceptions filed on behalf of the Division to the said Initial Decision, and conclude that the Exceptions are meritorious and should be sustained. I, therefore, reject the findings of fact and conclusions of law and recommendations contained in the Initial Decision, for the reasons set forth infra.

In the adjudication of this matter we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature, and not criminal, and, therefore, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). In appraising the factual picture herein presented, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961); See 32 A.C.J.S. Evid. Sec. 1042.

It is a fundamental maxim of alcoholic beverage law in New Jersey that a licensee "must keep his place and patronage under control, and is responsible for conditions outside and inside his premises". See e.g., Galaso v. Bloomfield, Bulletin 1387, Item 1. The law regulating the liquor industry is written and applied in such a manner as will "limit to the utmost" the evils inherent in the business. Hudson Bergen Association v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 13 N.J. Super. 449, 456 (App. Div. 1951).

In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the Alcoholic Beverage Law and the Rules and Regulations pertaining thereto. A relaxation from the requirements of the provisions in the Alcoholic Beverage Law N.J.S.A. 33:1-1 et seq., and the Rules and Regulations of this Division would be contrary to their intentment and against the dictates of sound public policy. Re Club Aquarius, Inc., Bulletin 2028, Item 2; Cf. Jeanne's Enterprises, Inc. v. Division of Alcoholic Beverage Control, 93 N.J. Super. 230 (App. Div. 1966), aff'd 48 N.J. 359 (1966).

I shall now summarize my findings of fact and conclusions of law with respect to the charges herein.

On the evening of April 19, 1979 ABC Agents K C and G* entered the licensed premises of the licensee** pursuant to a specific assignment to investigate allegations and complaint of narcotics activity in these premises. I take judicial notice, 52:14B-10(b), of the usual procedure in this Division whereby agents are specifically assigned for undercover investigations pursuant to complaints received or allegations made that certain licensed premises are engaging in unlawful activities.

ABC Agents K and G seated themselves at the bar next to a patron named Joey, whom the agents knew from prior visits. While conversing with Agent K Joey gave her a marijuana cigarette in front of Agent G.

Agent K then moved to another part of the bar and engaged a person named Phil and Joseph J. Puglisi, president and principal stockholder of the corporate licensee, (hereinafter referred to as Joe) in a conversation about marijuana, during which Agent K informed Joe that Joey had just given her a "joint". Joe took no affirmative action, nor did he request Agent K either to dispose of the marijuana cigarette or leave the premises.

* The agents are referred to by the first initials of their full names in the Initial Decision. The proper and acceptable method is to identify the undercover agents by the first initial of their surname only, in order to preserve their anonymity.

** The licensee is erroneously denominated as "petitioner" in the Initial Decision. In disciplinary proceedings instituted in this Division it is correct to refer to the licensee as such, for he is not a petitioner herein.

Agents K and C returned to these premises on April 26, 1979, at which time Agent K engaged the patron Joey in conversation. Joey informed her that he was going to have a connection for cocaine who was expected to arrive at these premises later in the evening, and he offered to sell the same to Agent K. In conversation with Joe, Agent K informed him that she was going to buy some cocaine later that evening.

Joey's cocaine connection was a male named Julio who arrived at the premises thereafter and Agent K made the purchase of cocaine from Julio, through Joey. She gave the money to Joey at the bar, and Julio went into the bathroom with Joey where he turned over the cocaine to him. Joey then returned to the bar and gave Agent K the cocaine.

When Joey went back to the bathroom, Agent K told Joe to buy Joey a drink because she had just purchased cocaine from him. Joe then expressed surprise and said "you mean to tell me he deals drugs? I'm goind to have to call the police". Agent K then replied "wait don't tell him that I told you" whereby he answered "no, no I won't".

Contrary to the finding by Judge Jarrett, Agent K did not request Joe not to call the police. Moreover, Joe never told Agent K to destroy the cocaine or leave the premises; nor did he make any attempt, in the presence of the agents or at any time, according to the record, to 'phone the police with respect to this incident.

Agents K and C returned to the premises on the evening of May 3, 1979 and engaged a patron, known as Phil, in a conversation. Julio, who had been involved in the cocaine transaction on the previous occasion, entered the premises and Agent K asked him whether he could supply her with more cocaine. Julio agreed to do so, and left the premises.

Later that evening, Julio telephoned Phil at these premises to arrange the sale. Agent C gave Phil \$20.00; Phil left the premises and returned a few minutes later with the cocaine which he gave to the agents. Later that evening Phil gave Agent K a "joint". The agents then asked Joe if he had ever spoken to Joe about these cocaine transactions; Joe replied: "Yes I asked him what does he want to do something like that for, he's got a good job". Agent K's testimony was corroborated by Agent C.

In defense hereof the principal stockholder-bartender Joe testified that he could not recall the April 19th conversation wherein Agent K had informed him that Joey had given her a "joint". He did, however, admit that, on April 26th, Agent K informed him that she had just purchased cocaine from Joey. It should be emphasized that, at no time did the Agent ever tell Joe not to call the Police. It is equally important to note that Joe did not call the police on any of the dates alleged herein either when the agents were in those premises or at any other time, with respect to these incidents.

I find that, on two occasions, the bartender was informed by the Agent in her undercover capacity that a patron possessed narcotics. Notwithstanding the knowledge of the unlawful possession of narcotics by a patron, the bartender never told or asked the patron to leave or to dispose of the narcotics. I, thus, find that the licensee allowed, permitted or suffered the possession of narcotics, in violation of N.J.A.C. 13:2-23.5(b). This Rule imposes a responsibility of the licensee not to "allow, permit or suffer upon the premises the possession of narcotics". See Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947). In Essex Holding Corp., at p. 31, the Court added that the word "suffer" "imposes responsibility on

a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Gustamacchio v. Brennan, 125 Conn. 356, 23 Atl. Rep. (2d) 140". See Carnagino, Bulletin 2044, Item 2.

It is significant to note that Joe is the principal officer of the corporate licensee.

Notwithstanding the above, the Administrative Law Judge facilely concludes that the charge should be dismissed based upon the curious notion that, because the Agent's appearance and demeanor were not normal, the bartender was justified in believing that her statements regarding possession were just a "crazy act" and mere "puffing". In this connection, I would point out that the Agent was operating in an undercover capacity, and obviously dressed appropriately for her assignment in these premises.

Her allegedly abnormal appearance and behavior consisted of the fact that she was wearing jeans, a shirt, had "frizzy" hair and was able to discuss drugs with the bartender who, he suggests, was apparently a stranger to her. She, of course, explained that she had spoken to Joe on several occasions so that he was not really a stranger. The Judge, therefore, reasons that the licensee was justified in not believing the Agent's statement about the cocaine.

Such reasoning does violence to the realities and, indeed, to common sense.

The Administrative Law Judge determined that the bartender was a "55 year old individual who had no street knowledge"; was "very naive"; and "had no knowledge of the drug transactions". The facts are clearly to the contrary. On at least two occasions on the dates charged, Agent K informed Joe that she had purchased cocaine. With respect to the April 26, 1979 incident Joe knew of the serious nature of the cocaine transaction when he stated that he would have to call the police. And on May 3, 1979, when the Agent asked Joe if he ever spoke to Joey about Joey's possession of cocaine, Joe replied "Yes I asked him what does he want to do something like that for. He's got a good job."

Finally, as Judge Jarrett notes, he, the bartender, "attempted to discourage the (Agent) from the use of (drugs)".

All of these instances, in context, indicate that the bartender was neither naive nor unaware of the narcotics activity in force in these premises. It is abundantly clear that where, as here, the bartender has been informed by a patron on two occasions that a patron possesses unlawful narcotic drugs (cocaine), he has an affirmative duty to remove the patron from the premises, dispose of the narcotics or call the police. The bartender failed to take any action. Thus, the licensee knowingly permitted, allowed and suffered the unlawful possession of narcotics on the licensed premises.

The Administrative Law Judge then additionally bases his conclusion that the charges be dismissed upon his finding that "the actions of the Agent in soliciting the licensee (sic) to participate in the smoking of marijuana and the snorting of cocaine borders upon entrapment, entrapment, being the soliciting of an individual by an officer of the law or his agents to commit an offense for which he had no pre-disposition to do so". He argues that the bartender was a "naive", non-streetwise individual who was entrapped.

Judge Jarrett did not cite a single case in New Jersey in support of his

conclusion - a conclusion clearly contrary to the law in this State. Indeed, no New Jersey Court has ever applied the defense of entrapment in an administrative disciplinary proceeding. It is, therefore, hardly surprising that no law was cited supporting this proposition.

As a general matter, entrapment is an affirmative defense in a criminal case, designed to assure that otherwise innocent persons are not unduly enticed by "unconscionable" governmental activity into committing crimes they would not otherwise commit. State v. Dolce, 41 N.J. 422, 432 (1964).

Our Courts have held that "judicial abhorrence of entrapment does not mean that police officials cannot afford opportunities or facilities for the commission of criminal offenses. Artifice and stratagem, traps, decoys and deceptions may be used to obtain evidence of the commission of crime or to catch those engaged in criminal enterprises." State v. Dolce, Supra. Cf. State v. Rosenberg, 37 N.J. Super. 197 (App. Div. 1955); Highlander Hotel Corp., Bulletin 1475, Item 1; 48 C.J.S. Intoxicating Liquors, p. 283.

The Court pointed out in State v. Dennis, 43 N.J. 418, 426 (1964) that there is no entrapment where the government merely affords a suspect an opportunity for engaging in unlawful conduct without applying pressure. Obviously, there is not a scintilla of evidence to infer, or even suggest that any pressure or traps were applied or used in the instant matter. In the matter sub judice, the Agents did not employ any traps or stratagem and, in fact, did nothing of any affirmative nature other than afford the opportunity for the commission of the violations charged herein.

Furthermore, very different plans and policies apply where, in a civil matter a licensee has been shown to be tolerant of conduct which indicates that he carries out his obligations in a manner directly contrary to law and to the public welfare.

Where a licensee knowingly permits and suffers the unlawful possession of narcotics on his premises, he should be subject to sanctions, absent egregious over-reaching in discovering the impermissible conduct. Such obviously was not the situation in this matter. See, e.g., State v. Rhodes, 177 Neb. 650, 131 N.W. 2d 118, 128 (Sup. Ct. 1964) where the Supreme Court of Nebraska rejecting the defense of entrapment in a disciplinary proceeding against an attorney, stated that even if the defendant showed that his violation of obligations was instilled by the government, all he has demonstrated is his unfitness to continue in his profession. See also Knight v. Louisiana State Bd. of Medical Examiners, 211 So.2d 433, 438 (La. Ct. App. 1968) writ of review den. 214 So.2d 716 (Sup. Ct. 1968) cert. den. 395 U.S. 933 (1969) where the court viewed entrapment as a defense only in a criminal charge and not applicable in administrative disciplinary proceedings.

Finally, it should be emphasized that the Division of Alcoholic Beverage Control has repeatedly rejected the defense of entrapment. See e.g., In the Matter of Silver Crest Motels, Inc., Bulletin 2019, Item 1; Re Charles D. Kuchar, Bulletin 2007, Item 2; Re Highlander Hotel Corp., Bulletin 1475, Item 1. Therefore, the charges having been proved by a fair preponderance of the credible evidence, indeed, by substantial evidence, I find the licensee guilty of the five (5) charges contained in Schedule "A" annexed hereto and made a part hereof. I shall impose a suspension of license for ninety (90) days.

- procure and distribute to said customers and patrons a controlled dangerous substance.
2. Whether or not on April 19 and 20, 1979 the Petitioner allowed, permitted, suffered in or upon its licensed premises unlawful activity pertaining to a controlled dangerous substance, more particularly, the distribution of marijuana by or through a person on his licensed premises.
 3. Whether or not on April 26, 1979 Petitioner allowed, permitted, suffered in or upon its licensed premises unlawful activity pertaining to a controlled dangerous substance, more particularly, that he, through a person on his licensed premises, made offers to and arrangements with customers or patrons to obtain and procure for or sell to these customers or patrons cocaine and allow the possession and distribution of cocaine in and upon said licensed premises.
 4. Whether or not the Petitioner, on May 3, 1979, allowed, permitted and suffered in and upon its licensed premises unlawful activity pertaining to the Controlled Dangerous Substances Act, more particularly, permitted, allowed or suffered the possession or distribution of marijuana and cocaine in and upon said licensed premises.

The State presented two witnesses, Investigators R.A.K. and E.C.C. Inspector R.A.K. stated that she is with the State Police Bureau of Alcoholic Beverage Control and is employed as an inspector. On April 19, 1979 she went to the Hackensack Melody Bar on an assignment to investigate alleged controlled dangerous substance violations. She entered the premises and observed a male, later identified as Joey, whom she spoke to about procuring "coke" and other controlled dangerous substances. She then received a marijuana joint from Joey and upon observing an individual, later identified as Phil, at the other end of the bar she walked over to him and was offered a drink by him. She refused said drink and stated to him that she was going to do a joint later and that she didn't want to get her head all messed up. Joe, the bartender, who happened to be standing at the end of the bar nearest her, asked her if she was going to smoke that stuff, to which she responded in the affirmative and she and he held a conversation about marijuana wherein he attempted to persuade her not to partake in any use of drugs. She then requested that the bartender serve Joey a drink since he had been so nice to her to give her a joint. At that time neither she nor Joey was asked to leave the premises.

She exited the premises at approximately 12:45 a.m. On April 26, 1979 she again returned to the Hackensack Melody Bar, this time accompanied by Inspector E.C.C., arriving at approximately 9:15 p.m. Upon entering the premises she again observed the

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individual named Joey and engaged in a conversation with him at which time he advised her that he had some coke coming in later. She then advised Inspector E.C.C. with regard to the nature of the conversation between herself and Joey. She spoke with the bartender Joe and told him that she had something good for his nose. At that time she observed Julio come in and speak to Joey, at which time Joey advised her that that was his connection. Joey left and returned and said he just picked up a gram of coke for \$75. She then asked how much two spoons of same was and was told \$40. She tendered to him said amount at which time Joey went into the bathroom with Julio and returned and tendered to her the two spoons of coke. She then advised Joe the bartender about the sale at which time he said he was going to have to report Joey to the police. She responded please don't do that or please don't tell Joey what I said. She then exited the premises shortly thereafter and had said coke examined by the State Police which stated that same was .53 grams of coke. The reports of the State Police examination of the marijuana cigarette received on April 19, 1979 and the cocaine received on April 26, 1979 were submitted into evidence and marked R-1 and R-2.

She returned on May 3, 1979 and arrived at approximately 9:50 p.m., observed Phil and engaged in a conversation with him at which time he advised her that he had a joint for her. She then spoke to Joe the bartender and stated that she was afraid to return because she thought she would be thrown out for what she had told him before. Joe, at that time, laughed and told her "oh, go on". Julio then came into the establishment and she asked him for a spoon of coke to which he said okay. Julio left, called back, spoke with Phil, who in turn requested \$20 from the agent. Phil then exited the premises and returned shortly with the amount of coke requested.

Under cross-examination she stated that the first time she was at the premises was on April 19, 1979 and that to her knowledge the bartender was not involved in any of the transactions. In addition she admitted that the bartender did not possess any street knowledge or familiarity with the jargon of same. She described the patrons as being somewhere between 20 and 30 years old while the owner was over 50 years old. She could not recall who initiated any of the conversations between herself and Joey with regard to drugs but did recall speaking to Joey with regard to drugs and that he had handed her a joint of marijuana which he had removed from his inside jacket pocket. She also did not possess any knowledge as to how long Joey or Julio were patrons in the bar but stated that on her first visit she had overheard conversations about drugs. She admitted that when Joey passed her the joint he had done so in a fashion so that no one would observe

the joint passing hands and that immediately upon receiving said joint she put same in her pocketbook. In addition she admitted that the bartender did not observe the joint at any time and that she had only told him about it. It was her opinion that the bartender and Joey knew each other.

With regard to the purchase of coke on April 26, 1979 she stated that Joey made the arrangement with Julio for her. When she was conversing with Joey about the drugs she did not know where the bartender was located and could not state with certainty that he could have overheard the conversation. Therefore, she advised the bartender of the purchase rather than assuming that he was aware of it.

She stated that when the bartender complained of having a nose problem she advised him that coke could take care of it, but in her opinion the bartender appeared to discourage her from the use of same. She admitted that during many times when she was discussing drugs the jukebox was playing rock music.

Inspector E.C.C. testified that he was associated with the New Jersey State Police Bureau of Alcoholic Beverage Control. On April 19, 1979 he went with Inspector R.A.K. He observed her in a conversation with Joey and Phil. He did not observe the passing of the joint from Phil to her nor the passing of the joint from Joey to her but was advised of same by her.

On April 26, 1979 when he went to the bar he spoke with Joey about purchasing coke and was advised by him that he was receiving a gram from another patron and he made arrangements to receive same. He stated that Joey received the gram from Julio and that Julio stated at first that he did not know the agent but later agreed to sell coke to him as long as Joey was the intermediary. He admitted that he never had any conversations with the bartender with regard to these transactions. In addition he stated that Inspector R.A.K. was the one who advised the bartender to give Joey a drink because he had just sold her some cocaine. He also stated that when she made the statements to the bartender, the bartender stated that he guessed he was going to have to call the police but he never observed the bartender to do so.

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With regard to the May 3 transaction he went to the premises with Inspector R.A.K. and observed her to speak with Julio and was advised by her that she had made a request to purchase coke. He recalled Julio leaving the premises and calling back and speaking with an individual named Rauol, who then advised Phil and Inspector R.A.K. of the money transaction and upon same being tendered to Phil he left and returned with the coke.

Under cross-examination he admitted that he could not overhear any of the conversations between Inspection R.A.K. and the other individuals and that he was 10 feet away. He could not recall whether or not the joint passed from Phil to Inspector R.A.K. was made above or below the bar. In addition he admitted that on the 19th and the 3rd the bartender did not appear to have any knowledge of drugs or any knowledge of their being transacted in the bar. He described the bar as being of a neighborhood type, predominately Italian and Spanish clientele.

The State rested and Petitioner, Joe Puglisi, then testified. He stated he is the owner of the Hackensack Melody Bar and runs the establishment along with his wife and his wife's brother. He is 55 years of age and stated that the tavern is located at 169 Hudson Street, approximately one block from the jail.

He recalls Inspector K. coming to the bar and stated that she, on her first visit, had asked him if he wanted to smoke a joint and that at the time he looked at her strangely and told her the dangers of the drug and thought she was crazy. He stated he knows Joey and that he has been a patron of the establishment for five years and while patronizing same has never cursed or acted improperly or bothered anyone. With regard to the Inspector's allegations of the coke he stated that she asked him if he wanted to do coke and he again tried to discourage her from using such drug and in his personal opinion felt that she was a "wackout". He was of the impression that the Inspector and Joey were friends. He denied having any knowledge of drug sales and stated that when she advised him that she had bought \$40 of coke from Joey he stated that he was going to call the police to which she asked him not to do so in that it would get her in trouble with Joey. He later spoke with Joey with regard to her allegations and stated that he denied any knowledge of any sales between himself and her.

He stated that prior to the agents asking him to partake in the use of drugs he had never been confronted and that he had never heard any patrons discuss drugs in his bar to his knowledge.

Under cross-examination he stated his first impression of Inspector K. was that she was an older person trying to act young. That when she advised him that she had made a purchase of coke from Joey he was astonished that Joey would do such a thing and when he threatened to call the police she asked him not to. He stated that he did not believe her due to her personal appearance and his personal knowledge of Joey. Petitioner rested its case.

After having observed all the witnesses for both sides and having considered the entire record, including the testimony and exhibits submitted into evidence, together with the arguments of counsel, the Court makes the following findings of fact:

1. Petitioner is the owner of a Plenary Retail Consumption License No. 0223-33-026-001 located at 169 Hudson Street, Hackensack, New Jersey.
2. On the dates in question Petitioner was the owner of said license.
3. On the dates in question Inspector K. did have discussions with individuals while on the premises with regard to purchase of drugs.
4. Inspector K., while on the premises on the dates in question, did receive from two individuals, two joints of marijuana.
5. Inspector K., on the dates in question, did receive from two individuals, cocaine.
6. That Inspector K. had a conversation with the bartender about the receipt of marijuana and cocaine.
7. That Inspector K. never showed the bartender the controlled dangerous substance received on the premises.
8. That the bartender was a 55 year old individual who had no street knowledge.
9. That the bartender, when solicited by the Inspector to partake in drugs, attempted to discourage the Inspector from the use of same.
10. That none of the other agents that accompanied Inspector K. had observed the drug transactions between herself and the individuals.

11. Inspector E.C.C. did, on one occasion, receive cocaine from a patron.
12. That the controlled dangerous substances received on the various occasions were in fact marijuana and cocaine.
13. That the bartender was very naive and had no knowledge of the drug transactions.
14. That the appearance of Inspector K. was such to make her appear younger.

The owning of an alcoholic beverage license is a privilege and not a right and should be protected as such. N.J.A.C. 13:2-23.5 and 13:2-23.6 all state that no licensee shall allow, permit, engage or suffer the licensed premises to be accessible to narcotics and illegal activities, immoral activities, disturbance or nuisance. The Court must find, in order to substantiate the charges, that (1) the licensee was aware of the illegal activities taking place on the premises; and (2) after being aware of same did allow, permit or suffer it to continue upon the premises. Inspector K. testified that she, at no time, showed the licensee the contraband she received on the premises and that whenever she discussed same with the licensee he attempted to discourage her from partaking in the use of such drugs. The real question concerns the credibility of Inspector K. as to whether or not when she made her statements to the licensee that he believed her.

The licensee testified that he knew Joey for approximately five years and knew him to not be a troublemaker or create any disturbances upon the premises. While he did not know Inspector K., in his opinion she appeared to be "wacked out" or an older person trying to act young.

There is testimony from the licensee that he did not believe the Inspector when she made the statements and when questioning Joey with regard to her allegations was emphatically informed by him that no such transactions took place on the premises and he did not know why she would accuse him of such. Given those circumstances it is the Court's conclusion that the licensee was not aware of the transactions even though informed by Inspector K. Inspector K.'s making the statements to the licensee can be discounted by the fact that the Inspector, in soliciting the licensee to partake in the smoking of marijuana or the snorting of cocaine, would appear to be a highly unusual person and not behaving like a normal person would to a total stranger. Therefore, the licensee, when informed, by the Inspector of the transactions, could again assume the

Inspector was acting crazy and just puffing. The Court therefore does not find the licensee in violation of N.J.A.C. 13:2-23.5 and 6 and hereby recommends that the charges be dismissed against the licensee. The Court would also like to conclude by stating that the actions of the Inspector in soliciting the licensee to partake in the smoking of marijuana and the snorting of cocaine border upon entrapment, entrapment being the soliciting of an individual by an officer of the law or his agents to commit an offense for which he had no predisposition to do so. It is clear that when a 30 year old individual solicits a 55 year old naive, non-streetwise individual to partake in illegal narcotics activity especially after being admonished on one occasion with regard to same that the agent is attempting to entrap and set up a situation whereby she could then charge the licensee with said violation. Again for this and the foregoing reasons, the Court recommends the **DISMISSAL** of this action.

This recommended decision may be affirmed, modified, or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOSEPH H. LERNER**, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

I HEREBY FILE with the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOSEPH H. LERNER**, my Initial Decision in this matter and the record of these proceedings.

2. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	S-12,405
	:	X-33,794-F
Hackensack Melody Bar, Inc.	:	H-7179-447
169 Hudson Street	:	OAL DKT. NO. ABC 5818-79
Hackensack, N. J.	:	
	:	SUPPLEMENTAL
HOLDER OF PLENARY RETAIL CONSUMPTION	:	CONCLUSIONS
LICENSE NO. 0223-33-026-001 ISSUED BY	:	AND
THE CITY COUNCIL OF THE CITY OF	:	ORDER
HACKENSACK.	:	

Draesel, Sunshine & Atkins, Esqs., by Jay R. Atkins, Esq., Attorneys for Licensee.
Kenneth I. Nowak, Esq., Deputy Attorney General, for Division.

BY THE DIRECTOR:

On June 16, 1980 I entered Conclusions and Order suspending the subject license for the balance of its term, and for any renewal of the said license that may be granted, commencing June 27, 1980 and terminating September 25, 1980, a total of ninety (90) days upon a finding of guilt to Division charges alleging that, on various specified dates in April and May, 1979, it allowed, permitted and suffered controlled dangerous substance activity in and upon its premises, in violation of N. J. A. C. 13:2-23.5 and 23.6.
Re Hackensack Melody Bar, Inc., Bulletin _____, Item _____.

Upon appeal filed to the Superior Court-Appellate Division, the suspension was stayed pending determination of the appeal.

On March 4, 1981 the Appellate Division, in a Per Curiam opinion, affirmed my action and dismissed the appeal. Hackensack Melody Bar, Inc. v. Division of Alcoholic Beverage Control, (App. Div. Docket No. A-4008-79) unreported decision noted in Bulletin _____, Item _____. The suspension may now be reimposed.

Accordingly, it is, on this 20th day of March, 1981,

ORDERED that Plenary Retail Consumption License No. 0223-33-026-001 issued by the City Council of the City of Hackensack to Hackensack Melody Bar, Inc., for premises 169 Hudson Street, Hackensack for ninety (90) days commencing 2:00 a.m. Tuesday, March 31, 1981 and terminating 2:00 a.m. Monday, June 2, 1981.

Joseph H. Lerner
Director

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL AND AMENDED ORDER.

In the Matter of Disciplinary Proceedings against:	:	
	:	S-12,405
	:	X-33,794-F
Hackensack Melody Bar., Inc.	:	H-7179-447
t/a Melody Bar	:	OAL DKT.No. ABC 5818-79
169 Hudson Street	:	
Hackensack, N. J.	:	SUPPLEMENTAL
Holder of Plenary Retail Consumption License No. 0223-33-026-001 issued by the City Council of the City of Hackensack.	:	AND AMENDED
	:	CONCLUSIONS
	:	AND
	:	ORDER

Draesel, Sunshine & Atkins, Esqs., by Jay R. Atkins, Esq., Attorneys for Licensee. Kenneth I. Nowak, Esq., Deputy Attorney General, for Division.

BY THE DIRECTOR:

On June 16, 1980, Conclusions and Order were entered herein; (a) reversing the determination of the Administrative Law Judge; (b) finding the licensee guilty of Division charges which alleged that, on divers specified dates in April and May, 1979, it allowed, permitted and suffered unlawful narcotics activity in and upon its licensed premises and permitted the licensed premises to be conducted as a nuisance, in violation of N.J.A.C. 13:2-23.5 and .6; and (c) imposing a ninety (90) days license suspension, commencing June 27, 1980.

Prior to the commencement of the suspension, the licensee appealed to the Superior Court, Appellate Division. An Order was entered staying the suspension pending determination of the appeal. By Decision dated March 4, 1981, my determination was affirmed. Hackensack Melody Bar, Inc., v. Division of Alcoholic Beverage Control (App. Div. Docket No. A-4008-79).

Prior to the reimposition of the suspension, the licensee petitioned for Certification to the New Jersey Supreme Court, which Petition is currently pending determination. The licensee has now requested a reconsideration of the original penalty imposed, and the Deputy Attorney General representing the Division has recommended that, in lieu of further Appellate proceedings, and in light of some mitigating circumstances, a sixty days license suspension be imposed. The licensee has agreed to withdraw its Petition if I accept the sixty days suspension recommendation.

Upon the above referenced agreement and with good cause appearing, I shall grant the request. My previous Order of June 16, 1980 shall be amended to reflect a sixty days license suspension.

Accordingly, it is, on this 10th day of April, 1981,

ORDERED that my Order of June 16, 1980 be and the same is hereby supplemented and amended as follows:

ORDERED that Plenary Retail Consumption License No. 0223-33-026-001 issued by the City Council of the City of Hackensack to Hackensack Melody Bar, Inc., for premises 169 Hudson Street, Hackensack, N. J. be and the same is hereby suspended for sixty (60) days commencing 2:00 a.m. on Tuesday, April 21, 1981 and terminating 2:00 a.m. on Saturday, June 20, 1981.

JOSEPH H. LERNER
DIRECTOR

4. COURT DECISIONS - HACKENSACK MELODY BAR, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4008-79

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST:

Hackensack Melody Bar, Inc.
169 Hudson Street
Hackensack, N. J.

HOLDER OF PLENARY RETAIL CONSUMPTION
LICENSE NO. 0223-33-026-001 ISSUED BY
THE CITY COUNCIL OF THE CITY OF HACKENSACK

Argued February 18, 1981 - Decided March 4, 1981.

Before Judges Kole and Ard.

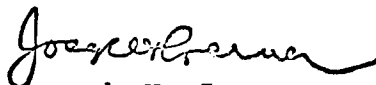
Jay R. Atkins argued the cause for appellant
(Draesel, Sunshine & Atkins, attorneys).

Kenneth I. Nowak, Deputy Attorney General, argued
the cause for respondent Division of Alcoholic
Beverage Control (John J. Degnan, Attorney General,
attorney).

PER CURIAM

(Appeal from the Director's decision in
Re: Hackensack Melody Bar, Inc., Bulletin 2411,
Item 1. Director affirmed. Opinion not approved
for publication by Court Committee on Opinions).

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Joseph H. Lerner
Director