

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

BULLETIN 2075

January 9, 1973

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - RE KUCHAR et als - DIRECTOR AFFIRMED.
2. COURT DECISIONS - KIEFER'S TAVERN, INC. - DIRECTOR AFFIRMED.
3. NOTICE TO RETAIL LICENSEES - SALE OF GIFT CERTIFICATES PERMITTED UNDER CERTAIN CONDITIONS.
4. DISCIPLINARY PROCEEDINGS (Wallington) - FOUL - INDECENT LANGUAGE - BRAWL - LICENSE SUSPENDED FOR 25 DAYS.
5. DISCIPLINARY PROCEEDINGS (Secaucus) - PERMITTING DRUGS ON PREMISES - SALE OF DRUGS - NUISANCE - LICENSE SUSPENDED FOR 90 DAYS.
6. DISCIPLINARY PROCEEDINGS (Secaucus) - SUPPLEMENTAL CONCLUSIONS AND ORDER.
7. NOTICE TO RETAIL LICENSEES - CHAPTER 81 LAWS OF 1972 - CHANGE OF AGE LIMITATION OF MINORS - REQUEST FOR COOPERATION OF LICENSEES TO PREVENT INTOXICATION AND ACCIDENTS.

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

BULLETIN 2075

January 9, 1973

1. COURT DECISIONS - RE KUCHAR et als - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-219-71

In the Matter of Disciplinary
Proceedings against CHARLES D. KUCHAR
and MARY BRUPBACHER t/a CHARLMAREE TAVERN,
Hackensack,

Appellants.

Submitted October 2, 1972 - Decided October 16, 1972

Before Judges Collester, Leonard and Halpern

On appeal from determination and order of the Director,
Division of Alcoholic Beverage Control

Messrs. Gross, Demetrakis & Donohue, attorneys for appellants
(Mr. Joel M. Ellis, on the brief).

Mr. George F. Kugler, Jr., Attorney General of New Jersey,
attorney for respondent (Mr. David S. Piltzer, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM.

(Appeal from the Director's decision in Re Charles D. Kuchar & Mary Brupbacher, Bulletin 2007, Item 2. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - KIEFER'S TAVERN, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-398-71

In the Matter of Disciplinary
Proceedings against

Kiefer's Tavern, Inc.
215-217 Broad Avenue
Palisades Park, N. J.

Holder of Plenary Retail Consumption
License C-4 issued by the Mayor and
Council of the Borough of Palisades
Park.

Appellant.

Submitted October 24, 1972 - Decided November 2, 1972

Before Judges Collester, Leonard and Halpern

On appeal from determination and order of the Director,
Division of Alcoholic Beverage Control.

Messrs. Moses, Aronsohn & Kahn, attorneys for appellant.

Mr. George F. Kugler, Jr., Attorney General of New Jersey,
attorney for respondent (Mr. David S. Piltzer, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Kiefer's Tavern, Inc.,
Bulletin 2010, Item B. Director affirmed. Opinion not approved
for publication by the Court Committee on Opinions).

3. NOTICE TO RETAIL LICENSEES - SALE OF GIFT CERTIFICATES PERMITTED UNDER CERTAIN CONDITIONS.

NOTICE TO ALL RETAIL LICENSEES:

This Division has recently received a request that retail licensees be permitted to sell to the public gift certificates redeemable for alcoholic beverages, particularly during the coming holiday season. In the past, the Division has prohibited the sale of such gift certificates upon the basis that this activity was deemed to constitute a practice unduly designed to increase the consumption of alcoholic beverages, in violation of Rule 20 of State Regulation No. 20. See Bulletin 746, Item 6, and Bulletin 1471, Item 1. However, proper control in achieving temperance in the consumption of alcoholic beverages need not be perverted into unreasonable prohibitions. Virtually, all advertisements or promotions by licensees inure to the benefit of their alcoholic beverage business.

What the statute prohibits are practices designed to unduly increase alcoholic beverage consumption and promote intemperance. I do not believe it was the intention of the legislature for the Director to design restrictions which would place obstacles in the paths of licensees engaged in a legitimate business.

I have concluded that today's licensees are making every effort to comply with the statute and I can see no reason why they should not be given the opportunity of selling gift certificates in the same manner engaged in by many other types of businesses.

I have thus given careful consideration to this matter and conclude that retailers should be permitted to engage in this type of business activity, under certain conditions. The conditions are that the certificates may not be redeemable for drinks of alcoholic beverages, but only for package goods intended for consumption off the licensed premises, and that no discount may be given either for the purchase of the certificates, or for their redemption. Thus, retailers may not sell any certificate for less than its redemption value, nor may they allow a certificate, when redeemed, to be used to purchase package goods in excess of the amount of the certificate. Gift certificates may not be utilized to circumvent this Division's Regulation No. 30, which prohibits the sale of alcoholic beverages at less than filed minimum consumer resale prices.

Of course, retailers will continue to be responsible for sales of alcoholic beverages to minors (currently persons under 21 years of age, but, under Chapter 81 of the Laws of 1972, effective January 1, 1973, persons under 18 years of age) and to actually or apparently intoxicated persons when the gift certificates are redeemed by retailers. The delivery of an alcoholic beverage by a licensee to a customer constitutes a "sale" thereof, whether cash or the gift certificate is the medium of exchange. N.J.S.A. 33:1-1(w).

Accordingly, effective immediately, the sale by retail licensees of gift certificates redeemable for alcoholic beverages, subject to the above stated conditions, will no longer be deemed to be in violation of Rule 20 of State Regulation No. 20. However, licensees are advised that in the event abuses of this privilege should arise, remedial steps will be taken to protect the public interest.

Robert E. Bower
Director

Dated: November 16, 1972

4. DISCIPLINARY PROCEEDINGS - FOUL -- INDECENT LANGUAGE - BRAWL - LICENSE
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
 J & K Bar Inc.)
 74 Mercer Street)
 Wallington, N. J.,)
 Holder of Plenary Retail Consumption)
 License C-18, issued by the Mayor)
 and Council of the Borough of)
 Wallington.)

CONCLUSIONS
and
ORDER

 Joseph M. Keegan, Esq., by Daniel T. Hanley, Esq., Attorney for
 Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday, September 11, 1971, you allowed, permitted and suffered foul, filthy, indecent and obscene language, and brawls, acts of violence and disturbances in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On behalf of the Division Agent H testified that, pursuant to a specific assignment and in the company of Agent C, he entered the licensed premises at approximately 9:50 p.m. on the evening of September 11, 1971. They seated themselves among some fifteen patrons at the bar, and observed that a female (later identified as Joan Chiagano, owner of 50% of the stock of the corporate licensee) was tending bar.

At approximately 10:20 p.m. two male patrons began shouting obscenities at one another, whereupon these patrons quickly proceeded to push and punch one another. Repetition in this report of the vile obscenities used would serve no useful purpose.

While Mrs. Chiagano made no effort to quell the disturbance, two male patrons succeeded in establishing order temporarily. Shortly thereafter the combatants recommenced the fisticuffs with renewed vigor to the point of wrestling on the floor. Mrs. Chiagano made no effort to stop the fight. The agents departed briefly, summoned police by use of a nearby public telephone, and Agent C reentered the premises. Agent H remained outside to await arrival of the police officers.

Upon arrival of two Wallington police officers, Agent H and the officers entered the premises. The combatants were still in the rear of the premises "pushing at each other. They looked up and saw the police, and at this time they stopped." He noted that the entire incident consumed approximately ten minutes. Mrs. Chiagano denied hearing any profanity.

On cross examination he testified that the profanity was engaged in for only a brief period and then the combatants began to fight in earnest. The men fought for a short period before several patrons attempted, without a great deal of success, to stop the fight. He saw both contestants strike blows. During the altercation Mrs. Chiagano moved from the rear of the premises to the front of the premises, but made no attempt to call for assistance. He waited three or four minutes outside for the police to respond but Agent C returned to the premises immediately after the phone call to police. The telephone on the premises was located at the rear and was in use when the fight began.

It was stipulated by the parties that Agent C's testimony would be corroborative of that of Agent H. However, Agent C added that, while Agent H remained outside to await arrival of the police, he reentered the premises. He then observed that the fight was still in progress and several blows were struck. Mrs. Chiagano remained seated behind the bar, served him a drink and made no attempt to stop the fight.

Joan Chiagano testified she is a major stockholder in the corporate licensee and was on duty tending bar on the date and time alleged herein. One of the alleged combatants was seated at the bar when the other, in the company of several companions (male and female) entered the premises. Both combatants were regular, frequent patrons and well known to her. Shortly after the arrival, both men confronted each other in the rear of the premises and the fight ensued. She was stationed behind the bar, midway between front and back of the licensed premises, approximately twenty-five feet from where the fight took place. She looked toward the phone booth at the front of the premises, saw that it was occupied and then moved to the rear of the premises. Almost immediately a patron (Raymond St. Pierre) stepped between the two combatants and separated them.

After the agents departed, she left her post behind the bar, met one of the combatants and was escorting him back to the bar when the agents returned with the police officer. She stated that the combatants were good friends before the incident and have remained so since the incident. When the police arrived, peace had already been restored with the aid of several of the patrons and no action on the part of the police was necessary.

On cross examination she candidly admitted that a fight occurred and blows were struck. Since she saw St. Pierre moving to intercede, she felt further affirmative action on her part was unnecessary. She did not go to the phone to summon police because the phone was in use. She took no steps to stop the fight prior to the arrival of the police officers because the fight had ended before the police arrived.

Raymond St. Pierre testified on behalf of the licensee that he was a patron on the premises on the evening in question and was present when the first of the combatants entered at approximately 6:30 p.m. The other entered shortly thereafter. He knew both men personally and they were friends of long standing.

Some time thereafter the men confronted each other near the rear of the premises, began to hurl obscenities at each other, and the fisticuffs commenced. He immediately attempted to stop the fight by getting between the combatants. He himself was struck. The entire incident, until the arrival of the police, lasted approximately ten minutes. When the police arrived he was in the phone booth with one of the combatants attempting to quiet him while Mrs. Chiagano had succeeded in escorting the other back to the bar. He saw no direct blows land on either of the combatants.

On cross examination he testified that he had consumed approximately eleven bottles of beer during the evening before the altercation took place. Approximately four to five patrons were required to quell the disturbance; the combatants required restraint throughout the entire incident which lasted approximately ten minutes; and at no time did he observe Mrs. Chiagano take any steps to stop the fight.

The licensee has admitted that an altercation took place and the crucial question, therefore, is whether the licensee "allowed, permitted or suffered" the incident to occur.

Preliminarily, it is observed that it is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

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, at 554 (1954).

From the facts presented, I find that the testimony of the agents is forthright, credible, and has the ring of truth.

I find that the licensee, by her inaction, failed to take any affirmative steps, whatever to bring the situation under control. I further find that the licensee, by her inaction and apparent indifference to the events occurring on her premises, failed to take the necessary steps to stop the altercation. Cf. Jackson v. Newark, Bulletin 1600, Item 2.

The logical and realistic reaction of a licensee who is confronted with an alarming situation as described herein is to call the police. It is apparent here that the only steps taken to remedy the situation were taken by the agents who themselves summoned assistance. There is no evidence that Mrs. Chiagano asked the agents to call the police, nor is there any evidence that she took any steps to control the offensive language nor to stop the fight. No other reasonable conclusion could result than that the brawl and the foul and offensive language were suffered on the licensed premises. See Trade Winds Cocktail Lounge, Inc. v. Sea Bright, Bulletin 1996, Item 1.

I therefore find that the Division has established the guilt of the licensee by a clear preponderance of the believable evidence, and recommend that the licensee be found guilty of the charge herein.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for twenty-five days. Re 451 Corp., Bulletin 1676, Item 6.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 25th day of October/1972,

ORDERED that Plenary Retail Consumption License C-18, issued by the Mayor and Council of the Borough of Wallington to J & K Bar, Inc., for premises 74 Mercer Street, Wallington, be and the same is hereby suspended for twenty-five (25) days commencing at 2:00 a.m. Monday, October 30, 1972 and terminating at 2:00 a.m. Friday, November 24, 1972.

Robert E. Bower
Director

5. DISCIPLINARY PROCEEDINGS - PERMITTING DRUGS ON PREMISES - SALE OF DRUGS - NUISANCE - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against
Ronald Scalzo Inc.
1297 Paterson Plank Road
Secaucus, N. J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Town Council of the Town of Secaucus.

Frederick Klaessig, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee entered a technical plea of not guilty to the following charges:

- "1. On July 2, 1971, you allowed, permitted and suffered the unlawful possession of and unlawful activity pertaining to an amphetamine, a prescription legend drug, viz., methamphetamine, in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.
- 2. On July 2, 1971, you allowed, permitted and suffered immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such a manner as to become a nuisance, viz., in that on said date you, through a person employed on your licensed premises sold methamphetamine, as above, to a customer or patron; in violation of Rule 5 of State Regulation No. 20."

The attorney for the licensee consented to the admission of Division file in evidence and, in effect, pleaded mitigating or exculpatory circumstances.

The reports of the ABC agents and the other documents in the file disclose that Investigator Carl Sicola of the Hudson County Prosecutor's office who was assigned to narcotics undercover work in Secaucus was approached by a Gary Gallo who asked Sicola if he wanted to purchase some "speed." Upon receiving Sicola's affirmative response, Gallo took him (Sicola) to the subject licensed premises (a tavern) and, while inside the tavern, Gallo asked Sicola how many bags he wanted. Sicola replied "three" and Gallo informed him that it would cost \$30. Sicola handed Gallo the money and Gallo told the bartender (identified as Deon James DeTitta) "Give him three bags." DeTitta removed three tinfoil wrapped packages and handed them to Sicola who then left the premises.

A chemical analysis of the contents of the packages for narcotic content established that the packages contained a prescription legend drug known as methamphetamine. Subsequent thereto DeTitta was placed under arrest charged with the sale of a controlled dangerous substance.

In behalf of licensee, Deon DeTitta testified that, while in the employ of the licensee as a bartender on July 2, 1971, he became involved in the sale of the aforesaid substance and pleaded guilty to the criminal charge. The conviction was grounded on a transaction which he described as follows:

"A man came into the bar drunk and he threw these little metal packets on the bar and I picked them up, put them in my pocket, assuming that they were some, you know -- I thought they were some kind of drug I guess. So I put them in my pocket and then later on he told me to give them to another guy that came in and I handed them to him."

DeTitta testified that he alone was tending bar at the time this transaction took place and that Ronald Scalzo (the major corporate stockholder and its president) was not in the barroom at the time of this occurrence.

Bernd Strunz testified that, during the years 1969 and 1970 he had been employed as a part-time bartender. Municipal officials and law enforcement officers patronized the establishment. On one occasion in January 1970, while he and Scalzo were serving as bartenders, three local patrolmen came in for drinks. The patrolmen assaulted another patron and, after he (Strunz) remonstrated, he too, was assaulted. Upon being requested to leave by Scalzo, one of the police officers shouted, "We're going to get you, Scalzo."

Ronald J. Scalzo, principal stockholder, president and manager of the corporate licensee, testified that he had no knowledge that DeTitta was involved in a narcotics transaction on July 2, 1971. He instructed his bartenders not to admit anyone involved in narcotics activity in the tavern.

Continuing, Scalzo testified that four or five months prior to July 2, 1971, a male identified as Derek Crewe entered the tavern and asked to be served. Inasmuch as it was common knowledge that he was involved in drug and other unlawful activities, Scalzo informed him not to patronize the premises. Crewe then asserted that he was engaged in undercover work for the local police department and the prosecutor's office in searching for persons engaged in drug activities. Crewe requested Scalzo not to reveal that he was engaged in undercover work. It was his belief that Crewe was actually engaged in undercover work because he had

seen him (Crewe) together with Sicola who was also reputed to have been engaged in police undercover work. He felt that it was to his advantage to have them work undercover and that he was cooperating with the police authorities.

Scalzo testified that, while he and Strunz were tending bar one night in January 1969, several local police officers were in the barroom and caused a commotion by pushing a customer and smashing a beer bottle on the bar. After Scalzo requested them to leave, one of the officers became angry, shouted obscenities and threatened to have the tavern closed down. He did not file a complaint with reference to this incident.

In October 1969, while he was seated in his automobile after closing up at 2:15 a.m., a county police officer (who was a brother of a Secaucus police officer) punched him in the face. He proceeded to the local police station and informed someone of the incident; however, he did not sign a formal complaint.

Continuing, Scalzo testified that he never informed his bartender DeTitta that Crewe was working undercover as an informer.

On cross examination the witness conceded that, as far as he knew, it was not officially established that Crewe was an undercover man for any law enforcement agency.

Frederick Woeckner (who was employed as a law clerk by the attorney for the licensee) testified that he was given a subpoena by his employer to serve upon Derek Crewe. Upon proceeding to a certain address in Union City and ringing the bell, a middle-aged couple answered and said they were related to Crewe. The female informed him that Crewe was not there, the police were hiding him; further, he would be leaving the country since deportation proceedings were pending against him. At the Union City Police Department he was informed by the officer behind the desk that Crewe was being protected because his activity as an informant had resulted in numerous arrests of persons involved in drug violations, and his physical well-being was in danger. Woeckner also testified that a local police captain informed him that Crewe was secreted and it wouldn't be possible for him to communicate with Crewe.

Nelson H. Elwell testified that he is a life-long resident of Secaucus; was a councilman for sixteen years; was engaged in business therein; has been acquainted with Ronald Scalzo since boyhood days, and has patronized his tavern. He never heard adverse comment concerning the tavern and it bore a good reputation. The tavern was patronized by other councilmen.

The licensee contended (1) that, Scalzo had cooperated with Derek Crewe who had asserted to him that he was a police informer and Scalzo's failure to reveal to his bartenders that Crewe was an informer in order to cooperate in the prevention of unlawful narcotics activity, therefore this was an exculpatory circumstance; (2) the conduct of the bartender should not be imputed to the licensee inasmuch as it occurred without its knowledge; and (3) licensee did not permit, suffer or allow the violation committed by its bartender.

Inasmuch as the unlawful activity of July 2 mentioned in the charges leveled against the licensee was unchallenged, the validity of the defense to the charges becomes of paramount importance.

In defense of the charges, Scalzo asserted that he relied upon Crewe's statement made to him (Scalzo) that he was working undercover in behalf of the local police department. It appears to me that it is incredible for a person, who has a

business at stake, would accept as factual the uncorroborated statement of an individual whom he admittedly knows to have an unsavory and questionable background. Ordinary prudence dictates that he should have made inquiry of the law enforcement agency named by the self-proclaimed informer that he was actually authorized to act as such. Furthermore, I am not impressed by licensee's testimony to the effect that it could not produce the alleged informer at the hearing held herein because he was secreted by the police department who would not reveal his whereabouts for the reason that it would jeopardize his personal safety. A local police captain was alleged to have declared that Crewe was secreted and it would be impossible for the licensee to communicate with him. It is also apparent to me that this testimony is pure hearsay, none of which was corroborated by any of the law enforcement arms that were allegedly using Crewe's services as an informant.

It is my view that licensee's defense that it was entitled to immunity from liability because it cooperated with the police authorities was an afterthought and an attempt to cloak itself with a mantle of innocence after an employee was discovered to have violated the rules and regulations for which it was cited.

Furthermore, despite licensee's lengthy explanation and argument that it, in good faith, relied upon Crewe's assertion that he was acting as a police informant and that licensee made reasonable efforts to subpoena Crewe there is nothing in the proofs to indicate that Crewe was involved in the transaction which led to the preferment of the subject charges.

Additionally, I find no merit in licensee's contention that the charges preferred against the licensee were motivated by the personal antagonism of two local police officers against Scalzo.

Lastly, conceding that Scalzo admonished the bartenders not to engage in any illegal activities, and in particular the act charged, and that Scalzo was not present when the alleged transaction took place, this is not a valid defense to the charges.

It is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities during their employment on licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20. Violations committed by an agent becomes the responsibility of the licensee and does not depend upon his personal knowledge or participation. It has been held that the licensee is not relieved even if the employee violates his express instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 393 (App. Div. 1951); E. & A. Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961); cf. Mazza v. Cavicchia, 28 N.J. Super. 280 (App. Div. 1953), reversed on other grounds, 15 N.J. 498 (1954).

In Mazza the court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge. Said the court (at p.509):

"The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly

maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated thereunder and would make the enforcement of the law an impossibility."

Under all the circumstances, I conclude and recommend that the licensee be found guilty of said charges.

Absent prior record, it is further recommended that the license be suspended for ninety (90) days.

Conclusions and Order

Written exceptions to the Hearer's report and to the supplemental Hearer's report, with supportive argument, were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his reports or are without merit.

Consequently, having considered the entire record herein, including transcripts of the testimony, the exhibits, the memoranda of counsel for the licensee, the Hearer's report, the exceptions filed with reference thereto and the supplemental Hearer's report and exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of October 1972,

ORDERED that Plenary Retail Consumption License C-30, issued by the Town Council of the Town of Secaucus to Ronald Scalzo, Inc., for premises 1297 Paterson Plank Road, Secaucus, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Tuesday, October 17, 1972, and terminating at 2 a.m. Monday, January 15, 1973.

Robert E. Bower
Director

6. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL CONCLUSIONS AND ORDER.

In the Matter of Disciplinary)
Proceedings against)
Ronald Scalzo, Inc.)
1297 Paterson Plank Road)
Secaucus, N. J.,)
Holder of Plenary Retail Consumption)
License C-30 (for 1971-72 and 1972-73)
license periods), issued by the Town)
Council of the Town of Secaucus.)

CONCLUSIONS
and
ORDER

Frederick Klaessig, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Supplemental Hearer's Report

Licensee had heretofore entered a technical plea of not guilty to the following charges:

- "1. On July 2, 1971, you allowed, permitted and suffered the unlawful possession of and unlawful activity pertaining to an amphetamine, a prescription legend drug, viz., methamphetamine, in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.
- "2. On July 2, 1971, you allowed, permitted and suffered immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such a manner as to become a nuisance, viz., in that on said date you, through a person employed on your licensed premises sold methamphetamine, as above, to a customer or patron; in violation of Rule 5 of State Regulation No. 20."

Thereafter this Hearer filed his report wherein he recommended a guilty finding to said charges and further recommended that the subject license be suspended for ninety days.

Upon reviewing the exceptions filed to the Hearer's report, the Director ordered a supplemental hearing be held in order to afford the licensee an opportunity to produce two witnesses, namely, a Carl Sicola and a Derek Crewe, whose testimony the licensee represented as necessary in support of its defense that licensee was acting under a belief that it was cooperating with a police informer and a police undercover officer who were pursuing law enforcement undercover activities relating to the sale of narcotics.

At the supplemental hearing Carl Sicola testified that, while assigned to the narcotics squad of the Hudson County Prosecutor's office, he had occasion to collaborate with Officers Gorman and Zloti who were assigned to the narcotics squad of the Secaucus Police Department. On July 2, 1971, while in the licensed premises, he handed an individual named Gallo the sum of \$30 for which he received an illegal drug from the bartender Deon James DeTitta, as more fully set forth in my Hearer's report.

When necessary, he rode in a car with Officers Zloti and Gorman and it was probable that he was seen in their company. He did not specifically recall riding in a car with Officers Zloti, Gorman and Derek Crewe at the same time. He did associate with Derek Crewe in Secaucus on an almost daily basis. He occasionally patronized the licensed premises in the company of Crewe. He asserted that in July 1971 Crewe was a police informant; that Crewe knew that he (Sicola) was a law enforcement officer, and that Gallo was not a police informant. In accordance with prudent police practice, he would not disclose Crewe's identity as a police informant. Crewe had been employed by him as a police informant for a period of approximately two months prior to July 2, 1971.

Sicola concluded his testimony as follows:

"Q May I ask you this, Mr. Sicola: At any time in your association with Officer Zloti, of the Secaucus police department, and Officer Gorman, of the Secaucus police department, did they ever suggest to you, directly or indirectly, that they did not like the Other Place [the licensed premises]?"

A No.

Q Or the owner of the Other Place?

A No. The only thing I was ever told about the Other Place was the people hanging out in there I purchased from. The type place it was, you know, narcotics being sold there, never said anything about who was selling. The type of people associated with the place, they associated with narcotics."

* * * * *

- "Q Did they ever suggest by inuendo about Ronald Scalzo about his character or personality?
A To the best of my recollection, no. The only thing they ever did say was the type of people hanging out in the Other Place. That is why they directed me to hang out by the plaza and in the bar, to see what was going on in the bar.
Q Did they ever tell you they had any kind of scuffle with Ronald Scalzo?
A No, sir.
Q You knew nothing about it?
A No, sir."

Derek J. Crewe testified that he had been engaged as a police informant for approximately a year prior to July 1, 1971; that he resided in Union City; that he was informed of this hearing by reason of a telephone call his mother received from Sergeant Mona of the local police; that his mother at no time informed him that a process server was attempting to subpoena him as a witness.

Additionally, Crewe testified that in March 1972 he denied under oath that he was an informer; he had frequented the licensed premises occasionally prior to July 2, 1971; he was acquainted with Ronald Scalzo; Scalzo never requested him to leave his tavern; he never informed Scalzo that he was working with the police; he did patronize the licensed premises in the company of Sicola; he denied associating with Officers Gorman and Zloti in Secaucus because he did not wish to disclose his identity.

At this supplemental hearing Ronald J. Scalzo (the principal officer and stockholder of the corporate licensee) testified that he knew that Gorman and Zloti were employed by the local police department and were assigned to plain-clothes duty. Prior to July 2, 1971 he had seen Officers Gorman and Zloti riding in an unmarked car with Crewe. He also saw Officers Gorman and Zloti, Crewe and Sicola riding together.

On one occasion Crewe entered the licensed premises alone. He appeared to be intoxicated. Scalzo said to Crewe, "I would appreciate it if you didn't come in any more." Crewe informed him that he had been working with an undercover agent. He believed Crewe's assertion was true because he had seen him conversing with Gorman and Zloti and had seen him associating with Sicola. He asserted that he felt that Sicola was an undercover agent because "Well, I had people talking there was an undercover agent in the area, and I seen him with Crewe, Crewe told me, and seeing them together I thought Sicola was an undercover agent."

In explaining his reason for not making inquiry of the Secaucus police concerning Sicola's status as an undercover agent, Scalzo testified, "If I did ask them I don't think they would tell me anything. I knew these other people would know, and I don't think they would tell me, you know, about plain-clothes detectives because I don't get along with them too well and put them [Gorman and Zloti] out of the bar."

He made no mention to his bartender that either Crewe or Sicola were undercover agents "Because, you know, I didn't think it was necessary to tell them. I didn't tell anyone. If he was doing something wrong or anyone, I would like to see them get caught."

On cross examination Scalzo asserted that it wouldn't be logical for an individual working undercover to jeopardize himself by disclosing it or indiscriminately riding around with police officers.

In sum, the attorney for the licensee argued that the act of its principal officer (Scalzo) in cooperating with law-enforcement officers in not alerting his bartender of the true identity of either Crewe or Sicola directly led to the commission of the offense charged herein. He argued that, because he cooperated with the police, the licensee cannot be adjudged guilty of any wrongdoing, citing Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (1971).

It is my view that Ishmal is distinguishable from instant matter. Firstly, in Ishmal the licensee pursued a policy of refusing to serve and ejecting persons under the influence of drugs, and the licensee instructed her bartenders to do the same. Secondly, the licensee made numerous complaints to the police which resulted in a number of arrests. Unlike the instant matter, no employees of Ishmal were involved in the unlawful activities therein. Thirdly, it should be recalled that, at the original hearing held herein, Scalzo testified that he had instructed his bartenders not to admit anyone in the tavern who was engaged in narcotics activity. Nevertheless, the licensee's employee engaged in the proscribed activity, contrary to the express instructions of his employer. This transgression could have been consummated by the employee with an undercover agent whose identity was not revealed by the employer at the request of the undercover agent, or it could have been engaged in by the bartender with someone who was not an undercover agent but an ordinary trafficker in drugs or a user whose identity the employer had no legitimate reason whatsoever to conceal. It is apparent to me that the bartender was prepared to and did engage in the proscribed activity with anyone who afforded him an opportunity to do so.

As expressed in my original Hearer's report, a licensee is fully accountable for the misconduct of his employees during their employment on the licensed premises. Rule 33 of State Regulation No. 20. The responsibility of the licensee does not depend upon his personal knowledge thereof, nor is the licensee relieved should the employee violate his express instructions. Greenbrier v. Hock, 14 N.J. Super. 393 (App.Div. 1951).

Therefore, upon considering all of the circumstances herein, I reach the same conclusion as set forth in the Hearer's report and recommend that the licensee be found guilty of said charges. It is further recommended that its license be suspended for ninety days.

Conclusions and Order

Written exceptions to the Hearer's report and to the supplemental Hearer's report, with supportive argument, were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his reports or are without merit.

Consequently, having considered the entire record herein, including transcripts of the testimony, the exhibits, the memoranda of counsel for the licensee, the Hearer's report, the exceptions filed with reference thereto and the supplemental Hearer's report and exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of October 1972,

ORDERED that Plenary Retail Consumption License C-30, issued by the Town Council of the Town of Secaucus to Ronald Scalzo, Inc., for premises 1297 Paterson Plank Road, Secaucus, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Tuesday, October 17, 1972, and terminating at 2 a.m. Monday, January 15, 1973.

Robert E. Bower,
Director.

7. NOTICE TO RETAIL LICENSEES - CHAPTER 81 LAWS OF 1972 - CHANGE OF AGE LIMITATION OF MINORS - REQUEST FOR COOPERATION OF LICENSEES TO PREVENT INTOXICATION AND ACCIDENTS.

TO ALL RETAIL LICENSEES, MUNICIPAL ISSUING AUTHORITIES, CHIEFS OF POLICE, AND COUNTY CLERKS:

The Legislature has enacted Chapter 81 of the Laws of 1972 granting to persons 18 years of age or older most rights possessed by persons 21 years of age or over. This law takes effect 12:01 a.m. January 1, 1973. It expressly provides that persons 18 years of age or older shall have the right to sell, purchase and consume alcoholic beverages to the same extent as persons 21 years of age or older. Accordingly, on and after January 1, 1973, for the first time it will be lawful for retail liquor licensees to sell alcoholic beverages to persons 18, 19, or 20 years of age. Likewise persons of such ages will be able to own or have an interest in licensed premises and to work on licensed premises without having to obtain an employment permit.

The State Alcoholic Beverage Law (N.J.S.A. 33:1-81.2 et seq.) presently provides for the issuance by county clerks of identification cards to persons who have reached the age of 21 years. The cards bear the applicant's photograph and attest to such person's age. The cards are issued for the purpose of aiding liquor licensees to determine whether a prospective purchaser of alcoholic beverages is in fact 21 years of age or older. The cards are to be shown at the request of a licensee, but their presentation does not relieve a licensee from his responsibility to prevent any sale of an alcoholic beverage to a minor. In order for a licensee to be relieved of his responsibility for such a sale, the licensee must still obtain from the under-age patron a signed statement in the form found on page 87 of the Division's Rules and Regulations Pamphlet, that he or she is of legal age, the patron must reasonably appear to be of legal age, and the sale must have been made in good faith and reliance upon such signed statement and reasonable appearance.

Although the new law giving 18 year-olds the right to purchase alcoholic beverages on and after January 1, 1973 does not expressly refer to the right of any 18, 19, or 20 year-old to obtain such an identification card from a county clerk, the Attorney General has ruled that the new law should be interpreted to effect such change. Thus, effective January 1, 1973, county clerks may issue these cards to persons 18 years of age or older and liquor licensees should request their presentation from persons who appear to be less than 18 years of age.

It is hoped that there will be a smooth transition when the new law takes effect. In this connection, all licensees are cautioned to take particular care to see that no 18, 19 or 20 year old, or anyone else for that matter, is served or permitted to consume on the licensed premises alcoholic beverages to the point of actual

or apparent intoxication, and that no person under 18 years of age is sold or served or permitted to consume on the licensed premises any alcoholic beverage. These activities constitute a violation of the Alcoholic Beverage Law and Regulations for which appropriately stringent penalties will be imposed against offending licensees and their employees.

Furthermore, violations of this nature may well cause auto accidents by inexperienced young drivers. We must not let the new law result in any increase in highway fatalities or injuries.

Shortly, each retail licensee in the State will receive from this office a large poster depicting youngsters and an auto accident. It is requested that each licensee conspicuously display this poster at the licensed premises to help the State's campaign to improve highway safety. I enlist your support in this worthy cause and the confidence that the mature alcoholic beverage industry of this State will respond by doing its utmost to assist this campaign.

Robert E. Bower
ROBERT E. BOWER
DIRECTOR

Date: December 26, 1972