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

BULLETIN 2225 May 17, 1976

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ITEM

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

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1. DISCIPLINARY PROCEEDINGS - PERMITTING DRUGS (MARIJUANA) ON LICENSED PREMISES - SALE TO THREE MINORS - NON VULT PLEA RECEIVED TO MINORS CHARGE - LICENSE SUSPENDED ON ALL CHARGES FOR 75 DAYS.

In the Matter of Disciplinary Proceedings against Round Valley Inn, Inc. t/a Hunter's Rest e/s Highway #31 RD 1 Lebanon Clinton Township, N.J., Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Clinton.	CONCLUSIONS and ORDER

Bernhard, Durst & Dilts, Esqs., by Edmund R. Bernhard, Esq., Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to Charges (1) and (2) and non vult to Charge (3), as follows:

"1. On May 4, 7, and 12, 1975, you allowed, permitted and suffered unlawful activity in and upon your licensed premises pertaining to narcotic and other drugs and other controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1, et seq.) viz., Cannabis Sativa (marijuana), in that on the aforesaid dates you allowed, permitted and suffered offers to and arrangements with customers or patrons on your licensed premises to obtain and procure for and sell to these customers or patrons said controlled dangerous substances and did in fact allow, permit and suffer the distribution of said controlled dangerous substances to said customer or patrons on the said dates; in violation of Rule 4 of State Regulation No. 20.

2. On May 4, 7 and 12, 1975, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to constitute a nuisance, viz., you allowed, permitted and suffered unlawful activity in and upon your licensed premises pertaining to narcotic and other drugs and other controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1, et seq) viz., Cannabis Sativa (marijuana), in that on the aforesaid dates you allowed, permitted and suffered offers to and arrangements with customers or patrons on your licensed premises to obtain and procure for and sell to these customers or patrons said controlled dangerous substances and did in fact allow, permit and suffer the distribution of said controlled dangerous substances to said customer or patrons on the said dates; in violation of Rule 5 of State Regulation No. 20.

3. On May 5, 1975, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of eighteen (18) years, viz., Roy P---, age 16, John M---, Jr., age 17 and Cary A---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, ABC agent W testified that, pursuant to a specific assignment to investigate alleged narcotic activity, he entered the licensed premises - a barroom which contained a bar, several game machines and tables and chairs - on the night of May 3, 1975. At approximately 9:30 p.m., a male identified as John Williamson (John) approached agent W and engaged in conversation with him, as follows:

> "He [Williamson] came over to me and said something like, 'Do you know anybody that wants any grass?' I said, 'If it's any good, I might be interested.' He said he had a few ounces for sale, and I said that I would like to see it first. He said he'd see later after the pool game. I asked him how much and he stated approximately $20 for an ounce."

At approximately 12:05 a.m., agent W approached Williamson and informed him that if he didn't produce the marijuana he would leave. Williamson then approached a male, known to agent W as Jeff Pormann (Jeff) and conversed with him. Pormann nodded to agent W to go with him. Pormann and agent W exited the premises and walked across the street to Pormann's car. Pormann opened the trunk of his car, removed a plastic bag which contained a substance, which was later established to be marijuana, from the toe of a hip boot, and gave it to agent W in exchange for twenty dollars. Agent W then left in his car.

On the night of May 7, 1975, agent W revisited the licensed premises. Upon observing Pormann's entry therein, agent W informed Pormann that the marijuana he purchased from him was not of good quality, and that he was "upset" about it. Pormann stated that he had some more marijuana, and that it was of better quality. Agent W informed Pormann that he would be interested in an ounce. Pormann replied that they would go out and get it later.

The following testimony was then elicited from agent W.

"Q Did you keep that arrangement that you made with Pormann?

A Yes, I did, but I went to the bar next and spoke to the barmaid known by me as Pam.

Q What did you say to the barmaid?

A I asked if she knew Jeff very well, and what kind of a guy he was. She said he was an all-right guy as far as she knew; and I said he had some ounces for sale, and I asked her if she thought if it was okay or if I would be ripped off. She said, 'No, he is an all-right guy, go ahead.'

Q What happened after you had the conversation with the barmaid?

A She asked me if I wanted another beer, and I said, 'Yes', and she gave me a beer. I stopped talking to her."

Thereafter, agent W explained that he and Pormann left the licensed premises and proceeded to Pormann's car which was parked in front thereof. Pormann secured the marijuana from the rear seat of his car, handed it to agent W. Pormann asked for and received payment of the sum of twenty dollars.

Agent W revisited the licensed premises on the night of May 12, 1975, accompanied by ABC agent D. While standing at a table next to the pool table, agent W questioned Williamson concerning whether he had some marijuana for sale. Williamson replied that they have a couple of ounces out in Jeff's car that he could sell, and"I said I would probably be interested".

Upon finishing the pool game agent W and Williamson exited the barroom. Williamson proceeded to Pormann's car where he procured marijuana from inside of the car's compartment and handed it to agent W. Williamson asked for and received payment of the sum of twenty dollars from agent W.

Upon returning inside the tavern, Pam informed agent W that agent D wanted to see him at the other end of the bar. Agent W proceeded to where agent D was positioned at the bar.

Agent D informed Pam that "this witness dragged him out. It was a bad night, it was a rainstorm. He stated to Pam that I had dragged him out in this rain so that I could purchase this

marijuana from John, at which time he reached into my coat pocket and pulled out the ounce of marijuana and showed it to Pam. Pam said to me, 'I thought you said he gave you bad stuff last time?' I said, 'Yes, he did, but it's getting better.'"

On cross examination, agent W explained that he had patronized the tavern prior to May 3, and had become acquainted with Williamson. The subject of the sale of marijuana was broached by Williamson who said that he knew someone who had it available. Agent W did ask Williamson whether he liked to "get high" to which Williamson responded affirmatively.

Relative to the date of May 7, and prior to making the purchase of the marijuana from Jeff Pormann, agent W testified that he engaged in conversation with Pam at the bar, as follows:

"Q What did you ask her [Pam]?

A I asked her if she knew Jeff very well.

Q What did she reply?

A She said, 'He is okay.'

Q She said, 'He is a straight dude,' or something to that effect?

A That was later on.

Q She said, 'He was okay.' When you first started talking to her, did you ask her if she knew Jeff well?

A I asked if she knew Jeff well, and she said 'He is okay.' I asked her if he was all right or not because he had an ounce of marijuana for sale. She said 'Yeah, he is okay.'

Q Did she understand that you were asking her about marijuana?

A I told her he had an ounce of marijuana.

Q Ounces of marijuana as opposed to grass or anything else?

A Yes.

Q Did you use 'ounces of marijuana'?

A Yes, I did.

Q You didn't use 'ounces of grass' or 'pot'?

A No, marijuana as there couldn't be any mistaking.

Q What did she say?

A She said like he is a pretty squared away dude, you know, he is okay, and then she asked me if I wanted another beer. I said, 'Yeah, get me a bottle.'"

Agent W conceded that he did not identify himself nor relate what had transpired to Robert Fisher, president and major stockholder of the corporate licensee who was also behind the bar.

Agent D testified that he accompanied agent W in connection with the investigation of the licensed premises on May 12, 1975. Agent W informed John that he would like to purchase some marijuana. John replied that he had a few ounces, and that when the game was over, he could go outside and get it.

Some time later, agent W and John exited from the tavern together and, shortly thereafter, returned to the tavern together. Agent D requested Pam to send agent W to his location at the bar. Upon being questioned concerning what then transpired, agent D testified as follows:

"He [agent W] took a seat to my left --I'm sorry, Pam came over, at which time I stated to Pam that Agent W, I referred to him as Tim, dragged me out on a rainy night like this to buy this marijuana shit. Subsequently, I removed a plastic bag from his pocket which contained a greenish vegetation or marijuana. I showed this to Pam and she stated, 'I thought he gave you bad stuff last time,' and he replied in my presence, 'He had, but it's getting better.' With this we ordered a drink and she departed the bar where he and I were seated."

On cross examination, agent D stated that the conversation between John and agent W took place approximately ten feet distant from the bar; he did not accompany them outside the premises. While waiting for agent W's return he did not engage in a discussion relative to marijuana with Pam. His only discussion relative to marijuana with Pam occurred when agent W joined him at the bar and pulled the bag out of agent W's pocket.

In defense of the charges, John Williamson testified that he had patronized the licensed premises approximately every night during April and May, 1975. Prior to May 3, 1975, he had observed agent W's (known to him as "Tim") presence in the tavern three or four times. On one of these occasions he struck up a conversation with him.

Upon being questioned as to whether any of the conversation related to marijuana, the witness explained that when they first met, he told him about the time that he was busted, and Tim told him about parties he had been to, smoking marijuana.

On May 3, agent W informed Williamson that he wanted to purchase some marijuana. Trusting agent W, and under the impression that he was a user, Williamson made the contact with Jeff Pormann. He did not accompany agent W and Pormann to the car.

Pamela DePue testified that, in May 1975, she was employed by the corporate licensee as a barmaid three nights weekly. She recalled that agent W (Tim) patronized the tavern in May 1975. The witness explained that she occasionally conversed with agent W and that agent W questioned her as to whether she was acquainted with Jeff to which she responded affirmatively. The witness denied that there was any mention made of marijuana.

DePue denied that on May 12 she saw agent D take out a plastic bag containing marijuana from agent W's coat pocket.

The witness also denied that, on that date, she engaged in any conversation concerning the purchase or sale of marijuana. Her testimony was particularly evasive concerning conversations relating to marijuana, as follows:

> "Q Now, the night that the person known to you as Tim asked you about Jeff, didn't he tell you that he wanted to buy marijuana from him?
>
> A If he did, I didn't hear it."

She denied that the plastic bag described by agent D had been exhibited to her and her testimony relating to such plastic bag was as follows:

> "Q You're saying that's what happened when [agent] D showed you a plastic bag?
>
> A He didn't show me one.
>
> Q He said he showed you one?
>
> A He didn't show me one, he might have thought he did it purposely for me to see it.
>
> Q You didn't look?
>
> A I didn't look at it."

Robert Fisher, president, major stockholder and the day-to-day manager of the tavern operation testified that he is in the premises on most evenings with the exception of Wednesday, which is his day off. On Mondays his cook is not on duty hence he spends a larger amount of his time in the kitchen than he usually does. When he is not present, his barmaid Pamela DePue, is in charge. He suspects that some of his patrons smoke marijuana in the parking lot adjacent to his premises, but he has no certain knowledge thereof.

I

In adjudicating matters of this kind we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. 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 presented herein, 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 the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super 1 (App. Div. 1961).

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

In arriving at a determination herein, I find the agents' testimony is forthright and convincing. The several conversations leading to the eventual purchase of the marijuana that occurred in the direct proximity of the barmaid, coupled with her evasive testimony concerning it, leads to an inescapable conclusion that the licensee, through its agent, permitted the infraction.

DePue explained that it was not her business to listen to conversations. I do not believe her testimony to the effect that she was unaware of the alleged narcotics activity. It is apparent the licensee failed in its obligation to supervise the premises adequately. Mazza v. Cavicchia, 15 N.J. 498, 507 (1954); Benedetti v. Board of Commissioners of Trenton, 35 N.J. Super. 30,34 (App. Div. 1955); Davis v. Newtown Tavern, 37 N.J. Super. 376, 378 379 (App. Div. 1955).

While there is no requirement that the proscribed activities be "open and notorious", I find substantial credible evidence which unmistakenly demonstrates that the licensee's employee knew or should have known of the existence of such proscribed activities. In fact, 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."

The cases in this Division are legion which hold that a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid narcotic activities to take place on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

Additionally, it is basic that in disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. in re Schneider, 12 N.J. Super. 449 ((App. Div. 1951).

Accordingly, after a careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, I conclude and find that the Division has established the truth of Charges 1 and 2 and recommend that it be adjudged guilty thereof.

II

As noted hereinabove, licensee pleaded non vult to Charge 3.

Licensee has no prior adjudicated record. I further recommend that the license be suspended on Charges 1 and 2 for forty-five days, and on Charge 3 for thirty days, making a total of seventy-five (75) days.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by the licensee and a written Answer to the said Exceptions was filed on behalf of the Division pursuant to Rule 6 of State Regulation No. 16.

The licensee, in its Exceptions to the merits of the case, raises for the first time in this matter, defense of entrapment. During the hearing herein, the only reference to entrapment was the phrase "entrapment situation" employed by the attorney for the licensee during summation. However,

this was a passing reference for literary effect in the context of another argument, and was neither further explained nor pursued.

In fact, the licensee's attorney indicated in his summation that the only ground offered for dismissal of the charges was lack of adequate evidence. If the defense of entrapment were properly interposed, the Division would be entitled to the right to introduce evidence of predisposition, demonstrated by such things as prior conviction of crime, reputation for criminal activities, and ready compliance with minimal inducement for easy yielding to the opportunity to commit the offense. State v. Dolce, 41 N.J. 422, 433 (1964).

A serious question arises as to whether the defense of entrapment is entertainable at all in an administrative disciplinary proceeding of this type. In Highlander Hotel Corp. V. Division of Alcoholic Beverage Control, (App. Div. 1963), not officially reported, reprinted in Bulletin 1533, Item 1, the court, in finding that under the facts of that case, the defense of entrapment was not applicable, did not feel called upon in view of its disposition of the State's first contention, to consider the State's alternative argument, that such defense is not applicable in an administrative disciplinary proceeding.

While the licensee asserts that "The licensee may also rely upon...entrapment...as a defense to the charges presently pending before the Division", it has cited no authority that entrapment can be used as a defense to administrative violations of this type. Assuming that the licensee is not estopped from now raising the issue, and further, assuming that such defense is available in an administrative proceeding, it is clear that the defense is inapplicable under the facts in the instant matter.

The record discloses that the conversation with the licensee's employee related solely to whether or not she knew Williamson, the drug purveyor. Her reply was "he is okay; he is a straight dude," or something to that effect. Obviously, there was no entrapment for Pam, the bartender, merely assured the Agent, after she was informed that Williamson was about to sell marijuana to the Agent, that he was okay.

With respect to Williamson, substantial evidence was produced to show that Williamson was ready, willing and able to arrange for distribution of drugs to the Agent. There was not the slightest hint of entrapment. The drugs were not supplied by law enforcement authorities; they came from a cache under the full control of both Williamson and Porman. All the Agent did was ask for the drug. There was certainly no inducement and surely no "extraordinary" inducement. See In re Hagen, Bulletin 1698, Item 2.

In State v. Rosenberg, 37 N.J. Super. 197 (App. Div. 1955), when commenting on the defense of entrapment, Judge

Francis stated that, if a police officer envisages a crime, plans it, and activates its commission by one therefore intending its perpetration for the purpose of providing a victim for prosecution then only is such defense available. However, as pointed out by Judge Jayne in re Schneider, 12 N.J. Super. 449 (App. Div. 1951), "We are dealing with a purely disciplinary measure and its alleged infraction", and that such matters are civil in nature and not criminal. Kravis v. Hock, 137 N.J. Law 252 (Sup. Ct. 1948).

As the Court pointed out in State v. Dolce, Supra:

> "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. Such devices are necessary weapons in the ever present war on crime and criminals. [Citation omitted.]
>
> * * *
>
> The law will protect the innocent from being led to crime through the activities of law enforcement officers but it will not protect the guilty from the consequences of subjectively mistaking apparent for actual opportunity to commit crime safely. Marshall v. United States, 258 F. 2d 94, 97 (10 Cir. 1958), reversed on other grounds 360 U.S. 310, 79 S. Ct. 1171, 3 L. Ed. 2d 1250 (1959)." Id. at 431-32.

The defense of entrapment is hardly ever successful in drug cases.

> "The readiness of the accused to commit the offense without any excessive inducement is typically seen as evidence of the accused's predisposition or intent to commit the offense charged, thereby negating the claim of entrapment. On the other hand, in a few illustrative narcotics cases discussed herein, the courts, holding that there was an unlawful entrapment, have stressed that the narcotics involved in the defendant's crime were supplied by an agent or informer, or that the entrapping agent or informer had in some other way exercised extraordinary inducement or coercion." Footnote references omitted, emphasis supplied. Annotation, "Modern Status of the Law Concerning Entrapment to Commit Narcotics Offense--State Cases," 62 A.L.R. 3d 110, 115 (1975).

In sum, I find that the Agent did not lure or entrap the purveyors of this drug to commit the offense. Rather, the Agent, acting in good faith and in the pursuit of his duties,

merely furnished the opportunity for the commission of the offense. The rationale of Masciale v. U.S. 236 F. 2nd 601 (2 Cir. 1956), rehearing denied 357 U.S. 933, 78 S. Ct. 1367 (1958), is applicable; see also In Re Poodle Club, Inc., Bulletin 1596, Item 2.

It is interesting to note that Williamson's predisposition became evident as a rebuttal to the defense of entrapment when he admitted that he had been involved in a previous drug violation. His actions were consistent with knowledge and participation in drug trafficking that was occurring at that time. He readily volunteered to arrange for the acquisition of drugs for Agent W.

One final comment: the bartender denied the conversation as testified to by the Agent. Such denial is, of course, clearly inconsistent with the defense of entrapment. Thus, I find this contention both untimely and without merit.

Finally, the licensee takes issue with the recommendation with respect to the penalty made by the Hearer as being oppressive and harsh. The recommended penalty to be imposed is consistent with established Division precedents for the types of violations involved. Therefore, this contention is devoid of merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the Exceptions filed with respect thereto and the Answering Argument to the said Exceptions, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein. Thus, I find the licensee guilty of the said charges 1 and 2. Licensee, of course, pleaded non vult to Charge No. 3.

Accordingly, it is, on this 25th day of February 1976,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Clinton, to Round Valley Inn, Inc., t/a Hunter's Rest, for premises e/s Highway #31, RD 1 Lebanon, Clinton Township, be and the same is hereby suspended for seventy-five (75) days commencing at 2:00 a.m. on Thursday, March 4, 1976 and terminating at 2:00 a.m. on Tuesday, May 18, 1976.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - HERNANDEZ ET AL. v. UNION CITY.

Donna Hernandez and Rolando Fernandez,		
Appellants,		On Appeal
v.		CONCLUSIONS AND ORDER
Board of Commissioners of the City of Union City,		
Respondent.		

Samuel R. De Luca, Esq., by Joseph W. Gallagher, Esq., Attorneys for Appellants
Edward J. Lynch, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Board of Commissioners of the City of Union City (hereinafter Board) which, on November 12, 1975 suspended appellants' Plenary Retail Consumption License C-67, covering premises 4803 Park Avenue, Union City, for fifteen days, upon finding appellants guilty of a charge alleging that, on February 8, 1975, they permitted a brawl, act of violence to occur upon the licensed premises, in violation of Rule 5 of State Regulation No. 20. The said suspension was stayed on November 20, 1975 by order of the Director of this Division, pending the determination of this appeal.

Appellants contend that there was insufficient evidence before the Board upon which a guilty finding could be predicated. The Board denied this contention, and averred that there was sufficient reason for its determination, as established by the evidence before it.

An appeal de novo was heard in this Division, with full opportunity afforded the parties to present evidence and cross-examine witnesses. Additionally, at the conclusion of the hearing, both counsel were provided the opportunity to audit an electronic transcription of the testimony of a witness before the Board, with further understanding that such tape would be reviewed thereafter as part of this hearing.

Union City Detective Ronald C. Karabatsos testified that on February 8, 1975, he investigated an incident which occurred at appellants' licensed premises. His investigation

consisted of taking statements from persons who were in the premises at a time when one Rodolfo Rosario was allegedly stabbed by an assailant, identified as Charles Bright.

It appeared to Detective Karabatsos from the several persons from whom he took statements, that Rosario was a patron who found himself enmeshed in an altercation with Bright because he, Rosario protested to Bright for demeaning persons of Hispanic background. In consequence of the argument, Rosario was stabbed and required hospitalization. The thrust of the complaint against the appellants came from a statement given by Guillermo Lefon to Detective Karabatsos.

That statement indicated that the manager, who was on the telephone, was warned by Lefon that an argument ensued which would terminate in a fight unless he, the manager, stopped it. Despite that admonition, the manager, Carlos Hernandez, did nothing. Hence the charge that the licensee permitted a brawl or act of violence to take place.

Rodolfo Rosario, the victim, testified that he arrived in the licensed premises shortly before the incident and sat down at the end of the bar, where he was joined by a "go-go" dancer for whom he bought a drink. Shortly thereafter, she left his side and went to the other end of the bar; and he followed her. A discussion or argument between Rosario and the "go-go" girl developed, and Bright injected himself by coming upon Rosario and stabbing him in the neck and the side. Rosario had no warning nor discussion whatever with Bright, which would have alerted him to any fight or stabbing.

The barmaid gave a statement to the detective, which was placed into evidence before the Board, in which she contributed little or nothing to explain the stabbing. Her version was only that she saw a customer, [presumably Rosario] fall to the floor, obviously bleeding. That patron was removed from the premises.

The husband of the co-licensee, Carlos Hernandez, testified that he was in the premises on the evening of February 8. Bright had been a long-time patron and was in the premises. He had never experienced any difficulties with Bright, and, on that evening, was conversing with him at one end of the bar. The telephone rang and Hernandez answered and discovered the caller to be his brother in Washington. Before that conversation got underway, he turned his body just in time to see some altercation between Bright and Rosario.

He dropped the receiver of the phone and ran to where Rosario had fallen to the floor. He saw some blood and escorted Rosario to the outside to a car. His purpose was to drive with him to the hospital. In the car, the bleeding became profuse, so Hernandez returned to the premises where he picked up the phone (his brother was still on the line and was then told that an emergency had arisen) and called the police; they arrived in minutes, and took Rosario to the hospital.

On cross examination, Hernandez admitted that Lefon might have attempted to speak to him, but he did not recall any such attempt because his attention at that moment was totally directed to the conversation on the phone. He repeated that, as soon as he saw that something had occurred, he proceeded instantly to the scene and, as soon thereafter as practical, summoned the police.

The crucial issue in this appeal is whether the appellants allowed an act of violence to occur on the licensed premises.

The test in these matters involving an act of violence is:

> "...The question involved here is whether the licensees could reasonably have taken steps to prevent the act of violence and disturbance that took place on their licensed premises, but failed to do so." Riverside Corp. v. Elizabeth, Bulletin 2144, Item 3 and citations therein.

I find no testimony, including that of Lefon, which would clearly establish that the appellants' manager could have reasonably anticipated an act of violence under the circumstances. The manager was engaged in a telephone conversation, and such warning as Lefon believed he delivered could well have been unheard by the manager. The victim, whose stabbing resulted in a hospital stay for five days, did not inculpate the management of appellants' premises in the incident which occurred. Reasonable anticipation of an occurrence must be attributable to a licensee before he can be charged successfully with neglect in prevention. Such anticipation was not manifested in this matter.

The Board's concern in this matter is fully understandable, particularly in view of the fact that the unfortunate incident resulted in a serious injury to the victim. However, in disciplinary proceedings, a fair preponderance of the credible evidence is necessary to support and sustain a finding of guilty. Doubtful questions of fact must be resolved in appellants' favor. Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1; Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Rigney's Wine & Liquor, Inc. v. Irvington, Bulletin 2168, Item 4.

After carefully considering the entire record herein, I find an absence of substantial credible evidence to support a finding of guilt. Thus, I conclude that appellants have sustained their burden of establishing that the action of respondent was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Accordingly, I recommend that the action of the respondent be reversed and the charge be dismissed.

Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 5th day of March 1976,

ORDERED that the action of the respondent Board of Commissioners of the City of Union City be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

Leonard D. Ronco
Director

3. STATE LICENSES - NEW APPLICATIONS FILED.

Cortco International Corporation, Inc.
67-69 Cottage Street
Jersey City, New Jersey
Application filed May 3, 1976 for limited wholesale license.

Arnold Young and Morris Rubell
164 Railroad Avenue
Jersey City, New Jersey
Application filed May 7, 1976 for person-to-person transfer of State Beverage Distributor's License SBD-85 from Daniel Miller and Harry Fixler, t/a Kagan Enterprises.

Warren Distributing Company
125 Howard Street
Phillipsburg, New Jersey
Application filed May 10, 1976 for additional warehouse license for premises 47 Readington Road, Branchburg Township, PO Somerville, New Jersey, in connection with State Beverage Distributor's License SBD-56.

Leonard Anklowitz
219 Clarksville Road
West Windsor Township
R.D. #1, Trenton, New Jersey
Application filed May 14, 1976 for a state beverage distributor's license.

Joseph H. Lerner
Acting Director