

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

BULLETIN 2033

March 17, 1972

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STATE OF NEW JERSEY
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1. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - CRIMINALLY DISQUALIFIED STOCKHOLDER - FAILURE TO KEEP BOOKS - LICENSE SUSPENDED FOR BALANCE OF THE TERM WITH LEAVE TO LIFT AFTER 80 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL ACTIVITY.

In the Matter of Disciplinary)
Proceedings against)

Dap and Down Club, Inc.)
6 Nineteenth Ave.)
Newark, N. J.,)

Holder of Plenary Retail Consumption)
License C-1, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Newark.)

CONCLUSIONS
and
ORDER

A. William Sala, Jr., Esq., Attorney for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to the following charges:

- "1. In your short form application dated June 15, 1971 and filed on June 24, 1971 with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which you obtained your current plenary retail consumption license in answer to Question 8 you, after listing Cecelia Baulkman and Michael A. Contino as the holders of 80% and 20% respectively, of your issued and outstanding stock, failed to disclose in answer to Question 10 therein a change in facts in your last prior long-form application, viz., to show a change in answer from "No" to "Yes" to Question 22 in said long-form application which asks: "Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?_____". If answer is "Yes", state details _____", to show and disclose that Cornelius Baulkman had such interest in that he was the real and beneficial owner of 80% of the shares of stock listed in the name of Cecelia Baulkman; such evasion and suppression of a material fact being in violation of R. S. 33:1-25.
- "2. In your aforesaid short-form application for license you failed to disclose and show in answer to Question 10 therein a change in facts in your last prior long-form application viz., a change of answer from "No" to "Yes" to Question 24 in said long-form application which asks: "Does the individual signing this application on behalf of said corporation know, or have any reason whatsoever to believe or suspect, that any of the officers or directors of said corporation, or any holder, directly or indirectly, by any device or subterfuge whatsoever, of more than ten (10) per cent in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect _____?", and to show and disclose you knew and had reason to know that Cornelius Baulkman, who indirectly was the holder of 80% of your issued and outstanding stock in the name of Cecelia Baulkman, as aforesaid, would fail to qualify as an individual applicant for the reason of the fact that he had been convicted of crimes involving moral turpitude to wit: assault with intent to rape and breaking and entering with intent to rape in Essex County Court on May 21, 1947, entering and larceny in Essex County Court on July 20, 1955; such evasion and suppression of a material fact being in violation of R. S. 33:1-25.

- "3. In your aforesaid short-form application for license, you failed to state in answer to Question 10 therein a change in facts in your last prior long-form application viz., a change from "No" to "Yes" to Question 29 which asks: "Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? _____ If so, state names addresses and interest of such individuals, partnerships, corporations or associations _____", and to show and disclose that the aforementioned Cornelius Baulkman had such an interest in that he, indirectly, through the said Cecelia Baulkman had such an interest, as hereinabove set forth in the license applied for and in the business to be conducted under said license; such evasion and suppression of a material fact being in violation of R.S. 33:1-25.
- "4. In your short-form application for license you failed to state in answer to Question 10 therein a change in facts in your last prior long-form application, viz., a change of answer from "No" to "Yes" to Question 30 in said long-form application which asks: "Has the applicant agreed to pay to any employee or other persons (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for? _____ If so, give complete details _____," and to show you had agreed to permit the aforementioned Cornelius Baulkman to retain the profits and income derived from your licensed business; said evasion and suppression of a material fact being in violation of R.S. 33:1-25.
- "5. From on or about October 17, 1966, to date you knowingly aided and abetted said Cornelius Baulkman to exercise, contrary to R. S. 33:1-26 the rights and privileges of your successive plenary retail consumption licenses; in violation of R. S. 33:1-52.
- "6. From on or about July 1, 1967, to date, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed business, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20."

Absent prior record, the license will be suspended on charges 1 through 5 herein for ninety days (Re Scott's Tavern, Inc., Bulletin 1733, Item 2; Re Mack's In-Crowd Bar Inc., Bulletin 1810, Item 3; Re The 331 Broad Ave. Corp., Bulletin 1895, Item 2), and for ten days on charge 6 herein (Re O.K. Corral, Inc., Bulletin 1832, Item 6), making a total of one hundred days, with remission of twenty days for the plea entered, leaving a net suspension of eighty days.

However, as the unlawful situation has not to date been corrected, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than eighty days from the commencement of the suspension herein.

Accordingly, it is, on this 1st day of February 1972,

ORDERED that Plenary Retail Consumption License C-1, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Dap and Down Club, Inc., for premises 6 Nineteenth Avenue, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, effective at 2 a.m. Tuesday, February 15, 1972, with leave to licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than eighty (80) days from the commencement of the suspension herein.

Richard C. McDonough
Director

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
X.P.Y. Corp.)	
t/a The Play Girl Lounge)	
1135-37 South 4th Street)	CONCLUSIONS
Camden, N.J.,)	and
)	ORDER
Holder of Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)	
-----))	
Piarulli and Vittori, Esqs., by Michael J. Piarulli, Esq.,)	
Attorneys for Licensee)	
Edward F. Ambrose, Esq., Appearing for Division)	

BY THE DIRECTOR:

Licensee pleads non vult to a charge that on divers occasions between March 19 and 29, and on April 1, 1971, it permitted gambling on the licensed premises, viz., "numbers game", in violation of Rule 6 of State Regulation No. 20.

Absent prior record, the license will be suspended for ninety days, with remission of eighteen days for the plea entered, leaving a net suspension of seventy-two days. Re Campisi, Bulletin 2015, Item 10.

Accordingly, it is, on this 2nd day of February 1972,

ORDERED that Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to X.P.Y. Corp., t/a The Play Girl Lounge for premises 1135-37 South 4th Street, Camden, be and the same is hereby suspended for seventy-two (72) days, commencing 2:00 a.m. on Monday, February 7, 1972, and terminating 2:00 a.m. on Wednesday, April 19, 1972.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - PERMITTING LEWDNESS ON LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

Joseph Petrucci t/a Crystal Inn 7 Park Avenue Paterson, N. J.,)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

-----) Goodman and Rothenberg, Esqs., by Sylvan Rothenberg, Esq., Attorneys for Licensee Edward F. Ambrose, 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 May 1, 1971, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered a female person to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20."

The Division offered the testimony of two ABC agents in substantiation of the charge.

Agent G testified that, accompanied by agent S, he entered the licensed premises (a tavern) on May 1, 1971 at 9:15 p.m., sat at the far end of a "U"-shaped bar, approximately seven feet distant from a raised "go-go" stage which was contained inside the "U". Upon entry he observed a female, identified as Barbara Rivers tending bar. A male, identified as Ralph Trombino, was acting in a managerial capacity. A female, identified as Marija Huestis, was performing on the go-go stage. Approximately twenty patrons were in the barroom.

The agent described the dancer as being attired in a "G" string and with pasties approximately the size of a silver dollar covering the nipples of her breasts. She also wore a "...transparent mesh type cloth which only covered the pasties and this was secured by elastic going around her neck and the elastic at the bottom of her breasts." A clasp was affixed to the elastic which held the mesh cloth together. A four-inch patch secured by an elastic which went around the dancer's waist and between her buttocks, when removed, revealed a smaller patch. Her buttocks were completely exposed. The female danced to the rhythm of music emanating from a juke box. Occasionally, while performing to a slow number, she would open the clasp permitting the transparent mesh cloth to fall aside completely thus exposing her breasts completely except for the pasties. She would then "...walk back and forth on the stage, grasping her breasts with her hands and moving her breasts up and down and on a couple of occasions she would take the breasts with her hands and squeeze them together." Occasionally,

while performing a fast number, the dancer would pick up a piece of mesh cloth approximately four or five feet long and move it back and forth with her hands between her legs and at times touch her private part.

This performance concluded at approximately 9:45 p.m. She resumed her performance at approximately 10:30 p.m. She performed similarly until about 11:05 p.m. when it was terminated because the agents identified themselves to the barmaid and to Trombino.

It was stipulated that the testimony of agent S would be similar to the testimony elicited from agent G.

In behalf of the licensee, Ralph Trombino testified that he is employed as the manager of the licensed premises. He observed the go-go dancer's performance and attire and it was his opinion that she performed a normal go-go dance and that she did not perform in a lewd, indecent or immoral manner.

On cross examination the witness conceded that the dancer was wearing pasties covering her nipples and a veil which she occasionally loosened exposing the area of the breasts covered only by the pasties. The witness further conceded that this was known as "topless dancing". Finally, the witness asserted that he was generally engaged in pursuing his usual duties as manager and did not particularly concentrate his observations on the dancer.

Marija Huestis testified that she is employed as a professional dancer. She admitted wearing pasties and a sheer cloth covering the pasties; denied rubbing a veil between her legs and asserted that if she, at anytime touched her breasts, it was for the purpose of adjusting the netting or fastening the hook so that her breasts would not be exposed. She performed in New Jersey for five or six years and no one ever cautioned her that her performance was violative of any regulations.

On cross examination the witness testified that she interprets topless dancing to mean that the performer's upper part of her body is completely nude including the absence of pasties. On the night alleged she wore pasties and a net which covers an area approximately two inches to each side of the pasties. The net is held together by an elastic around her neck and under the breasts. Occasionally, the netting slips and when that occurs her breasts are covered solely by the pasties until she adjusts the netting in place. The netting is sheer, it permits a view of the pasties that she wears.

Nicholas Argenti testified that he patronizes the licensed premises usually on a weekend and for approximately an hour each visit. On May 1st, he patronized the tavern for approximately twenty minutes and saw the dancer perform for approximately six minutes of that time. He did not recall what time he was in the tavern. He saw the agents there. He did not see the performer squeezing or cupping her breasts or passing a veil between her legs. He did not consider her performance or dress lewd, immoral or indecent. The performer was wearing pasties and was braless.

The testimony of Sheilann Lozorachak who usually patronizes the licensed premises on weekends was similar to the evidence offered by the previous witness.

In his argument on a motion to dismiss the charge and again in his argument for acquittal, licensee argued (1) that the Division failed to set a guideline, a definition or a standard relative to what constitutes lewd, immoral or indecent activity; and (2) that, in any event, the facts failed to establish that the dancer performed in a lewd, indecent and immoral manner as charged.

Upon due consideration of all of the evidence herein and the legal precedents I find as a fact that the dancer may be characterized as having performed "topless". It has been established that the performer wore pasties which merely covered the nipples of her breasts and a transparent veil which did not conceal the performer's breasts even when the veil was in place.

The licensee's legal contentions are destroyed by precedent.

In the case of In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971), bearing a striking similarity to the case at hand, both factually and as to the charge lodged against the licensee (wherein two go-go dancers wore transparent bibs and pasties covering only the nipples on the breasts), the court held, as follows:

"A license to sell intoxicating liquor is not a contract nor is it a property right. Rather, it is a temporary permit or privilege to pursue an occupation which is otherwise illegal. Since it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954)."

and further:

"We are not here concerned with the censorship of a book, nor with the alleged obscenity of a theatrical performance. 'Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade.' McFadden's Lounges, Inc. v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App. Div. 1954). Lewdness or immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally. Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App. Div. 1955); Jeanne's Enterprises, Inc. v. State of New Jersey, etc., 93 N.J. Super. 230 (App. Div. 1966), aff'd o.b. 48 N.J. 359 (1966).

The public policy of this State strictly limiting the type of permissible entertainment in taverns was recently declared in Paterson Tavern & Grill Owners Assn. Inc., et al. v. Borough of Hawthorne, 108 N. J. Super. 433, 438 (App. Div. 1970), rev'd on other grounds, 57 N.J. 180 (1970), where the court stated:

'The ordinance seeks to ban from Hawthorne's taverns and other licensed premises the 'topless' and 'bottomless' entertainer or dances. The community has a right to protect itself against this kind of an immoral atmosphere which exists elsewhere in the United States. Such so-called 'entertainment' is nothing more or less than an appeal to the prurient interest. It is bait to bring customers to the bar and hold them there, for the obvious purpose of increasing the sale of alcoholic beverages. It may be validly curbed, as Hawthorne provides in its ordinance.'

It is noteworthy that the court (at pp.580, 581) aptly pointed out:

"...that all licensees are charged with knowledge of the admonition of former Director Joseph P. Lordi expressed in an earlier proceeding against a licensee charged with employing 'topless' female employees set forth in Bulletin 1778, Item 5, reprinted in Bulletin 1805, Item 1 as follows:

'In passing, however, I wish emphatically to advise all licensees, that so called 'topless' female employees, whether entertainers or otherwise, and whether with pasties described by the Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State.'

Finally, it should be emphasized that insofar as New Jersey is concerned, there exists no conflict of authority with reference to the lex mammilaria or the legal principles relating to the topless female. Cf. Playpen Incorporation, Bulletin 1778, Item 5, aff'd by the Appellate Division in Playpen Incorporation v. Division of Alcoholic Beverage Control, (1969) not officially reported, reprinted in Bulletin 1805, Item 1; Mrs. Jay's, Inc., Bulletin 1903, Item 2, aff'd by the Appellate Division in Mrs. Jay's, Inc. v. Division of Alcoholic Beverage Control, (1971), not officially reported, reprinted in Bulletin 1967, Item 2; Re Agron, Inc., Bulletin 1840, Item 3.

After carefully considering and evaluating all of the evidence adduced herein and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty as charged and as a necessary corollary thereto, I further recommend that the licensee's motion for a dismissal of the charge be denied.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for thirty days. Re In re Club "D" Lane, Inc., Bulletin 1900, Item 3, aff'd 112 N.J. Super, 577 (App. Div. 1971).

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 transcript of the testimony, the exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 7th day of February 1972,

ORDERED that Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph Petrucci, t/a Crystal Inn, for premises 7 Park Avenue, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Wednesday, February 23, 1972, and terminating at 3 a.m. Friday, March 24, 1972.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

Donata Druda)
t/a Dan's)
152-154-156 Fowler Avenue)
Jersey City, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-309, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

-----)
William V. McLaughlin, Jr., Esq., Attorney for Licensee
Edward F. Ambrose, 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 August 6, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., William M---, age 17; in violation of Rule 1 of State Regulation No. 20."

The Division's presentation was developed through the testimony of the minor and two ABC agents who were specifically assigned to an investigation of alleged sales of alcoholic beverages to minors at the subject premises.

William ---, an eighteen year old minor, gave the following account: On August 6, 1971 (he was then seventeen years of age) he entered the licensed premises and ordered two quarts of beer from the bartender on duty, whom he later identified as James Druda. Upon receiving the beer he paid \$1.10 for it. He had made a purchase of beer on a prior occasion and was never asked, at that time or on this occasion, for any identification for proof of age, nor did he make any written representation with respect thereto.

When he left the tavern, he was stopped by two ABC agents who questioned him with respect to his age. He admitted his true age as being seventeen years old after first displaying a false draft card. He surrendered the alcoholic beverages in his possession, and in the company of the agents he returned to the tavern. After confrontation by the agents with the bartender, the minor was taken to police headquarters.

On cross examination, he admitted that he had been in the tavern on a number of prior occasions but had only actually purchased alcoholic beverages on the date charged herein, and one prior occasion.

ABC agent De testified as follows: In pursuance to a specific assignment to investigate alleged sales of alcoholic beverages to minors at the subject premises, he visited the premises in the company of ABC agent M on the date charged herein. Entering the tavern at 9:45 p.m. the agents seated themselves at the bar and observed the sale of the two quarts of beer to the said minor by Druda. Because he believed this minor was about eighteen or nineteen years of age he followed the minor as he left the tavern, and questioned him with respect to his age. The minor first insisted that he was twenty-one years of age and produced a spurious draft card. The agent did not believe him and upon further questioning the minor finally admitted his true age.

The agent returned with the minor to the tavern and questioned Druda about the sale. Druda admitted that he did not question the minor with respect to his age, and was thereupon placed under arrest charged with the unlawful sale of alcoholic beverages to a seventeen year old minor.

The witness explained that the reason he did not stop the minor immediately upon the said purchase was that he felt that the patronage was belligerent; in fact, upon the confrontation, the patronage did become excited and he heard one of the patrons say to the bartender "...Let's get him. Are they giving you any trouble? ...Let's get him, take care of him..." However, the bartender appeased them by saying "...They are doing their job. I sold to the minor. Please leave him alone."

It was stipulated that the testimony of ABC agent M would be substantially corroborative of that of the previous witness. He added that, in his opinion, the minor appeared to be about eighteen years of age and the New York draft card which he produced was obviously spurious.

James J. Druda testified that he sold beer to the minor on the date charged herein and frankly admitted that he did not on this occasion ask him for identification or obtain any written representation with respect to the minor's age. However, he stated that the minor had been in the premises on approximately seven or eight prior occasions, on at least two of which he "challenged" the minor because he felt that he was under the statutory age.

On both of these occasions the minor produced a driver's license which reflected an age of twenty-one years. He asserted that the minor "...looked 21, might have been 20, I don't know. That is what he looked to me." Although he challenged him the first

time he, nevertheless, felt that it was necessary to "challenge" him on the second occasion "...I still had doubt. I asked him again." However, he never required or obtained any written representation by the minor that he was in fact, of statutory maturity.

Thomas Shinnick, a patron of the tavern testified that, on a prior occasion, he saw the bartender ask the minor for identification. He never saw the full-face view of the minor but from a side glance observation, it was his opinion he was "I would say twenty years of age or more."

In adjudicating this matter, we are guided by the long 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); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). 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.

I have had the opportunity to observe the demeanor of the witnesses as they testified and to observe the appearance of the minor. I am persuaded that the minor appeared to be about eighteen years of age. The fact is that both ABC agents also were firmly convinced that this boy was a minor well below the statutory age.

It is clear to me that Druda must have felt that the purchaser of these alcoholic beverages was a minor because he admitted that on two occasions he challenged him on that account. However, he insists that the minor showed him a driver's license; however he did not request written representation nor was one given by the minor.

The licensee produced a witness who similarly had doubts about the minor's age.

N.J.S.A. 33:1-77 states that in order to provide a complete defense, the licensee must show all of the following:

- (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over; and
- (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over; and
- (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.

I am persuaded that an ordinary prudent person would not believe this minor to be of age.

The attorney for the licensee argues that the minor presented a driver's license which showed him to be of age and that, therefore, no further written representation had to be made. He cites Laurino v. State of N.J. Div. of Alcoh. Bev. Contr. 81 N.J. Super. 220 (App. Div. 1963), reprinted in Bulletin 1544, Item 1, in support of his contention. In Laurino a false written representation was made by two female minors to the local police officer on fingerprint cards, signed by them and in compliance with a local ordinance. The court, in a narrowly written opinion concluded that such police identification cards satisfied the require-

ments of the statutory law as a valid representation in writing in place of the form suggested by the Division to be used by the licensee in such cases.

However, this case is limited to the peculiar facts and circumstances therein. This Division has always held that written representation as contemplated in the statute is a writing made by the minor at or prior to the time of sale or service. In a Special Note defining Rule 1 of State Regulation No. 20 (see p.86 of Rules and Regulations) it is specified such writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale. Such interpretation of the statute has been made by the Division in numerous cases. See Re Fornaro, Bulletin 339, Item 10; Cedar Bar of Bergen County, Inc., Bulletin 942, Item 5; Re Wedemeyer, Bulletin 1050, Item 8.

In Sportsman 300 v. Nutley, 42 N.J. Super. 488 (App. Div. 1956), the court specifically rejected a contention that a showing of a driver's license constituted a representation in writing that the minor was twenty-one years of age or over. In that case, the court said:

"The agency has not, however, considered that a 'false representation in writing by the minor' was intended to embrace such writings as a driver's license, a draft card, or a social security card."

The court added:

"Experience in cases similar to this indicates for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their neglect. It would appear no more difficult for the licensee to follow the statutory requirement of having the patron sign a representation of his age than asking him to produce a draft card, driver's license or similar document for the licensee's purported examination. Where the licensee follows the statutory method, there is always the desirable and substantial possibility that the patron, if a minor, will refuse to commit himself to writing and will leave the establishment."

The decision of Sportsman 300, supra. continues to be the Division's policy and is applicable to the matter sub judice. It should be noted, of course, that the minor has denied even showing or having been requested to show a driver's license or any other representation as to his age.

Since two of the factual elements enumerated in the applicable enactment were not established, he has failed to meet the exculpatory requirement of the statutory defense to such prohibited sale.

Licensees must be held strictly accountable for violations of the statute and the rules with respect to sales to minors. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947); In re Schneider, 12 N.J. Super. 449, 456.

After carefully considering all of the testimony with respect to the said charge, and the applicable law, I conclude that this charge has been established by a fair preponderance of the credible evidence. Accordingly I recommend that the licensee be found guilty of the charge.

Licensee has no prior adjudicated record. It is, further, recommended that this license be suspended for twenty days.
Re Bembas, Bulletin 1984, Item 10.

Conclusions and Order

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

Having carefully considered the entire record herein, including transcript of the testimony, the exhibit, the Hearer's report, the exceptions filed with respect thereto which I find have either been fully considered and resolved in the Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

The attorney for the licensee requested that there be an imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. Under present Division policy, the charge of sale of alcoholic beverages to a seventeen-year-old minor is not one for which the imposition of a fine in lieu of suspension may be favorably considered. Therefore, the request for same is denied.

Accordingly, it is, on this 10th day of February 1972,

ORDERED that Plenary Retail Consumption License C-309, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Donata Druda, t/a Dan's, for premises 152-154-156 Fowler Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Friday, February 25, 1972, and terminating at 2 a.m. Thursday, March 16, 1972.

Richard C. McDonough,
Director.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS (PRINTINGS AND ILLUSTRATIONS) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Bernard Buffy)
501 Summit Avenue)
Union City, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-129, issued by the Board of Commissioners of the City of Union City.)

Vincent L. Verdiramo, Esq., Attorney for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 18, 1971, he possessed, upon his licensed premises, lewd and obscene matter, viz., lewd printings and illustrations, in violation of Rule 17 of State Regulation No. 20.

Absent prior record the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Fasanella, Bulletin 1884, Item 2.

Accordingly, it is, on this 2nd day of February 1972,

ORDERED that Plenary Retail Consumption License C-129, issued by the Board of Commissioners of the City of Union City to Bernard Buffy for premises 501 Summit Avenue, Union City, be and the same is hereby suspended for ten (10) days, commencing 3:00 a.m. on Friday, February 18, 1972, and terminating 3:00 a.m. on Monday, February 28, 1972.

Richard C. McDonough
Director

6. DISCIPLINARY PROCEEDINGS - LOCAL HOURS VIOLATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Wooden Wheel Inn Co., Inc.)
Route #206)
Montgomery Township)
P.O. Skillman, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-1 issued by the Township Committee of the Township of Montgomery.)

James J. Armstrong, Jr., Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, September 5, 1971, it sold alcoholic beverages on the licensed premises in violation of the local hours ordinance.

Licensee has a previous record of suspension of license by the Director for ten days effective July 9, 1962 for sale to minors. Re Wooden Wheel Inn Co., Inc., Bulletin 1470, Item 15.

Prior suspension for dissimilar offense committed more than five years ago disregarded for penalty purposes, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Lou-Mar Cafe, (A Corp.), Bulletin 2024, Item 7.

Accordingly, it is, on this 2nd day of February, 1972

ORDERED that Plenary Retail Consumption License C-1 issued by the Township Committee of the Township of Montgomery to Wooden Wheel Inn Co., Inc. for premises Route 206, Montgomery Township, P.O. Skillman, N.J. be and the same is hereby suspended for ten (10) days commencing 1:30 a.m. on Friday, February 18, 1972 and terminating 1:30 a.m. on Monday, February 28, 1972.

Richard C. McDonough,
Director

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Franklin House, Inc.)
t/a Franklin House)
N.E. Corner Main & West Street)
Glassboro, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-2 issued by the Borough)
Council of the Borough of Glassboro.)

Licensee, Pro Se.
Walter H. Cleaver, Esq., appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 16, 1971, it sold alcoholic beverage to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Mar-May, Inc., Bulletin 2020, Item 5. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$750.00 in lieu of suspension.

Accordingly, it is, on this 2nd day of February, 1972

ORDERED that the payment of a \$750.00 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough,
Director

8. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against
 Lotus Landing, Inc.,
 t/a Lotus Landing
 West Shore Drive
 Stillwater Township RD 2
 Box 54, Newton, N. J.,
 Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Stillwater.

SUPPLEMENTAL ORDER

 Jeffer, Walter, Tierney, DeKorte, Hopkinson & Vogel, Esqs.,
 by George Tierney, Esq., Attorneys for Licensee
 Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

On January 24, 1972 Conclusions and Order were entered herein suspending the license for the balance of its term, effective February 7, 1972, with leave to the licensee or any bona fide transferee of the license to file a verified petition establishing correction of the unlawful situation (undisclosed interest of corporate stockholders in the license) for lifting of the suspension on or after March 6, 1972, after the license had been suspended for twenty-eight days. Re Lotus Landing, Inc., Bulletin , Item .

It appearing from the petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension effective March 6, 1972.

Accordingly, it is, on this 17th day of February 1972,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 4 a.m. Monday, March 6, 1972.

Robert E. Bower
 Robert E. Bower,
 Director.