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

BULLETIN 2425 March 16, 1982

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ITEM

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BULLETIN 2425

March 16, 1982

1. APPELLATE DECISIONS - GOLFRED LOUNGE & BAR, INC. v. NEWARK.

GOLFRED LOUNGE & BAR, INC.,

Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS
AND
ORDER

Lipstein & Lipstein, Esqs., by Howard D. Lipstein, Esq., Attorneys for Appellant.
Salvatore Perillo, Esq., by Hugh Gallagher, Esq., and Gene Truncellito, Esq.,
Attorneys for Respondent.

Initial Decision Below

Hon. Arnold Samuels, Administrative Law Judge

Dated: July 25, 1980 - Received: July 29, 1980

BY THE DIRECTOR:

No exceptions to the Initial Decision were filed by the parties hereto pursuant to N.J.A.C. 13:2-17.6.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits and the Initial Decision, I concur in the findings and recommendation of the Administrative Law Judge and adopt them as my conclusions herein.

Since this is an appeal from the action of the respondent Board, the appellant should not be designated as petitioners but rather as the appellant in these proceedings.

The Administrative Law Judge states "the issue to be decided in this appeal is whether the respondent's action in suspending the petitioner's license for 30 days for violation of the applicable Rule prohibiting lewd and immoral conduct on licensed premises was a reasonable exercise of discretion."

The primary issue herein is whether the action of the respondent in finding the appellant guilty of the subject charge was arbitrary and unreasonable. The secondary issue is whether upon a finding of guilt the respondent abused its discretion in imposing the 30 day suspension.

With respect to the primary issue, in administrative disciplinary proceedings, "discretion" had nothing to do with it. As the Court stated in Fanwood v. Rocco, 59 N.J. Super at page 315 (App. Div. 1959) "the misunderstanding of the scope of review has doubtless been caused in large measure

by the unfortunate use of the term 'abuse of discretion' or its equivalent in some of the cases. Cf. Smith v. Smith, 17 N.J. Super 128, 131, (App. Div. 1951), certification denied 9 N.J. 178 (1952). If all of us could always remember that 'abuse of discretion' means, as Justice Case said in Hager v. Weber,7 N.J. 201, 214 (1951) 'nothing else then that the court's ruling went far enough from the mark to become reversible error', such misunderstanding would not arise. Better yet, we might stop using the term, for in a brief it usually obscures the issues and never illuminates them, while in an opinion it usually beclouds the real basis for the decision and misleads the reader". The Court pointed out that discretion is not involved where the Director is called upon to decide disputed questions of fact, as, for example, in disciplinary and similar proceedings. Id. page 317 "in such cases the Director's 'discretion' has nothing to do with his findings of the underlying facts. If the evidence is not there, no amount of 'discretion' can supply the deficiency. However, if after finding sufficient facts to warrant disciplinary action the Director imposes a penalty, the amount of the penalty would be an exercise of his discretion".

Finally, the Administrative Law Judge correctly referred to State v. Delce, 41 N.J. 422, 530 (1964), for the rule that entrapment occurs only when wrongful conduct was the product of the creative activity of the law enforcement officials. However, he states: "as for the question of entrapment such a defense can be urged (in these proceedings)...". With respect to the defense of entrapment in a disciplinary proceeding, the law is to the contrary. Courts have uniformly viewed entrapment as a defense to a criminal charge only, and not applicable in administrative disciplinary proceedings. See Knight v. Louisiana State Bd. of Medical Examiners, 211 So. 2d 433,438 (La. Ct. App. 1968) writ of review den. 214 So. 2d 716 (Sup. Ct. 1968) cert. den. 395 U.S. 933 (1969); State v. Rhodes, 177 Neb. 650, 131 N.W. 2d 118, 128 (Sup. Ct. 1964).

The appellant did not cite a single case in New Jersey in support of its defense of entrapment in disciplinary proceedings; in fact, there is no such case. It should be emphasized that the Division of Alcoholic Beverage Control has repeatedly rejected the defense of entrapment. See e.g., In the Matter of Silver Crest Motels, Inc., Bulletin 2019, Item 1; Re Charles D. Kuchar, Bulletin 2007, Item 2; Re: Highlander Hotel Corp., Bulletin 1475, Item 1; Re: Hackensack Melody Bar, Inc., Bulletin _____, Item ___.

Since I have concluded that the respondent acted reasonably, based upon the evidence presented, I also find that a suspension of license for 30 days was reasonable, and in accordance with the long-established penalty schedule in effect in this Division for such offense.

Accordingly, it is, on this 22nd day of August, 1980,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order dated November 15, 1979, staying the said suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License No. 0714-33-701-003 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Golfred Lounge & Bar, Inc. for premises 612 South Orange Avenue, Newark be and the same is hereby suspended for 30 days commencing 2:00 a.m. Thursday, September 4, 1980 and terminating 3:00 a.m. Saturday, October 4, 1980.

INITIAL DECISION

GOLFRED LOUNGE & BAR, INC.	)	**OAL DKT. NO. ABC 5874-79**
v.	)	AGENCY DKT. NO. Appeal 4421
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK	)	MUN. REV. 7469

APPEARANCES:

Hugh B. Gallagher, Esquire, Assistant Corporation Counsel and **Gene Truncellito,** Esquire, attorneys for the respondent, City of Newark Board of Alcoholic Beverage Control

Lipstein & Lipstein, Esquires, by **Howard D. Lipstein,** Esquire, attorneys for the petitioner, Golfred Lounge & Bar, Inc.

WITNESSES:

For the Respondent:

V. G.

For the Petitioner:

Marlene West

OAL DKT. NO. ABC 5874-80

BEFORE THE HONORABLE **ARNOLD SAMUELS,** A.L.J.:

This matter is an appeal by the petitioner from the action of the respondent, suspending the petitioner's plenary retail consumption license for 30 days, based upon a charge of permitting lewd and immoral activity on the licensed premises on January 31, 1979. The suspension was stayed by the Director of the Division of Alcoholic Beverage Control pending this appeal; and on December 28, 1979,the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held at the Office of Administrative Law in Newark, New Jersey on April 29, 1980 and June 26, 1980, and the record closed on June 27, 1980.

The exact charge preferred by the respondent is as follows: "You did on Wednesday, January 31, 1979, allow, permit or suffer in and upon your licensed premises lewdness, immoral activity and foul, filthy and indecent and obscene conduct in violation of Rule 5 of State regulation No. 20."

The foregoing charge was set forth in a Resolution and Order adopted by the respondent on October 15, 1979. The conduct and acts involved in the charge are set forth in Rule 5 of State regulation No. 20, now N.J.A.C. 13:2-23.6.

A disciplinary hearing was held by the respondent Board on October 15, 1979. At that hearing, one witness testified for the Board, Investigator V. G. The petitioner was represented by counsel, who cross-examined Mr. G. and argued the defense of entrapment, but did not present any witnesses for the petitioner. The stenographic transcript of that proceeding was marked in evidence here as Exhibit J-1. It is the only document in evidence.

The issue to be decided in this appeal is whether the respondent's action in suspending the petitioner's license for 30 days, for violation of the applicable rule prohibiting lewd and immoral conduct on licensed premises, was a reasonable exercise of discretion.

Prior to the taking of testimony, the respondent moved for dismissal of the appeal based solely on the existence of the record of hearing below, without the need for de novo testimony. The respondent took this position based upon N.J.A.C. 13:2-17.18, which provides that the Board may offer the transcript in lieu of producing witnesses at the hearing on appeal. Since the petitioner produced no witnesses at the hearing below, the

respondent argued that the testimony of its witness at the departmental hearing furnished sufficient credible evidence on the record to compel a finding here in support of the municipal action, without more.

In its preliminary argument, the respondent also moved for dismissal of the petitioner's claim that the Board's action should be reversed because the Board allegedly obtained its evidence by means of entrapment.

The above matters were argued and decided prior to the commencement of testimony, as follows:

N.J.A.C. 13:2-17.6 provides:

"De novo hearing; discovery

All appeals shall be heard de novo except as otherwise provided in section 8 of this subchapter, and the parties may introduce oral testimony and documentary evidence. The respondent shall first present evidence in support of the action of the municipal issuing authority, but the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with the appellant. ... "

N.J.A.C. 13:2-17.8 provides as follows:

"Stipulations, offer of transcript.

Where none of the material facts is disputed, the appeal may be presented, subject to the approval of the Director, upon an agreed statement of facts. Where there is available a stenographic transcript or electronic recording of the proceedings before the issuing authority, either party may, if at least three days notice of intention so to do has been given opposing parties, or counsel therefor, offer the transcribed record thereof in lieu of producing said witnesses at the hearing of the appeal. In such event, any opposing party may subpoena witnesses to appear personally, and any party may produce any additional evidence, oral or documentary, at the hearing of the appeal. Subject to the approval of the Director, the parties may agree to present the appeal solely upon such stenographic or electronic transcript."

The foregoing regulations (formerly Alcoholic Beverage Control Regulation 15, rule 6 and rule 8 respectively) are part of a group of extensive regulations dealing with procedure in appeals to the Director.

Presentation of an appeal solely on the transcript or record of the proceeding below, pursuant to N.J.A.C. 13:2-17.8, is clearly discretionary. The ability of the Director (and derivatively, an Administrative Law Judge) to accept such a format does not create a prohibition against conducting the de novo appeal provided for in N.J.A.C. 13:2-17.6. In fact, the foregoing section specifically authorizes any opposing party to adduce testimony from witnesses personally and to produce any additional evidence, oral or documentary, at the hearing on appeal. The transcript of the record below can be introduced into evidence at the hearing, as was done in this case. However, in the case at hand, that transcript by itself was an insufficient record for purposes of this appeal.

Furthermore, the need for a de novo hearing of the facts does not in any way alter or reduce the concept stated in Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 55 N.J. 292 (1970), that the hearer on appeal will not substitute his judgment for that of the local board or reverse their ruling if reasonable support for it can be found on the record.

Respondent's motion for dismissal of the appeal without de novo testimony was therefore denied.

As for the question of entrapment, such a defense can be urged when a wrongful design originates with the investigatory authorities, and they implant in the mind of an innocent person the disposition to commit the offense; and they induce the commission in order that they may prosecute. Entrapment occurs only when the wrongful conduct was the product of the creative activity of the law enforcement officials. State v. Dolce, 41 N.J. 422, 530 (1964).

No such inducement or creative activity took place in this case, and entrapment is clearly not a viable reason for dismissal of the charge. Respondent's motion to eliminate petitioner's use of the defense was granted.

The de novo hearing on appeal followed.

V. G., an investigator employed by the Alcoholic Beverage Control Board of the City of Newark, testified that he went into the Golfred Lounge at about 5:00 p.m. on January 31, 1979 and sat at the bar for approximately one or one and one-half hours. About 35 or 40 patrons were also in the establishment.

After he was there for about 15 minutes, a female go-go dancer began performing on the stage behind the center of the bar. She was wearing a black two-piece bikini and danced for about 15 or 20 minutes, just moving her body, but otherwise mostly stationary. On occasion, she would pull the upper portion of her bikini bra apart and expose her breasts. She would then take a breast in each hand and shake them in the direction of the patrons. On occasion she would move the G-string portion of the bikini bottom apart and stroke her pubic area.

The dancer also used a toy pistol in her act, which she would place to her vagina and then to her lips.

A bartender named Max was present at the time, serving customers and conversing with them.

After the dancer finished, she went to the ladies room, changed costumes, and then sat down with the customers at the bar. About 20 minutes later she got up on the stage and repeated the same routine described above.

The investigator had two or three beers while he was in the premises and left. He stated that he had seen the same go-go dancer perform on previous occasions in other places, but never in the manner described above.

It was stipulated by counsel that testimony could have been offered by K. W., a Detective in the Newark Police Department, who was with V. G. at the time. His testimony would have been corroborative, but cumulative, he did not testify.

Mrs. Marlene West testified for the petitioner. She was also present and tending bar during the dance act described by V. G. The other bartender, Max, is her husband, and Mrs. West was in charge of the premises at the time. She has known V. G. for the past four and one-half years, and knew he was an investigator for the Municipal Board of Alcoholic Beverage Control. Mrs. West saw him come into the bar at 5:00 p.m.,

and she was present while the dancer, named GiGi, performed. She described the dance act as slow technique - modern jazz. According to Mrs. West, GiGi did not unhook the upper or lower part of her costume, and she did not completely expose her breasts.

However, Mrs. West stated that the dancer had certain mannerisms and would insert her fingers into the bottom and pull at them at the sides. She acknowledged that GiGi used a toy pistol during some of her songs, aiming it either at her head or stomach or possibly pointing it toward her bottom area, depending on the movement. Mrs. West said that the dancer also put the pistol to her mouth. She said it was a really cute act, and she thought the toy pistol made little explosions.

Mrs. West indicated that the investigator, V. G., spent some time talking to GiGi between her acts, and that there was some relationship between them.

When asked about the attention she gave to the dancing, while she was serving 30 or 35 people, Mrs. West asserted that she paid close attention to it, but could not see everthing all the time because she sometimes turned to serve customers.

Having heard and observed the witnesses, reviewed the exhibit and considered the argument of counsel, the Court **FINDS** the following facts, by a preponderance of the credible evidence:

1. The foregoing discussion is incorporated herein by reference.

2. The petitioner, Golfred Lounge & Bar, Inc., operates a bar and tavern at 612 South Orange Avenue, Newark, New Jersey, and is the holder of plenary retail consumption license #0714-44-732-001.

3. On January 31, 1979, between 5:00 and 6:00 p.m., a go-go dancer named GiGi performed on a stage behind the bar in the licensed premises, before 35 or 40 patrons. She was wearing a two-piece bikini costume.

4. During her performance, GiGi pulled the upper part of her bikini (bra) apart, exposed her breasts and shook them in the direction of the customers at the bar. This was in addition to dancing that she performed, primarily by moving her body.

5. During the same performance, GiGi also moved the bottom (G-string) portion of her bikini aside and stroked her pubic area.

6. During the same performance, the dancer also placed a toy pistol to her vagina and then to her mouth.

7. The above performance lasted approximately 15 or 20 minutes.

8. After resting for about 20 minutes and changing her costume, the dancer repeated her performance a second time. During this second performance, she substantially repeated the same acts described above.

9. All of the foregoing was seen by patrons in the bar.

10. The management and employees of the petitioner's establishment observed the acts performed by the dancer, as described above, and they did nothing to stop or prevent them.

N.J.A.C. 13:2-23.6 (formerly Alcoholic Beverage Control regulation 20, rule 5, provides, in pertinent part, as follows:

"(a) No licensee shall engage in or allow, permit or suffer in or upon the licensed premises:

1. Any lewdness or immoral activity; ... "

In interpreting the extent to which this rule can be applied in premises holding a liquor license, our courts have held that in determining what conduct constitutes lewdness or immoral activity, we are not concerned with censorship of a book or the alleged obscenity of a theatrical performance. Since a license to sell intoxicating liquor is not a contract or property right, but is a temporary permit or privilege to pursue an occupation which is otherwise illegal, it may be entirely prohibited, permitted or restricted under such conditions as will limit its evils to the utmost extent.

It therefore follows that the definition of lewdness or immoral activity, for purposes of controlling and restricting the sale and use of alcoholic beverages, may be determined on a distinctly narrower basis than for regulation of commercial entertainment generally. In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971.)

The imposition of strict limits on permissible entertainment in taverns was also approved in Paterson Tavern & Grill Owners Assn., Inc. v. Hawthorne, 108 N.J. Super. 433 (App. Div. 1970), rev'd. on other grounds 57 N.J. 180 (1970), cited with approval in In re Club "D" Lane, supra.

See also McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61 (App. Div. 1954); California v. LaRue, 409 U.S. 109 (1972).

Based upon the foregoing facts and the law applicable thereto, it is **CONCLUDED** that:

A. The act performed by the go-go dancer GiGi during her performances in the petitioner's establishment on January 31, 1979, as described above, constitutes lewd and immoral activity, in violation of N.J.A.C. 13:2-23.6.

B. Sufficient facts existed, and were proven by a preponderance of the credible evidence, to support the decision of the local board to suspend the petitioner's license for 30 days, for the foregoing violation. The respondent's action in so doing represents a reasonable exercise of discretion on the basis of the evidence presented, and since its decision was not unreasonable, arbitrary or illegally grounded, that decision should not be disturbed. Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); In re Club "D" Lane, Inc., supra.

It is, therefore, ORDERED that the action of the respondent in suspending the petitioner's license for 30 days be **AFFIRMED** and the appeal **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOSEPH H. LERNER,** who by law is empowered to make a final decision in this matter. However, if Joseph H. Lerner does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE my Initial Decision with **JOSEPH H. LERNER** for consideration.

2. APPELLATE DECISIONS - NEW LIDO, INC. v. NEWARK.

#4232
New Lido, Inc.,
t/a Miller's Bar & Grill,

Appellant,

v.

Board of Alcoholic Beverage Control
of the City of Newark,

Respondent.

ON APPEAL
CONCLUSIONS
AND
ORDER

Hodes, Fein and Randall, Esqs., by Jeffrey G. Poster, Esq., Attorneys for Appellant.
John C. Pidgeon, Esq., Assistant Corporation Counsel of the City of Newark, Attorney for the Board.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark, which, by Resolution dated May 22, 1978, suspended appellant's license for ten (10) days upon its determination that the appellant was guilty of a charge alleging that, on Friday, September 9, 1977, the corporate appellant did, through its servants or employees, fail to facilitate and/or hinder and delay and caused the hindrance of an investigation, inspection, etc. of its licensed premises in violation of N.J.S.A. 33:1-35.

Upon filing of the appeal, the Director, by Order dated June 16, 1978, stayed the suspension pending determination of this appeal.

The parties waived hearing in this Division, and submitted the matter upon the transcript of the hearing held by the local issuing authority, the pleadings and oral argument, pursuant to N.J.A.C. 13:2-17.8.

From reading the transcript, the following factual matrix emerges.

Joseph Neuman, principal stockholder and manager of the corporate licensee became involved in a dispute with

a go-go dancer on the date of the alleged violation. She apparently became enraged and grabbed him by his necktie; he pushed her away. She then hurled glasses at him, some of which struck and smashed the back bar mirror. He then pushed "the button", a silent alarm which registers at the nearby police station. He described the device as a disturbance signal.

The Police Department dispatched a cruiser to the scene which was involved in a motor vehicle accident enroute; the two police officers required removal from the scene to the hospital because they were seriously injured.

Other police were then dispatched, and upon their entry found no holdup in progress. Detective Egan, one of the first on the scene, related his encounter with Neuman which can be characterized as surly and uncooperative. Egan stated that Neuman informed him that it was not his business to know why the alarm was activated; it merely being his business to respond.

When Egan asked to see the current license and employment list, he was refused at first, then ignored, and then the volume of the juke box was increased. After several minutes Neuman removed the requested documents from the wall above the cash register where they were visible, in a frame, and handed them to Egan. The officers were subject to verbal abuse throughout their stay in the premises.

Neuman testified in defense of the charge and denied Egan's allegations, and gave the following account: the police barged in and demanded certain things and did not give him time to comply. He was neither arrogant nor uncooperative as Egan's description would indicate. The police were hostile from the first, which he ascribes to the fact that two of their brother officers were injured in the accident hereinbefore described.

Alvin B. Ward, a patron testified on behalf of the licensee. His testimony, as related in the transcript, indicates a degree of uncertainty as to the facts at issue.

The bartender, George Washington, corroborated the testimony of Neuman.

- I -

We are herein dealing with a purely disciplinary action directed at the licensee. Such action is civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449, 454 (App. Div. 1950). Thus the proof must be supported only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

There is a sharp conflict in the testimony of the witnesses produced by both appellant and the Board. Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. No testimony need be believed, but rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, Sec. 2100 (1940); Greenlief Evidence, Sec. 201 (16th Ed. 1899).

Apparently, the Board who heard the testimony and was privileged to observe the demeanor of the various witnesses as they testified, found more credible the account given by the police officer and of course, witnesses did not testify at the Division hearing.

There can be no doubt that, inasmuch as the licensee summoned the police by engaging the silent alarm ("disturbance button"), their presence on the premises was during the course of an investigation and, therefore, clearly within the pertinent regulation.

The burden of establishing that the Board acted erroneously, and in an abuse of its discretion, is upon the appellant. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way, could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Lyons Farm Tavern v. Municipal Board of Alcoholic Beverage Control, Newark, 55 N.J. 292, 303 (1970); Hudson-Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 50. (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277, 283 (App. Div. 1957).

My examination of the facts in the entire record and the applicable law generates no doubt that the truth of the charge was established by a fair preponderance of the credible evidence. I further conclude that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by N.J.A.C. 13;2-17.6.

Additionally, it should be observed that the suspension imposed in local disciplinary proceedings rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Director to reduce the suspension is limited to those situations where it is manifestly unreasonable. Sventy and Wilson, Inc., v. Point Pleasant Beach, Bulletin 1930, Item 1. See Also, Pom Bon, Inc., v. Cliffside Park, Bulletin 1897, Item 1, and cases cited therein, wherein a penalty of revocation of license was not disturbed; Delroz, Inc. v. West Orange, Bulletin 1755, Item 1; affirmed (App. Div. 1968), opinion not approved for publication.

The suspension imposed by the Board is consonant with this Division's practice in similar cases.

Accordingly, it is recommended that an order be entered affirming the Board's action, dismissing the appeal, vacating the Order staying the suspension and reimposing the ten days suspension fixed by the Board.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the appellant and written Answers submitted on behalf of the respondent, pursuant to N.J.A.C. 13:2-17.14.

In its first Exception, the appellant now argues for the first time that the Board lacked jurisdiction because one of its three members excused himself and did not participate at the hearing below. It is well settled that, absent specific legislation to the contrary, presence of a majority of members constitutes a quorum to effectuate official action. Re Reichenstein, Bulletin 173, Item 9. Thus, I reject this Exception as without basis in law.

Appellant next argues that the local police had no authorization or cause to conduct a license investigation on September 9, 1977, and it was, in fact, made only to vent the police officers' frustations.

The licensee has a statutory and regulatory obligation to cooperate with license investigations whether conducted by this Division or the local police of the issuing authority. N.J.S.A. 33:1-35, N.J.S.A. 33:1-71, N.J.A.C. 13:2-23.13 and N.J.A.C. 13:2-23.30. The record clearly supports a finding that the appellant's manager intentionally obstructed and failed to cooperate with a lawful and proper demand to produce required documents.

It is immaterial to the determination herein that the responding officers may have been agitated or frustrated. The request was proper and justified; it was the appellant who thwarted and obstructed the request. Vogellus v. Division of A.B.C., (App. Div. 1963) Bulletin 1537, Item 1. I reject those Exceptions in this regard as without basis in law or fact.

Further Exceptions of appellant allege that the local issuing authority exhibited bias and prejudice against the appellant. Bias, prejudice or improper motivation may not be presumed and must be established by convincing proof. Ramblewood Spirit Shop, Inc. v. Mount Laurel, Bulletin 2324, Item 1. Such proof does not appear from my review of the record as a whole and I reject these Exceptions.

In its last Exception the appellant seeks a new hearing. Such request is without basis in law or fact. The within appeal de novo afforded the appellant a full and complete opportunity to present witnesses and evidence on its behalf. It chose to rely on the transcripts below, pursuant to N.J.A.C. 13:2-17.8, and it is bound therein.

Having carefully considered the entire record herein, including the transcripts of the testimony, the written memorandum of the parties, the Hearer's Report, the written Exceptions filed thereto by appellant, and the written Answers submitted on behalf of the respondent, I concur in the findings and recommendations of the Hearer and adopt same as my conclusions herein.

Accordingly, it is, on this 25th day of August, 1980,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed and the appeal be and is hereby dismissed, and it is further

ORDERED that my Order of June 16, 1978 staying the subject suspension pending determination of the appeal be and is hereby vocated; and it is further

ORDERED that Plenary Retail Consumption License No. 0714-33-547-001 issued by the Newark Board of Alcoholic Beverage Control of the City of Newark to New Lido, Inc., t/a Miller's Bar & Grill for premises 270 Washington Street, Newark, N. J. be and the same is hereby suspended for ten (10) days commencing 2:00 a.m. Monday, September 8, 1980 and terminating 2:00 a.m. Thursday, September 18, 1980.

Joseph H. Lerner
Director

3. STATE LICENSES - NEW APPLICATIONS FILED

Carlyle Importers, Inc.
600 Secaucus Road
Secaucus, New Jersey
Application filed February 17, 1982 for place-to-place transfer of its wine wholesale license to include a salesroom at 530 Huyler Street, So. Hackensack, New Jersey.

Karis Paper and Food Distributors Inc.
152 Jelliff Avenue
Newark, New Jersey
Application filed February 23, 1982 for state beverage distributor's license.

Domecq Importers Inc.
2 Madison Avenue
Larchmont, New York
Application filed March 3, 1982 for plenary wholesale license.

Campari USA Inc.
527 Madison Avenue, Room 508
New York, New York
Application filed March 15, 1982 for plenary wholesale license.

Dennis P. O'Keefe
Acting Director