

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

BULLETIN 1667

April 11, 1966

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BULLETIN 1667

April 11, 1966

1.. COURT DECISIONS - BOMWELL v. NEWARK - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-60-65

ROBERT BOMWELL and CONNIE
BOMWELL, t/a Parakeet Lounge,

Respondents,

v.

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

Appellant.

Argued February 24, 1966 Decided March 2, 1966

Before Judges Gaulkin, Labrecque and Brown.

Mr. Anthony J. Iuliani, Assistant Corporation
Counsel, argued the cause for appellant (Mr.
Norman N. Schiff, Corporation Counsel of the
City of Newark, attorney).

Mr. Herman L. Fast argued the cause for
respondents (Messrs. Fast and Fast, attorneys).

PER CURIAM

Appeal from Director's decision in Bomwell v. Newark,
Bulletin 1639, Item 1. Director's order affirmed without opinion.

2. APPELLATE DECISIONS - FRAIETTA, INC. v. GLOUCESTER CITY.

Fraietta, Inc., t/a One)
 Rose Cafe,)

Appellant,)

On Appeal

v.)

CONCLUSIONS

Common Council of the City)
 of Gloucester City,)

and
 ORDER

Respondent.)

 Cahill, Wilinski & Mohrfeld, Esqs., by Robert Wilinski, Esq.,
 Attorneys for Appellant

William D. Dilks, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The appeal herein was filed from the action of respondent whereby it suspended appellant's Plenary Retail Consumption License C-27 for premises 308 Orlando Avenue, Gloucester City, for a period of forty-five days commencing October 25, 1965. Upon the filing of this appeal an order, dated October 21, 1965, was entered by the Director staying the suspension until the entry of a further order herein. R.S. 33:1-31.

Appellant alleges in its petition of appeal that the action of respondent was erroneous because:

"... the licensee, who was not represented at a hearing held October 5, 1965, did not fully understand the import, meaning and effect of said hearing, was not given an opportunity to present a proper defense to the charges, was not given an opportunity to properly cross-examine the witnesses and furthermore, the findings of the respondent were not based on facts or evidence, were erroneous and against the weight of the evidence."

Respondent in its answer contends that:

"... its findings were based on proper evidence and prays that the Division make the same finding and give the same suspension."

The charge in the disciplinary proceedings instituted by respondent alleged that:

"On August 26, 1965, you through your agent, sold served and delivered alcoholic beverages to Stephen ---, a person under the age of twenty-one years, from your licensed premises in violation of State Regulation 20, Rule 1."

The testimony of Detective John Berfaille, of the Gloucester City Police Department, discloses that Stephen --- was apprehended by Bellmawr police after alcoholic beverages were found in a car which he was operating and, as a result of

conversation with Stephen, the matter was turned over to the Gloucester City police authorities. Detective Berfaille further testified that he interviewed Stephen at local police headquarters on September 1, 1965.

Stephen --- testified that he was born November 6, 1946, and that he was taken into custody by the Bellmawr police before August 15, 1965. The attorney for respondent asked Stephen what happened on August 26th and, in response, he answered, "I don't remember the dates, but referring to the going into the bar, I was there." When asked by the said attorney "What date was that?" he replied, "I can't tell you about any of the dates. I don't remember." Stephen further testified that, on the date when apprehended by the Bellmawr police, he had been in appellant's licensed premises and had purchased "a six-pack of beer" from "Peggy" the barmaid, and at the hearing herein identified a woman who, when asked what her name was, stated "Peggy Daveler" (hereinafter Peggy). Stephen further said the purchase took place at night "somewhere around eight, a little after." He further testified that she did not ask him for any identification before the sale of the beer was made. Stephen also said that he knew the barmaid (Peggy) and also the owner (Anthony Fraietta) because, on the first occasion that he visited appellant's premises, Fraietta asked him for identification and "I told him I didn't have any and later I found out he was the owner." He said that there were two customers in the premises on the night in question when he bought the beer, paying \$1 therefor.

The attorney for respondent asked the following:

- "Q I have a statement in front of me given to John Berfaille on September the 1st, and in this statement you gave August 26th as the date that you bought the beer; is that correct?
A Yes.
Q Was that the date?
A Yes."

The statement referred to was not offered as an exhibit in evidence in the instant matter.

On cross examination Stephen --- testified that he parked on the parking lot and then entered the appellant's premises through the rear door which was the only entrance he knew whereby one could enter the licensed premises; that Peggy was behind the bar and Fraietta "was sitting in the chair" to his left; that he remained in the premises "a couple of minutes" and, when he gave his order to Peggy, "she came around behind the bar and she walked down the door and walked in and got it;" that the first time he entered appellant's premises, six weeks before the date in question, he was asked by Fraietta for identification and, when he could not produce it, Fraietta said "Do you want a coke or something?" and Stephen then told Fraietta "Never mind. I'll leave." So I left." Stephen said that he was in the said premises "several times" from his first visit to the time when he purchased the six-pack of beer, and Fraietta "was there almost all the time I was there;" that on the several occasions referred to by him he purchased beer at the appellant's premises; that on each of the occasions between the first and the last visit to appellant's premises he remained in the premises about fifteen or twenty minutes and during that time consumed five bottles of beer; that "after I got served a second time I went back about, approximately, a week, maybe a couple of days later;" that he drank the same amount of beer in the same period of time on his

third visit as on the previous visit. When asked why he (Stephen) returned to appellant's premises after being refused service of alcoholic beverages on the initial visit, he stated, "The people told me it was an easy mark to hit" but further stated, in response to a question, that he found other licensed premises in the municipality also to be "easy marks." He said that he was picked up by the police "about ten, ten-thirty" at a hamburger stand, and at said establishment drank only "the last couple of bottles, about two left." When queried as to whether the beer was warm or cold, he stated, "It was still cool" as "it was a cool night."

On redirect examination by respondent's attorney, Stephen described Miss Daveler's attire "almost every time I was in there she had a shell blouse on, short-sleeved, and a skirt." Asked to describe the interior of the premises, he said "As you walked in the door, yeah, you, you go down the steps and the bar is right there. It's in, right in front of you, about ten, about ten feet. On the right-hand side as you walk in, there's a pool table with a few tables around it, and as soon as you walk in the door on the left-hand side there's a juke box and in back of the juke box there's a place where they make sandwiches."

Anthony Fraietta (an officer of appellant and manager of the premises) testified he was on duty, as was Peggy, on August 26, 1965, but he did not see Stephen in the place that night. However, he remembered that "about five or six weeks" prior to the date Stephen was apprehended by police, the youth and two companions were in his premises and that, although the two companions offered proof of their respective ages, he refused to serve Stephen alcoholic beverages when he was unable to do likewise.

Peggy Daveler testified that on August 26, 1965, she was tending bar in appellant's premises but did not see Stephen there that evening nor did she see him in the premises on any other occasion. When asked concerning the statement made by Stephen that on two separate occasions he consumed five bottles of beer within a period of fifteen or twenty minutes, she said "Well, I would remember if somebody came in and drank five bottles of beer in that amount of time, because it's unusual for somebody to do that. Maybe the first or second beer they drink fast, but after that they slow down." In answer to a question asked by respondent's attorney concerning the type of blouse she usually wears, Peggy answered "shell blouse. But Stephen said I had a skirt on, but I don't wear skirts. I wear slacks or a pair of knickers."

Stephen testified in rebuttal that on the first occasion that he visited appellant's premises he was alone, but on other occasions he was in the company of others. None of his alleged companions was called to testify at this hearing.

After a careful review of the evidence, it becomes apparent that the uncorroborated testimony of Stephen is weakened by various statements given by him at the instant hearing. First of all, there is no dispute that, on the first visit to appellant's premises, Fraietta refused to sell or serve alcoholic beverages to Stephen. Thus his contention that the said establishment had the reputation of being an "easy mark to hit" was not borne out. Further, Stephen not only singled out appellant's place of business wherein it was easy for minors to be sold and served alcoholic beverages, but also testified that other licensed premises in the municipality did likewise. He said he made the alleged purchase of beer in question prior to August 15, 1965. However, when the respondent's attorney asked what

happened on August 26th, Stephen answered, "I don't remember the dates, but referring to the going into the bar, I was there." Moreover, Stephen testified that on two visits to appellant's premises between the time he was refused service and August 26, 1965, when he alleges that he was sold the six-pack of beer, he consumed five bottles of beer within fifteen or twenty minutes on each occasion. He also stated that he purchased the six-pack of beer around 8 p.m. or a little thereafter, and that at 10 or 10:30 p.m., just prior to the time he was stopped by the police, he consumed the last two bottles of beer which still were cool. It must be remembered that the violation in question was alleged to have taken place on August 26, 1965, which was during the summer season. It also is very difficult for one to believe that any person could consume five bottles of beer within a period of fifteen or twenty minutes. I agree with the statement of Peggy that it is understandable one might consume the first or second bottle of beer quite hastily, but in all probability after that the tempo of consumption of the beer would slow down considerably. Stephen did not remember the date or the day of the week when the six-pack of beer was purchased. It was his impression that it was some time before August 15th. He had visited the licensed premises on one occasion, and it is quite likely that he could have remembered the layout of the said premises. He also said that Peggy was also attired in a shell blouse and skirt, whereas she contends that she never wore a skirt when on duty in the licensed premises but, rather, wore slacks or a pair of knickers.

Peggy, who was alleged by Stephen to have sold the beer to him on the various occasions, stated that she did not see him on the evening now under consideration or at any prior time. There was nothing brought out on cross examination which in any way refuted her testimony concerning Stephen.

I was not very impressed with Stephen's demeanor on the stand when testifying in this matter.

The guilt of appellant must be established by substantial evidence. I do not believe the uncorroborated testimony given by Stephen meets this requirement. The testimony of the appellant's witnesses who were in the licensed premises when the incident in question took place is more plausible.

It is axiomatic that in disciplinary proceedings a preponderance of the evidence is necessary to support and justify a finding of guilt, and doubtful questions of fact must be resolved in appellant's favor. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1.

In the case sub judice the appeal to the Division constitutes a de novo hearing. Cino v. Driscoll, 130 N.J.L. 535 (E. & A. 1943); Fanwood v. Rocco, 33 N.J. 404, 414 (1960).

The Director's review in a matter of this kind is plenary and may result in independent findings which supersede the action taken at the original hearing. Neiden Bar and Grill v. Municipal Board etc., 40 N.J. Super. 24, 28-29 (App.Div. 1956). See also Oak Inn Incorporated v. Division of Alcoholic Beverage Control, et al. (App.Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2.

After careful consideration of all the testimony adduced herein, it is recommended that the action of respondent be reversed.

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 written argument of the respective attorneys, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 16th day of February, 1966,

ORDERED that the action of respondent be and the same is hereby reversed.

JOSEPH P. LORDI,
DIRECTOR

DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - FOUL LANGUAGE - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 80 DAYS.

In the Matter of Disciplinary)
Proceedings against)
C. & S. Tavern Corp.,)
t/a Jack's Star Bar)
24 Tichenor Street)
Newark, N. J.,)
Holder of Plenary Retail Consumption)
License C-143, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Newark.)
-----)

CONCLUSIONS
and
ORDER

Louis R. Cerefice, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleads not guilty to the following charges:

- "1. On Wednesday night, June 30, Friday night July 2 into early Saturday morning July 3, Saturday night July 10, early Sunday morning July 11, Wednesday night July 14, early Sunday morning July 25, early Saturday morning July 31 and early Sunday morning August 15, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females and females impersonating males, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On all the dates and occasions aforesaid, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.

"3. On Saturday, August 21, 1965, at about 11:20 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Gordon's Distilled London Dry Gin, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

Five ABC agents participated in the investigation which resulted in the charges preferred herein.

Agent S testified that he visited the licensed premises "on Wednesday, June 30, I returned on Friday, July 2, on Saturday, July 10, on Sunday, July 25, on Saturday, July 31, on Sunday, August 15, and on Saturday night, August 21."

Agent S further testified that at 10:30 p.m. on July 2, 1965, he, Agent H and Agent M entered licensee's premises and "took positions on the right-hand side of the bar toward the rear;" that he observed three bartenders on duty, among whom was one called "Huck" (Sylvester Huckaby); that seated between two women at the patrons' side of the bar was a man referred to as "Jack" and "The Boss," subsequently identified as Bernard Rauch (hereinafter Rauch), president of the licensee corporation; that there were approximately ten female and twenty male patrons in the establishment; that his attention was drawn to about five females seated in a group and four males also seated in a group. Agent S testified, in describing the females, that "two of the five in question wore regular men's shirts, they are shirts with 'T' neck showing 'T' undershirt showing, one was tattooed on the forearm, her sleeves were rolled up, they wore men's pants with zipper fly fronts." He further stated "All of them had zipper fly fronts. One had a double-breasted jacket on, with a brown colored man's shirt, man's haircut with side burns. One female looked like a male, and after close observation -- and also very flat chested -- it was a lady, it wasn't a male, but it was a female." Agent S further stated that two normal looking females were with the five aforementioned, and that the latter would purchase drinks and pay for them for the two female companions. He also testified that the five females "walked like men", and two of them had "harsh voices." Agent S described the four males under observation as "very effeminate appearing" and that three of them "swished and swayed as they moved about the premises. They conversed with their hands in limp action. One rolled his eyes at another while talking to a straight male." Agent S further testified that one of the effeminate appearing females wore long hair and lipstick and expressed a desire to go home, and that the masculine-looking-type female ordered her to remain seated, using a filthy word, to which the girl with the long hair and lipstick retorted with a filthy expression which need not be repeated here. Agent S said Rauch was seated about five stools away at the time. Shortly thereafter a female attired in a "man's double-breasted jacket and pants and side burns" shouted at Dorothy C---, seated alongside of Rauch, and the remarks that passed between them were so shocking, sordid and vile that the repetition thereof would serve no useful purpose. Agent S further said that, when Rauch intervened, the heated discussion subsided. Later, according to the testimony of Agent S, he spoke to Huckaby and directed his attention to the two persons whose conversation was initially referred

to and, in response to a question as to the sex of the one wearing a "T" shirt, Huckaby said she was a girl and explained the one seated next to her "is her wife. They are married." When Agent S inquired if Huckaby wasn't kidding, he said "No, I'm not kidding. That is the truth. They are lesbians." Huckaby further stated that Mrs. C--- had been married to the lesbian arguing with her and that she had left her and was now going out with Jack (Rauch). Asked his opinion of the five females and four males, from their actions, speech and attire Agent S said "they appeared to be homosexuals, queers, fags, commonly known as fags." Agent S further stated that, during his three-hour stay in the premises, the tenor of the language used by many of the patrons was filthy.

Agent S testified that he again visited licensee's establishment on July 10 and observed about twenty patrons; that two males, because of their dress and mannerisms, "appeared to be homosexuals;" that he saw Rauch there and inquired of Huckaby concerning the absence of lesbians and Huckaby replied "You are here on the wrong night;" that during his hour-stay in the premises the language used by many patrons was "obscene language, foul, filthy." The agent further testified that he and Agent H returned to the place at midnight on July 11 and that "about 20 people, 25 people" were there, among whom he observed seated together two of the females, one having "a man's suit on, double-breasted jacket, pants with a zipper fly front, man's shirt, with a heavy rock and roll hair-do combed back, sweeping back to his side of the temples" and "the other one was dressed in a pair of slacks and a shirt;" that he also saw a male "talking to a female and male, and he was swishing and swaying and moving about the premises. He had a lispy tone when he spoke, waved his hands in limp-wrist fashion;" and that the same filthy language by patrons was heard as prevailed on his previous visit.

The testimony of Agent S further discloses that he and Agent H again entered the licensee's premises July 25 at about 12:15 a.m., and that Huckaby, a Spanish-speaking male and a person called "Al" were tending bar; that there were "about 20 or 25 people", among whom were "four females" and "three males" seen on prior visits, who again attracted his attention because of the way the females were dressed and the effeminate manner of the males; that a male entered wearing a "yellow polka-dot middy blouse" and "his hair up in fashion they tease hair;" that "he swished and swayed" when walking and had "his eyebrows plucked." Agent S leaned over to the uniformed special officer employed by the licensee seated next to him at the bar, advising him that he and his companion (Agent H) had a bet concerning the sex of the person in question and the officer said that the person was a male. The officer said that he was instructed by Rauch to "keep them out, the bad ones." Agent S stated that the language was just as filthy as that used by the patrons on previous visits.

Agent S testified his next visit to the licensee's premises was on the morning of July 31 just after midnight, being accompanied by Agents H and R. He noticed that there were "about 20 or 25 people in the premises" and among them he observed two females, one of whom he recognized from a prior visit; that "they were acting in the same manner. They were masculine in their actions. They had no make-up, they had men's haircuts, they wore men's clothing, men's shoes. They drank their beer roughly, grabbed it about the glass and put the glass down. Threw ashes from the cigarettes in the tray and flicked them." Agent S discussed these two females with Huckaby and he agreed that they were tough-looking. Again the language used by patrons was filthy.

Agent S testified that he and Agent H visited licensee's establishment on August 15 after midnight, and there were about thirty people in the premises; that he observed two males and six females who dressed and conducted themselves as those described on previous visits. He further said that some other girls in the group appeared to be females as they wore long dresses and had long hair. He further stated that "the more prominent male-appearing female was friendliest with Mr. Rauch. On occasion she would talk to him in masculine manner, lean on him, put her arm on his shoulder, and drink together." He also testified that two males were dressed in male attire "but their speech was slurred on occasions, and they used lispy tones on occasion while speaking." He also noticed a male-appearing female lean over and kiss her female companion; that Agent S then asked Huckaby how come they kissed one another, and he said "Why not, man? They are married." Agent S said that the language again used by the patrons was filthy and comparable to that used by patrons on his previous visits.

Agent S testified that on his last visit to licensee's premises on Saturday, August 21, he was accompanied by Agent H; that at 11:15 p. m., when he and his fellow agent entered, Rauch and the Spanish-appearing male (later on identified as George Del Gado) were tending bar; that he observed a female seated at the bar (later identified as Luvinnia Henderson); that he heard her ask Del Gado for a pint of gin to take out and was told to "see the boss." She called to Rauch, who came over to her, and then went behind the bar, picked up a pint of gin and handed it to her; that she gave him three one-dollar bills; that he handed her the bottle of gin which she placed in her pocketbook. Mrs. Henderson then asked Rauch for six cans of beer but he refused her, saying "No, I can't give you beer. You know that. I gave you the gin already;" that, just before she left the premises, Agent S asked Rauch for a pint to take out but Rauch stated that it was too late; that, as Mrs. Henderson left the premises, Agent H followed her and brought her back into the barroom where she took the bottle of gin out of her pocketbook. Agents S and H then identified themselves to Rauch, to Mrs. Henderson and to Del Gado. Rauch was then questioned about the same but he stated that he had sold her the bottle before ten o'clock that night. Agent S then stated that he then discussed the language of the patrons and Rauch claimed that he could not control it because they are the type of people who live in the area. Thereafter Agent S questioned Rauch concerning apparent lesbians being permitted in the establishment and Rauch asked "Just because a girl wears slacks she is a lesbian? I am no doctor." Agent S then informed Rauch about his conversation with Huckaby, also of what the special police officer had informed him concerning the patrons. Rauch denied that there was ever an argument between a female and Mrs. C---.

Agent S was subjected to extensive cross examination by the attorney for the licensee, but the answers were substantially the same as those given on direct examination. The attorney also directed questions at Agent S with reference to his sobriety on the various visits to the licensed establishment. Agent S answered that, although he had some drinks of alcoholic beverages, he was perfectly sober at all times.

Agent H, who accompanied Agent S on the various visits to the licensee's premises, substantially corroborated the facts testified to by Agent S. In addition thereto Agent H testified that he also visited the licensee's premises on July 14th, entering the tavern at "9:35 p.m." The visit was terminated approximately "11:05." On this visit he was accompanied by Agents S and

R. Agent H stated that Rauch was seated at the left-hand corner of the bar "near the ladies' room, at the usual position;" that there were approximately thirty persons on the premises, eight of whom were females; that two of the females, also two of the males, attracted his attention on this visit. He had seen both of the females on previous visits and his description of them was similar to that given by Agent S. Agent H was of the opinion that the females in question, because of their dress and mannerisms, were apparent lesbians, and the males, because of their conduct and mannerisms, were apparent homosexuals. Agent H testified that he saw the sale of the pint of gin to Mrs. Henderson on August 21, and his testimony as to the incident would be similar to that of Agent S. Agent M testified that he was with Agents S and H on the visit of July 2, and the morning of July 3 and, by stipulation of the parties, it was agreed that, if he were asked the same questions concerning occurrences on said dates, his answers would be similar to those given by them.

Agent St. and Agent R testified that on July 14th they visited the licensed premises in the company of Agent H and that, if they were asked questions similar to those put to Agent H for that date, their answers would be the same as his. Also, Agent R stated that his testimony with reference to the visit of July 31st would be similar to that given by Agent S. With respect to all the agents, each was asked on cross examination regarding their educational background and the length of time they had worked for the Division and participated in investigations of the kind now under consideration.

Sylvester Huckaby testified that he was on duty on all of the dates mentioned in the charges preferred herein with the exception of August 21st. He denied that on the various dates vile language was used other than perhaps a swear word, and at no time was his attention ever attracted to females who acted like males or males who acted like females. Huckaby further denied that at any time he conversed with Agent S concerning the conduct and demeanor of patrons in the licensed premises.

Luvinnia Henderson testified that on the evening of August 21st she was in the licensed premises and the bottle of gin which she had in her pocketbook was purchased from Del Gado about five o'clock that afternoon. She further testified that, as she was going through the door, she was stopped by Agent H and returned to the bar, at which time he ordered her to give him the bottle of gin. She said that the average person curses occasionally but, when one gets loud in the licensed premises, the bartender stops serving drinks to the offender.

George Del Gado testified that he was tending bar on August 21st when Mrs. Henderson asked him to sell some liquor for off-premises consumption, and he told her he could not do so because it was after hours. Thereafter the girl walked out and was brought in immediately, and the agents then questioned the owner (Rauch). Furthermore, according to Del Gado, he was on duty early in the evening and, at quarter past five, he had sold Mrs. Henderson the pint of gin which she put in her pocketbook. He also said that, if patrons use any filthy language, he (Del Gado) cuts them off, takes them out, or calls the police.

Dorothy C--- testified that on July 2, 1965, she was present in the licensee's premises but did not see any males impersonating females or females impersonating males. She stated that some women in the establishment wore slacks and men's shirts but, in her opinion, this was not unusual because at times she dresses similarly. Mrs. C--- testified that she was celebrating her birthday and Rauch came from behind the bar, remained with her,

kissed her on the cheek and treated her to a couple drinks. She said that she is a frequent visitor to the premises and, when any profanity is used or any person becomes loud, Mr. Rauch refuses to tolerate it. Mrs. C--- denied that she ever had an argument with another person during which filthy language was used.

Dorothy Smith testified that she was in the premises on every week-end from July 2nd and until August 21st, and recalled seeing the agents in the establishment. She further testified that the patrons neither looked unusual to her nor did she see men impersonating women or vice versa. And, if a patron used obscene or vulgar language, the person would be directed to stop such conduct. Miss Smith recalled the evening of August 21st when the sale of a bottle of alcoholic beverages was alleged to have been made during prohibited hours, and it was her contention that she was present shortly after five o'clock that day when Mrs. Henderson purchased the pint of gin.

Rauch testified that, with the exception of Sunday nights, he works every week-end and was in the premises on the occasions about which Agent S testified; that he never observed anything unusual concerning the patrons' mannerisms or dress as he contended that, if any of the patrons made any advances to any other persons of the same sex, he would order them to "stay out of here." He also stated he remembered an instance when two women kissed each other but the reason for that was that they were sisters-in-law and one of them had just come back from her honeymoon. Furthermore, according to Rauch, when he heard any offensive language he would order the person using same to cease or to finish his drink and leave the tavern. Rauch testified that there are five signs in his place, two in Spanish and three in English, forbidding use of obscene language by patrons. He stated that two hospital employees patronize his place of business and they wear "off-beat type clothes" and "fancy-looking striped shirts." Rauch said that on August 21st Mrs. Henderson asked him to sell her some beer in cans but that he refused to do so. She then paid for drinks which had been served to her and her friends and, as she left, Agent S asked if he could have a pint of whiskey. He refused Agent S but suggested, if Agent S desired, he could have a container of beer. Shortly after Mrs. Henderson left the premises, she "was pushed through the door" by Agents S and H, which prompted patrons to go to her assistance. He (Rauch) testified he came from behind the bar to quiet the patrons. After the agents showed their credentials, he cooperated fully with them. Rauch further noticed that Agent A became very excited and that Agent H suggested to him that he quiet down. Rauch asked Agent S to point out any person who he (Agent S) believed to be a "queer" but the agent did not.

In rebuttal, both Agent S and Agent H denied Rauch's accusation that Agent S became excited making it necessary for Agent H to calm him down. The agents also denied that at no visit to the licensee's premises did they consume alcoholic beverages so that they were on the verge of intoxication.

Although some of the evidence may appear repetitious, the purpose is to show that on the respective visits of the agents the females and males in question on the licensed premises invariably followed a pattern in their dress, mannerisms or demeanor. Thus it discloses that the continuous congregating of such type of persons on the premises did not constitute merely an isolated occasion which might in any manner absolve the licensee or its employees of knowledge thereof. As then Commissioner Driscoll stated in Bilowith v. Passaic, Bulletin 527, Item 3:

"Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises."

It is not a requirement to establish by the evidence beyond doubt that the specified patrons in the licensee's premises were in actuality homosexuals. The evidence presented by the agents with reference to the conspicuous guise, demeanor, carriage and appearance of both the females and males in question meets the required proof that they were apparent homosexuals. See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405. Furthermore, all of the agents, specifically Agents S and H, have had experience with this type of investigation for a number of years and, consequently, they may testify from their observations whether or not in their opinion a person is or is not an apparent homosexual. Cf. Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87. I would be naive indeed to believe the testimony of Rauch and his employees, namely, Huckaby and Del Gado, who attempted to feign ignorance of the existing conditions during the times when both they and the agents were in the premises. Furthermore, I am not impressed with the testimony of Mrs. Henderson, Mrs. C--- or Miss Smith that they see nothing unusual with the attire of the females, which has been fully described by the agents herein. I am satisfied from the testimony presented in this matter that the licensee permitted apparent homosexuals to congregate on the licensed premises and there was nothing done to prevent such conditions. I might add that it is the duty of a licensee or his agents and employees to take immediate action to prevent such class of people habitually congregating on licensed premises. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, *supra*; Re Jo-Stem Corporation, Bulletin 1625, Item 2, and case cited therein.

With respect to the second charge, I am satisfied with the testimony of the agents that filthy and obscene language was used on the licensed premises by patrons at the time of their visits.

With respect to the sale of a pint of gin in its original container for off-premises consumption to Mrs. Henderson during prohibited hours, I am convinced that the agents have given an accurate account of what took place at the time. Thus I recommend that the licensee be found guilty of all the charges preferred herein.

Licensee has a prior record of suspension effective October 14, 1957 for ten days by the local issuing authority for sale of alcoholic beverages for off-premises consumption in violation of Rule 1 of State Regulation No. 38. (Inasmuch as there has been a complete change of stockholders of the licensee since that time, the record of this suspension should not be considered in fixing the penalty herein. Re Lounge 68, Bulletin 1602, Item 10.) Effective January 19, 1964 the license was suspended by the Director for seventy-five days for permitting solicitation for prostitution on the licensed premises and sale in violation of Rule 1 of State Regulation No. 38. Re C. & S. Tavern Corp., Bulletin 1549, Item 1.

I have considered the fact that the number of homosexuals on the premises on each visit by the agents constituted a relatively small percentage of the patrons. Hence it is recommended that the

license be suspended on Charge 1 for forty days (Re Jo-Stem Corporation, supra); on Charge 2 for ten days (Re Hauge, Bulletin 1629, Item 3), and on Charge 3 for thirty days, in view of the prior suspension for similar violation occurring in 1964 within the past five years (Re Cinaglia, Bulletin 1652, Item 4), or a total of eighty days.

Conclusions and Order

The licensee has filed exceptions to the Hearer's report pursuant to Rule 6 of State Regulation No. 16 in which it contends that the recommended finding of guilt is contrary to the weight of the evidence. With this I cannot agree. A careful and considered reading of the entire record satisfies me that the Division has established the truth of the charges by a preponderance of the evidence. No other conclusion is warranted. The fact that there were relatively few homosexuals congregated on the licensed premises during the period complained of goes to the question of punishment and not of guilt--a consideration properly reflected in the penalty recommended by the Hearer.

The licensee also argues that the testimony of the agents is necessarily colored so as to place themselves in a favorable light with their superiors. More specifically it states "...so that they can present a good report, a good case, in order to maintain a good 'batting average' with respect to convictions they are able to obtain in the line of duty...", and "their testimony should be weighed with not a grain of salt but with many grains of salt."

The argument advanced by the licensee is predicated on the assumption that agents of this Division color their testimony in a given case to their own advantage and at the expense of others and suggests that the Director scrutinize their testimony more closely than that of other witnesses. Such a suggestion, if adopted, would create a double standard unfair to the Division and inimical to the true interests of justice. The interest a witness may have or the advantage he may derive from the outcome of a given case may always be shown at the trial of that case through cross examination or independent proof. The weight to be given to the testimony of the witness whose credibility is being questioned may then be considered by the Director in the light of the entire record before him and not on any fancied predilections that find no support in the evidence.

In the instant proceeding the licensee, through its attorney, was given and availed himself of the opportunity to cross-examine Division witnesses and present testimony on his own behalf. Despite his efforts, the record is barren of any evidence to support the allegations that the agents colored their testimony or strayed from the truth.

After careful review of the entire record, including the transcript of testimony, the Hearer's report and the exceptions thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 28th day of February, 1966,

ORDERED that Plenary Retail Consumption License C-143, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to C. & S. Tavern Corp., t/a Jack's Star Bar, for premises 24 Tichenor Street, Newark, be and the same is hereby suspended for eighty (80) days, commencing at 2:00 a.m. Monday, March 7, 1966, and terminating at 2:00 a.m. Thursday, May 26, 1966.

JOSEPH P. LORDI,
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - GIFT OF ALCOHOLIC BEVERAGES WITH SALE - LICENSE SUSPENDED FOR 30 DAYS - NO REMISSION FOR PLEA ENTERED AT HEARING.

In the Matter of Disciplinary)
Proceedings against)

The Canteen, Inc.)
t/a Canteen Bar)
85 Main Street)
Netcong, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consump-)
tion License C-8, issued by the)
Mayor and Borough Council of the)
Borough of Netcong)
-----)

VanBlarcom, Silverman & Weber, Esqs., by Albert G. Silverman, Esq.
and Frank G. Schlosser, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

At the hearing held herein, licensee pleaded non vult to charges alleging that on January 1, 1966, it (1) sold twenty-four bottles of beer to a minor, age 17, in violation of Rule 1 of State Regulation No. 20, and (2) made a gift of six bottles of beer in connection with the sale of the twenty-four bottles, in violation of Rule 20 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for seven days effective May 1, 1960, for sale in violation of State Regulation No. 38.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended on the first charge for twenty days (Re Samjo Corporation, Bulletin 1650, Item 1) and on the second charge (considering it equivalent to a charge of sale below filed price and so treated for penalty purposes) for ten days (cf. Re Edelman, Bulletin 1587, Item 11; Re Papp, Bulletin 1500, Item 4; Re Abazia, Bulletin 1659, Item 13), or a total of thirty days, without remission for the plea not entered prior to the hearing (Re Arahill, Bulletin 1646, Item 1).

Accordingly, it is, on this 2nd day of March, 1966,

ORDERED that Plenary Retail Consumption License C-8, issued by the Mayor and Borough Council of the Borough of Netcong to The Canteen, Inc., t/a Canteen Bar, for premises 85 Main Street, Netcong, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, March 9, 1966, and terminating at 2:00 a.m. Friday, April 8, 1966.

JOSEPH P. LORDI,
DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #274

In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-2,)
 Issued by the Common Council of)
 the City of Ventnor City to)

On Petition

O R D E R

Norman Kornblau and Pearl Kornblau)
 t/a Norm's Liquor Store)
 5117 Ventnor Avenue)
 Ventnor City, N. J.)

 Edwin H. Helfant, Esq., by Sherman L. Kondis, Esq., Attorney for
 Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein and the reports of this Division that on February 11, 1966, Norman Kornblau, one of the licensees-petitioners, was fined \$200 in the Ventnor City Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on December 29, 1965, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that Kornblau has taken an appeal from his conviction to the Atlantic County Court and that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensees because of the alleged sale of alcoholic beverages to the minor.

In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed pending the outcome of the criminal appeal and the disciplinary proceeding. Re Tom's Cafe & Tavern, Inc., Bulletin 1609, Item 11.

Accordingly, it is, on this 2nd day of March, 1966,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

JOSEPH P. LORDI,
 DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Bernard Gannon)
t/a Gannons Tavern & Package Store)
100 Pearl Street)
Camden, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-43, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Camden)
-----)

Joseph Wm. Cowgill, Esq., Attorney for Licensee.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 5, 1966, he sold two six-packs of canned beer to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days effective January 4, 1960, for sale in violation of State Regulation No. 38. Re Gannon, Bulletin 1320, Item 4.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Samjo Corporation, Bulletin 1650, Item 1.

Accordingly, it is, on this 2nd day of March, 1966,

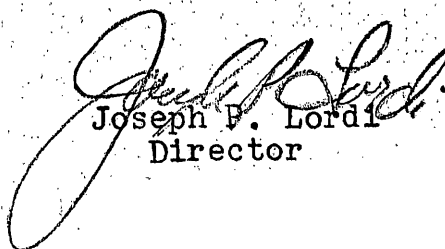
ORDERED that Plenary Retail Consumption License C-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Bernard Gannon, t/a Gannons Tavern & Package Store, for premises 100 Pearl Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, March 9, 1966, and terminating at 2:00 a.m. Thursday, March 24, 1966.

JOSEPH P. LORDI
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Beer Import Company (a corporation)
2536 Springfield Avenue
Union, New Jersey

Application filed April 4, 1966 for Plenary Wholesale License, for the 1966-67 fiscal year.


Joseph P. Lordi
Director