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

BULLETIN 2169 January 3, 1975

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ITEM

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

BULLETIN 2169 January 3, 1975

1. COURT DECISIONS - GREENSTEIN v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL and ELIZABETH - REMAND TO ELIZABETH TO PERMIT TRANSFER APPLICATION.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-920-73

SYDNEY GREENSTEIN
t/a STAR LOUNGE AND LIQUORS,

Plaintiff-Appellant,

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
DEPARTMENT OF LAW AND PUBLIC SAFETY, and
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF ELIZABETH,

Defendants-Respondents.

Argued October 15, 1974 - Decided November 11, 1974.

Before Judges Collester, Lora and Handler.

On appeal from Division of Alcoholic Beverage Control.

Mr. Jacob M. Goldberg argued the cause for appellant (Mr. Gerald B. Goldberg on the brief).

Mr. John R. Weigel argued the cause for respondent Municipal Board of Alcoholic Beverage Control of the City of Elizabeth (Mr. Frank P. Trocino; attorney; Mr. Joseph M. Clayton, Jr. on the brief).

Mr. David S. Piltzer, Deputy Attorney General, submitted statement in lieu of brief (Mr. William F. Hyland, Attorney General of New Jersey, attorney for Division of Alcoholic Beverage Control).

PER CURIAM

(Appeal from the Director's decision in Re Greenstein v. Elizabeth, Bulletin 2135, Item 4. Director is reversed, in part, and the matter remanded to the Municipal Board with direction to permit appellant to apply for a transfer of the license to a suitable location within 90 days. Opinion not approved for publication by Court Committee on Opinions).

2. APPELLATE DECISIONS - ALICE G. TOWNSEND, INC. v. ORANGE.

Alice G. Townsend, Inc.) Appellant,) v.)	On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Orange,) Respondent.)	CONCLUSIONS and ORDER

Anthony J. Iuliani, Esq., Attorney for Appellant
Beninati & La Morte, Esqs., by Frank A. La Morte, Esq.
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Orange (Board) which, on June 26, 1974, suspended appellant's plenary retail consumption license for a period of sixty days, based on a finding of guilty of a charge alleging that on February 24, 1974, appellant "...allowed, permitted or suffered in or upon your licensed premises, immoral activity, or foul, filthy, indecent or obscene language or conduct a brawl, acts of violence, disturbance or unnecessary noises; you also allowed, permitted or suffered the licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20."

In its petition of appeal, appellant contended that the action of the Board was erroneous in that: "(a) No notice in writing of such suspension was served on appellant; (b) The license was picked up by a police officer of the City of Orange prior to service of a Notice in writing of the suspension and its' effective date; (c) the suspension was effectuated within hours after the Board's finding, without affording appellant reasonable time to conduct its business; (d) that the term of suspension was excessive; (e) it was contary (sic) to the weight of evidence; (f) no legal evidence was adduced in support of said charge; (g) there was no factual testimony before the respondent from which it could, in its sound discretion, support its conclusion; (h)the action of the respondent was arbitrary, capricious, and abuse of discretion and unreasonable."

The Board, in its answer, denied these contentions and affirmatively alleged that its action was based on factual testimony.

Upon the filing of this appeal, the Board's order of suspension was stayed by order of the Director on June 27, 1974 pending the determination of this appeal.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

At the outset of the hearing, it was stipulated that an event took place in the licensed premises on February 24, 1974 which resulted in the subject charge against appellant. The central issue raised is whether that occurrence was, in fact, a violation of Rule 5 of State Regulation No. 20.

Testifying as witness for the Board, Mary Henderson, a niece of Alice G. Townsend (owner of all of the stock of the corporate appellant) stated that she was employed as a barmaid by appellant and that on February 24, 1974 she was working behind the bar together with her sister, Rosita Langford, who is also employed as a barmaid. She described the patronage as a "medium sized crowd."

Henderson recalled that one Yvonne Sayles entered the tavern. She was accompanied by a male, identified as Donald Calloway, and by another couple. Upon arrival, the quartet positioned themselves at the bar where this witness served them several rounds of drinks. While eating at one end of the bar during a break in her duties, Langford came over and said that something was wrong, but that she did not know what was wrong. Langford pressed the buzzer which transmits a signal to police headquarters.

The witness asserted that, at that time, the jukebox was playing, she heard no argument and no screaming. She later ascertained that a cutting had taken place. She saw blood on the floor of the barroom, however, she saw no weapon.

Prior to the occurrence she did not see or hear anything which would indicate that an occurrence was about to happen. She heard no shouts, threats of violence or abusive language.

Patrolman Richard Conte of the local police department testified that on February 24, 1974 he was dispatched to the licensed premises in response to a complaint that there was a disturbance thereat. He observed Yvonne Sayles and Donald Calloway (who were cut about the face) walking out of the tavern and took them to a hospital. He took statements from both injured persons which indicated that an Ernestine Carpenter, who had previously gone out socially with Calloway, in a fit of jealousy, attacked Sayles, and that Calloway was injured while attempting to intervene.

Detective John E. Rappaport of the local police department testified that he spoke with one of the barmaids, Mary Henderson, on the telephone later in the morning, on the date of the incident. Henderson asserted that she saw nothing; that she heard a commotion and a breaking of glass and pushed the emergency button, in order to summon the police.

Rosita Langford testified that she was working the entire bar at the time of the alleged occurrence because her sister, who was also employed as a barmaid, was at the end of the bar, during her work break.

Prior to the subject occurrence, Langford heard no argument; it was not necessary to quiet anyone; the occurrence happened so quickly she did not know what happened. She ran to her sister and pushed the buzzer. She saw Frazier (who was employed as a bouncer) "trying to break it up." She did not hear anything or see anything which would indicate to her that something was about to happen.

Jerry A. Frazier, employed as a bouncer, testified that he saw the quartet (hereinabove referred to) enter the premises.

Upon being questioned concerning what happened, the witness replied:

> "Well, all of a sudden a big disturbance started in the middle of the floor. I approached the scene. There was somebody up on the platform which was throwing bottles. When I got to the scene Mr. Calloway was bleeding from the side of the face. I escorted Mr. Calloway and Mrs. Sayles, I believe it was, I escorted them out the door. I locked the door and nobody got in until the police arrived."

Prior to the occurrence, he heard no arguing or screaming, it appeared that "everybody was enjoying themselves."

Frazier did see Calloway bleeding. He was struck behind the back of his head by a bottle. One of the females was bleeding, too.

Later the witness testified: "As I said before, that happened on the spur of the moment. Everybody was enjoying themselves and it just broke out. If I was standing there, I couldn't have stopped it."

It was stipulated that the testimony of three additional witnesses produced on behalf of the Board at this hearing, would be cumulative.

The central issue presented for determination is: Did the licensee, allow, permit or suffer brawls, acts of violence, disturbances or noises upon the licensed premises in violation of Rule 5 of State Regulation No. 20, as charged?

I find no testimony which would establish that the licensee could or should have reasonably anticipated that a brawl or act of violence would occur. I find that the licensee acted reasonably in notifying the police as soon as the act of violence erupted.

The test in this and similar matters involving a brawl or act of violence is:

"...The question involved here is whether the licensees could reasonably have taken steps to prevent the act of violence and disturbance that took place on their licensed premises, but failed to do so."

Riverside Corp. v. Elizabeth, Bulletin 2144, Item 3 and cases cited therein.

In disciplinary proceedings, a preponderance of the evidence is necessary to support and justify a finding of guilt. Doubtful questions of fact must be resolved in appellant's favor. See, Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1; Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1.

After carefully considering the legal testimony adduced, I find an absence of substantial credible evidence to support a finding of guilt. Thus, I conclude that appellant has sustained its burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

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

Conclusions and Order

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

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

Accordingly, it is, on this 7th day of November, 1974,

ORDERED that the action of the respondent in finding appellant guilty of the charge preferred herein be and the same is hereby reversed, and the charge be and the same is hereby dismissed.

Leonard D. Ronco,
Director

3. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY - INDECENT DANCE - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against Howell's Sportsman's Inn, Inc. t/a Howell's Sportsman's Inn, Inc. S/S State Highway No. 33 Howell Township P.O. Farmingdale, N.J. Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of Howell Township.	CONCLUSIONS and ORDER

Robert E. Levy, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on Friday, January 25, 1974 it permitted lewdness and immoral activity upon the licensed premises, viz., immoral and indecent dance by a female person, in violation of Rule 5 of State Regulation No. 20.

ABC Agents B and M testified that on January 25, 1974, they visited the licensed premises shortly after noon and observed the performance of a go-go dancer, identified as Tina, who was attired in a two-piece bikini-type costume. During her dance she lay on the stage upon a pillow and simulated movements of sexual intercourse while caressing her body from her breasts to her vagina area. Thereafter, she lifted a portion of her lower costume permitting several male patrons to deposit currency inside the costume.

During her second performance, she employed a device, which the agents later seized, resembling a male sexual organ. Tina used this device in simulating sexual intercourse and acts of sexual aberration.

Edward B. Ray, principal stockholder of the licensee corporation, testified that, although he was in the premises during the time of the visit of the agents, he was occupied in the preparation and service of food, and had little time to observe the go-go dancer's performance. He observed nothing of her dance, nor did he see the device she employed until the agent showed it to him thereafter.

In its memorandum filed subsequent to the hearing, the licensee contended that "(D)espite the fact that the Division is given the responsibility of policing licensed establishments through what

is obviously a malum prohibitum regulation, some latitude and leeway must be given with respect to what would be protected expression and what would be the present contempo (sic) of modern life."

The short answer to this contention is that the acts described by the agent were not only malum prohibitum but also malum in se.

In any event, this Division has the right and the duty to require that the licensees maintain decency and propriety in liquor licensed premises. The Division must stand as a bulwark against the attempts of those who would utilize licensed premises to reduce society to its lowest denominator in widening the gap between morality on the one side and decency and the law on the other.

Furthermore, the question of lewdness must be evaluated according to the legal and decisional precedents followed by the Division. See Re Club "D" Lane, Inc., Bulletin 1900, Item 3; aff. 112 N.J. Super. 577 (App. Div. 1971) wherein the Court reaffirmed the long established principle that "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 Lounge, 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 N.J., etc., 93 N.J. Super. 230 (App. Div. 1966), aff'd. o.b. 48 N.J. 359 (1966)."

Licensee further contends that the agents did not act to curtail the performance of the dancer when the violation was first observed by them but, instead, awaited its conclusion before identifying themselves and alerting the licensee of the violation. It asserts that such delay constitutes a complete defense to the charge. Such contention is frivolous; the licensee is usually afforded full opportunity to correct such allegedly improper conduct if for no other purpose than to establish mitigation. Additionally, it is anticipated that the agents, like all law enforcement officers, are required to make a complete report of their observations.

In the exercise of their sound judgment, they may wait in order to observe and determine whether the proscribed acts are repeated and are carried on as a regular course of conduct in the licensed premises. Upon the conclusion of the offending dances, they promply revealed their identities.

I also find that the agents' testimony was forthright and therefore, reject licensee's challenge to the agents' credibility.

Finally, it is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully responsible for their activities during their employ on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299, (App. Div.

1958); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Division of Alcoholic Beverage Control, 36 N.J. 34 (1961).

I conclude that the charge herein has been established by a fair preponderance of the credible evidence, and recommend that the licensee be found guilty thereof.

Absent prior record, it is further recommended that the license be suspended for fifty days. Re Iodice Corporation, Bulletin 2122, Item 1.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument , were filed on behalf of the licensee, and written answers with supportive argument to the said exceptions, were filed on behalf of the Division pursuant to Rule 6 of State Regulation No. 16.

One of the exceptions challenges the Hearer's finding that the performance of the dancer was an immoral and indecent dance, and contends that, in fact, she engaged in "interpretative dancing"; that it was "a form of satire and communication".

The evidence argues convincingly to the contrary. As stated in the Hearer's report, the uncontroverted testimony of the agents was that, during Tina's second performance, she employed a device which resembled a male sexual organ. During her act she inserted the red tip of this device in her mouth and then placed it between her legs in simulating sexual intercourse and acts of sexual aberration. It was quite apparent, from the accounts given by the agents that this was not a "go-go" dance or an interpretative dance; it was clearly an indecent and immoral performance.

The licensee next argues that there was no physical contact with the patrons. The agents testified, however, that in fact this performer lifted a portion of her lower costume and permitted several male patrons to deposit currency inside the costume. There is no merit to this contention.

Another exception advocates that "nudity is an objective determination and that lewdness is subjective. . ." The Division is not required to prove that the performances produced any subjective erotic excitation upon the patrons present in the licensed premises (although there is, in fact, evidence in the record of such effect upon the audience). "The Division instead may consider 'the natural and probable tendency' of the performances rather than their actual effect." McFadden's Lounge, Inc. v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App. Div. 1954).

Furthermore, the performances herein constitute a dirty show which produces an "immoral atmosphere" having no place on liquor-licensed premises. Paterson Tavern & Grill Owners Ass'n, Inc. v. Hawthorne, 108 N.J. Super. 433, 438 (App. Div. 1970), rev'd on other grounds, 57 N.J. 180 (1970). See also In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971).

Another exception asserts that the Hearer erred in noting that "in the exercise of their sound judgment, they [the agents] may wait in order to observe and determine whether the proscribed acts are carried on as a regular course of conduct in the licensed premises".

It is a well established and sensible policy for agents of this Division to reasonably wait to observe the nature of the entire performance, in order to ascertain whether the licensee, through its agents, acquiesces in the existence of such conduct. There is no obligation on the agent's part to stop an indecent performance or to present it forthwith to the attention of the licensee. Here, two bartenders and a waitress were in a position to stop the performances which were taking place openly on the licensed premises, but failed to do so. The licensee is deemed responsible for such failure. Rule 33 of Division Regulation No. 20; F. & A. Distrib. Co. v. Div. of Alcoh. Contr. 36 N.J. 34, 37 (1961). This is particularly true where, as here, the licensee has not produced any such available employees as witnesses to explain their lack of requisite action.

In another exception the licensee maintains that it is its constitutional right of freedom of speech and expression affords it protection from the subject charge. My review of the testimony convinces me that these performances which occurred in the licensed premises do not afford the licensee such protection. As was set forth in Jeanne's Enterprises, Inc. v. State of New Jersey, etc., 93 N.J. Super. 230, 232 (App. Div. 1966), aff'd. o.b. 48 N.J. 359 (1966):

> "The right of free speech protected by the First amendment and mirrored in the Fourteenth of our Federal Constitution is not absolute at all times and under all circumstances. The conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location 'may lawfully be tightly restricted to limit to the utmost the evils of the trade.' McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App. Div. 1954). The Director's action herein was a reasonable exercise of the supervisory province entrusted to him by the Legislature. There is no sound basis for our interference therewith.
>
> "The Pearl Williams performance on the licensed premises constituted, in part, 'lewd activity', and the principal subject matter of her monologue was 'foul, filthy and obscene' within the broad construction of that

phraseology justified in a liquor licensing context."

This contention is devoid of merit and is rejected. Finally, licensee argues that the recommended penalty of suspension of license for fifty days is unreasonable. However, based upon all the facts and circumstances herein, I find no warrant to modify the said recommended penalty. I have, in sum, examined all of the exceptions advanced by the licensee and find that they are lacking in merit.

Having carefully considered all of the facts and circumstances herein, including the transcript of the testimony, the written summation submitted by counsel for both the licensee and the Division, the Hearer's report, the written exceptions with respect thereto, and the answers to the said exceptions, I concur in the findings and recommendation of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of October, 1974,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of Howell Township to Howell's Sportsman's Inn, Inc. t/a Howell's Sportsman's Inn, Inc. for premises S/S State Highway No. 33, Howell Township be and the same is hereby suspended for fifty (50) days, commencing 2:00 a.m. on Tuesday, October 29, 1974 and terminating 2:00 a.m. on Wednesday, December 18, 1974.

Leonard D. Ronco
Director

4. ELIGIBILITY PROCEEDINGS - RECEIVING STOLEN GOODS - ELIGIBILITY DENIED.

In the Matter of the Application for Rehabilitation Employment Permit by Robert H. Freeman 18 Brentwood Road Matawan, N.J., Pursuant to N.J.S.A. 33:1-26.	Re: ELIGIBILITY CONCLUSIONS and ORDER

Applicant, pro se

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Applicant, Robert H. Freeman, filed an application for a rehabilitation employment permit on March 28, 1974 pursuant to the provisions of N.J.S.A. 33:1-26. The pertinent part of the statute reads, as follows:

> "No person who would fail to qualify as a licensee under this Chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee. Persons failing to qualify as to age or by reason of conviction of a crime involving moral turpitude may, with the approval of the Director, and subject to rules and regulations, be employed by any licensee,...."

A temporary work permit letter granted applicant on June 12, 1974 effective until July 31, 1974 was, upon review, revoked by letter notification to applicant under date of July 17, 1974.

This matter was, thereupon, scheduled for hearing upon applicant's request therefor.

It was established that in March, 1974 applicant was convicted in the Middlesex County Court of a charge of receiving stolen goods, and was sentenced to serve one to three years in the New Jersey State Prison; the operation of the said sentence was suspended, and he was placed on probation for three years.

The crime of receiving stolen goods involves the element of moral turpitude. Re Case No. 1829, Bulletin 1571, Item 7. See Weinstein v. Division of Alcoholic Beverage Control et al, 70 N.J. Super. 164 (App. Div. 1961).

Applicant had been connected with the alcoholic beverage industry in excess of eight years. He had been employed as a bartender in his father's tavern (Arnold's Cafe) located at 351 Prospect Street, Perth Amboy, until May 1967 when he acquired ownership thereof. On May 21, 1974 the license was transferred from applicant to Arnolds Fine Wine and Liquors, Inc. Its principal officers are Sheila Freeman (applicant's wife), president and 95% stockholder and Gertrude Freeman (applicant's mother), secretary and 5% stockholder. Applicant's desire to secure employment in the said corporate transferee, motivated the filing of the subject application.

At the hearing, applicant testified that he desired to continue in the alcoholic beverage industry because that is his sole means of support. He acknowledged making a serious mistake in purchasing the stolen merchandise. His wife and two minor children (ages 7 and 9) were totally dependent upon him for their support. His wife secured a job after he became involved with the law, and she provides partial family support. His mother is partially dependent upon him for support.

In support of the application, the Division received letters of recommendation from applicant's past and present probation officers. This Division also received a letter from the acting chief of police of the City of Perth Amboy, wherein he states that he has known applicant for many years, feels that applicant has been rehabilitated, and that he should be afforded an opportunity to continue in the liquor industry.

Applicant has no prior criminal record.

In my evaluation of the facts and circumstances I have disregarded the fact that, in a forfeiture proceeding instituted in this Division, the Director, by order dated August 1, 1974 directed that certain alcoholic beverages seized in applicant's licensed premises on August 6, 1973 that were purchased by the applicant from an unauthorized source be forfeited. Seizure Case No. 12,960.

However, the records of this Division reveal that the applicant, who was then the holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Perth Amboy, through his attorney pleaded non vult to three charges, as follows: (1) on July 9, 1973, he obtained alcoholic beverages from an unauthorized source, in violation of Rule 15 of State Regulation No. 20; (2) on June 9, 17 and July 15 and 28, 1973, he purchased alcoholic beverages from an unauthorized source, in violation of Rule 15 of State Regulation No. 20; and (3) on June 17, July 15 and 28, 1973, he permitted his licensed premises to be used in furtherance of an illegal activity, i.e., the distribution of stolen alcoholic beverages, in violation of Rule 4 of State Regulation No. 20.

In consequence of the plea, applicant's license was suspended by the Director for ninety-six (96) days, effective February 20, 1974.

Applicant's conviction of the crime of receiving stolen goods, which necessitated his filing of the subject application for rehabilitation employment permit, related to applicant's receipt of stolen alcoholic beverages. Inasmuch as the third charge to which applicant entered his plea of non vult contains an allegation that applicant permitted the aforesaid licensed premises to be used for the illegal activity, i.e., the distribution of stolen alcoholic beverages, I conclude that, under the facts and circumstance herein, the applicant should be held to be ineligible to be employed in the alcoholic beverage industry. Therefore, I recommend that the application filed herein be denied.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the applicant herein.

Applicant admits that, he had pleaded non vult to three charges, the third charge of which contained an allegation that "on June 17, July 15, and July 28, 1973, he permitted his licensed premises to be used in furtherance of an illegal activity, i.e., the distribution of stolen alcoholic beverages, in violation of Rule 4 of State Regulation No. 20. However, he argues that the Hearer erred because (1) applicant's attorney recommended that applicant enter the said plea on his representation that the penalty would be substantially less; (2) the Hearer failed to question applicant as to whether or not applicant was, in fact, guilty of all of the charges to which he had pleaded non vult; and (3) applicant denied that his licensed premises were used in the manner charged and the stolen liquor was not seized in his licensed premises.

I find each of these contentions to be devoid of merit. There is no evidence to establish or even infer that the applicant's attorney employed fraud, coercion or duress upon applicant in connection with the entry of the plea of non vult. Moreover, the Hearer had no duty, nor was it appropriate for him, in this proceeding, to inquire of applicant whether or not he was, in fact, guilty of all of the charges to which he had heretofore pleaded non vult. The applicant's admission, as reflected in his plea, and the Conclusions and Order of the Director dated February 6, 1974 speak for themselves.

Additionally, the files of this Division reflect that plans, the purchase of the stolen liquor, the distribution, and some of the payments therefor were actually made at applicant's licensed premises. Contrary to applicant's statement in his exceptions, he was not charged with the possession of stolen alcoholic beverages in his licensed premises.

Consequently, having considered the entire record herein, including the transcript of the testimony, the Hearer's report and the exceptions filed with respect thereto, I concur in the

findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of October, 1974,

ORDERED that applicant's application for employment permit be and the same is hereby denied.

Leonard D. Ronco
Director

5. DISCIPLINARY PROCEEDINGS (Hoboken) - FRONT - FALSE STATEMENTS IN APPLICATION - LICENSE NOT RENEWED BY ISSUING AUTHORITY - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against.

Pedro E. Diaz
222 Bloomfield Street
Hoboken, N.J.,

Holder of Plenary Retail Consumption License C-28, for licensing year 1973-74, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

CONCLUSIONS and ORDER

No appearance on behalf of Licensee
Pascal Gallerano, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee did not enter an appearance nor otherwise respond to charges preferred against him alleging that (1) in his short form application for plenary retail consumption license, filed June 5, 1973, he failed to disclose that one Jose Manuel Ortiz had a beneficial interest in the said license; (2) in the said application he failed to disclose a change of ownership in the licensed premises; (3) in the said application he failed to disclose that the aforementioned Jose Manuel Ortiz had an interest by way of rent, net profits or income derived from the licensed business; charges (1), (2) and (3) being in violation of N.J.S.A. 33:1-25; (4) that from January 2, 1973 to June 3, 1974 he aided and abetted the said Jose Manuel Ortiz to exercise the rights and privileges of the said license, in violation of N.J.S.A. 33:1-26,52 (5) from January 2, 1973 to June 3, 1974 he failed to keep true books of account in violation of Rule 36 of State Regulation No. 20; and (6) on March 8, 1974, through the said Jose Manuel Ortiz, then employed in the licensed premises, he permitted unlawful possession of a controlled dangerous substance, viz., marijuana, in violation of Rule 4 of State Regulation No. 20.

Thereafter, and subsequent to the termination of the licensing period 1973-74, the municipal issuing authority reported to this Division that prior license issued to the said Pedro E. Diaz for premises 222 Bloomfield Street, Hoboken, was not thereafter renewed.

As no effective penalty may be imposed upon proof of the charges as set forth herein, the issue thereupon becoming moot, the charges herein shall be dismissed without prejudice.

Accordingly, it is, on this 23rd day of October, 1974,

ORDERED that the charges herein against Pedro E. Diaz, former licensee of premises 222 Bloomfield Street, Hoboken, be and the same are hereby dismissed without prejudice; and it is further

ORDERED that upon the grant of any plenary retail license to the said Pedro E. Diaz, the charges herein shall be forthwith reinstituted and the said Pedro E. Diaz shall be called upon to answer same.

Leonard D. Ronco
Director