

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

BULLETIN 1832

December 19, 1968

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1100 Raymond Blvd. Newark, N.J. 07102

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1. APPELLATE DECISIONS - HARDWICK HOUSE, INC. v. HARDWICK.

HARDWICK HOUSE, INC.,	)	
t/a HARDWICK HOUSE,	)	
Appellant,	)	ON APPEAL
v.	)	ORDER
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF HARDWICK,	)	
Respondent	)	

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John C. Stritehoff, Jr., Esq., Attorney for Appellant  
Archie Roth, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent on July 5, 1968 of its application for a plenary retail distribution license for premises at the intersection of Stillwater and Millbrook Roads, Hardwick Township, for the license year 1968-69.

Prior to the hearing, appellant's attorney advised me that the appeal was withdrawn.

Accordingly, it is, on this 13th day of November 1968,

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH M. KEEGAN  
DIRECTOR

2: APPELLATE DECISIONS - LAWNSIDE REPUBLICAN CLUB v. LAWNSIDE.

LAWNSIDE REPUBLICAN CLUB,	)	
	)	
Appellant,	)	ON APPEAL
	)	ORDER
v.	)	
	)	
BOROUGH COUNCIL OF THE	)	
BOROUGH OF LAWNSIDE,	)	
	)	
Respondent.	)	

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 Cobbin, Farr, Reifsteck & Wolf, Esqs., by Joseph I. McCullough,  
 Jr., Esq., Attorneys for Appellant  
 Joseph Tomaselli, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending its license for ten days effective October 28, 1968 for sale to a non-member.

Upon filing of the appeal, I entered an order staying the suspension pending determination of the appeal.

Prior to the hearing on appeal, appellant's attorney advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 18th day of November, 1968,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension be reinstated against Club License CB-2, issued by the Borough Council of the Borough of Lawnside to Lawnside Republican Club for premises on Gloucester Avenue, Lawnside, commencing at 3:00 a.m. Monday, November 25, 1968, and terminating at 3:00 a.m. Thursday, December 5, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SOLICITATION FOR PROSTITUTION -  
 LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )

ROYAL CASTLE, INC. )  
 t/a Frank's Royal Castle )  
 35 River Street )  
 Newark, N. J. )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption )  
 License C-755, issued by the Municipal )  
 Board of Alcoholic Beverage Control of )  
 the City of Newark. )

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 Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys 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 pleaded not guilty to the following charge:

"On April 9 and 11, 1968, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

The Division's presentation was developed through the testimony of three ABC agents who were assigned to investigate alleged solicitation for prostitution at the licensed premises.

ABC Agent L gave the following account: Pursuant to specific assignment and in the company of other ABC agents, he visited the licensed premises on March 23, March 29, April 9 and April 11, 1968. On April 9, at approximately 10:45 p.m., in the company of Agent S he entered the said premises, seated himself at the bar and noted that there were about fifteen or sixteen males and about six females who were being served by a bartender (later identified as Francis Burns). He overheard a conversation between two females wherein one (identified as Bonnie) asked the other unidentified female where a certain "cookie" was that night, and the other replied, "Oh, well, she's out trickling." This witness asked Bonnie what "trickling" meant and she replied, "Well, they're just out there having a little fun, you know." He then engaged her in general conversation and asked her whether she would like to have some fun with him and she replied that she was available on "Thursday night, that I should be here Thursday night and that it would cost me \$10." She asked him to bring a buddy with him on Thursday night because she needed a lot of money. Burns was in the immediate area of this conversation, within three feet of the witness, serving drinks. At about twelve midnight Burns was overheard to say to a female, "'You'd better go home tonight' because there was nobody in, there was no money to be made here tonight, because none of the men were leaving

with any of the females." The girl acknowledged this by saying, "Yes, I think you're right."

Returning to the tavern on April 11 in the company of Agents S, C and M, Agent M entered the premises at 9:20 p.m., followed by Agent C at 9:30 p.m. and this witness (Agent L) at 9:40 p.m. Burns (the bartender) was on duty at that time and the agent observed that Bonnie was seated at the bar with two or three other females. When she saw him she immediately waved and came over to him, sat next to him, and asked him whether he was ready to go out that night. He indicated that he was and at this time the bartender put a coaster in front of Bonnie and, after serving her a drink, took payment therefor from this witness. They then engaged in conversation with reference to sexual intercourse. Bonnie informed them that "It will cost you the same as I told you the other day, ten bucks, and we will go to the Douglas Hotel in Newark." At this time Agent M came over and was introduced to Bonnie who informed him that it would cost him \$10 as well. The agent then gave Bonnie some change and told her to go over and play some songs on the juke box. He then engaged the bartender in conversation, saying "Hey, Frank, look, we're going out with this colored broad to screw ... is she worth ten bucks?" Frank (Burns) replied, "I'm just a bartender. I don't care what you do over there." The agent then said, "Look, Frank, I had a date with this broad for tonight to screw. You know I'm white, you're white and she's black. I don't want to get clapped up or get any kind of a disease." Frank then tapped him on the shoulder and said, "What do you think I have here, a license for a whore house or a license for a tavern?" When the agent asked him what he meant, Frank said, "Look, that's your business what you do over there with that girl. I just tend bar here."

Bonnie then returned to the bar and said, "Well, let's go. The night is early. I still have time to come back and make more money." She instructed them that, in accordance with customery practice, she was to leave by the rear door and the agents were to leave by the front door. After remaining in the tavern for about fifteen minutes, during which they were served another drink, Bonnie left through the rear door and the two agents left through the front door.

Proceeding to the hotel, Bonnie told the agent her room number, went up to the room and was followed shortly thereafter by this agent. Entering the room, he found that she was stripped. Within a few minutes, other agents accompanied by local police officers were admitted by this witness to the room; they searched her purse and found the \$20 in marked money theretofore given to her by the agents in her purse; she was arrested and taken to police headquarters.

Shortly thereafter this witness, in company with two local detectives and Agent S, returned to the premises and spoke to Frank who was then tending bar. Upon confrontation they asked him whether he remembered their leaving with Bonnie and he turned around and said, "Look, I told you I wasn't running a whore house." He refused, however, to make a statement or say anything further. On cross examination this agent insisted that Frank knew what was going on between the agents and Bonnie and, by his words and actions, this witness was under the impression that he had been "putting on an act" in their earlier conversation.

Agent M substantially corroborated the testimony of Agent L and added that, when Bonnie said to Agent L, "Does your buddy want to go out with me also", Frank was about to serve him a drink and was standing directly in front of him. He heard Frank

reply to the inquiry by Agent L, "What do you mean? I'm only the bartender here. I don't care what you do with her." He stated that, when they were in the car on the way to the hotel, he gave Bonnie a marked \$10 bill and Agent L gave her two marked \$5 bills. Upon confrontation when they returned to the tavern, he heard Frank say in a loud voice, "I told you I didn't run a whore house here."

ABC Agent C corroborated the testimony of Agent L with respect to the occurrence on April 11. He recalled that, when Agent L informed the bartender that he and Agent M offered Bonnie \$10, the bartender stated, "I'm only the bartender here. I'm not running a whore house. Do what you want to do." He estimated that the conversation between Agent L and Bonnie consumed about twenty-five minutes before she went to the juke box to play some records.

John Yencho, testifying on behalf of the licensee, gave the following account: He is an auto mechanic, a friend of the bartender, and has done work for him as an auto mechanic; he is also a frequent patron at this bar. He heard Agent L ask Frank in a loud voice, "Frank, is this girl worth \$10?" He saw Frank raise his finger in a motion but he could not hear the conversation. He then saw Frank go over to Robert Lescota, who was seated at the far end of the bar, and speak to him. On cross examination he denied knowing to whom the agent was referring when he asked Frank whether she was worth \$10 but "I was continuously looking back and forth wondering what he was doing with the colored girl." He added that he heard Frank reply, "This is my license" but he couldn't hear anything further. He was then asked:

- "Q Well, you know that L--- was talking about going out to have intercourse with her, don't you?  
 A No. Well, I don't look upon a colored girl as going out with a white man.  
 Q But you knew what he was talking about?  
 A Yes. I understood what he was talking about.  
 Q And still you weren't inquisitive enough to concentrate to listen to what was going on?  
 A It didn't interest me that much."

Thereafter he noted that Bonnie left the tavern and the agents left immediately thereafter. Finally, he noticed that, when Bonnie returned from the juke box, Frank poured a drink for the agent and himself and took payment from the agent for that drink.

Robert Lescota testified that he has stockholdings in the corporate licensee; that his mother is secretary-treasurer thereof, and that he was in the tavern on April 11. Agent L was seated about six or seven feet from him and was gesturing to Frank, "Hey, Frank ... Is this broad worth \$10?" Frank said something to the effect, "I'm running a tavern license and this is not a license for a whore house." Frank then approached him and asked him to go over and talk to Bonnie, saying, "I think possibly she's trying to hustle ... I want her out of here."

Lescota then went over to Bonnie and told her that some of the conversation that he overheard at the bar led him to believe that she was trying to hustle and he didn't want her in the place any more. She denied everything at that point and she rejoined the agents at the bar. Lescota also returned to the bar and told Frank that Bonnie denied everything flatly and "she

wasn't about to leave at that present time." She remained in the bar for another twenty or twenty-five minutes, after which she left the premises. On cross examination this witness admitted that, when the conversation with respect to Bonnie took place, he did not go over to the group or become involved in the conversation. Further, he did not see any gesture of admonition on the part of Frank. He was then asked:

"Q Did you ask him [Frank] why he didn't say something to her, why he didn't put her out?

A Well, he was quite busy and I was more available for the situation."

He explained that he went over to her and told her that there was a question of her soliciting or hustling in the bar and she flatly denied the same. He was then asked:

"Q Didn't you tell her, 'Listen, I know what goes on here. I heard the fellow just ask Burns whether you were worth \$10'?

A No, I didn't tell her, no.

Q Was there any reason why you didn't? That was good proof, wasn't it?

A Not really.

Q But you didn't?

A No, I didn't."

Francis Burns testified that on April 9 he spoke to Lescota and said, "I don't think there's any money to be made tonight. You might as well go home" and Lescota left shortly thereafter. On the night of April 11 he was tending bar and at about 10:15 p.m. Agent L shouted "at the top of his voice", "Is this girl worth \$10?" He pointed his finger at him and said, "What do you think I'm running here? I have a tavern license and not a whore house." Then he calmed down and spoke to him softly, saying, "Don't you have any respect for me, any respect for the license? What are you trying to do to me?" They continued the conversation and he then continued to serve other patrons. He then went over to Lescota and asked him to speak to Bonnie and request that she leave; "that we can't permit such things happening around the place. I was under the opinion then after he spoke to me of what she was trying to do." Lescota then informed him that Bonnie denied everything and Bonnie then returned to the bar. She left the premises about fifteen minutes later. Before she left, Agent L bought him a drink and apologized for his behavior. On cross examination he specifically denied saying to Bonnie, "Yes, you can't make money if there's no one here to move out with;" his actual conversation was with Lescota when he said, "I don't think there's any reason for you to hang around tonight. There's no money here." However, he admitted that Bonnie was in his premises on April 9. Finally, he acknowledged that he did not tell Bonnie to leave the premises since he thought that Lescota had taken care of the situation; that in fact Bonnie did not leave the premises at that time but remained for some fifteen or twenty minutes thereafter.

Agent L, called in rebuttal, denied apologizing to Frank and emphatically denied that he had anything to apologize about.

I have set forth in considerable detail a summary of the testimony adduced herein in order to obtain a proper perspective of the actions which transpired on the dates in question. In the consideration of this matter it is pertinent to state that we are dealing with a purely disciplinary measure which is civil

in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); The Panda v. Driscoll, 135 N.J.L. 164 (E. & A. 1946). Thus the Division is required to establish its case by a fair preponderance of the credible evidence and not by proof beyond a reasonable doubt. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). The violation herein charged is embraced within Rule 5 of State Regulation No. 20 which provides as follows:

"No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy, indecent or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The specific charge herein alleges that the licensee had violated this rule by allowing, permitting and suffering the solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse. Our courts have consistently maintained that "the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is in itself an immoral activity comprehended by the scope of the regulatory rule." In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). The court stated in Schneider, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity ...."

See In re Olympic, Inc., 49 N.J. Super. 299.

In my evaluation and assessment of the testimony of the witnesses herein, I have had an opportunity to observe their demeanor. I am guided by the basic legal principle that no testimony need be believed but, rather, the hearer must always credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899). Evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546.

Applying the crucible of these principles, I am persuaded that the more probable version and the truth lie in the testimony adduced by the Division agents. It must be borne in mind that these agents visited these premises and undertook this investigation pursuant to a specific assignment, and there is no reason to believe that the testimony of the three agents reflected a conspiracy or prejudice against the licensee. Their version was credible and factual and remained unshaken under vigorous and capable cross examination by the attorney for the licensee.

On the other hand, I was singularly unimpressed with the testimony of the bartender and the other witnesses for the licensee. Further, I do not believe that the bartender truthfully testified that the agent shouted his question with respect to the

fact that this female sought to make arrangements to engage in sexual intercourse. Common experience does violence to that version. It is much more consistent with the realities that, when a person seeks to inquire about an alleged offer of this nature, it is done quietly and not broadcast to the entire patronage.

If the agents' version is to be believed, and I do believe it, the reply by Frank, "Look, that's your business what you do over there with that girl. I just tend bar here", manifests a total disregard of his responsibility as the manager of this establishment. I am not convinced that Frank requested Lescota to inform Bonnie that she was to leave the premises. In any event, it is clear from the evidence that Frank did nothing in furtherance of that after he was admittedly aware of the fact that Bonnie had solicited these agents. It is no excuse that he accepted her flat denial in view of the definite statements made to him by the agents of her activity.

A licensee is the master of his establishment, and it is his duty and obligation to take affirmative action to eliminate such activity. Not only did he not do so, but he permitted her to remain with the agents for some fifteen or twenty minutes after being alerted by the agents of her solicitation, and, indeed, accepted a drink which was purchased for him by one of the agents. It is fantastic to believe that he did so after the agents allegedly "apologized" for shouting at him and seeking his advice as hereinabove noted. It is equally ludicrous to accept his explanation that, after Lescota came back and told him that she had denied everything, there was no reason to put her out.

From the evidence presented it is manifest that the licensee permitted and suffered the solicitation for prostitution to take place on April 11 on the licensed premises.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

Agent L testified that the original solicitation took place on April 9, 1968, and that it was as a result of the conversation had with Bonnie on that date that the final visit was made on April 11. In so far as the April 9 episode is concerned, while it is quite evident that such solicitation took place, the testimony falls short of establishing that the licensee's agent knew specifically of such solicitation. The testimony with respect to April 9 is significantly relevant, conceptually, to establish a common scheme and course of conduct in so far as the initial solicitation by Bonnie is concerned, as it relates to the episode of April 11. Thus it has been established by substantial evidence that, in so far as the solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse on April 11, the licensee's agent on that date knew and allowed, permitted and suffered the proscribed act to take place therein. Cf. Re Kirby, Bulletin 1792, Item 1; Re Ritchie's Inc., Bulletin 1426, Item 1; Red Poodle Club, Inc., Bulletin 1813, Item 3.

It has long been held that the solicitation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App.Div. 1953). In fact, where it has been established that the licensee or its employees actually procured a female or made offers to male patrons to procure a female to engage in acts of illicit sexual intercourse with them and made arrangements therefor, this Division has unhesitatingly revoked the license. See Re Tiny's Bar & Grill, Inc., Bulletin 1718, Item 1; Re Soto Pruna, Bulletin 1713, Item 1. This dimension is not embodied in the charge against this licensee.

From my examination of the totality of the evidence, I am persuaded and conclude that the Division has established the truth of the charge with respect to April 11, 1968, by a fair preponderance of the credible evidence -- indeed by substantial evidence -- and recommend a finding of guilt as to that date alleged.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective April 5, 1951 for sale to minors, for ten days effective October 10, 1955 for sale to a minor and permitting gambling on the licensed premises, and for fifteen days effective June 29, 1959 for permitting a brawl on the licensed premises. Since these suspensions for dissimilar violations occurred more than five years ago, it is recommended that they be disregarded in fixing the penalty.

It is further recommended that the license be suspended for ninety days. Re Kirby, supra; Re Fantaco, Inc., Bulletin 1766, Item 2; Re Fap, Inc., Bulletin 1822, Item 4.

#### Conclusions and Order

Written exceptions to the Hearer's report and argument in support thereof were filed by the attorneys for the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the exceptions have been either considered and answered by the Hearer in his Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exceptions and the supportive argument with reference thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 26th day of November 1968,

ORDERED that Plenary Retail Consumption License C-755, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Royal Castle, Inc., t/a Frank's, for premises 35 River Street, Newark, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Tuesday, December 3, 1968, and terminating at 2 a.m. Monday, March 3, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

4.

ACTIVITY REPORT FOR NOVEMBER 1968

<b>ARRESTS:</b>		
Total number of persons arrested - - - - -		20
Licensees and employees - - - - -	6	
Bootleggers - - - - -	14	
<b>SEIZURES:</b>		
Motor vehicles - cars - - - - -		2
- trucks - - - - -		1
Alcohol - gallons - - - - -		9.12
Distilled alcoholic beverages - gallons - - - - -		393.65
Wine - gallons - - - - -		309.37
Brewed malt alcoholic beverages - gallons - - - - -		112.64
<b>RETAIL LICENSEES:</b>		
Premises inspected - - - - -		652
Premises where alcoholic beverages were gauged - - - - -		536
Bottles gauged - - - - -		9,238
Premises where violations were found - - - - -		142
Violations found - - - - -		226
No Form E-141-A on premises - - - - -	105	Disposal Permit necessary - - - - - 3
Unqualified employees - - - - -	67	Prohibited signs & practice - - - - - 1
Application copy not available - - - - -	20	Other violations - - - - - 30
<b>STATE LICENSEES:</b>		
Premises inspected - - - - -		7
License applications investigated - - - - -		7
<b>COMPLAINTS:</b>		
Complaints assigned for investigation - - - - -		370
Investigations completed - - - - -		356
Investigations pending - - - - -		213
<b>LABORATORY:</b>		
Analyses made - - - - -		137
Refills from licensed premises - bottles - - - - -		55
Bottles from unlicensed premises - - - - -		23
<b>IDENTIFICATION:</b>		
Criminal fingerprint identifications made - - - - -		10
Persons fingerprinted for non-criminal purposes - - - - -		276
Identification contacts made with other enforcement agencies - - - - -		176
Motor vehicle identifications via N.J. State Police teletype - - - - -		2
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities - - - - -		6
Violations involved - - - - -		6
Sale to minors - - - - -	4	
Sale during prohibited hours - - - - -	2	
Cases instituted at Division - - - - -		16
Violations involved - - - - -		22
Sale to minors - - - - -	4	Unauthorized transportation - - - - - 2
Permitting lottery acty. on prem. - - - - -	3	Fraud in application - - - - - 1
Possessing liquor not truly labeled - - - - -	3	Hindering investigation - - - - - 1
Sale during prohibited hours - - - - -	2	Possessing chilled beer (DL Licensee) - - - - - 1
Sale below filed price - - - - -	2	Possessing indecent matter - - - - - 1
Delivery w/o bona fide invoice - - - - -	2	
Cases brought by municipalities on own initiative and reported to Division - - - - -		12
Violations involved - - - - -		15
Sale to minors - - - - -	6	Hindering investigation - - - - - 1
Permitting brawl, etc. on prem. - - - - -	2	Unqualified employees - - - - - 1
Conducting business as a nuisance - - - - -	2	Permitting gambling on premises - - - - - 1
Sale during prohibited hours - - - - -	2	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held - - - - -		19
Appeals - - - - -	5	Seizures - - - - - 2
Disciplinary proceedings - - - - -	5	Tax revocations - - - - - 2
Eligibility - - - - -	5	
<b>STATE LICENSES AND PERMITS:</b>		
Total number issued - - - - -		1,287
Licenses - - - - -	5	Wine permits - - - - - 167
Solicitors' permits - - - - -	20	Miscellaneous permits - - - - - 227
Employment permits - - - - -	272	Transit insignia - - - - - 195
Disposal permits - - - - -	62	Transit certificates - - - - - 40
Social affair permits - - - - -	301	
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>		
Licenses issued - - - - -	5	
Enforcement files established - - - - -	1	

JOSEPH H. KEEGAN  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

Dated: December 5, 1968

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD OF LICENSEE AND CORPORATION IN WHICH LICENSEE WAS OFFICER - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against

S. EDWARD HAUSNER  
t/a Skyline Lounge  
789 Dowd Avenue  
Elizabeth, N. J.

CONCLUSIONS AND ORDER

*offer-off*  
*1853-1*

Holder of Plenary Retail Consumption License C-111 issued by the City Council of the City of Elizabeth

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Licensee, Pro se.  
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 pleaded not guilty to the following charge:

"On April 17, 1968, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Four 4/5 quart bottles labeled 'Grant's B P Blended Scotch Whisky, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

Division Agents M, S and Mc visited the licensed premises on April 17 at approximately 9:15 a.m. for the purpose of gauging open bottles of alcoholic beverages. They entered a large barroom containing a large bar, a smaller service bar, tables and chairs. A smaller barroom containing an oval bar adjoined the large barroom. Upon entering the agents identified themselves to the licensee and informed him of the purpose of the visit.

Agent M made a check of bottles in the main or large barroom. As a result of the gauging, he seized an open bottle of Grant's blended scotch whisky for the reason that it appeared to him to be low in proof. In the smaller barroom, Mc seized a bottle of Grant's blended scotch whisky and S seized two bottles of the same brand. The four bottles were assembled and sealed in the presence of Hausner. Each of the bottles bore on the label "86 proof." Hausner signed each seal and he was given an official receipt for each bottle. Prior to removing the bottles from the premises, Hausner was informed that the bottles appeared to be low in proof. The bottles were taken from the licensed premises directly to the Division office for testing by the Division chemist.

A duly certified report of analysis of the four seized bottles, made by John P. Brady (a graduate chemist regularly

employed by the Division), and the four seized bottles were received in evidence. In brief, the report of chemical analysis indicated that the contents of all of the bottles were not genuine for the reason that all of the bottles were low in proof and color. The proof varied from a low of 78.7 to a high of 83.4.

In defense of the charge, the licensee contended that he did not tamper with the bottles; that they may have been low in proof because they had been purchased more than two years prior to the testing, and each of the seized bottles had pourers attached to them; he had no knowledge that the whisky was low in proof and, finally, that some third person (not one of his employees) who bore ill will toward the licensee tampered with the bottles.

In adjudicating this matter, I find that the unchallenged report of the chemist indicating that the bottles bore labels which did not truly describe their contents is fully dispositive of that issue.

As stated heretofore, licensee is charged with violating Rule 27 of State Regulation No. 20. The pertinent part of the rule in question reads as follows:

"No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage...in any keg, barrel, can, bottle, flask or similar container which...(b) bears a label which does not truly describe its contents..."

The phrasing of the vital part of the rule of present concern to us, which reads, "No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage", is clear and unambiguous, and clearly renders unmeritorious the defenses raised by the licensee without considering the bona fides thereof.

Applying the firmly established principles to the instant proceeding, I am persuaded that the evidence is clear and convincing that the licensee is guilty of said charge and I therefore recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the Director for similar violation for forty days effective January 10, 1968 (terminating February 19, 1968). Re Hausner, Bulletin 1779, Item 10. Additionally, the license then held by Penn Brook Inn, Inc. for premises 33-35 West Grand Street, Elizabeth, in which corporation he was secretary-treasurer, was suspended by the Director for similar violation for sixty-five days effective September 13, 1960. Re Penn Brook Inn, Inc., Bulletin 1358, Item 8.

It is further recommended that, the prior record of suspension for similar violation in 1968 within the past five years considered, the license be suspended for thirty days (Re Cleffi's Cafe, Inc., Bulletin 1745, Item 2), to which should be added five days by reason of the suspension of license of Penn Brook Inn, Inc. (Re Gallia, Bulletin 1811, Item 8) for similar violation in 1960, more than five but less than ten years ago (Re Ganser's Tavern, Inc., Bulletin 1784, Item 4) and an additional fifteen days by reason of the occurrence of the instant violation on April 17, 1968, in close proximity to the expiration of the previous suspension on February 19, 1968 (Re Maesm, Inc., Bulletin 1769, Item 4), or a total of fifty days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee and answering argument to the exceptions was filed by the prosecuting attorney, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of testimony, the exhibits, the Hearer's report and the exceptions and answering argument filed thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions. I shall therefore impose the penalty recommended by the Hearer, namely, a license suspension of fifty days.

Accordingly, it is, on this 14th day of November, 1968,

ORDERED that Plenary Retail Consumption License C-111, issued by the City Council of the City of Elizabeth to S. Edward Hausner, t/a Skyline Lounge, for premises 789 Dowd Avenue, Elizabeth, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. Thursday, November 21, 1968, and terminating at 2:00 a.m. Friday, January 10, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

- 6. DISCIPLINARY PROCEEDINGS - FRONT - FAILURE TO KEEP BOOKS OF ACCOUNT - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

O.K. CORRAL, INC.  
146 Mulberry Street  
Newark, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-628 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

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Samuel Raffaelo, Esq., Attorney for Licensee  
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1), (2) and (3) alleging that by false statements in its application for license, it concealed the fact that since July 27, 1967 Charles Caruso was the real and beneficial owner of 98 per cent of its corporate stock listed in the name of Ralph Berardinelli, in violation of R.S. 33:1-25 and 52, and (4) failed to keep true books of account of the licensed business, in violation of Rule 36 of State Regulation No. 20.

During the pendency of this proceeding, the unlawful situation was corrected by transfer of 98 per cent of the corporate stock to Caruso.

Licensee has a previous record of suspension of license by the Director for sixty days effective January 17, 1966, and again for two hundred five days effective January 11, 1967, both for permitting solicitation for prostitution on the licensed premises. Re O. K. Corral, Inc., Bulletin 1660, Item 5; Bulletin 1718, Item 2.

The license will be suspended on the first, second and third charges for twenty days (Re Forked River House, Inc., Bulletin 1821, Item 8) and on the fourth charge for ten days (Re American Legion Post #380, Bulletin 1661, Item 3), to which will be added ten days by reason of the record of two suspensions of license for dissimilar violation within the past five years (Re Poodle Club, Inc., Bulletin 1813, Item 3) or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 14th day of November, 1968,

ORDERED that Plenary Retail Consumption License C-628, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to O.K. Corral, Inc. for premises 146 Mulberry Street, Newark, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Thursday, November 21, 1968, and terminating at 2:00 a.m. Thursday, December 26, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT ON PROOF OF CORRECTION OF UNLAWFUL SITUATION AFTER 40 DAYS.

In the Matter of Disciplinary Proceedings against

HI-DE-HO Corp.  
602 Paterson Plank Road  
Union City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Union City

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James F. McGovern, Jr., Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that in its application for license dated May 22, 1967, it falsely listed as its stockholders Sue Gale Gilligan 49%, Dorothy Bosinski 50%, and Teddy Rigano 1%, whereas in fact each was the beneficial owner of 33-1/3% of the corporate stock, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective July 26, 1965 for permitting a brawl on the licensed premises, and by the Director for twenty-five days effective April 18, 1966 for sale to minors and false statement in the license application by failure to disclose the suspensions of licenses held by Teddy Rigano, individually and as a member of other corporate licensees. Re Hi-De-Ho Corp., Bulletin 1676, Item 7. In addition, the license then held by Teddy Rigano for premises 615 Paterson Plank Road, Union City, was suspended by the Director for twenty-five days effective May 27, 1957 for permitting hostess activity; and the license then held by Club Hi-De-Ho, Inc. (of which Teddy Rigano was secretary-treasurer and 60% stockholder) for premises Baldwin Avenue and Route 46, Lodi, was suspended by the Director for forty-five days effective April 26, 1954, for permitting indecent entertainment and hostess activity, and (when Rigano was secretary and 50% stockholder) was again suspended by the Director for thirty-five days effective March 2, 1955, for hostess activity. See Re Rigano, Bulletin 1174, Item 3.

The prior record of suspensions of license for dissimilar violations occurring more than five years ago disregarded, but the record of suspension for similar violation in 1966 within the past five years considered, the license would usually be suspended for forty days (cf. Re Forked River House, Inc., Bulletin 1821, Item 8; Re Lesniewski, Bulletin 1743, Item 5), to which would be added five days by reason of the record of suspension for dissimilar violation in 1965 within the past five years (Re Marcella Bar, Inc., Bulletin 1820, Item 11), or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

However, since to date there is no indication that correction of the unlawful situation has been accomplished, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply for lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than forty days from the commencement of the suspension herein.

Accordingly, it is, on this 14th day of November 1968,

ORDERED that Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Union City to Hi-De-Ho Corp., for premises 602 Paterson Plank Road, Union City, be and the same is hereby suspended for the balance of its term, viz., until June 30, 1969, commencing at 3 a.m. Thursday, November 21, 1968, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of license on or after 3 a.m. Tuesday, December 31, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - LICENSE  
SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

THOMAS BUCCI, JR. )  
t/a Penguin Club )  
933 Atlantic Avenue )  
Atlantic City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-193, issued by the Board of Commissioners of the City of Atlantic City )

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Licensee, Pro se  
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 5, 1968 he permitted a female entertainer to drink at the expense of a male patron, in violation of Rule 22 of State Regulation No. 20.

Absent prior record, 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 Fap, Inc., Bulletin 1822, Item 4.

Accordingly, it is, on this 19th day of November 1968,

ORDERED that Plenary Retail Consumption License C-193, issued by the Board of Commissioners of the City of Atlantic City to Thomas Bucci, Jr., t/a Penguin Club, for premises 933 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for fifteen (15) days, commencing at 7 a.m. Tuesday, November 26, 1968, and terminating at 7 a.m. Wednesday, December 11, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

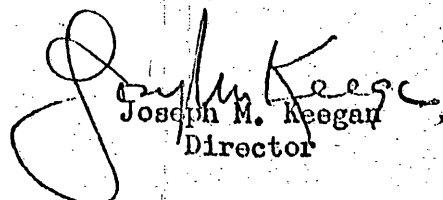
9. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph Pingitore Co.  
241 Chelsea Avenue  
Long Branch, N. J.

Application filed December 18, 1968 for person-to-person transfer of State Beverage Distributor's License SBD-16 from Joseph Pingitore, Inc.

Boller Wine and Liquor Inc.  
438-440-442-441-444 East Jersey Street  
Elizabeth, New Jersey

Application filed December 13, 1968 for person-to-person transfer of Plenary Wholesale License W-7 from Boller's Beverages, Inc.

  
Joseph M. Keegan  
Director