

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

BULLETIN 2019

December 28, 1971

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1. DISCIPLINARY PROCEEDINGS - LEWD AND IMMORAL ACTIVITY (ROOM  
RENTING) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary  
Proceedings against

Silver Crest Motels, Inc.  
t/a Silver Crest Motor Lodge  
1609 Georges Road  
North Brunswick Township  
PO New Brunswick, N. J.,

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption  
License C-18, issued by the Township  
Committee of North Brunswick Township.

Meth & Wood, Esqs., by John K. Cooper, Esq., Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report and supplemental  
report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On August 5 and 14, 1970, you allowed, permitted  
and suffered lewdness and immoral activity in and  
upon your licensed premises, viz., the making of  
arrangements for the renting of rooms, the offer  
to rent and the renting of rooms for the purpose  
of acts of illicit sexual intercourse and/or acts  
of illicit perverted sexual relations; in  
violation of Rule 5 of State Regulation No. 20."

Four ABC agents participated in the investigation which  
culminated in the preferment of the subject charge.

Agent G testified that pursuant to a specific assignment  
he went to the licensed premises on August 5, 6, 11 and 14, 1970. He  
entered the licensed premises on August 5, 1970, at approximately 8:00  
p.m. in the company of agent Ga.

He described the barroom area as a one-story building and  
the entrance to this area a foyer with two doors leading therefrom.  
Immediately ahead, upon entry into the foyer, is the door leading to  
the barroom and on the left of the foyer is a clear glass door leading  
to the motel registration office.

Upon entering the bar area, agents G and Ga seated themselves at the bar and observed four patrons present. They engaged in general conversation with the barmaid, later identified as Carol Markley. The testimony of agent G developed as follows: Agent Ga discussed with Carol the prospect of obtaining a room where both agents could entertain a "girl friend", in response to which Carol suggested the agents take a room for an hour since it is less expensive. When agent Ga expressed doubt that a room could be rented for such a short period of time, Carol assured him that she had recently learned that this was the case. Agent Ga thus being reassured, advised Carol of the agents intention to have an "orgy" and invited Carol to join in. She responded "...everyone has their own hang-up. This is not mine." Agent Ga then confirmed that drinks were available in the rooms and again asked Carol if she would join in an "brgy". She again declined. She further assured the agents that the desk clerk, named Carl, was okay.

Thereafter the agents proceeded to the motel registration office immediately off the foyer where they spoke to a man behind the registration desk, subsequently identified as Carl Boyer.

Agent G continued that he told Carl the barmaid had advised him that rooms were available by the hour, to which Carl replied "'Who are you going to take to the room? Him?'" while pointing toward agent Ga. Agent G then advised Carl that both he and agent Ga had the same girl friend with whom they desired to rent a room for purposes which need not be expressly repeated. Suffice it to say that the purposes presented by agent G clearly describes acts of illicit or perverted sexual intercourse. The following testimony is pertinent:

"He [Carl] said, 'What is her name and phone number?' Then he said, 'No'. I said, 'We aren't kidding. We have the same girl friend. She has this thing about motels. She won't do anything in a car or in a house, but she has this thing about motels.' I added, 'Do I need a suitcase or wedding rings when I register?' He laughed, and he said, 'How about a toothbrush?' Then Carl said, 'You don't need anything like that.' Then he quoted the price of a double room which was somewhere around fifteen dollars, and he quoted the price of a single room which was around nine dollars."

As the agents prepared to rent a room, a male later identified as Santo LaBarbera, an officer of the corporate licensee entered

the office; whereupon Carl ended the conversation with the agents as follows: "'When you want a room I'll be here.'"

With respect to the visit of August 14, agent G testified that he arrived in the general vicinity of the licensed premises at approximately 8:00 p.m. in the company of agents Ga, Gr and R. He had in his possession two ten dollar bills, the serial numbers of which had been previously recorded on a list which was retained by agent R. Agents G, Ga and Gr entered the foyer while agent R remained outside at a post of observation. Agent G then entered the registration office, agents Ga and Gr remained in the foyer where they were clearly visible through the transparent glass door which agent G had left partially open.

He continued that he approached Boyer who was alone behind the desk and the following testimony was elicited:

"Q What was your conversation with him?

A I said to him, 'We are here. Tonight is the night.' I said, 'There is the girl,' and I pointed to agent Gr. You could see her through the door in the foyer. I said, 'That is the girl I was telling you about the other night.' I pointed to agent Gr. That is when I told him she has a thing about motels. I said, 'I am going to get ... I hope you got a room for me tonight.' He said, 'For who'. I said, 'Just me and her,' and I said, 'See her at the door?' He replied, 'Yes'. I said, 'Give me a single room,' and I pointed to agent Ga, and I said, 'He isn't going to get any tonight. ... I asked him if he had a single. And he said, 'Yes'. He said it would cost \$9.50. I gave him the \$10 bill that we had previously prepared. He took this \$10 bill, and he put it in the cash register drawer, and he returned to me 50 cents change. Then he made some notations on the register page, I guess you call it. I said, 'Do I sign the registration?' He laughed and he said, 'You don't even get a key.' He said, 'Take Room No. 25. The door is open.' He said, 'How long are you going to stay?' I said, 'I'll be about an hour, not much longer.'

Q Did you see where Investigators Gr and Ga were during this time?

A Yes. They were standing behind me in the foyer or lobby behind the glass door.

Q Did you ask Mr. Boyer anything?

A I pointed out agent Gr and I said, 'Do you want a little of that?' I said, 'Do you see her?' He said, 'Yes, I see her.' He said, 'But I am too

busy.' I said, 'I'll take room 25. I'll see you later.' As I walked away from the desk on the way out I said, 'Room 25?' He said, 'yes'. He added, 'It is open.' I said, 'O.K. Last chance. Do you want a little?' He said, 'I told you I am too busy.'"

Then he and agent Gr proceeded to and entered the unlocked Room 25, while agent Ga returned to the premises. Shortly thereafter agent Ga entered with two plastic containers of drinks, and then departed.

At approximately 9:30 p.m. agent G opened the door in response to a knock and found Boyer, agents Ga and R at the door. The testimony proceeded as follows:

"Q Tell us what they did.

A As I stood in the doorway they were right there in front of me, and then agent R asked me, 'What are you doing here?' I said, 'I rented the room.' He said, 'Do you have a woman in the room?' I said, 'Yes'. He said, 'Is it your wife?' I said, 'No'. Then agent R asked, he said, 'Did you tell him' - and he pointed to Carl, the manager - 'what you were going to rent this room for?' I said, 'Yes. I told him my girl and me were going to rent the room, and I was going to get ....' Carl said, 'Wait a minute. You told me you were going to rent the room; that is true.' And then agent R said, 'Did you tell Carl how long you wanted the room for?' I said, 'Yes. I said I just wanted it for about an hour. That is all I would need.' And Carl replied, 'Well, you did say that when you came in.'"

Agents R and Ga then entered and seized the drinks by pouring them in sample bottles which Boyer initialed. Agent G then instructed agent Gr to return to the car and he, agents Ga and R returned with Boyer to the registration office. Boyer produced the marked ten dollar bill from the register drawer which he admitted receiving in payment for the room.

On cross examination he continued that he received the present assignment from his supervisor on August 5, 1970 in the presence of agent Ga and that he was given no specific instructions as to how to proceed. He and agent Ga entered the barroom at 8:00 p.m. and ordered drinks.

There then ensued considerable colloquy and legal argument by counsel, with reference to the nature of the investigation and the meaning of responses elicited from Carol to the questions asked by

agents G and Ga, and as to any preconceived notions prior to the actual investigation culminating in the following testimony:

"Q Inspector, did you have a plan in mind when you first started this investigation on August 5, 1970?

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A There was no plan. There was no set plan. There are no steps. There is nothing like that. We start an investigation, and we have to just go from one point to another, but you don't go into an investigation of any kind with a set plan."

He continued that he and agent Ga then proceeded to the registration desk where they engaged Boyer in conversation substantially as had been described by agent G on direct examination. Again, the testimony of agent G is pertinent:

"Q How would you describe Carl's attitude during this conversation?  
A He appeared to me that he was going to rent us a room, and he knew why we wanted the room, and he had no objections to our renting the room for that purpose. That was the impression I got.  
Q What led you to that impression? A Because at no time did he refuse or give me the impression that this is something he did not do or that this was not what he was there for. In other words, he had every opportunity to say, 'No, you can't do that' or 'No, I can't rent you a room for that,' and he never once gave me the impression that he would not rent us a room for this purpose.  
Q What would you have done if he said, 'No'? A Turned away and walked away. Q Never to come back again? A Maybe a different approach, but we always have it in our mind whenever we reach this point the individual we are taking to says, 'No' or 'I will not' or 'I cannot' this affects the whole complexion of our investigation and things then change. We would never push, if I may use that word."

Further, the agent denied terminating the conversation about room renting because LaBarera then entered the room. He was assured by Boyer that a room was available to him whenever he wanted it.

Agents G and Ga left the premises at 9:20 p.m. having had three drinks while on the premises.

With reference to August 14, agent G testified that on no occasion did he ask Boyer whether he had discussed this rental with a superior, and at no time did he intend to have sexual relations with agent Gr. He concluded that he compared the carbon copy of the registration sheet with the original and that they were exactly the same.

Agent Ga testified for the Division that he accompanied agent G on August 5, 6, 11 and 14. He had been in the hearing room

during agent G's testimony and his testimony would substantially corroborate that of agent G as to August 5. With reference to August 14, he remained in the foyer with agent Gr while agent G entered the registration office. He continued with his account: Agent G and Boyer were visible through the glass door but that while the door remained partly open he could not hear the conversation between agent G and Boyer. As agent G departed the office he heard agent G ask Boyer if he wanted to come, to which Boyer replied that he was too busy.

As agents G and Gr departed toward the motel units, he returned to the registration office and had brief conversation with Boyer. He then returned to the barroom where he purchased two drinks from Carol which she placed in plastic cups and which he then delivered to agents G and Gr in Room 25. Upon departing Room 25, he contacted agent R, advised him of what had transpired and he then returned to the barroom, identified himself as an ABC agent to Carol and engaged her briefly in conversation. He and agent R then proceeded to the registration office and the testimony developed as follows:

- "A He asked him, you know, if he rented a room to G, Carl asked him what was the matter.  
Q Go ahead.  
A Agent R then asked Carl how much he charged for the room. Carl told him he charged \$9.50.  
Q Then what was the next step in the investigation as far as you were concerned?  
A Well, R asked Carl how long he rented the room to G for, and Carl said, 'I rented it to him for the whole night.'

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Carl stopped for a minute, and he said, 'Yes, he did say he wanted the room for a couple of hours.'

He, agent R and Boyer proceeded to Room 25 and he corroborated the testimony of agent G regarding the conversation which occurred there, including the seizure of the drinks, and the later seizure of the marked money.

He and agent R returned to the barroom and he identified himself to Carol. The testimony then developed as follows:

"Q Did you say anything in particular to her?  
A Agent R asked Carol if she knew why G and myself wanted to rent a room. Carol at this time said, 'No, not really.'

I at this time refreshed Carol's memory. I told her she remembered on previous visits we had been in here in the premises talking, and I told her we both had the same girl friend, and we were going to get a room.

Q To what date were you referring on a previous visit?

A The 5th. I told her we were having an orgy, and I asked her to come, and she says -- I am talking to Carol -- she said, 'It is nice you want me to come.' I also refreshed her memory where she said, 'Take the room for an hour. It is cheaper.' I also reminded her on this night I bought drinks for Bob and myself.

Q You are not talking about the 5th; you are talking about the 14th?

A The 14th. And I told her I was going second. Carol didn't say anything at this time.

Agent R asked Carol if everything I said was true, and Carol said, 'Yes, he did, he did say these things.'

He asserted that the conversation with Carol was of a serious nature; and that similarly the conversation with Boyer on August 5 was "business conversation." He recalled LaBarbera's entrance into the office on August 5 but "I had no concern with the gentleman."

As to August 14, he stated that they arrived in the area approximately 8:00 p.m., prepared and marked the money list, changed cars and drove to the licensed premises; Boyer said nothing about allowing no more than two people in the room; agents G and Gr were fully clothes when he brought the drinks to Room 25. He had no knowledge of the conversation which took place among agents G, Gr, R and Boyer, because he "didn't have any part in it." He denied ever shouting any loud or obscene remarks at anyone.

Agent Gr testified that she arrived at the licensed premises on August 14, 1971, in the company of agents G, Ga and R at approximately 8:00 p.m. She was aware that agent G had two "marked" ten dollar bills. She, agents G and Ga entered the foyer at approximately 9:00 p.m. A clear glass door led from the foyer into the registration office on the left, and she saw Boyer through the door.

Agent G entered the office and she and agent Ga remained side by side in the foyer and visible to Boyer. As agent G opened the



door to leave the office, she heard the following:

"Last chance. Do you want a little? and  
Mr. Boyer said, 'No. I told you I was too busy.'"

She and a gent then left, proceeded through the parking lot and entered Room 25. Agent Ga went in another direction. Shortly thereafter agent Ga brought two drinks in plastic containers to the room and then departed.

In a few moments, there was a knock at the door. Agent G opened the door and agents R, Ga and Boyer were then admitted. She then generally corroborated the testimony of agent G regarding the ensuing conversation. She returned to the car while the others went to the registration office.

ABC agent R testified that he participated in the instant investigation on three dates. With reference to August 14, he testified that in the company of agents G, Ga and Gr, he arrived at the area approximately 8:00 p.m. and took up a post of observation while agents G, Ga and Gr, entered. He subsequently observed agents G and Ga walk toward the motel units, while agent Ga entered the barroom and shortly thereafter agent Ga exited the barroom with two containers and walked to the motel unit. Shortly thereafter agent Ga emerged from the motel unit area to the barroom; he, (agent R) followed. He then identified himself to Carol, and in the company of agent Ga, proceeded to the motel office where he confronted Boyer. He asked Boyer if he had rented a room to agent Ga's friend. (It should be noted that at this posture of the investigation, agent Ga had not yet been identified to Boyer.) Boyer responded that he had rented a room to agent G for \$9.50 for "all night, I guess". Agent Ga then reminded Boyer of the illicit and perverted acts allegedly referred to by agent G, to which Boyer replied, "Yes, he did say he was going to use the room for a couple of hours."

Subsequently, and at agent R's request, Boyer, agents Ga and R proceeded to Room 25. He corroborated the prior testimony with respect to the fact that the room was to be used for illicit intercourse, was to be occupied only for "a couple of hours", and Boyer

admitted being so advised. He also corroborated testimony with reference to the confrontation in the office and the seizure of the "marked" money and registration sheet.

On cross examination agent R denied that the investigation was designed specifically to intimidate Boyer and he denied the use of loud, foul or obscene language by any of the agents. He had worked with agent Gr on one or two other occasions; he heard no reference to anyone named "Sandy"; and he flatly denied any attempt to entrap or set-up the licensee.

On behalf of the licensee, Carmen Canastra testified that he has been a member of the North Brunswick Police Department for thirty years and Chief for eight years. There have been no specific complaints against the licensed premises. In the past five or six years, he had been on the premises for routine inspection approximately twice a month and has seen no evidence of drunkenness, arguments or solicitation for prostitution, although regular undercover investigations are made of all bars in the community. He has known LaBarbera, president of the corporate licensee, for fifteen or twenty years.

On cross examination he conceded that he was not on the premises on August 5 or August 14, 1970; neither he nor any of his personnel have ever conducted an investigation of the premises with reference to the renting of rooms for immoral purposes.

Adalbert Czarda testified that he is a Police Sergeant of the North Brunswick Police Department and has been so employed for eighteen years. During this time he has been required to go to the licensed premises only on one occasion; and the licensee is very well respected in the community.

On cross examination he acknowledged that he has functioned primarily as a regular patrolman, and has not participated in undercover work since 1962. "... I just follow orders. I can be sent any place any time." He was not on the licensed premises on either August 5 or August 14; he did not specifically recall any conversation with persons in the immediate area regarding the reputation of the licensee;

and his evaluation of the reputation of these premises was as a result of "...my own observations and duties...."

Edward F. Ambrose, the attorney for the Division in these proceedings, was subpoenaed by the licensee and testified that he is Assistant to the Director of the Division of Alcoholic Beverage Control and has access to the records with respect to investigations conducted by ABC investigators; he continued that he was personally served with a subpoena to produce:

"all records surrounding this present investigation involving the Silver Crest Motel, and records for the years 1968, 1969, and 1970 dealing with violations of State Regulation No. 20, Rule 5, wherein it was charged that the licensee suffered or permitted lewd or immoral activities or permitted or allowed or suffered illicit sexual intercourse on the licensed premises."

He stated that he is not custodian of these records and that he has been told by the present and prior Division Directors that such records are not subject to subpoena or notice to produce, being privileged communications between the investigating agents and the Director. He first became aware that a violation might have occurred with respect to the instant license when the reports of investigation were submitted to him some time after August 14, 1970.

Carol Markley testified on behalf of the licensee that she has been employed at the licensed premises for at least thirteen months prior to the date of hearing and was so employed on August 5, 1970. With respect to the evening of August 5, she testified that agents G and Ga, then unknown to her, entered the premises and engaged her in general conversation. Agent Ga did most of the talking:

"He asked me if he could rent a room for an hour. I said, 'Yes'. He said, 'How about longer?' I said, 'yes'. He says, 'Suppose I want to shack up?' And I looked at him, and I laughed, because I laughed at this because I hear it every day. I don't take offense in this kind of situation. I hear this every day of the week. I must hear different remarks - - I couldn't begin to tell you because I let it go over my shoulder. I looked at him and I laughed. I said, 'If that is your thing do it. It is none of my business what you do.' I tell everybody this. This is my general conversation. If some one wants to do something I feel it is none of my business as long as it doesn't involve me."

She told agents G and Ga that if they were interested in renting a room, to "see Carl... He is O.K. He is a nice guy."

With respect to August 14, she testified that agent Ga entered alone and ordered two drinks to take to the motel and he requested a "ladies' drink". The agent stated that "my buddy is shacking up with a girl"; and shortly thereafter admitted "I am only kidding. I am really my buddy's girl friend." He departed, and returned later with agent R.

On cross examination she testified that she is still employed by the licensee; she was not nervous or upset on August 5; she did not feel that agents Ga and G were practicing any trickery on her; she did indicate to agent Ga that he could rent a room for an hour; she does not recall suggesting they take a room for an hour because it is cheaper; nor did she recall stating "I just found out myself last week that this is that kind of a place. I guess all motels rent rooms like that'?" Further she recalled no reference to the word "orgy"; she had no knowledge whether Carl was renting rooms for immoral purposes.

On redirect the witness testified that she has never personally rented a room to anyone nor has she the authority to do so. Rather she would direct any prospective tenant to Boyer at the registration desk.

Carl Boyer testified on behalf of the licensee that he is presently employed as a school teacher and that on August 5 and August 14, 1970, he was employed on the licensed premises as desk clerk.

He stated that he had had contact with ABC agents on two occasions; with reference to August 5, he testified that agent Ga asked if rooms could be rented for an hour; he responded in the affirmative. Agent Ga proceeded to spell out in detail the reasons for wanting the room with particular reference to acts of sexual intercourse and per-versions thereof:

"I said, 'why don't you take her out in the woods if she is a joy on it?' I was abashed. He said, 'She has a thing about motels.' I went along with them. He said, 'Can we rent a room for a couple of hours?' I said, 'We do rent a room for a

couple of hours.' He started asking questions, 'Do I have to bring this? Do I have to bring a suitcase?'

From his testimony I recall I did say, 'Yes', laughingly, 'Just bring your toothbrush.'

Then the conversation went on like that, and I played along with them. They went back into the bar. Sandy came out in the meantime, and I stopped talking to them.

Q Who is 'Sandy'? A Mr. LaBarbera. He was in back. He came out. I stopped talking to them because I knew Sandy wouldn't like what I was doing, playing these guys along. They went back in the bar. He says, 'Let me know when a room is open'. I went back about my business."

Thereafter he pointed them out to LaBarbera and advised him of their request to rent a room and the reason therefor. LaBarbera responded "Don't rent them a room. We don't go for that stuff. ... They look like a couple of queers to me."

With reference to August 14, he testified that agent G entered and said "I want to go in the back for a while". He saw "the other two [agents Ga and Gr] " in the doorway and they appeared to be going into the bar. Agent G then said, "Oh, he is going in the bar."

He then saw agents G, Ga and Gr go toward the driveway and thereafter his attention was diverted by the switchboard. He next saw agent Ga come out of the bar with two paper cups and watched agent Ga knock on the door of Room 25 and hand in the two drinks.

Shortly thereafter, agents Ga and R entered the office. Agent R identified himself and at agent R's insistence he accompanied them to Room 25. During the walk agent Ga shouted obscene references to the acts to be committed by agents G and Gr and continued to do so until the door to Room 25 was opened. In response to agent R's question he admitted renting the room to agent G for a couple of hours. He insisted that he did not believe he was renting rooms for immoral purposes, and that if he thought that to be the case he would have refused agent G's request.

On cross examination, he admitted that the conversation between himself and the agents did include a request to rent a room to

engage in certain acts with a girl but he denied telling the agents on August 5, that he would rent a room to the agents. He further denied that agent G made any remarks regarding the use of a room for immoral acts on August 14, and he, therefore, had no objection to renting the room on August 14.

He also admitted stating to agents G and Ga that "We do rent rooms for short periods of time" and they informed him of their purported purpose in renting a room. Further, he did not accompany agent G to Room 25 nor did he give agent Ga a key to Room 25; he told agent G the door was open and he didn't need a key; he did not request that agent G sign the registry sheet; agent G may have said "Don't you want to come along with us and get a little ....". When agent G mentioned the intended use of the room on August 5 "I thought he was joking or drunk or crazy....".

Santo LaBarbera testified that he is a principal stockholder of the corporate licensee and manager of the licensed premises. With reference to the incident of August 5, he recalled a conversation with Boyer relative to a room renting to three men and a girl but he emphatically denied ever seeing agents G and Ga until "I walked into this room."

At the close of the Division's case, the licensee moved for mistrial for: (1) failure to admit testimony with respect to investigation on August 6 and 11; (2) failure to admit testimony with respect to the state of mind of investigators; (3) failure to admit testimony with respect to other investigations of the instant licensed premises; (4) failure to admit testimony with respect to other similar violations; (5) failure to produce notes with respect to the investigation; (6) failure to reveal the source of the complaint or the motivating factor regarding the investigation; (7) admission of illegally seized evidence and (8) failure to permit formal or informal discovery.

As to the first ground, the complaint alleges violations on August 5 and August 14 only; what transpired on other dates is wholly immaterial.

Testimony with respect to prior investigations was ruled immaterial when it was disclosed that the prior investigation had taken place some five years earlier.

The fourth ground was ruled immaterial during the course of the hearing. The fifth stated ground fails because the reports of all agents relative to the dates alleged in the complaint were made available to counsel for the licensee. the seventh ground is answered by the provisions of R.S. 33:1-35, which provides in part:

"...Investigations, inspections and searches of licensed premises may be made without search warrant by the director, his deputies, inspectors or investigators...."

R.S. 33:1-35 does not expressly limit the use to be made of evidence obtained through its provisions. The language granting the search power should be "liberally construed", in accordance with the mandate of R.S. 33:1-73. State v. Zurawski, 89 N.J. Super. 488 at p.492 (App. Div. 1965), aff'd 47 N.J. 160.

The eighth ground is also without merit for the reason that the Division rules and regulations make no provision for such discovery. Nevertheless, it should be noted that counsel for the licensee and the Division met on September 30, 1970, at which time counsel for the licensee was offered all details with respect to the dates alleged in the complaint. I find that the matters raised in the said motion are without merit, and recommend that the said motion for mistrial be denied.

The licensee further moved for dismissal at the close of the Division's case on the following grounds: (1) the charges are the result of entrapment; (2) failure to state a claim; (3) Division's failure to establish a prima facie case; (4) failure to sustain the burden of proof; (5) the act, if any, which forms the basis of the charge is fornication. Inasmuch as the parties were consenting adults, there was no profit motive to the licensee and no intention to consummate the act, the matter should be dismissed on the basis of impossibility of performance; (6) no proof of any substantive violation save for the acts of the agents; (7) no intent on the part of the agents

to perform the acts alleged; (8) the activities of the agents of the ABC violated equal protection of the law as evidenced by the arbitrary and capricious manner of investigation; (9) fruits of an illegal search and seizure provide the sole basis for the complaint; (10) this is a quasi-criminal proceeding and as such the failure to apprise licensee of his constitutional rights was prejudicial; (11) invalid exercise of police power; (12) failure to provide expert testimony with respect to the immorality or illicity of the alleged acts; (13) no immoral activity on the premises; (14) and finally no discovery was permitted.

In reviewing the facts of the instant case for purposes of the motion for judgment of dismissal, we must accept as true all the evidence which supports the view of the party against whom the motion is made, and should give him the benefit of all legitimate inferences which may be drawn in his favor. Klockner v. Green, 54 N.J. 230 at p. 235 (1969). DeRienzo v. Morristown Airport Corp., 28 N.J. 231 (1958); Bell v. Eastern Beef Co., 42 N.J. 126 (1964).

By application of the foregoing principle, I find there is ample testimony on the record to warrant recommendation that the motion be dismissed as to grounds three, four, six and thirteen.

With reference to ground one, suffice it to say that at the close of the Division's case, there was no evidence adduced to even suggest anything other than the agents, in pursuit of their duties and as the result of a specific assignment afforded the licensee an opportunity to commit the act and in nowise lured or entrapped the licensee into the commission of an act which he would not have committed when afforded the opportunity. See State v. Rosenberg, 37 N.J. Super 197 (App. Div. 1955).

The argument that the complaint fails to state a proper charge lacks substance in light of the testimony adduced. See re Highlander Hotel Corp., Bulletin 1475, Item 1; Re Mello-D-Club, Inc., Bulletin 1536, Item 1; Re Cross Keys Hotel & Rest., Inc., Bulletin 1771, Item 1.



As to grounds five and seven, it is enough to say that fornication is still at least a disorderly persons act. See State v. Lutz, 57 N.J. 314 at p. 316 (1970). That the agents had no intention of consummating the act is no ground for dismissal. 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 applicable regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil. In Re Schneider, 12 N.J. Super. 449 (App. Div. 1950).

The argument that this is a quasi-criminal proceeding is contrary to the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

The remaining grounds for dismissal have either been dealt with with reference to the motion for mistrial or are without merit. It is, therefore, recommended that the motions for dismissal be denied.

At the conclusion of this case, the attorney for licensee renewed his motion for dismissal urging as an additional ground that certain records were not produced pursuant to a subpoena served on Mr. Ambrose, Assistant to the Director, Division of Alcoholic Beverage Control. The transcript will indicate that Mr. Ambrose, under oath, testified that he is not the custodian of the records, and has no authority to produce them. Counsel was further advised that the records sought through subpoena were, in any case, immaterial to the instant charge. I recommend denial of said motion.

I have related a large quantum of the essential testimony in order to develop a proper perspective of the legal and factual issues herein.

In essence, the licensee argues (1) insufficient evidence and (2) entrapment.

I have carefully evaluated the testimony of the witnesses and have observed their demeanor on the stand. In reference to the date of August 5, 1970, there is no dispute as to the fact that no actual renting was consummated on that date. I am satisfied that the purpose for said use was clearly communicated to Boyer and just as clearly understood by him. Nonetheless, in order to sustain the allegation all the elements contained in the charge must be sustained in toto; this of course includes the actual renting of the room. Re Lawrenceville Corp., Bulletin 1727, Item 6. Since this vital element is lacking I find that no violation has been established as to August 5, 1970.

With reference to August 14, 1970, the issue is the credibility of the witnesses. There is a sharp dispute between the testimony of Agent G and the testimony of Boyer. It should be noted that the conversation with Markley, the barmaid, did not constitute the proscribed activity as set forth in the charge. There seems to be no question that she was in fact a barmaid. However, there is no indication that she had any authority whatever to rent rooms.

As to Boyer, however, I am satisfied from the lengthy testimony presented that knowledge of the use for which the room was sought to be used was clearly imparted to Boyer, not only on August 5, but also on August 14.

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

It is incredible to suggest that agent G would have conversed with Boyer on August 14, without making clear to him the purpose of the renting. The totality of the circumstances leads to the rejection of any other conclusion.

The defense presented a purely factual denial of the Division's case. No significant evidence was adduced to support the defense of

entrapment. It remains clear that the agents, in pursuit of an assignment, simply offered to the licensee an opportunity to commit the act to which it was predisposed. Assuming, without deciding, that Boyer committed the act in violation of an express directive from the licensee, the licensee is nonetheless responsible for the acts of his employee. Rule 33 of State Regulation No. 20. In re Olympic, Inc., 49 N.J. Super. 299.

After carefully considering and evaluating all of the evidence adduced herein and the legal principles applicable thereto, I conclude that the Division has proved its case by a fair preponderance of the credible evidence, indeed, by substantial evidence. I, therefore, recommend that the licensee be found guilty to the charge insofar as it refers to the date of August 14, 1970, and not guilty of that portion of the charge which refers to the date of August 5, 1970.

The licensee has no prior adjudicated record of suspension of license.

I further recommend that the license be suspended for ninety days. Re Advance Motor Lodge and Restaurant Enterprises, Inc., Bulletin 1953, Item 7.

#### Hearer's Supplemental Report

A supplemental hearing was held herein, pursuant to an order of the Director, Re Silver Crest Motels, Inc., Bulletin 1979, Item 8, to permit the licensee to take testimony with respect to certain dates of Division investigation referred to on the three prior hearing dates herein. Licensee was authorized to have access to the Division file in the instant matter.

At the supplemental hearing herein, agent G testified that on Thursday, August 6, 1970, at approximately 8:20 p.m., accompanied by agent Ga, he entered the licensed premises. Agent R remained outside at a post of observation. They took positions at the bar and engaged the barmaid, Carol, in conversation.

Upon questioning Carol as to the availability of a room, the agents were advised to wait until midnight and "Bob" would take

care of them. He observed that no one was on duty at the motel reservation desk.

Carol informed him that the owner was then on the premises and that it would be advisable to await the arrival of "Bob". (not further identified) He had no personal knowledge of the presence of the owner but candidly admitted that his presence could be reasonably assumed. He concluded that he made a judgment based on his experience that the wiser course would be to leave at 9:40 p.m. rather than await the midnight arrival of "Bob".

On Tuesday, August 11, agents G and Ga again entered the premises at 8:00 p.m., with agent R again stationed outside at a post of observation. Upon entering the premises he observed "Carl" on duty at the reservation desk. He approached Carl and inquired about the availability of a room. Carl said "I am all filled up. I will have one in about fifteen minutes." The agents waited at the bar. Shortly thereafter, Carl advised the agents that the "boss" had ordered him "...not to rent a room to two guys." The agents thereupon departed the premises.

As a result of this refusal to rent a room to "two guys" the agents decided that a female agent would be necessary to continue the investigation.

It was stipulated by the parties that the testimony of agent Ga, unavailable on the date of the supplementary hearing, would be the same as that of agent G.

Santo LaBarbera, manager of the coprorate licensee testified that he had not been aware of the presence of agents G and Ga on his premises on August 5, 1970 until the hearings herein. On August 5 or 6, his desk clerk came into the office and said "There is a couple of men in the bar and asked me if they can get a room" and "They had a couple of men and a girl." He advised the clerk that he did not want rentals "to anything but two people in a room."

He concluded that his establishment often and regularly rents accommodations to two men giving as examples; two truck drivers or two businessmen; he had never seen any of the agents

before the date of these hearings; and he was on duty on August 6, 1970.

At the conclusion of the supplemental hearing herein, counsel for the licensee renewed the numerous motions for mistrial or dismissal made at the conclusion of the primary hearings. I find that no testimony has been adduced which substantively alters the testimony taken at the earlier hearings. I therefore reaffirm my earlier recommendations with respect thereto.

In a memorandum of law submitted by counsel for the licensee thereafter, he argues three points as grounds for dismissal of the charge herein, namely:

(1) entrapment; (2) failure to reveal a confidential file herein; and (3) the exclusion of testimony with respect to previous investigations of the licensed premises by agent G.

With respect to (1), counsel cites State v. Dolce, 41 N.J. 422 (1966) in support of his argument that since the licensee advised his clerk that no rooms were to be rented to these two men and since it then became necessary to engage the services of a female agent, that there was not one scintilla of proof that the licensee or his agents, servants or employees had any inclination whatsoever to commit the act charged as a violation of Rule 5 of State Regulation No. 20 but for the activity of these agents. Had not agent G been of the opinion that the only way they could establish a violation was to produce a female agent, no violation of any kind would have been established.

The short answer to this argument is that the introduction of the female agent into the investigation presented to the licensee or his agent a set of circumstances which obviously were not repugnant to him.

The testimony established that the licensee would not rent a room to two males for an immoral purpose. The testimony further establishes, however, that the licensee would and did rent a room to a male in the company of a female. I have already found that the

knowledge for which the room was to be rented was clearly imparted to the employee of the licensee. The fact that a female was introduced does not one whit alter the fact that the room was rented with clear knowledge of its proposed use. Ardor and zeal on the part of the agents in pursuit of their duties does not constitute entrapment. "Judicial abhorrence of entrapment does not mean that police officials cannot afford opportunities or facilities for the commission of criminal offenses. Artifice and stratagem, traps, decoys and deceptions may be used to obtain evidence of the commission of crime or to catch those engaged in criminal enterprises....a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal." State v. Dolce, supra, at p.431. See also State v. Rosenberg, 37 N.J.Super. 197 (App. Div. 1955).

Here the truly unwary innocent need only have refused the rental.

With respect to (2), access to the alleged confidential file issaid to be essential to a proper defense of the charges. It is further argued that the licensee should be in a position to negative any scurrilous, untrue or unconfirmed accusation made against him by some third person.

At the supplemental hearing herein, counsel for the Division represented that the confidential file contained no proof of any investigation but merely dealt with the source of the original complaint.

There has been no affirmative proof presented which even suggests that the Division evidence is based on the investigation of anyone except those agents which have herein testified. Further, the Director's order for a supplemental hearing expressly confines that hearing to the dates of August 6 and 11.

In any event, I find that the charge herein has been determined solely on the evidence presented by the Division agents, limited to the dates of August 5, 6, 11 and 14.

Lastly, counsel argues that failure to admit testimony with respect to prior investigations constitutes a denial of fundamental fairness and, is therefore cause for dismissal of the charge herein.

At the hearing, it was established that agent G had investigated these licensed premises in November 1965. Counsel for the licensee argues that the failure to charge a violation/at that time notwithstanding some evidence of a violation should have been explored with respect to the motivation of the agent then and now.

To maintain that an occurrence five years ago might have probative value in the instant matter smacks of the rankest speculation and is palpably lacking in merit.

Testimony with respect to the four dates charged herein is all that the Director appears to have contemplated in his supplemental order. Accordingly, I recommend that the motions to dismiss be denied.

I find that the testimony presented at the supplemental hearing has not significantly affected that testimony presented at the three prior hearing dates.

After carefully considering and evaluating all of the evidence adduced at this supplemental hearing and on the earlier dates of hearing, I conclude that the Division has established the truth of the charge that on August 14, 1970, the licensee allowed, permitted and suffered the making of arrangements for the renting of rooms, the offer to rent and the renting of rooms for the purpose of acts of illicit sexual intercourse and/or acts of illicit perverted sexual relations, in violation of Rule 5 of State Regulation No. 20, by a clear preponderance of the believable evidence. I, therefore, recommend that the licensee be found guilty, in accordance with my earlier recommendations, as set forth in the Hearer's report of March 30, 1971.

#### Conclusions and Order

Written exceptions to the Hearer's report and supplemental report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein,

including the transcripts of testimony, the Hearer's report, the Hearer's supplemental report, the exhibits and the exceptions filed to the Hearer's report and supplemental report, which I find have either been fully considered and resolved in the Hearer's reports or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of November 1971,

ORDERED that Plenary Retail Consumption License C-18, issued by the Township Committee of the Township of North Brunswick to Silver Crest Motels, Inc., t/a Plantation Room, for premises 1609 Georges Road, North Brunswick, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Wednesday, November 24, 1971, and terminating at 2 a.m. Tuesday, February 22, 1972.

RICHARD C. McDONOUGH  
DIRECTOR

2. STATE LICENSES - NEW APPLICATION FILED.

Henry Dobrzynski, t/a Henry's Corner  
2100 Belmar Boulevard  
Wall Township, N. J.

Application filed December 20, 1971 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-18 from Hazlet Beverage Co., Inc., 1000 Route 36, Hazlet, N. J.

  
Richard C. McDonough  
Director