

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

December 21, 1971

BULLETIN 2018

TABLE OF CONTENTS

ITEM

1. NOTICE TO LICENSEES - TAX, PENALTY AND REPORT DELINQUENCIES - COSTS TO COVER THE SERVICE INCREASED.
2. CLUB LICENSES - NOTICE OF INTENTION TO REVISE DIVISION RULES 1, 7 and 8 OF STATE REGULATION NO. 7 and ADOPT RULE 13 OF STATE REGULATION NO. 7.
3. ACTIVITY REPORT FOR NOVEMBER 1971.
4. APPELLATE DECISIONS - E A V LIQUORS & BAR, INC. v. PATERSON - ORDER RENEWING LICENSE NUNC PRO TUNC.
5. DISCIPLINARY PROCEEDINGS (Rockaway Borough) - IMMORAL ACTIVITY (ROOM RENTING) - CHARGES DISMISSED.
6. DISCIPLINARY PROCEEDINGS (Atlantic City) - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 12 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Jersey City) - SUPPLEMENTAL ORDER REIMPOSING REVOCATION.
8. DISCIPLINARY PROCEEDINGS (Galloway Township) - SALE TO MINOR - NOLLE PROSSED.
9. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 2018

December 21, 1971

1. NOTICE TO LICENSEES - TAX, PENALTY AND REPORT DELINQUENCIES -  
COSTS TO COVER THE SERVICE INCREASED.

NOTICE TO ALL LICENSEES:

Since October 26, 1954, service fees in the amount of \$10.00 and \$20.00, respectively, have been charged for entry of an order dismissing charges in proceedings based upon licensee's delinquency in complying with the requirements of the Alcoholic Beverage Tax Law, the fee depending upon whether the dismissal order is entered before or after the entry of an order of suspension. See Bulletin 1036, Item 13. As indicated in a prior bulletin (Bulletin 125, Item 12), the conduct of these proceedings, designed to effect collection of monies due to the State, takes considerable time and expense. Admittedly the expense in handling these matters has increased substantially in recent years and calls for an upward revision of the present service charges.

Accordingly, effective immediately, the service fees for our handling of first and second cases of tax revocation proceedings against licensees for their failure to timely file alcoholic beverage tax reports and/or pay any tax due the State will be (a) \$25.00 wherein a dismissal order is entered before the entry of an order of suspension and (b) \$50.00 where such order is entered after the entry of an order of suspension.

In cases where, within a five-year period, a third or fourth tax revocation proceeding is instituted against the same licensee or permittee, the service charge will be \$50.00 where a dismissal order is entered before entry of an order of suspension and \$100.00 where such order is entered after entry of an order of suspension.

Licensees are again reminded, as they were in 1936 (Bulletin 125, Item 2), that the payment of penalties and costs in these matters can be avoided by punctual payment of alcoholic beverage taxes due the State and by the timely filing of requisite tax reports.

Richard C. McDonough  
Director

Dated: December 8, 1971

2. CLUB LICENSES - NOTICE OF INTENTION TO REVISE DIVISION RULES  
1, 7 and 8 of STATE REGULATION NO. 7 and ADOPT RULE 13  
OF STATE REGULATION NO. 7.

NOTICE OF INTENTION TO REVISE DIVISION RULES

Richard C. McDonough, Director of the Division of Alcoholic Beverage Control, pursuant to authority delegated in N.J.S.A. 33:1-12(5) and 39, proposes to amend N.J.A.C. 13:2-85, 91 and 92 (Rules 1, 7 and 8 of Division Regulation No. 7) and adopt N.J.A.C. 13:2-96.1 (Rule 13 of Division Regulation No. 7) of the rules of the Division of Alcoholic Beverage Control concerning club licenses as follows (additions indicated in bold face thus, deletions indicated within brackets [thus]):

CLUB LICENSES

13:2-85 (Rule 1 of Division Regulation No. 7). Definitions.

For the purpose of these Rules, the following words and terms shall be deemed to have the meaning herein given to them:

"Club." An organization, corporation or association consisting of sixty (60) or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes, and not for private gain.

"Club Member." Any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the by-laws of a club, and who maintains such membership in a bona fide manner, and whose name and address are entered on the list of members.

"Guest of Club Member." An individual who is expressly invited to the club licensed premises by an individual member of the club and who is sponsored by and personally attended by the member at such premises. An individual club member may have as his guests no more than seven individuals on any one occasion, unless (1) payment for all food and drinks (alcoholic or otherwise) served to all such individuals at the club licensed premises and payment for all charges for the use of the club's facilities by all such individuals is made to the club directly by the individual club member, without direct or indirect reimbursement to such club member by anyone, including his employer, or (2) such individuals are attending at the club licensed premises a private affair, such as a wedding, anniversary, confirmation, bar mitzvah, or birthday party, honoring a spouse, child, parent or brother or sister of a club member.

13:2-91 (Rule 7 of Division Regulation No. 7). List of Club Members and Club Charter.

A list containing the names and addresses of all members of the club as of date of filing club license

application shall be submitted [together] with each [the] application. No club license shall be renewed unless the club then consists of at least sixty (60) members. The charter [of] or articles of association of the club shall also be presented for inspection or certified copy of the same submitted with the initial application.

13:2-92 (Rule 8 of Division Regulation No. 7). Sales to Club Members and Guests Only.

No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage to any person not a bona fide member of the club or a bona fide guest of such member. All club licensees shall have and keep on the licensed premises a true record, in form prescribed by the Director of the Division of Alcoholic Beverage Control, of all scheduled dinners, luncheons, receptions, dances, parties, catered events and similar affairs held at the club licensed premises and attended by eight or more non-club members. Such record shall be available for inspection by the Director and the other issuing authority and by his or its deputies, inspectors, investigators and agents and by other officers as defined by R.S. 33:1-1(p) for a period of one year from the date of such affair.

13:2-96.1 (Rule 13 of Division Regulation No. 7). Advertising.

No club licensee shall directly or indirectly advertise or allow, permit or suffer any advertising to non-club members the availability of alcoholic beverages at its licensed premises other than by signs on the interior of the licensed premises not visible from the exterior thereof; provided, however, that the prohibition herein shall not apply to the holder of any special permit, issued by the Director of the Division of Alcoholic Beverage Control and authorizing the sale of alcoholic beverages at a social affair to be conducted at the club's licensed premises, with respect to such particular affair.

Interested persons may present statements or comments concerning the proposed action at a public hearing to be held on Friday, January 28, 1972 at 10:00 A.M. at the Division of Alcoholic Beverage Control, Room 101, 1100 Raymond Boulevard, Newark, New Jersey, 07102 or may present or mail statements in writing relative to the proposed action on or before Friday, January 28, 1972 to Richard C. McDonough, Director of the Division of Alcoholic Beverage Control, 1100 Raymond Boulevard, Newark, New Jersey, 07102.

After full consideration of all matters respecting the proposed action, the Division of Alcoholic Beverage Control, upon its own motion, or at the instance of any interested party, may thereafter adopt the proposed revision substantially as set forth without any further notice.

Richard C. McDonough, Director  
Division of Alcoholic Beverage Control  
Department of Law and Public Safety

Dated: December 6, 1971

3.

ACTIVITY REPORT FOR NOVEMBER 1971

ARRESTS:			
Total number of persons arrested - - - - -			25
Licensees and employees - - - - -	14		
Minors - - - - -	11		
SEIZURES:			
Distilled alcoholic beverages - gallons - - - - -			105.70
COMPLAINTS AND INVESTIGATIONS:			
Inspections & visits made on assigned investigations - - - - -			1,556
Complaints assigned for investigation - - - - -			290
Investigations completed - - - - -			329
Investigations pending - - - - -			283
Premises where alcoholic beverages were gauged - - - - -			478
Bottles gauged - - - - -			7,902
Premises where violations were found - - - - -			162
Number of violations found - - - - -			223
License applications investigated - - - - -			3
Contacts made with other law enforcement agencies - - - - -			393
LABORATORY:			
Analyses made - - - - -			123
Refills from licensed premises - bottles - - - - -			93
Bottles from unlicensed premises - - - - -			8
IDENTIFICATION:			
Criminal fingerprint identifications made - - - - -			7
Persons fingerprinted for non-criminal purposes - - - - -			362
Identification contacts made with other enforcement agencies - - - - -			260
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities - - - - -			1
Violations involved - - - - -			1
Sale to minors - - - - -	1		
Cases instituted at Division - - - - -			34
Violations involved - - - - -			38
Sale to minors - - - - -	7	Perm. miscellaneous gambling on prem. - - - - -	2
Sale during prohibited hours - - - - -	7	Failure to keep true books of acct. - - - - -	1
Perm. immoral activity on prem. - - - - -	4	Perm. unlawful activity on prem. - - - - -	1
Hindering investigation - - - - -	3	Conducting business as a nuisance - - - - -	1
Permitting lottery acty. on prem. - - - - -	3	Sale to non-members by club - - - - -	1
Fraud and front - - - - -	3	Possessing indecent matter - - - - -	1
Possessing liquor not truly labeled - - - - -	3	Purchase from improper source - - - - -	1
Cases brought by municipalities on own initiative and reported to Division - - - - -			13
Violations involved - - - - -			18
Sale to minors - - - - -	5	Perm. pistol & ammunition on premises (local reg.) - - - - -	1
Fail. to close prem. dur. proh. hrs. - - - - -	2	Perm. narcotic activity on prem. - - - - -	1
Unqualified employees - - - - -	2	Perm. immoral activity on prem. - - - - -	1
Permitting gambling on premises - - - - -	1	Conducting business as a nuisance - - - - -	1
Permitting brawl on premises - - - - -	1	Failure to keep list of employees on premises - - - - -	1
Act of violence - - - - -	1		
Empl. female bartender w/o ID card (local reg.) - - - - -	1		
HEARINGS HELD AT DIVISION:			
Total number of hearings held - - - - -			51
Appeals - - - - -	10	Eligibility - - - - -	12
Disciplinary proceedings - - - - -	26	Seizures - - - - -	3
STATE LICENSES AND PERMITS:			
Total number issued - - - - -			1,512
Solicitors' permits - - - - -	376	Wine permits - - - - -	168
Employment permits - - - - -	333	Miscellaneous permits - - - - -	280
Disposal permits - - - - -	55	Transit insignia - - - - -	232
Social affair permits - - - - -	39	Transit certificates - - - - -	29
OFFICE OF AMUSEMENT GAMES CONTROL:			
Licenses issued - - - - -	7		
Enforcement files established - - - - -	22		

RICHARD C. McDONOUGH  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

Dated: December 8, 1971

4. APPELLATE DECISIONS - E A V LIQUORS & BAR, INC. v. PATERSON - ORDER RENEWING LICENSE NUNC PRO TUNC.

Nos. 3545, 3591	)	
E A V Liquors & Bar, Inc.,	)	
Appellant,	)	On Appeal
v.	)	
Board of Alcoholic Beverage	)	O R D E R
Control for the City of	)	
Paterson,	)	
Respondent.	)	
-----	)	

Goodman and Rothenberg, Esqs., by Sylvan G. Rothenberg, Esq.,  
 Attorneys for Appellant  
 Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for  
 Respondent

BY THE DIRECTOR:

Respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) denied the application of appellant for renewal of its plenary retail consumption license for the 1969-70 license period for premises 302 Market Street, Paterson. Upon appeal to the Director, an order was entered extending the term of the license until further order herein.

While the appeal was pending, an application was made by appellant for renewal of its license for the 1970-71 license period. That application was similarly denied by the Board. Upon appeal to this Division from denial thereof, the aforementioned extension was continued. On July 10, 1970 I entered Conclusions and Order reversing the action of the Board and ordering that the "Board grant appellant's application for 1969-70 renewal nunc pro tunc in accordance with the application filed therefor." E A V Liquors & Bar Inc. v. Paterson, Bulletin 1928, Item 2.

The Board appealed the aforesaid Order to the Superior Court of New Jersey (Appellate Division) and, while the said appeal was pending, appellant filed a timely application for renewal of its said license for the 1971-72 license period. Upon denial of said application by the Board and appeal filed by appellant from such denial, I entered an order on July 30, 1971 further continuing the said extension of license pending determination of the appeal.

On October 4, 1971 the Appellate Division of the Superior Court affirmed my Order of July 10, 1970 as aforesaid. Board of Alcoholic Beverage Control for the City of Paterson v. E.A.V. Liquors & Bar, Inc. et al., Superior Court, Appellate Division, Docket No. A-2173-69 decided October 4, 1971, not officially reported, recorded in Bulletin 2007, Item 1.

By letter dated October 8, 1971 the attorney for the Board advised me that the "appeals presently pending arise from a refusal to grant a license based on the first refusal [and] it is my opinion that the City has no basis for a defense to the appeals presently pending."

I shall, therefore, on my own motion enter an order reversing the actions of the Board with respect thereto, and direct that licenses be issued to appellant nunc pro tunc.

Accordingly, it is, on this 4th day of November 1971,

ORDERED that the Board grant appellant's applications for renewal of its license for the 1970-71 and 1971-72 license periods nunc pro tunc, in accordance with the applications filed therefor.

Richard C. McDonough  
Director

5. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY (ROOM RENTING) - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against )

Arman Realty Co. )  
t/a Mountain Motor Inn )  
Marlyn Ave. off Route #46 )  
Rockaway Borough, N.J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-10 (for 1970-71 and 1971-72 license periods), issued by the Mayor and Council of the Borough of Rockaway. )  
----- )

Henry Sant'Ambrogio, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On July 16 and 20, 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 illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

On behalf of the Division Agent G testified that, in the company of Agent R and pursuant to specific assignment, he went to the licensed premises on July 16 and 20, 1970. He described the premises as a huge motel complex, with the tavern itself in a detached two-story building in the rear of the complex.

With respect to July 16, 1970, the agents entered the bar, engaged the lone bartender Pete Starnadori in conversation and learned that rooms were available at \$13 single and \$16 double. Upon being told by the agents that they "only want a room for a couple of hours", that they wanted to "impress" a broad, Pete indicated that they could rent a room and that Monday and Tuesday were slow nights. Pete was then asked if he could influence the manager to help the agents get a room. Pete replied, "Just go yourself and register and tell the manager the girl is in the car." The agents then departed.

Agents G and R returned with Agent S on Monday, July 20, 1970, at approximately 9 p.m. Agent S remained outside at a point of observation and Agents G and R, with marked money in their possession, entered and again approached Pete at the bar. The agents and Pete thereupon engaged in a colloquy which need not be repeated herein but which clearly indicated the expectation of immoral and perverted acts of sexual intercourse.

G thereupon requested that Pete call the reservation desk to determine if rooms were available. Pete thereupon made a phone call and Agent G heard him say, "Two guys want a room. One will come down and register as Mr. Romano. He said, they only want the room for a couple of hours. Don't ask them any questions." Pete hung up the phone and said, "Go downstairs and register. She is waiting for you."

G then departed the barroom, proceeded to another building, entered the lobby and approached the reservation desk where he encountered Mrs. Webb, the desk clerk. He advised her, "I am one of the guys Pete called you about." She presented a registration card to him and he registered as Mr. Carl Romano and told her that he could not enter the car registration number since he had arrived in his companion's vehicle. He paid \$19.95, using the marked money, received a key to Room 234 and departed the desk area. He entered a phone booth and called Agent S to advise him of the room number.

He then returned to the registration desk and said to Mrs. Webb, "I better register 'Mr. and Mrs.' because this broad is not my wife, and I don't want to get in any trouble. I am only going to be here a couple of hours. We were going to have a little fun." Mrs. Webb replied, "That is O.K. We don't worry about that around here."

G departed, entered Room 234, and contacted Agent R by phone. R then brought three drinks to the room. Shortly thereafter Agent S, Pete and a local police officer appeared at the door. In response to questioning by the agents, Pete advised that he was aware of the purpose for which the room was to be used. The agents then advised Mrs. Webb and the bar manager of the alleged violation.

On cross examination Agent G testified that on both visits he was attired informally in sports clothes; he did not recall the weather on either occasion nor did he recall having any political discussions with Pete. He stated that he was aware that Pete could not rent him a room nor did Pete have any room registration cards at the desk. He could not hear the party with whom Pete was conversing on the telephone and he was alone when he registered and conversed with Mrs. Webb.

Agent R testified and corroborated the testimony of Agent G with respect to July 16, 1970. As to July 20, 1970, he corroborated the testimony of Agent G until G departed the barroom. Shortly thereafter Pete received a phone call and then advised R that his companion (Agent G) had requested that R bring three drinks to Room 234. He thereafter corroborated G's version with respect to the incidents occurring in Room 234. He remained in Room 234 after G, the local police officer and Pete departed, and was not present when they confronted Mrs. Webb and the barroom manager.

On cross examination he testified that, while he was aware of the dress requirement (that men wear jackets in the barroom), he was permitted to enter without a jacket after making this request of the bartender. He may have engaged in a brief political discussion with Pete. With respect to July 20, 1970, particularly, he did not recall the weather conditions that evening; he was at the bar approximately twenty minutes; there were approximately fifteen stools at the bar, and he saw no registration paraphernalia at the bar. He concluded that he did not know to whom Pete was speaking on the telephone.

Agent S testified that he arrived with G and R at the licensed premises at approximately 9 p.m. on July 20 and remained outside at a post of observation and contact. Upon being contacted by G, he summoned a local police officer and together they entered the tavern building where they confronted Pete who readily admitted the rental and knowledge of the purpose therefor. Thereafter S, the police officer and Pete proceeded to Room 234. S then corroborated the testimony of G with respect to the events and conversation therein.

He further stated that Gilbert A. Kieth, manager of the premises, entered and was informed of the violation. Thereafter he, Agent G, Kieth, Pete and the local police officer proceeded to the registration desk where they confronted Mrs. Webb. He then questioned Mrs. Webb with respect to the representations of Agent G as to the alleged use of the room and his return to enter the word "Mrs." on the registration card. Mrs. Webb responded that she does not ask too many questions about things like this; that many people come in and out of rooms and that she minds her own business. He concluded that, having reminded Mrs. Webb that G had returned and written the word "Mrs." on the registration card, she, in the presence of S, entered the word "Mrs." on the original and copy of the receipt for payment. He then retrieved the marked money from the cash register.

On cross examination he testified that G had advised him on the telephone that he had imparted the necessary knowledge to Pete and that he reminded G to go back to the registration desk to enter the word "Mrs." on the registration card as is normal procedure and that, upon confronting Pete, he proceeded to Room 234.

On behalf of the licensee, George DeVita testified that he is a major stockholder therein. Fortified with a survey of the premises, he described the premises as having a main building with fifty-six rental units. Additionally there is a separate building containing the barroom, an indoor swimming pool and twenty additional rental units. There is also an outdoor swimming pool. It appears from the survey that the distance from the barroom to the registration desk is approximately two hundred feet. He concluded that Kieth was manager of the premises on July 20, 1970.

On cross examination he testified that Kieth terminated his employment shortly after the incidents herein for reasons of ill health and, while he attempted to produce Kieth for this hearing, he discovered that Kieth was too ill to appear.

Roger Feinsilver testified that he has been employed on the premises since May 25, 1970; he succeeded Kieth as manager of the motel units upon Kieth's departure. He stated that on July 20, 1970 the barroom was under the control of a concessionaire. He noted the names of several prominent industrial firms and one prominent political figure who frequent the premises, particularly making use of the motel facilities. He concluded that none of the barroom employees is authorized or permitted to rent rooms.

Ignacio Cenicacelaya (hereinafter Nick) testified that he is manager of the restaurant; none of the employees in his charge is authorized or permitted to rent rooms.

With reference to July 20, 1970, he testified that there was a severe thunderstorm that evening which caused flooding in the kitchen. He saw the agents at 9:30 p.m. that evening. G was attired in a sweater and R wore a sport jacket.

On cross examination he testified that he specifically recalls the incident because of the unusual attire of the agents which had been called to his attention by an employee. Further, he has nothing to do with the bar and Pete is not his employee but, rather, an employee of the licensee.

Peter Starnadori testified he is a college senior and was employed as a bartender in the premises for the summer. He was on duty the evening of July 20 and recalls the agents' attire being as described by Nick. He further corroborated Nick with respect to the weather conditions.

He and the agents discussed the availability of rooms, and he advised them that renting rooms was not his job and they would have to check at the registration desk. Because of the rainy weather, the agent asked him to make a courtesy call to the desk. He called Mrs. Webb and was advised that rooms were available. He conveyed this information to the agents and advised them to go to the reservation desk.

Five or ten minutes later Agent S and a local police officer asked Pete if he had rented a room to two men and if he could identify them. He replied that he could identify the men but had no idea whether they had rented a room. S and the officer then departed and, shortly thereafter, he was summoned to the registration desk where he found S, the police officer and Mrs. Webb in conversation. He asserted that S had not questioned him regarding his knowledge of the purpose for which the room was to be rented nor did S ask Pete to accompany him to the room.

On cross examination with respect to July 20, 1970, he denied asking the agents where the third party was; there was some considerable conversation with respect to the agents' expectation of engaging in sexual intercourse; the agents asked him, because of the rainy weather, to make a courtesy call to the desk relative to the availability of rooms and he emphatically denied advising Mrs. Webb not to ask any questions.

Further, he did receive a request to send Agent R to Room 234 with three drinks. S asked whether the two men had rented rooms, and Pete replied that he had no knowledge whether they had actually rented a room. He was not asked to accompany S and the police officer to Room 234 at that time. He was thereafter summoned to the reservation desk where he again met S and the police officer. Thereupon he accompanied them to Room 234 for purposes of identification. In conclusion he testified that the entire conversation with G and R at the bar on both dates was in a light-hearted mood and interspersed with general conversation.

Dorothy Webb testified on behalf of the licensee that she has been employed as desk clerk, reservations clerk and telephone operator for two and one-half years. On July 20, 1970, in response to a phone call from Pete she advised him that rooms were available, whereupon he requested she hold a room for two under the name Romano. Shortly thereafter G presented himself as Mr. Romano. She presented him with the necessary registration forms and was thereafter required to respond to several telephone calls during the course of his registration and was therefore uncertain whether he registered in the names of Mr. and Mrs. Romano. After paying the rental fee, he departed and returned shortly thereafter to add certain information to the registration card, whereupon she handed him the registration card and proceeded about her business. At no time did G make any mention of the proposed

use of the room. A severe thunderstorm occurred between the hours of 8 and 10 p.m., and she insisted that Pete had not said "don't ask them any questions" during his telephone conversation; nor did he in any way communicate to her any suggestion of the proposed use of the room for an immoral purpose.

On cross examination she denied having any conversation with G upon his return to the registration desk; she was aware that he was registering for two people but was busy and did not check his registration carefully. She denied vigorously that she was told by Pete that the room was to be rented for only a short period of time and that she should not ask questions, and asserted that the licensee's policy is never to rent rooms for a short period of time. While G was amending his registration card, she was busy handling the telephone switchboard. Thereafter G departed without further conversation and she automatically and without further review of the card returned it to the card rack.

Furthermore, when S approached the desk, he merely asked if a Mr. Romano had registered. She replied affirmatively but refused to give him the room number. Thereafter she contacted the manager and Pete. She added that she recalls the incidents of the evening vividly, including the thunderstorm, because she prepared a written report of the entire incident the same evening. She concluded by steadfastly denying any communication to her by G or anyone else that the room was to be used for an immoral purpose.

In rebuttal Agent S testified that, while it may have rained earlier in the day and again perhaps after midnight, no rain fell between 9 and 11 p.m. on July 20, 1970.

I have detailed essential testimony in order to develop a proper perspective of the legal and factual issues herein. In essence, the licensee argues that there is insufficient evidence to support the charge herein.

I have carefully evaluated the testimony of the witnesses and observed their demeanor on the witness stand.

With respect to the date of July 16, 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 Pete 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 July 16, 1970.

The charge with respect to the date of July 20, however, presents a different question. It has been held that the "responsibility of a licensee may in some circumstances be imposed where, regardless of his knowledge, there is a failure to prevent the prohibited conduct by those entrusted with the management of the licensed premises" (emphasis added). In re Schneider, 12 N.J. Super. 449, at 456 (App. Div. 1951) and cases cited therein. Therefore, the mere renting of rooms for illicit purposes by those entrusted with the management of the licensed premises is conduct proscribed by Rule 5 of State Regulation No. 20.

In the most recently contested case (Re Cross Keys Hotel and Rest., Inc., Bulletin 1771, Item 1), the bartender was authorized to rent rooms; the necessary renting accouterments were available at the bar and the actual renting was concluded at the bar through the bartender.

See Re Lawrenceville Corp., supra, for an exhaustive review of "room renting" cases, all of which clearly indicate the active participation of some one with authority, either expressly or apparently, to rent the facilities and to whom clear knowledge of the use was communicated.

In the instant matter the agents were clearly aware that the bartender had no authority to rent them a room. With reference to the visit of July 20, 1970, Agent G testified, "I knew on this visit he couldn't rent us a room because we were told on the first visit by him to go in and register at the reservation desk. If he could rent us a room he would have told us on the first visit he rents rooms."

It is clear, therefore, that Pete was not authorized to make arrangements for the renting of rooms or to rent rooms, nor was he authorized to perform any activities on behalf of the licensee other than to serve patrons at the bar.

The question, therefore, becomes whether knowledge of the use for which the room was to be used was sufficiently imparted to Mrs. Webb (the agent of the licensee authorized to rent rooms). On direct examination G testified that Pete called Mrs. Webb and said, "Two guys want a room. One will come down and register as Mr. Romano. They only want the room for a couple of hours. Don't ask them any questions." Upon approaching Mrs. Webb he said, "I am one of the guys Pete called you about." He registered paid and departed. He returned shortly and said, "I better register 'Mr. and Mrs.' because this broad is not my wife, and I don't want to get in any trouble. I am only going to be here a couple of hours." Agent R corroborated the testimony of G with respect to the phone call. G's testimony with respect to the conversation at the registration desk stands uncorroborated.

Mrs. Webb testified that when Pete called he asked if accommodations for two persons were available. She advised that they were and he requested that she hold the accommodations for a gentleman named Romano. She vigorously denied on both direct and cross examinations that Pete ever said, "don't ask them any questions." She further testified that Monday and Tuesday nights are the busiest of the week and that, during the course of Agent G's registration, she was interrupted numerous times by telephone calls. She continued that Agent G registered as Mr. Romano indicated that there were two in the party, paid the rental fee, took his key and departed. He returned shortly and advised that he had forgotten to include certain information on the registration card. She then testified, "I handed him the card, and I went back to the switchboard and took a call. When I finished the call I went and got the card from him and dropped it in the rack." She vigorously denied any conversation with respect to any immoral or illicit use of the room.

On cross examination she continued to deny any knowledge of the use and testified, "... we don't rent rooms for a couple of hours."

The alleged conversation between G and Mrs. Webb is vigorously denied by her notwithstanding the affirmative testimony of G.

In dismissing a similar charge, the Director found that, although a room had in fact been rented to an agent, there was a sharp conflict in the testimony as to the conversation which accompanied the transaction (Re Peraino, Bulletin 927, Item 7) and

concluded that, while there were suspicious circumstances in the case, suspicion was not a substitute for proof. Similarly, in Re Deaver, Bulletin 1096, Item 5, wherein conversations were had with the licensee's wife who managed the establishment and wherein there was actual agreement to rent a room, the then Director, after considering all the evidence, found that guilt had not been proven by a fair preponderance of the believable evidence and found the licensee not guilty of the charge.

In Re Bird, Bulletin 1384, Item 1, the Director dismissed the charges against the licensee when he found that the licensee's son, who actually rented the room, was "so engrossed in his duties ... that he did not pay particular attention to the agents' conversation or fully comprehend its import." While it appears that the Division presented a prima facie case, it failed, on the whole case, to sustain the burden imposed upon it of establishing the truth of the charge by a fair preponderance of the believable evidence.

I am satisfied that, while Agent G at the reservation desk sought to communicate his purpose to Mrs. Webb, I am equally satisfied that Mrs. Webb, as the licensee's son in Re Bird, supra, was so engrossed in her duties that she failed to grasp the significance of G's remarks, if in fact she heard them at all.

Pete, it appears, suffers from that weakness which often befalls young college men "feeling their oats." He attempted to impart to the agent an air of sophistication while not seriously considering they intended to carry out their plans. The disputed comment "don't ask them any questions" described by the agent and denied by Pete and Mrs. Webb, even if it in fact occurred, is not sufficient evidence to prove so serious a charge. Re Deaver, supra.

Accepting the testimony of the agents, it is nevertheless extremely difficult to find in the evidence a chain or series of events establishing participation in the alleged acts by the licensee or its authorized agents.

Assuming, as I must, that conversation between G and Mrs. Webb transpired and a room was rented, there remains the question of the motivation for the renting. The underlying principle that must be used in all "room renting" cases is set forth in In re Schneider, supra, namely, there must be a conscious participation of the licensee in furtherance of the prohibited act. In short, the licensee must aid or suffer the commission of the act. That aid or acquiescence must revolve about specific knowledge on the part of the licensee or authorized agent of the prohibited act intended.

The actual knowledge on the part of the desk clerk is here open to serious question. Hence the Division has failed to prove its case by a preponderance of the believable evidence. Even assuming the totality of the agents' testimony as believable, the testimony of Mrs. Webb is equally believable. A state of equipoise precludes a preponderance.

Finally, it is difficult for me to believe that the licensee, which operates a motel of such size and obvious cost and catering to the type of clientele as described, would permit the renting of rooms for immoral purposes. Re Lawrenceville Corp., supra.

I therefore conclude that the Division has failed to

establish the guilt of the licensee by a fair preponderance of the credible evidence, and I recommend that the charge be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the Division within the time provided by Rule 6 of State Regulation No. 16. I directed that oral argument be held before me. I have fully considered the matters raised in the exceptions and oral argument, and find that they have either been answered in the Hearer's report, or are lacking in merit.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions filed with respect thereto, and the matters presented at oral argument, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of November 1971,

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

Richard C. McDonough  
Director

6. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 12 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Solkap, Inc. )  
t/a Midtown Motor Inn-Coachmen's Restaurant )  
1726-1746 Pacific Avenue & )  
101-109 S. Indiana Ave. )  
Atlantic City, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-86, issued by the Board of Commissioners of the City of Atlantic City. )

-----)  
Lashman & Kupperman, Esqs., by Wm. Goddard Lashman, Esq.,  
Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers days between February 17 and March 5, 1971, it permitted gambling, viz., the making of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of twelve days for the plea entered, leaving a net suspension of forty-eight days. Re Jean Arnone, Bulletin 1971, Item 3.

Accordingly, it is, on this 4th day of November 1971,

ORDERED that Plenary Retail Consumption License C-86, issued by the Board of Commissioners of the City of Atlantic City to Solkap, Inc., t/a Midtown Motor Inn-Coachmen's Restaurant for premises 1726-1746 Pacific Ave. & 101-109 S. Indiana Ave., Atlantic City, be and the same is hereby suspended for forty-eight (48) days, commencing 7:00 a.m. on Tuesday, November 22, 1971, and terminating 7:00 a.m. Monday, January 10, 1972.

Richard C. McDonough  
Director

7. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER REIMPOSING REVOCATION.

In the Matter of Disciplinary Proceedings against )

John Coleman )  
643 Communipaw Avenue )  
Jersey City, N. J., )

SUPPLEMENTAL

Holder of Plenary Retail Consumption License C-362, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

ORDER /

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John Coleman, Licensee, Pro se  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On October 1, 1970 Conclusions and Order were entered revoking the license herein upon a plea of guilty to a charge alleging that on August 14, 1970 licensee sold a pint bottle of gin for off-premises consumption in violation of Rule 1 of State Regulation No. 38. Re Coleman, Bulletin 1941, Item 1. The revocation was predicated not only upon this violation but the record of five prior similar violations as well as other dissimilar violations.

Prior to the effectuation of the said order of revocation, on appeal filed the Appellate Division of the Superior Court stayed the operation of the revocation until the outcome of the appeal. The court affirmed the action of the Director on November 3, 1971. In re Coleman, Aff'd., (App.Div., 1970), Docket A-429-70, not officially reported, recorded in Bulletin 2014, Item 3. The revocation may now be reimposed.

Accordingly, it is, on this 5th day of November 1971,

ORDERED that Plenary Retail Consumption License C-362, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Coleman, for premises 643 Communipaw Avenue, Jersey City, be and the same is hereby revoked, effective immediately.

Richard C. McDonough,  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against )  
 J.B.D. Enterprises, Incorporated )  
 t/a Pollock Anne's Place )  
 1268 White Horse Pike )  
 Galloway Township )  
 PO RFD, Absecon, N. J., )  
 Holder of Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Galloway. )  
 ----- )

O R D E R

William M. Snyder, Esq., Attorney for Licensee  
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleaded not guilty to a charge alleging that on July 16, 1971 it sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

The attorney for the Division represents that the minor, an essential witness, who resides in Wilmington, Delaware, failed to appear at the hearing although reasonable efforts have been made to produce her. Since her identity and age could not be otherwise established, the Division's attorney moved to nolle pros the charge. Good cause appearing, I shall grant the motion.

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

ORDERED that the charge herein be and the same is hereby nolle prossed.

Richard G. McDonough,  
 Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Wide Area Soda & Beer Distributors, Inc.  
 903 Bay Avenue  
 Manahawkin, New Jersey

Application filed December 17, 1971 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-6 from Arthur C. Masker & Eleanor T. H. Masker, t/a Irvington Beverage Co., 1153 Stuyvesant Avenue, Irvington, New Jersey

*Richard C. McDonough*  
 RICHARD C. McDONOUGH  
 Director