

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

BULLETIN 2136

March 4, 1974

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1. APPELLATE DECISIONS - J. K. J. CORPORATION v. PATERSON.

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| J. K. J. Corporation, |) | |
| t/a Dora's Bar & Grill, |) | |
| |) | |
| Appellant, |) | On Appeal |
| |) | |
| v. |) | CONCLUSIONS |
| |) | and |
| Board of Alcoholic Beverage |) | ORDER |
| Control for the City of |) | |
| Paterson, |) | |
| |) | |
| Respondent. |) | |

- - - - -)
Anthony J. La Sala, Esq., by William J. DeMarco, Esq., Attorney
for Appellant
Adolph A. Romei, Esq., by Ralph L. DeLuccia, Jr., Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which, on June 27, 1973, denied appellant's application for renewal of its Plenary Retail Consumption License C-183 for the 1973-74 licensing period for premises 54 Washington Avenue, Paterson.

The adopted resolution set forth in part its reasons for its action as follows:

"WHEREAS, objection was entered with this Board in the matter of the aforesaid application; and

WHEREAS, a hearing was held on June 27, 1973, pursuant to said objection, wherein it was firmly established that the licensed premises constitute a public nuisance and a detriment to the health and well being of the residents of the area wherein said premises are situated; NOW

THEREFORE,
BE IT RESOLVED, that the application submitted by J.K.J. Corporation be and the same is hereby denied."

Appellant contends that there was no evidence before the Board to support any of the allegations made by the dissident residents, and, further that appellant's counsel was not permitted to cross-examine or introduce evidence.

The Board answered by general denial of appellant's contentions.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15 in which the parties were permitted to introduce evidence and to cross-examine witnesses. In addition, a transcript of the hearings before the Board was introduced into evidence pursuant to Rule 8 of State Regulation No. 15. A transcript of testimony taken before the Board on April 18, 1973, in which the appellant was found guilty on five charges, was admitted into evidence, merely in support of the Board's findings in connection with the denial of renewal and not for review of the determination of those proceedings.

Upon the filing of the appeal, by order dated June 28, 1973, the Director extended appellant's 1972-73 license until further order herein.

I

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance and, in order to prevail on this appeal, the appellant must show unreasonable action of the part of the Board, constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

The dispositive issue in this appeal is whether the evidence herein justified the action of the Board in refusing to renew appellant's license. Nordco v. Newark, Bulletin 1148, Item 2. Prior to analyzing the testimony, it would be proper to state the applicable legal principles pertinent to the determination hereof. The burden of proof in all those cases which involve discretionary matters where the applicant seeks a renewal of the license falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957).

As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail. Crowley v. Christensen, 137 U.S. 86, and no

person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

II

The factual background leading to the denial of renewal of appellant's license may be gleaned from an examination of the testimony before the Board at its hearing on April 18, 1973. The appellant was found guilty in disciplinary proceedings on five charges: Assault on a police officer which occurred October 1, 1972; an "hours" violation occurring on March 2, 1973; another "hours" violation occurring March 23, 1973; selling mixed drinks for off-premises consumption on April 1, 1973; and on the same date, hindering an investigation by a police officer.

It has been noted that the transcript of that meeting reveals that testimony was taken of one witness who was permitted, over counsel's objection, to give a long impassioned statement relating the general situation of the licensed premises, the difficulties encountered by the neighbors and the general nuisance that appellant's premises constituted in the area. Although there was little or no relevancy in this statement to the charges, those charges were affirmed.

No appeal having been filed from the Board's determination of the guilt on the aforesaid charges, and any appeal period having expired, it must be assumed that the Board arrived at its determination on the basis of the credible evidence relating to the charges rather than being influenced by the irrelevant statement made by the witness. However, an examination of the abstract of the testimony taken of the Board's hearing on June 27 reveals a repetition of similar descriptions of the area which the Board heard on April 18. Thus, the statement made at that meeting must be read in context with the testimony given at the June 27 hearing.

At the June 27 hearing before the Board, the witness referred to above, Mary Niemira, substantially repeated her statement previously made. In brief, she alleged that people cannot walk on the sidewalk in front of appellant's premises because of the crowds of people, some drinking and some using vulgar and

profane language. Female residents are in fear of that location particularly because of intoxicated persons among the crowds who congregate in front of the premises. Her windows have been broken, and a car in which she was riding was rocked by members of the crowd.

Her husband Anthony, corroborated some of her descriptions, adding that he had observed sexual intercourse having been performed on a car parked near the premises. He learned that a woman had been raped in appellant's establishment, but, when brought to the police station, the alleged victim refused to sign a complaint.

Emile Koehler, another neighbor in the vicinity of appellant's tavern affirmed that he had observed persons drinking outside the premises and, further, that the crowds prevented automobiles from turning into adjacent streets.

At the conclusion of the hearing, the three members of the Board voted on the renewal application; two voted against renewal and one in favor.

At the hearing in this Division, testimony was given by William W. Harris, Secretary of the Board, who described some four hundred visits by police officers as routine checks, none of which resulted in charges against the appellant, save those for which the above described suspension resulted. He admitted that no complaints were filed with the Board in consequence of the allegations made by the witnesses before the Board who were objectors to the renewal. He further admitted that other liquor licensees had much more severe records but, nonetheless, their licenses had been renewed.

The principal stockholder of the appellant corporation, Willy Williams, testified that he and his mother own the building in which the licensed premises are housed. He readily admitted the existence of the crowds in front of his premises, but insisted that the congregants were residents of the dwellings surrounding the premises.

He welcomed the daily routine checks by police as an assistance to him and described the continued entry by police as friendly. During their several hundred routine visits, nothing negative was discovered, other than that which was the subject of the charges made against his establishment.

The principles to be applied to appeals from denials of renewal of licenses by municipal issuing authorities have been set forth herein. The primary test, as required by the applicable decisions cited above, is reasonableness. That degree of reasonableness as is required to be exercised in this and parallel situations must be equated with the total record before the Board and at this Division.

"It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local issuing authority. Common fairness to the licensee has been the basis for this policy. If undesirable conditions develop...the local authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired."

Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2. The record of a licensee during the prior licensing period should be considered in the determination of license renewal. Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Salmanowitz v. Hightstown, Bulletin 807, Item 2.

One obvious purpose of suspensions of license resulting from disciplinary proceedings is to discourage future violations. In the instant matter, appellant had its license suspended following the April 18th hearing, for sixty days. In consequence thereof, the premises were closed for most of the period between that hearing and the one at which appellant's application was denied. During the one week or so that the licensed premises were opened prior to the June 27th hearing, no activity resulted in further complaints that were testified to before the Board. The one-week period is hardly sufficient time in which to determine if the appellant, by that suspension, learned the necessity of correcting the situation described.

Additionally, it is noted that no representative of the police department testified in relation to the several hundred routine checks made by its members. While a Board is not required to base its determination upon the recommendation or advice of the police department, in the instant matter, where such voluminous police activity purportedly resulted from the conditions as described by the objectors, such police department comment would be expected.

Perhaps the most succinct analysis of the whole issue faced by the Board came from the minority member who voted to renew appellant's application. He clothed his vote with these remarks:

"Commissioner Holloway: The majority report is inconsistent with the facts that were given to us this evening. There wasn't one single ABC violation presented to this Board tonight and it is my opinion that the only legal factors upon which this Board could act upon is whether there were any ABC violations. There were none presented to us this evening. The only testimony that was heard before this Board was a repetition of the testimony that had been heard in a hearing in which each side had an opportunity to present its case and to cross-examine the witnesses. The Board at that time reached a decision and acted

on the basis of the facts that were presented to them.

Another thing that is inconsistent in this case is that we are going to act purely on the basis of the social ills in our community. We hasten to add and correct a mistaken understanding. There are many social ills in the area and not only on Plum Street.

There were other cases here this evening upon which this Board could have taken some action. There were three other cases that were heard this very evening where they have the same type of things going on, the same conditions that existed in those communities over which this Board had jurisdiction and this Board took no action whatsoever.

I consider it a conspiracy on the part of the City officials to act upon an individual tavern because we have a problem that exists throughout this entire City. I am talking about the elected officials or appointed officials who have taken it upon themselves to cure the ills of this City.

There are many individual businessmen in the tavern business who happen to be trying to make a living. I am referring specifically to the over two hundred eighty-five police calls that were made to this particular tavern in which three charges were made and these charges were aired before this Board and proper action was taken as a result of the ABC violations.

Let's deal with the social problems that we have in our communities. Let's see if the conditions are any worse in this community than they are in other parts of this City.

I happen to live in a very high rent area in this City. On my block there have been four breaking and entries in the last few weeks.

I am aware that the Mayor is present at this hearing tonight. I am also aware that former Mayor Kraemer tried to do something for this community when he was in power.

I am doubly aware that it cannot be solved by attempting to use a whipping-boy, or a single businessman, because things happen within the vicinity of his business, or within that community. He cannot be expected to control or take the

responsibility of the police department. I think it goes beyond the jurisdiction of this Board. If we are to have a better society in our community, we must get behind a concentrated action to do so.

We have heard that the police receive 258 calls. We cannot clean up a community because calls were made regarding Dora's Bar. If you are sincere in cleaning up the community, you should have been present, Mr. Mayor, when we dealt with E.G. Incorporated, at 1084 Main Street.

You should have been present when we dealt with Joseph Portelle and Sons Builders, trading as the Steam Pit and also we had the Pepper Pot Lounge before us.

However, I don't like the decision. I don't think it is going to change the community one iota. If I thought it would have an effect on the community, I would say let's go back and reverse our decisions that we rendered earlier against tavern owners who have appeared before us and whose licenses we renewed.

I don't see why these citizens need any more protection than the homes in any other parts of our City...."

The Board Commissioner's statement has been reproduced in full as it postulates that a licensee's accountability cannot extend to areas exterior to the licensed premises where critical conditions arise which have no direct bearing upon the management of its interior. Such conditions arising with increasing frequency in low-income areas of our cities has been recognized by the courts as creating a dichotomy between the basic responsibility of a licensee over lands forming ingress-egress to the premises as compared to the public thoroughfare directly in front of or along side of the licensed premises.

In a recent and landmark decision, Ishmal v. Div. of Alcoholic Bev. Control, 58 N.J. 347 (1971) the court held that as that licensee's premises was a "trouble spot" of narcotics activity due to its physical location rather than culpable conduct on her part, the court concluded (at p.352):

"But, where the problem thus inheres in the location, rather than the quality of the licensee's performance, the licensee in fairness should be offered a chance to secure another location."

By its judgment, the court gave rise to an additional remedy afforded to licensees whose premises would otherwise be closed.

The recognition of the sociological impact upon licensed premises in disadvantaged areas differing from those felt by premises in other areas, was again noted by the court in The Cajé Inc. v. Passaic, Bulletin 2063, Item 2, which bears marked similarity to the instant matter. There the appellant's application for renewal was denied because of the social problems inherent in the neighborhood; the exterior of the premises was similarly crowded with noisy and offensive throngs. The Director's affirmance of the Board's action was reversed by the Appellate Division of the Superior Court in an unpublished opinion cited in Bulletin 2114, Item 1.

In his opinion in Cajé, supra, the Director stated:

"I find from the credible evidence presented that the local enforcement officers were frequently required to disperse unruly crowds which had gathered on the sidewalk in front of the licensed premises. These crowds regularly disrupted the free flow of traffic, both vehicular and pedestrian, and that the improper control and operation of the licensed premises herein was the primary cause of the conditions."

However, the record in that matter was devoid of any disciplinary proceedings resulting from any activity within the licensed premises, a pivotal fact upon which the Appellate Division determined its reversal. Giving impetus to that determination was the continued efforts of the licensee to secure police assistance in attempts to meet the problem.

Thus, by Ishmal and Cajé, the long-standing doctrine that the licensee has responsibility for the exterior as well as interior of his licensed premises has been eroded at least where the problems are sociologically inherent to the neighborhood.

Applying the rationale of Ishmal and Cajé to the instant matter, we find that a disruptive congregation outside the appellant's premises was at best an indirect result of the premises itself. The decision of Cajé is inapposite, however, in that the appellant has a record of suspensions of license for violations during the prior licensing period. Initially, as hereinabove set forth, there were two "hours" violations. In themselves, "hours" violations merely indicate either carelessness or disregard of the Division regulation. However, the remaining two offenses involved the hindering of investigation and thereafter, the assault upon a police officer. These latter offenses undermine the confidence which the respondent Board may have had in the appellant's ability to properly manage the licensed premises. Thus, the majority of the Board determined that the appellant's inability to manage the licensed premises properly coupled with its total ineffectiveness in controlling the deleterious conditions on the exterior gave to it no other alternative than the denial of renewal.

Thus, while the Board is to be commended for coming to grips with an extremely difficult problem indigenous to the community, its remedy is suggested by Ishmal, supra. As appellant is patently unable to manage the licensed premises properly and, by that inability, has subjected the license to termination, it is recommended that the Board be directed to extend the term of the license for a reasonable time in order to permit appellant to apply for a person-to-person transfer of its license to a suitable person able to manage the premises properly and to correct the present social evils attendant upon it.

Accordingly, it is recommended that the action of the Board be reversed and it be directed to renew the license in order to permit the appellant to perfect an application for a person-to-person transfer of the license within three months from the effective date of the Director's order, to such person who, in the discretion of the Board, will properly manage the licensed premises; and that, in the event such transfer is not so effected, the license shall be cancelled.

Conclusions and Order

Written exceptions to the Hearer's report were filed by both appellant and respondent pursuant to Rule 14 of State Regulation No. 15. In addition, I heard oral argument in furtherance of the said exceptions.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report, the exceptions with supportive argument filed on behalf of the parties hereto, and the oral argument of counsel, I concur in the findings and recommendations of the Hearer and substantially adopt them as my conclusions herein. However, In respect to the recommendation that the appellant be permitted a period of three months from the date of this order to secure a bona fide transferee of the license, I shall extend that period for an additional time, i.e., to June 1, 1974, to give the appellant full opportunity to obtain a suitable transferee.

Accordingly, it is, on this 27th day of December 1973,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby reversed, expressly subject to the special condition that it consummate a transfer of its license to a bona fide transferee as may be approved by respondent Board on or before the 1st day of June 1974; and it is further

ORDERED that respondent Board is directed to grant appellant's application for renewal of its plenary retail consumption license for the license year 1973-74, subject to the conditions aforesaid; and it is further

ORDERED that, in the event such transfer is not effected within the time limited herein, or within any extension of the said period as may be granted by the respondent then and in that event, the said license shall be cancelled.

ROBERT E. BOWER
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY - LEWD DANCE - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

Martin Mazie Enterprises, Inc.
t/a Westville Liquor Mart &
Gateway Lounge
500 Gateway Boulevard
Westville, N.J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Westville.

Klein, Melletz & Klein, Esqs., by Paul Melletz, Esq., Attorneys
for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on June 7, 1973, it permitted lewdness and immoral activity on the licensed premises, i.e., permitting a female person to perform in a lewd manner, in violation of Rule 5 of State Regulation No. 20.

ABC agent D testified that on June 7, 1973, at about ten o'clock in the evening he, accompanied by ABC agent W, entered the licensee's premises, which he described as a large barroom with a rectangular bar, a small service bar, a dance platform and a dance area surrounded by tables. Shortly after entry, a "go-go" dancer, later identified as Sylvia --, began dancing. There were about one hundred and fifty patrons crowded

in the premises who were served by a bartender, later identified as Robert G. O'Connell, and two barmaids. Sylvia began her dance attired in a two-piece outfit consisting of an abbreviated panty and a bra held by string or cord supports.

The agent described Sylvia's costume as adequate when she was standing still, but immediately upon movement, the bra ceased to cover her breasts, and they would emerge from the bra.

The agent changed his position in the room several times, and at one point in Sylvia's dance he was within three feet of her. He observed that she descended from the platform and continued dancing in the dance area. At this time, with her breasts exposed, she danced close to the tables and placed her breasts toward the faces of the seated patrons. Those patrons who were with female companions turned away in embarrassment. On several occasions Sylvia replaced her breasts within the bra, but by her movements thereafter, they were again exposed. Her dance or actions were, otherwise, unobjectionable; nor did the patrons themselves behave in any unseemly manner.

The agent recounted previous visits to the licensed premises when Sylvia danced on other occasions. He admitted, on cross examination, that Sylvia's dance had been identical with the exception of the breast exposure. He admitted that the bar was crowded and the employees were very busy. When the agents identified themselves to the bartender and spoke to him and Sylvia in the licensee's office, both admitted that Sylvia did expose her breasts as aforesaid.

ABC agent W testified in general corroboration of the testimony of Agent D. His description of Sylvia actions and exposure was substantially identical to that of his fellow agent. He admitted, on cross examination, that he did not hear either the bartender or Sylvia admit the exposure of her breasts.

The bartender, Robert G. O'Connell, testified on behalf of the licensee that he is not now employed in the licensed premises, having accepted other employment about a month after the subject incident. He recounted the visit of the agents on a night when the business at the bar was unusually heavy. He described the rectangular bar as having two cash registers and then servicing about eighty-five people. He took charge of one end of the bar and a barmaid was in charge of the other.

The bartender indicated that the area of the bar where he was working was farthest from the stage and the dance area. Between the bar and the dance area is a low decorative fence. While Sylvia was not in his constant view, when he did see her, she was dancing in a normal manner and at no time was there any exposure of her breasts; however, he admitted that this was his first experience with ABC agents and he was confused by their allegations of impropriety.

The licensee introduced the testimony of Assistant Public Defender for Gloucester County, Carl C. Bowman, who testified that he visited the premises to ascertain from the bartender the name of a former employee for whom he was looking in conjunction with a pending case. As the premises were extremely crowded he awaited an opportunity to chat with the bartender, who he did not know, hence spent an hour standing with others watching Sylvia's performance. Save for moments when his vision was obscured by other patrons passing him or when her back was turned, he observed her full dance. At no time did he see the exposure described by the agents. At some moments Sylvia was a mere two to three feet away from him, and she danced in her apparently usual manner.

Three other patrons testified on behalf of the licensee. Each was standing or seated at a different location within the premises and each saw Sylvia's performance. The thrust of their testimony was that, at no time were Sylvia's breasts exposed, nor was her dance indecent. They individually denied that Sylvia projected her breasts toward the faces of any patrons nor was she ever within two feet of any patron during her dance.

The dancer, Sylvia, testified that she has danced at varied places for the last seven years, and for the last two years in the subject premises. At no time in her career has her mode of dancing or costume ever been subject to any criticism by any owner, patron or authority. On the date and time in question, she danced for the first time in one of her home-made costumes which she had not been able to try on prior to the dance. The bra portion was slightly loose and while dancing, the shoulder straps began to slide, requiring her to continuously reach for them. The strap sliding did not, however, result in any additional exposure of her breasts.

At the conclusion of her dance, the bartender requested her to speak to the agents. She denied admitting that there had been any indecency in her dance but she readily admitted not identifying herself to the agents until the arrival of the local police. She explained that she never gave her name and address to any patrons and, until the local police arrived, was not totally convinced that it was necessary for her to identify herself.

Martin Mazie, the husband of the principal owner of the corporate stock of the licensee corporation, testified that he is the manager of the establishment and, on the night in question, was summoned to return to the premises by his bartender, who informed him of the agents' presence. He denied that Sylvia's costume was in any way revealing, adding that no costume of any dancer in his establishment is violative of either the Division's regulation or of common decency.

Two local police officers, Sergeant Young and Patrolman Senatore, testified in rebuttal on behalf of the Division. They arrived on call, to the licensed premises and found the agents, the bartender and Sylvia in conversation concerning Sylvia's exposure during her dance. Neither officer recalled Sylvia admitting to any exposure. Patrolman Senatore admitted having seen prior performances of Sylvia, and that in none had Sylvia exposed herself.

It is apparent that a purely factual question has been presented for determination. In matters of this nature we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof only by a preponderance of the believable evidence. Butler Oak Tavern v. Div. of Alcoholic Bev. Control, 36 N.J. Super. 512, aff'd 20 N.J. 373 (1956).

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony to be believed, 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); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence, and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

After carefully considering and evaluating the testimony of the witnesses herein, it is apparent that what the agents observed was not observed by the several witnesses testifying upon behalf of the licensee. In distilling the evidence, it is apparent that the costume of the dancer, being too loose for the performance, caused some degree of momentary exposure which, to the trained eyes of the agents, was a breach of the regulation. Amid the flashing and colored lights playing on the stage and dancing area, the dancer's costume, covered with iridescent beads and spangles, disguised the momentary slippage of her bra; hence, the exposures were unseen by licensee's witnesses.

Rule 5 of State Regulation No. 20 provides that:

"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...."

This rule has long been interpreted in this Division to include lewd or exposed dancing in any licensed premises. See Jeanne's Enterprises, Inc. v. Div. of Alcoholic Beverage Control, 93 N.J. Super. 230 (App. Div. 1966) which further extended the restriction to obscene monologues. Lewdness in dancing has been particularly

prohibited. In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971); Re Starshock, Inc., Bulletin 2101, Item 2; Re Iodice Corporation, Bulletin 2122, Item 1.

However, the fundamental principle in all such cases is intent of indecency and the manner in which such intentions are carried out. The evidence given by the agents contrasts, in this regard, with the testimony of the independent witnesses to such degree as to be at polar extremity from it. Momentary accidental exposures by Sylvia with neither design nor intent cannot be categorized as planned indecency. In any event, accepting the agents' version at full value, the evidence does not preponderate in favor of the Division. Without such preponderance of the credible evidence, the charge has not been sustained.

Accordingly, I recommend that the licensee be found not guilty, and that the charge herein be dismissed.

Conclusions and Order


No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations. Thus, I find the licensee not guilty of the said charge.

However, the licensee is pointedly warned that any unlawful exposure by an entertainer, however accidental as reflected in the testimony herein will not be tolerated on liquor licensed premises. It is the duty of the licensee to take every effective measure to prevent such indecency, and to see that entertainers are at all times properly costumed during their employment in the premises.

Accordingly, it is, on this 27th day of December 1973,

ORDERED that the charges herein be and the same are hereby dismissed.


Robert E. Bower
Director