

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

BULLETIN 1757

October 13, 1967

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1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 210 DAYS -
DATE OF SUSPENSION NOT FIXED BECAUSE LICENSE NOT RENEWED.

In the Matter of Disciplinary
Proceedings against

F & A CORP.
t/a Ally-Ally
558 Fairview Avenue
Fairview, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-6, issued by the Mayor and
Council of the Borough of Fairview.

Avrom J. Gold, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The following charge was preferred against the
licensee.

"On Wednesday night August 3 and early Thursday
morning August 4, 1966, you allowed, permitted and
suffered your licensed place of business to be con-
ducted in such manner as to become a nuisance in
that you allowed, permitted and suffered persons who
appeared to be homosexuals, i.e., males impersonating
females and females impersonating males, in and upon
your licensed premises; allowed, permitted and suffered
such persons to frequent and congregate in and upon
your licensed premises; allowed, permitted and
suffered lewdness and immoral activity and foul,
filthy and obscene conduct by such persons in and
upon your licensed premises; and otherwise conducted
your licensed place of business in a manner offensive
to common decency and public morals; in violation of
Rule 5 of State Regulation No. 20."

During the pendency of this charge, and prior to
hearing, the following two additional charges were preferred
against the said licensee as a result of further investigation
of the licensed premises:

"On Friday night, January 6 and on Friday night,
January 13 into Saturday morning, January 14, 1967, you
allowed, permitted and suffered lewdness and immoral
activity and foul and filthy conduct in and upon your
licensed premises and allowed, permitted and suffered
your licensed place of business to be conducted in such
manner as to become a nuisance, viz., in that you allowed,

permitted and suffered persons who appeared to be homosexuals, i.e., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness, immoral activity and foul and filthy conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"On Saturday morning, January 14, 1967, you, through an officer, director and stockholder of your corporation, failed to facilitate, attempted to hinder and delay, hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey, viz., by urging, suggesting and counselling said Investigators to make false and untruthful reports of their investigation, inspection and examination and by offering to give money and other things of value to them to make and file such false and untruthful reports; in violation of R.S. 33:1-35."

A plea of not guilty having been entered by the licensee on the three charges, a concurrent hearing was held on the said charges. This report will first consider the evidence with respect to charges 1 and 2, and then concern itself with charge 3.

I

The evidence with reference to charge 1 was developed at this hearing through the testimony of two ABC agents, and the substance of their testimony is as follows: Pursuant to specific assignment to investigate alleged homosexual activities at the above licensed premises, two ABC agents, having in their possession a small yellow business card with lettering on it bearing the legend "This is your private invitation", arrived at the said premises on Wednesday, August 3, 1966, at about 10:45 p.m. Entering the upper portion of the premises, which contained an oval bar and a dining area in the rear, they then proceeded to the basement of these premises where an individual (later identified as Rex Val Richards), after examining the card held by one of the agents, admitted them into a large barroom. Seating themselves at the bar which was attended by three bartenders, they noted that there were approximately one hundred patrons, ninety males and ten females. From their observations the females appeared to be lesbians and the males appeared to be homosexuals. The agents testified to the appearance, manner and conduct of the apparent homosexuals as follows: Many of them wore tight-fitting pants, white in color, with flared bell-bottoms, wide belts and feminine type buckles. The shirts were variously V-neck polo shirt, gaily colored, or Ivy League shirts, short-sleeve shirts, unbuttoned below the chest. Some had a silk-type shirt on or a shiny material shirt, again unbuttoned, open below the chest. Some of these persons had their hair "cut in a normal manner; some wore it extremely long; some in a combed D.A. fashion. A couple of them had bangs, very neatly combed, some like a Katherine Hepburn-type of bang." When they walked they used a swishy motion, moving their hips from side to side. They puffed their cigarettes "effeminately as a female." They

rolled and fluttered their eyes at the males in their group. "They spoke, when overheard to speak, in high-pitched lispy tones of voice, using some terms as 'Old Mary,' 'Mother,' 'She,' when referring to another male." The female patrons were attired in male type attire with zippers in the pants and back pockets. They used male type tailored shirts, wore little or no makeup and their hair was combed in a short-cropped fashion. In dancing or walking, these females "seemed to tend to the other female of the pair as a male would."

The agents further observed forty males, in twenty male pairs, dancing to varied tempo music. The selection from the juke box at the time was a slow number, and the males danced arm in arm, body contact with body contact, as a male and female, normal male and female would dance. "The leader taking the masculine part would hold the male taking the feminine part, the more effeminate part, about the waist or buttocks, clutching him close to his own body. The other male playing the female role would hold onto the leader about the neck with his two hands as a female would, leaning against the leader's shoulders with his head, the eyes facing in toward the neck. And on occasion they were noted to kiss about the neck, the ears and and the lips of the leader. When dancing to the slow number, they bumped and ground their private parts together in a slow motion with the music." During the fast numbers one of the males was observed to "bump or grind his buttocks into the penis area, private part area, of the other male. The one usually doing the grinding was again the one that played the more effeminate part of the two."

Agent S had a conversation with one of the bartenders (later identified as Steven Facchiano) who informed him that this basement area usually attracted large crowds on Wednesday, Friday and Saturday nights. In discussing the nature of the premises, the bartender told him that this was a place where "definitely, you can let yourself go. You can let your hair way down."

The agent, then, proceeded to the foyer where they were requested by an employee identified as Keegan to show his identification card. When he produced the same, Rex Richards explained the reason for this. He said "Someone thought you were an ABC agent." The agents thereupon left the premises and returned at 12:10 a.m. in the company of local police officers. When they reentered, a signal was apparently given and the premises were brightly illuminated. This was an apparent signal for these patrons to act in a normal, well-behaved manner. The agents thereupon identified themselves and engaged Richards in conversation. Said Richards, "You caught us."

At this point a person who identified himself as Albert Cecchi, the custodian of the premises, admitted that he was aware that there was homosexual activity at the premises. He insisted that he could not prove that the patrons were in fact homosexuals, and "what was the big deal anyway. They were well behaved and didn't bother anybody." The bartenders were then questioned and stated that they were too busy to notice any such activity as described by the agents.

The agents proceeded to question several of the male patrons. Some of them admitted that they were members of Janus (a society for the equality of homosexuals). A search of the premises revealed two books -- one entitled "Kept Boy" (a book

on homosexual activity) and the other entitled "Someone You May Know, a Heterosexual Looks at Homosexuality." They also found a box containing a gadget described by the legend on the box "Little Jewel Chastity Preserver For The Errant Male."

The cross examination of these agents sought to develop that any one of the articles of dress, standing by itself, was not particularly unusual nor did it indicate that the wearer was an apparent homosexual.

It was stipulated that the testimony of Agent S would be fully corroborative on direct examination of that given by Agent D.

The following testimony was adduced from four ABC agents who participated in the investigation of these premises on Friday, January 6, 1967 and Friday evening, January 13, 1967, at 10:15 p.m. until 1:45 a.m. on Saturday, January 14, 1967. Their testimony was offered in support of the Division's charge 2 and may be briefly summarized as follows: On Friday, January 6, 1967, at about 10 p.m., Agent B entered the subject premises alone, followed shortly by Agent H. Upon entering he seated himself at the bar and observed that there were approximately ten males, all of whom appeared to be homosexuals. The patronage increased during the evening to sixty male patrons and no female patrons. At one point the bartender on duty reached over the bar and said to one of the patrons, "My hands are cold" and then placed his hands in front of the man's pants and played with his genital organs. The man said, "Oh, stop it" and slapped his wrists, and the bartender responded, "That's nice." Shortly thereafter the bartender leaned over the bar and gave another patron a big kiss on the lips.

Other patrons were walking around in a swaying movement, touching each other's genital parts, kissing and embracing. In dancing to a slow rhythm, they held each other close "whole front area to front area, hold by the buttocks, biting on the ear, kissing." Other patrons were observed embracing and kissing each other affectionately on the lips. One patron asked another, "Do you want to go sit at the table? If you sit at the table, you will get hot a lot faster." The males appeared to be acting like females.

On cross examination Agent B added that the admission charge to this part of the premises was \$2, which he paid upon entering. That entitled him to nothing more than the right to enter. All drinks were extra.

On Friday, January 13, 1967, at approximately 10:15 p.m., Agents H and Z visited the said premises and observed that there was a large sign on the outside of the premises containing, in part, the legend "association." Proceeding to the basement level of these premises, they paid the \$2 admission fee and proceeded to the main basement barroom. This barroom contained several bars and numerous circular tables with adjoining chairs, and a dance floor area to the right of the entrance. There were juke boxes immediately adjoining the dance floor area. Two bartenders (later identified as John Avella and Humberto Martinez) tended bar at the large bar, and another bartender (later identified as Emiliano Estrada) was employed at the smaller bar. Two waiters (later identified as Gilbert Smith and Chet Monte) were serving the patrons at the tables. The agents perceived that Monte was a male impersonating a female; he was dressed in very tight clothing, with a suede shirt and very tight wrangler pants "which appeared to be hip-huggers, is what

it would be called if a girl were wearing them." His hair appeared to be prematurely gray, although more likely it was "artificially streaked or artificially dyed to give it a streaked appearance, a style popular with women at one point." While the agents assumed that he was an apparent homosexual, it will be pointed out later that a licensee's witness identified him as being in fact a female. Monte was wearing facial makeup and spoke in a very high-pitched lisping voice "which seemed to be accented on purpose." He walked with exaggerated hip movements, a small mincing gait, and when he delivered drinks at each table "he was repeatedly fondled by males at several tables who would pet him on the buttocks."

At the height of the activity there were approximately one hundred forty-five males; the only female present was the hat-check girl. In the opinion of the agents, of the one hundred forty-five males "one hundred percent" appeared to be homosexuals based on their mannerisms and conduct, their dress, actions and demeanor. Agent H described their dress as being characterized by "tight pants, wide belts, striped shirts, that sort of thing." They walked slowly with an exaggerated and feminine hip movement; frequently they were overheard to address each other in such terms as "Dear", "Sweetie" and "Honey", stroking each other's faces. Also, two couples were observed in close conversation with one of the males resting his arm on his partner's genital area; "kissing each other on the lips and on the neck and about the ears" and they would "hold hands during the entire conversation."

This witness also described the dancing, during which approximately forty males paired off at one time. During the slow numbers the males were observed to hold each other tightly and dance with a slow, "gyrating movement of the hips toward each other, you know, pressing to each other very tightly." In several instances "they kissed each other about the ears, neck and stuck their tongues to the other person's ears." He added that he did not allude to an isolated instance but that the majority of the dancers engaged in such activity. The dancing, with the movements and activity hereinabove described, was carried on in a very "open, uninhibited manner."

Engaging in a conversation with bartender Avella, he casually observed that the idea of having an "association" seemed to be good because "the fellows down here can do anything they want now." Replied the bartender, "Yes. It works out very well. The guys are down here and the girls are all upstairs." During the conversation the bartender mentioned that he had been to a number of other places which had catered to apparent homosexuals.

The agents identified themselves to Avella who then summoned Rex Richards, the manager. Richards seemed to be well aware of the nature of the violation and, when he was asked whether the patronage appeared to be homosexuals engaging in overt, sexual activity at the bar, he shrugged his shoulders and said, "What can I say. I have to say no."

At that point Richards placed a telephone call and, shortly thereafter, Al Moss, an officer of the corporate licensee, appeared at the premises.

This agent was very closely cross-examined with respect to the activities of Monte and he asserted that, in at least four specific instances, he noted Monte's buttocks being fondled by patrons. He also admitted that, while each specific item of

dress or mannerism of the patron, considered separately, would not warrant his conclusion that the person was an apparent homosexual, the combination or orchestration of the specifics described, including the dress, conduct, the endearing expressions, the dancing of male with male, all added up to the opinion reached and expressed by the witness.

Agent Z substantially corroborated the testimony of Agent H with respect to the activities, dress, mannerisms and conduct of the apparent homosexuals on this occasion. He also had the distinct impression that Monte was an apparent homosexual. He admitted, however, that Monte denied being a homosexual.

Rex Val Richards, testifying on behalf of the licensee, gave the following account: He was employed on August 3, 1966, as a manager of these premises and is still employed in that capacity. On this date there were about one hundred patrons in the downstairs area and the men wore "mod clothes, sport shirts. Some of them wore chinos. The girls wore girls slacks, skirts, dresses." Males danced with other males, but he did not notice any unusual behavior between the dancers.

He overheard the agents asking some of the patrons whether they were members of Janus and "no one seemed to know what Janus is." In so far as the books and the box (which were introduced into evidence) are concerned, he stated that they were probably left there by some of the patrons. He did not recall saying to the agents upon confrontation "You caught us." In so far as the nature of the patronage is concerned, the witness stated that he is not a qualified expert on homosexuals so that he could not tell whether patrons were apparent homosexuals, but he added that "maybe they act a little more genteel, or they might have effeminate traits. But that doesn't necessarily say that I say they are a homosexual." It was his feeling that, so long as he saw nothing "immoral" going on, he did nothing nor did he in fact look for such actions. He also admitted that he did not give his bartenders any specific instruction with respect to any apparent homosexuals. When asked whether he considered it unusual for males to dance with other males regardless of the type of dancing they engaged in, he admitted that, while he did not consider it normal, most of the dances were of the fast variety, and he did not observe any body contacts between dancers.

Richards was then recalled later in the hearing to testify as to the activities on January 13, 1967. He stated that Martinez and Estrada were the regular bartenders, and another person, who he thinks was named Johnny Averio, had come down that night to "try out for a job." On this occasion there were approximately one hundred to one hundred fifteen patrons who appeared to be dressed in sports clothes, some with suits and ties, chino pants, sweaters. He then detailed his conversation after the agents identified themselves. He stated that he was questioned by the agent in the kitchen adjoining the barroom, and he told the agent that Chet Monte was in fact a female. At this point he excused himself and called Moss (the president of the corporate licensee) who arrived at the premises shortly thereafter. The details of what transpired from this point will be set forth in the examination of the record with respect to charge 3.

On cross examination this witness stated that, if he were to testify at length with respect to the appearance,

mannerisms, conduct of the patrons, his testimony would be substantially the same as that which he gave with respect to the patronage on August 3, 1966. Questioned about Monte, he gave the following explanation: He had met Monte in Florida about a year-and-a-half ago and she came up to look for a job. This was the first night and she was merely trying out for the job. This was also true of Avella who was working on a try-out basis. He was not paid any salary for that night, and his present whereabouts are unknown. He was then asked the following:

"Q And do you recall what your answer was when they [ABC agents] said to you 'Are you aware of the fact that these people are apparent homosexuals?'"

A I believe I said, 'Well, I have to say no.'"

His explanation for that was that he was not an expert on homosexuals; that he did not stop people at the door and ask them whether or not they were in fact homosexuals.

Humberto Martinez (a bartender employed by the corporate licensee) testified with respect to the activities on August 3, 1966. He described the dress of the patrons as normal, and told the agents that there was "nothing wrong going inside." He was then asked:

"Q Did you see men dancing with men any slow dances?"

A I was too busy to see anything."

On cross examination he insisted that he cannot tell the difference between an apparent homosexual and a normal individual. He stated that his primary function was to serve drinks, and he was not concerned with how the people were dressed or how they behaved. He specifically denied seeing any of the men embracing or acting in the way described by the agents. He also denied seeing anyone fondling Monte and insisted that Monte is actually a female and not a male.

He was then cross-examined with respect to the activities on January 6, 1967. On that occasion there were approximately fifty to seventy-five patrons, and he denied making any untoward advances to any of the patrons at the bar. In response to my inquiry with reference to the dancing, he stated that he did not observe any male dancers dancing with each other. He described the dance as follows: "There was one in one line, there was another line here. They weren't dancing together."

I have detailed much of the testimony of both the witnesses for the Division and for the licensee in order to develop an objective perspective of the facts upon which the charges herein are grounded. My careful analysis and evaluation of all of the testimony, together with my observation of the demeanor of the witnesses as they testified at this hearing, lead me to the considered conviction that these charges have been amply supported by the credible and forthright testimony of the agents. The following irresistible findings flow from the record before me: (1) Charges 1 and 2 are clearly bottomed upon substantially similar evidence involving the same licensee at the subject premises and were properly considered concurrently at this hearing; (2) the licensee knowingly and wilfully operated a recreational center designed to attract apparent homosexuals,

and the patronage in the basement area of these premises catered exclusively to apparent homosexuals and apparent lesbians. It was obvious that the licensee used promotional material in the form of guest cards and other advertising media to develop this type of activity; (3) notwithstanding the pendency of the charge relating to the incident of August 3, 1966, it is abundantly apparent that this type of proscribed activity was continued by the licensee, in callous disregard of the said charge, as reflected in the testimony relating to the dates set forth in charge 2; (4) the licensee's agents and employees were well aware of the fact that the relatively large percentage of the patronage (if not all of the patrons) were apparent homosexuals and participated in an encouraged the behavior attributed to these patrons, as delineated by the agents. It is no answer for the licensee or its employees to state that they were not interested in the personalities of the patrons so long as they did not engage in "immoral" conduct. The fact is that the record shows that a considerable amount of immoral conduct was engaged in; (5) it has long been established that the congregation of large numbers of apparent homosexuals is inimical to the orderly conduct of licensed premises. The testimony established, beyond a shadow of a doubt, that the male patrons, by their actions, mannerisms and demeanor, were males impersonating females and were persons who appeared to be homosexuals. As the court pointed out in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App.Div. 1957):

"If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient."

The authority is so well established as not to require citation for the premise that over acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been consistently held that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of Regulation No. 20. As was stated in Re Hoover, Bulletin 1521, Item 1:

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge."

See also Carelis v. Division of Alcoholic Beverage Control, Bulletin 1393, Item 2 (aff'd by Appellate Division on December 21, 1961, not officially reported; reprinted in Bulletin 1430, Item 1); also Murphy's Tavern, Inc. v. Davis, 70 N.J. Super 87 (App.Div. 1961), reprinted in Bulletin 1395, Item 3, wherein the court stated:

"In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of

the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premise, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405 (App.Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951)."

(6) furthermore, the conduct of the patrons, as described by the agents, would support that part of the charge which alleges that the licensee "conducted your licensed place of business in a manner offensive to common decency and public morals." On all of the dates charged it is abundantly clear that the patrons openly and notoriously engaged in indecent and scandalous dancing, male with male, during which they uninhibitedly fondled partner's genital organs, buttocks and other parts of the body; engaged in fondling the buttocks of a waiter, patrons at the bar and, in one instance, even the bartender engaged in these practices; hugged and petted, kissed and engaged in sexual contacts, in a manner clearly offensive to a properly supervised liquor licensed premises. The conduct of these males to each other was offensive to public morals and decent standards of behavior. As the court pointed out in In re Schneider, 12 N.J. Super. 449, at p. 458:

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

And further:

"'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are contra bonos mores, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2d ed.)."

When Richards, the manager, was asked whether these apparent homosexuals patronize these premises, he answered "I have to say no." It is abundantly clear that he knew of the activities that were carried on, and it is further unmistakably apparent that these activities were encouraged because they were obviously financially profitable to the licensee.

Therefore, I am persuaded by the overwhelming testimony and the clear, convincing proof in this case that both charges 1 and 2 have been established; that these premises on the dates in question were the scenes of large congregations of apparent homosexuals; that the licensee permitted, suffered their activities, and conducted its place of business as a nuisance, in violation of Rule 5 of State Regulation No. 20. Re One Eleven Wines and Liquors, Inc., Bulletin 1656, Item 5, aff'd One Eleven Wines & Liquors, Inc. v. Div. of Alcoholic Beverage Control (App.Div.

1966), not officially reported, recorded in Bulletin 1695, Item 1; Murphy's Tavern, Inc. v. Davis, supra. Accordingly I recommend that the licensee be found guilty of charges 1 and 2.

II

The Division's case in substantiation of charge 3 was developed through testimony of two ABC agents and may be briefly summarized as follows: After the confrontation by the agents on January 14, 1967, Richards placed a telephone call to Moss (the president of the corporate licensee). About twenty minutes later he arrived at the subject premises and discussed the situation with Agents H and B. Moss then said, "I'm glad I got here in time before you boys left. Everybody is after the same thing, the almighty buck. Why can't we be friends and talk this over?" Agent H then told him that there was nothing that could be done since the investigation was substantially completed. Moss then replied, "Well, let me just talk to you. You look like you need a hat. Let me buy you a hat", whereupon he pulled out a roll of bills and pulled a \$50 bill off the top and placed his hand toward Agent H's pocket, at which point Agent H said, "There's nothing that can be done."

The two agents then proceeded to the parking lot, followed by Moss who pleaded with them, "I used to be on the police force in New York. I know how these things go. You could either write it with a heavy pen or a light pen. Why not take a few hundred apiece and write it with a light pen? You will get your violation and I will be able to, you know, work my way out of the charge." The agents rebuffed the offer and departed.

Al Moss (president of the corporate licensee) gave the following version: After he arrived at the premises he proceeded with the agents into the kitchen to discuss the purpose of the agents' visit. When he ascertained from the agents that they intended to prepare a report with respect to the alleged violation, he stated, "Boys, take it easy. I got trouble here from before." He specifically denied offering the agents any money or displaying any money.

On cross examination he explained that he has now "walked out" of the corporation because "I didn't want to bother with it anymore." Thus he resigned from the corporation. His reason for walking out was that they had some previous trouble of the same nature before. He also insisted that Richards was with him at all times during the conversation with the agents. He admitted saying to the agent, however, "Boys, take it easy. I had trouble here before. I've got plenty of trouble as it is." He explained that he was "dragged into this thing. That's what I meant. I got plenty of headaches. I don't need that."

Richards, testifying in defense of this charge, insisted that he was present during the entire discussion between Moss and the agent, and denied hearing any conversation with reference to an alleged bribe. He said that Moss stated to the agents that "there was quite a bit of trouble; could they take it a little easy." On cross examination he admitted that Moss asked for a "break" but he did not hear him say that he would be willing to pay for it, although he was present during the said discussion.

Agent H, called in rebuttal, denied that Richards was in the kitchen for more than a few minutes after Moss

arrived. After that Richards departed, and Agents H and Z continued their conversation, as related hereinabove, with Moss and in the absence of Richards. His testimony was corroborated by Agent Z in rebuttal.

My evaluation of the testimony herein convinces me that the truth lies in the version given by the agents with respect to the conversation with Moss. I think it is a fair inference to draw from the statements made by Moss that, because of previous trouble which Moss mentioned, he was quite anxious to compromise these agents in the lawful performance of their duties and sought to concert with them in negotiating a bribe. The factual framework set forth hereinabove clearly constitutes a "hindering" within the meaning of the statute.

It is obvious that the actions of Moss were clearly intended to persuade the agents to deviate from their normal investigative procedure pursuant to which they would file accurate reports. The obvious purpose of the conversation adverted to was to induce them to "take it easy" and the offer of money was designed to result in the deliberate omission by the agents of pertinent facts which might result in the institution of disciplinary proceedings looking to the suspension or revocation of this license. That the agents were not dissuaded from or compromised the sworn performance of their duties, despite the tempting offers, is, of course, beside the point. The prohibited conduct was the overt act of the offering of a bribe, not the resulting effect upon the agent or the fulfillment thereof. Cf. Re Supreme Beverage Co., Bulletin 1231, Item 3.

I conclude that the Division has established this charge by a fair preponderance of the credible evidence and recommend that the licensee be found guilty of this charge.

III

The licensee has no prior adjudicated record. In assessing a recommended penalty to be imposed herein, the central fact should be underscored that, during the pendency of the first charge, the licensee continued to operate openly and notoriously in the same manner and to an even greater extent up to and including the date of the second charge. In this posture, for penalty purposes the second charge should be deemed equivalent to a second similar violation within the past five years. It is, therefore, recommended that to the established penalty of sixty days suspension of the license on charge 1 (Re Your Girls, Inc., Bulletin 1713, Item 2) should be added a suspension of one hundred twenty days, which is the usual penalty for a second similar violation occurring within five years (Re Sabar, Inc., Bulletin 1729, Item 3), and an additional thirty days suspension on charge 3 (Re Key Hole Bar, Bulletin 1732, Item 1), making a total suspension of two hundred ten days.

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 transcript of testimony, the exhibits and the Hearer's report, I shall adopt the conclusions and recommendation of the Hearer.

The license for the year 1966-67 having expired by its terms on June 30, 1967, and pending application for renewal of

the license for the year 1967-68 not yet having been granted or denied by the municipal issuing authority, no effective dates for the suspension may now be fixed.

Accordingly, it is, on this 21st day of August, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Fairview to F & A Corp., t/a Ally-Ally, for premises 558 Fairview Avenue, Fairview, be and the same is hereby suspended for two hundred ten (210) days, the effective dates of such suspension to be fixed pursuant to Rules 1 and 2 of State Regulation No. 16, if and when the pending application for renewal of license is granted.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

WESNAN, INC.)
t/a Wes and Ann's Lounge)
Route 46)
Montville Township)
PO Pinebrook, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-15, issued by the Township)
Committee of the Township of Montville.)

DeRose & Serratelli, Esqs., by Richard C. Serratelli, Esq.,
Attorneys for Licensee.

Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On January 9, 1967, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One 4/5 quart bottle labeled, 'Wolfschmidt Genuine Vodka, 80 Proof',

One 4/5 quart bottle labeled, 'Canadian Lord Calvert Whisky, a Blend, 80 Proof',

One 4/5 quart bottle labeled, 'The Blended Scotch Whisky of the White Horse Cellar, 86.8 Proof', and

One 4/5 quart bottle labeled, 'Vat 69 Blended Scotch Whisky, 86.8 Proof';

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

ABC Agents M and D testified that on January 9, 1967 they visited the licensee's place of business and, while there, Agent D made an inspection of all the open bottles of alcoholic beverages in the licensed premises; that, when preliminary tests of four bottles indicated to the agents that the contents thereof were low in proof from that shown on the respective labels, the bottles were seized and delivered to the Division chemist for chemical analysis.

John P. Brady (a qualified chemist employed by the Division) testified that analyses of the four bottles in question, when compared to analyses of similar brands of alcoholic beverages, produced the following: the contents of the 4/5 quart bottle bearing the label "Wolfschmidt Genuine Vodka, 80 Proof" disclosed the color and solids to be "far in excess of what any vodka could have" and that, in addition thereto, the said bottle contained kernels of garlic; the contents of the 4/5 bottle labeled "Canadian Lord Calvert Whisky, a Blend, 80 Proof" showed its proof to be 75.3; the contents of the 4/5 bottle labeled "The Blended Scotch Whisky of the White Horse Cellar, 86.8 Proof" showed its proof to be 77.4" and the contents of the 4/5 bottle labeled "Vat 69 Blended Scotch Whisky, 86.8 Proof" showed its proof to be 80.9 and solids shown to be "somewhat lower than Vat 69 should be." The chemist was of the opinion that the result of the chemical analyses of the four bottles disclosed that the contents of the bottles were not genuine in accordance with their respective labels.

Wesley Simmons (president of licensee corporation) testified that licensee has occupied the premises for eight years; that in 1964 there was a fire in the upper part of the building which created heat and there was water damage in the barroom and that he believes the bottles in question were in cases on the side of the bar; that he placed garlic kernels in the bottle labeled vodka and that the concoction was used by him for medicinal purposes. Simmons further stated that, with the exception of the vodka, he never tampered with any of the other bottles of alcoholic beverages and had implicit trust in the persons who are employed by the licensee for various purposes.

The findings of the Division chemist that the labels on the bottles in question did not describe their contents must be considered conclusive in the absence of any testimony to the contrary. No such testimony in opposition to the chemist's findings was offered by the licensee.

A licensee's responsibility for any "refills" found on the licensed premises was considered in Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156, wherein, among other things, the court stated:

"...We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration."

A licensee is liable for the actions and conduct of his employees regardless of personal knowledge, intent or participation resulting in the violation and is not released from responsibility although the said violation was contrary to express instructions. Mazza v. Cavicchia, 28 N.J. Super. 280, reversed on other grounds 15 N.J. 498; Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; Essex Holding Corp. v. Hock, 136 N.J. 28; Rule 33 of State Regulation No. 20.

I am satisfied that the Division has established the truth of the charge by a fair preponderance of the evidence and therefore recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of its license. Effective August 22, 1961 its license was suspended by the municipal issuing authority for a period of fifteen days for sale to a minor. Again, effective April 5, 1958, a license held by Wesley J. Simmons (president and principal stockholder of Wesnan, Inc.) t/a Lucky Bar & Restaurant, for premises 1 Russell Street, Clifton, was suspended by the municipal issuing authority for a period of seven days for a local "hours" violation.

It is recommended that the prior record of suspensions for dissimilar violations be disregarded because both occurred more than five years ago, and that the license herein be suspended for a period of twenty days. Re Hackensack Golf Club, Bulletin 1726, Item 7.

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 and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 22nd day of August 1967,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Montville to Wesnan, Inc., t/a Wes and Ann's Lounge, for premises on Route 46, Montville, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, August 29, 1967, and terminating at 2 a.m. Monday, September 18, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - SALE OF DRINKS
FOR OFF-PREMISES CONSUMPTION - LICENSE SUSPENDED FOR 25
DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

MARTIN VLADIMIR TARBY)
t/a Lord and Lady Essex)
90 Essex St.)
Jersey City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-334, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Jersey City.)

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on June 30, 1967 he (1) sold a mixed drink of an alcoholic beverage to a minor, age 17, in violation of Rule 1 of State Regulation No. 20, and (2) for consumption off the licensed premises, in violation of R.S. 33:1-2.

Absent prior record, the license will be suspended on the first charge for twenty days (Re Joseph Sandor Bar, Inc., Bulletin 1725, Item 7) and on the second charge for five days (Re Mac's Bar & Grill, Inc., Bulletin 1721, Item 6), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 30th day of August 1967,

ORDERED that Plenary Retail Consumption License C-334, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Martin Vladimir Tarby, t/a Lord and Lady Essex, for premises 90 Essex Street, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Wednesday, September 6, 1967, and terminating at 2 a.m. Tuesday, September 26, 1967.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

BUFFY'S, INC.
 t/a Buffy's
 252 Monroe Avenue
 Kenilworth, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)
)

Holder of Plenary Retail Consumption
 License C-3 issued by the Borough
 Council of the Borough of Kenilworth

 Licensee, by Rodman Decker, Treasurer, Pro se.
 Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on
 May 2, 1967, it possessed alcoholic beverages in three bottles
 bearing labels which did not truly describe their contents, in
 violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
 twenty days, with remission of five days for the plea entered,
 leaving a net suspension of fifteen days. Re Mahon, Bulletin
 1739, Item 8.

Accordingly, it is, on this 31st day of August, 1967,

ORDERED that Plenary Retail Consumption License C-3,
 issued by the Borough Council of the Borough of Kenilworth to
 Buffy's, Inc., t/a Buffy's, for premises 252 Monroe Avenue,
 Kenilworth, be and the same is hereby suspended for fifteen
 (15) days, commencing at 2:00 a.m. Thursday, September 7, 1967,
 and terminating at 2:00 a.m. Friday, September 22, 1967.


 Joseph P. Longi
 Director