

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

BULLETIN 1660

February 21, 1966

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - KOST v. ORANGE.
2. APPELLATE DECISIONS - MALONEY v. BURLINGTON.
3. APPELLATE DECISIONS - VILLA VILLA, INC. v. RAMSEY.
4. ACTIVITY REPORT FOR DECEMBER 1965.
5. DISCIPLINARY PROCEEDINGS (Newark) - SOLICITATION FOR PROSTITUTION - LICENSE SUSPENDED FOR 60 DAYS.
6. DISQUALIFICATION REMOVAL PROCEEDINGS - THEFT FROM INTER-STATE SHIPMENT - CONVICTION SUBSEQUENT TO PRIOR DISQUALIFICATION REMOVAL - DEFERRED EFFECTIVE DATE OF ORDER REMOVING DISQUALIFICATION.
7. NEW LEGISLATION - CLUB LICENSES - NEW LICENSE PERMITTED IN PARTICULAR MUNICIPALITY WHERE VOTE WAS 'NO' AT REFERENDUM UNDER R.S. 33:1-45 - ACT EXPIRED JULY 29, 1965.
8. DISCIPLINARY PROCEEDINGS (Cliffside Park) - SOLICITOR'S PERMIT - EMPLOYMENT OF SOLICITOR BY RETAILER - PERMIT SUSPENDED FOR 5 DAYS.
9. STATE LICENSES - NEW APPLICATION FILED.

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APPELLATE DECISIONS - KOST v. ORANGE.

George Kost & Frank T. Kost,)
t/a Park Delicatessen & Liquor,)
Appellants,)

On Appeal

v.)

AMENDED ORDER

Municipal Board of Alcoholic)
Beverage Control of the City)
of Orange,)
Respondent.)
-----)

James A. Palmieri, Esq., Attorney for Appellants.
Felix J. Verlangieri, Esq., by John F. Monica, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

On October 21, 1965, I entered Conclusions and Order herein affirming suspension by respondent of appellants' license for thirty-five days for sale to minors. Kost v. Orange, Bulletin 1649, Item 2.

Prior to effectuation of the order of suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On December 30, 1965, the appeal was dismissed by consent. The suspension may now be reimposed.

Accordingly, it is, on this 5th day of January, 1966,

ORDERED that the thirty-five day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Distribution License D-8, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to George Kost and Frank T. Kost, t/a Park Delicatessen & Liquor, for premises 135-137 Park Street, Orange, commencing at 9:00 a.m. Wednesday, January 12, 1966, and terminating at 9:00 a.m. Wednesday, February 16, 1966.

JOSEPH P. LORDI,
DIRECTOR

2. APPELLATE DECISIONS - MALONEY v. BURLINGTON.

Mary M. Maloney and Michael J.)	
Maloney, Jr., t/a Maloney's)	
Liquor Store,)	On Appeal
Appellants,)	CONCLUSIONS
v.)	and
	ORDER
Common Council of the City of)	
Burlington,)	
Respondent.)	

Dimon, Haines and Bunting, Esqs., by Dominick J. Ferrelli, Esq.,
Attorneys for Appellants
Herman Belopolsky, 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 respondent whereby it suspended appellants' plenary retail distribution license for premises 531 York Street, Burlington, for a period of five days, after appellants were found guilty of the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Upon the filing of the appeal an order dated June 14, 1965, was entered by the Director staying respondent's order of suspension until further order herein. R.S. 33:1-31.

Appellants in their petition of appeal allege that the action of respondent was erroneous and should be reversed for the following reasons:

- "a) Said finding was against the weight of believable evidence.
- b) Said finding was in violation of the statutes of the State of New Jersey concerning alcoholic beverages and the rules and regulations promulgated thereof by the Director of the Division of Alcoholic Beverage Control.
- c) Said finding was arbitrary and unreasonable and an abuse of discretion on the part of the respondent, Council of the City of Burlington."

Respondent in its answer denies the aforesaid allegations and contends that the action of respondent should be sustained.

Eight of the twelve members of the respondent Common Council sat at the hearing below and five voted to find appellants guilty of the sale of alcoholic beverages to a minor, while three voted that the appellants be found innocent of the charge.

The testimony of Police Officer Louis Janson was that at approximately 9 p.m. on April 24, 1965, he stopped a car driven by Thomas --- and, during a routine check, he noticed in the rear of the car "a six-pack of Schmidt's beer;" that he then checked the ages of Donald --- and the three other male occupants of the car and ascertained their respective ages to be under twenty-one years. It further appears from the officer's testimony that two of the minors stated that they got into the car some time after the beer had been acquired, and neither knew anything regarding the purchase thereof. This contention was verified by both Thomas and Donald. The latter minors at first contended that a man had sold them the beer; that on the following day Donald voluntarily came to police headquarters and informed the police that the beer in question was purchased by him at appellants' liquor store on the evening of April 24, 1965. Officer Janson further testified that he locked the six-pack of beer in a cabinet in the criminal investigation room and, on the following day, turned it over to Chief Yuengling.

Chief Yuengling testified that, after the six-pack of beer was turned over to him by Officer Janson on April 25, 1965, he placed it in his office "under lock and key" and retained continual possession thereof. Furthermore, he stated that appellants were officially advised by letter of the alleged violation "approximately three weeks after the incident."

Thomas --- testified that shortly after 6:45 p.m. on April 24, 1965, he parked "about twenty feet" from appellants' liquor store; that Donald entered the store and came out a few minutes thereafter carrying two six-packs of Schmidt's beer; that he (Thomas) and Donald, while driving around, each consumed the contents of a bottle of beer and that he had given away four bottles of beer prior to entering "a hamburger place on Route 130" where he (Thomas) was employed.

Donald --- testified that he was born September 7, 1947, and that "around seven" on April 24, 1965, he left the car of Thomas and went into appellants' premises where he purchased two six-packs of Schmidt's beer for \$2.30, of which \$2 thereof was contributed by Thomas; that at the hearing herein, in response to a question from respondent's attorney, he (Donald) identified Michael J. Maloney as the person who waited on him on the evening when he purchased the beer.

Michael J. Maloney (one of the appellants) testified that he was on duty on the evening of April 24, 1965, but did not sell beer to Donald and, to the best of his knowledge, he had never seen him until the hearing before respondent on June 10, 1965; that he became aware of the alleged violation on May 13, 1965. According to Mr. Maloney, the price charged for a six-pack of Schmidt's beer at the time in question was 99¢.

I am cognizant of the fact that the minors concocted a story as to where they had obtained the beer when first interrogated by Officer Janson. However, as the officer stated, the following morning Donald came to police headquarters and told that he had purchased the beer from appellants on April 24, 1965. At the hearing herein the said minors confirmed the fact that the beer was purchased at appellants' licensed premises.

It is the function of an administrative agency to weigh the evidence to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve conflicts therein. Cf. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

I am satisfied from the testimony of Thomas and Donald that Donald entered appellants' liquor establishment on April 24, 1965, and purchased two six-packs of Schmidt's beer. Although Michael Maloney stated that the six-pack of Schmidt's beer sold for 99¢ and that the testimony of Donald was that he paid \$1.15 for such a six-pack, Donald may have been in error in so far as to the exact amount that was charged for the items.

The testimony of Michael Maloney that he had never seen Donald until the evening of June 10, 1965, at the hearing below of the matter now under consideration is purely negative in character. Opposed to this is the testimony given by Donald with reference to the purchase in question which has the ring of truth.

The Director should not substitute his judgment to reverse the exercise of judgment in fact-finding of the municipal issuing authority in the absence of a clear indication of abuse of discretion or unwarranted finding of fact or mistake in law by such authority. In Abad v. Newark, Bulletin 619, Item 8, former Commissioner Driscoll stated:

"The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant."

Under the circumstances appearing herein, and after a thorough review of the evidence presented, I conclude that appellants have not met the burden of proof that respondent's finding was erroneous and should be reversed. Neither has there been shown that the respondent was arbitrary and unreasonable nor did its action constitute an abuse of discretion. Therefore it is recommended that an order be entered affirming the action of respondent, fixing the effective dates of the five-day suspension imposed by respondent, and dismissing the appeal filed herein.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, the attorneys for appellants filed exceptions to the Hearer's report and written argument in substantiation thereof. The attorney for respondent urged that the findings and the recommendation of the Hearer be affirmed.

I have considered the exceptions taken on behalf of appellants and find that they have been either adequately answered by the Hearer or lack merit.

I have carefully considered the record herein, including the transcript of the proceedings, the Hearer's report and the exceptions thereto, and concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 10th day of January, 1966,

ORDERED that the action of respondent Common Council in finding appellants guilty be affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-6, issued by the Common Council of the City of Burlington to Mary M. Maloney and Michael J. Maloney, Jr., t/a Maloney's Liquor Store, for premises 531 York Street, Burlington, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, January 17, 1966, and terminating at 9 a.m. Saturday, January 22, 1966.

JOSEPH P. LORDI,
DIRECTOR

APPELLATE DECISIONS - VILLA VILLA, INC. v. RAMSEY.

Villa Villa, Inc.,)	
)	
Appellant,)	On Appeal
v.)	
)	CONCLUSIONS
Mayor and Council of the)	and
Borough of Ramsey,)	ORDER
)	
Respondent.)	

Paul R. Huot, Esq., Attorney for Appellant
 Weber, Muth & Weber, Esqs., by James M. Muth, Esq., Attorneys
 for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of respondent in denying an application for the issuance of a plenary retail consumption license to appellant for premises 538 Franklin Turnpike, Ramsey.

Appellant in its petition of appeal asserts that the action of respondent was erroneous because:

"... an ordinance of the Borough of Ramsey, Chapter 28 of the Municipal Code, Section 28.03B provides that in Ramsey there shall be permitted four plenary retail consumption licenses for premises fronting on State Highway 17, and seven such licenses for the remainder of the Borough, in which area appellant's property is located."

Respondent's answer states that no plenary retail consumption license can be legally issued because of R.S. 33:1-12.14.

The aforesaid statute, as amended, pertinent to the matter sub judice, among other things provides that:

"... no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than 1 for each 2,000 of its population as shown by the last then preceding Federal census"

The population of the Borough of Ramsey, according to the last Federal census, is 9,527. The number of plenary retail consumption licenses issued and outstanding is eleven.

Appellant's contention is that, in its opinion, the locations of eleven licensed premises for which the plenary retail consumption licenses have been issued are not strictly in accordance with the terms of the local ordinance, thus creating a vacancy in the area in which appellant's premises are located. Respondent does not agree that this is true. Granting, for the sake of argument, that this is so, there cannot be any dispute that the fact is there are eleven plenary retail consumption licenses in existence and thus the issuance of a new license of that classification, under the circumstances appearing in this case, would be in violation of the limitation statute, viz., R.S. 33:1-12.14. Cf. Morris County Tavern Owners Association v. Randolph et al., Bulletin 1477, Item 2.

It is recommended, for the reason aforesaid, that an order be entered affirming the action of the respondent and dismissing the appeal.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of January, 1966,

ORDERED that the action of the Mayor and Council of the Borough of Ramsey be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI,
DIRECTOR

ACTIVITY REPORT FOR DECEMBER 1965

ARRESTS:

Total number of persons arrested		12
Licensees and employees	7	
Bootleggers	5	

SEIZURES:

Stills - 50 gallons or under		1
Alcohol - gallons		4.87
Distilled alcoholic beverages - gallons		.52
Wine - gallons		6.20
Brewed malt alcoholic beverages - gallons		12.42

RETAIL LICENSEES:

Premises inspected		668
Premises where alcoholic beverages were gauged		529
Bottles gauged		8,290
Premises where violations were found		40
Violations found		76
Unqualified employees	51	Other mercantile business 1
Application copy not available	10	Prohibited sign 1
Reg. #38 sign not posted	1	Other violations 12

STATE LICENSEES:

Premises inspected		12
License applications investigated		5

COMPLAINTS:

Complaints assigned for investigation		451
Investigations completed		352
Investigations pending		315

LABORATORY:

Analyses made		58
Refills from licensed premises - bottles		8
Bottles from unlicensed premises		9

IDENTIFICATION:

Criminal fingerprint identifications made		5
Persons fingerprinted for non-criminal purposes		348
Identification contacts made with other enforcement agencies		208

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities		15
Violations involved		19
Sale during prohibited hours	15	
Sale to minors	3	
Failure to close prem. dur. proh. hrs.	1	
Cases instituted at Division		22
Violations involved		32
Sale during prohibited hours	5	Hindering investigation 1
Fraud in application	4	Failure to close prem. dur. proh. hr. 1
Possessing liq. not truly labeled	4	Sale to intoxicated person 1
Beverage Tax Law non-compliance	3	Permitting foul lang. on prem. 1
Sale to minors	3	Sale to non-member by club 1
Sale below filed price	2	Unqualified employee 1
Permitting immoral activity on prem.	2	Failure to keep true books of acct. 1
Sale on Election Day	1	Solicitor employed by retailer 1
Cases brought by municipalities on own initiative and reported to Division		23
Violations involved		27
Sale to minors	14	Permitting lottery activity on prem. 2
Sale during prohibited hours	6	Permitting bookmaking on premises 2
Failure to close prem. during prob. hrs.	2	Conducting business as a nuisance 1

HEARINGS HELD AT DIVISION:

Total number of hearings held		41
Appeals	5	Seizures 3
Disciplinary proceedings	20	Tax revocations 6
Eligibility	5	Applications for license 2

STATE LICENSES AND PERMITS ISSUED:

Total number issued		1,383
Licenses	1	Social affair permits 319
Solicitors' permits	24	Miscellaneous permits 259
Employment permits	349	Transit insignia 281
Disposal permits	41	Transit certificates 68
Wine permits	41	

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued	89
Enforcement files established	3

Joseph P. Lordi
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: January 6, 1966

5. DISCIPLINARY PROCEEDINGS - SOLICITATION FOR PROSTITUTION - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

O. K. Corral, Inc.,)
146 Mulberry Street,)
Newark, New Jersey,)

CONCLUSIONS
and
ORDER

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

Samuel Raffaelo, 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

Licensee pleaded not guilty to the following charge:

"During the early morning hours of Sunday, May 23, 1965, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

Four ABC agents participated in a continuing investigation of the licensed premises pursuant to a specific assignment to investigate alleged solicitation by females of male patrons for immoral purposes at the said premises. The record discloses that on Saturday evening, May 22, 1965, Agents H, R, S and St arrived at the licensed premises at approximately 11:25 p.m. Agents S and St remained nearby at the outside of the premises, and Agent R entered and took his seat at the bar. A few minutes thereafter Agent H also entered the premises and seated himself two stools away from Agent R.

These premises are located in downtown Newark, on the first floor of a three-story dwelling, and there is a corner entrance to the premises. Two bartenders were on duty (later identified as Dominic C. Amiano, president of the licensee corporation, known as Dick, and John J. Chapman, known as Jack). The agents observed that several male and female patrons left the tavern together at various times but that the women usually returned alone. Upon their return they were served drinks by Dick (the bartender) who apparently did not charge them therefor or take any money from them.

At 1 a.m. a female, who introduced herself as Carol, entered into a conversation with Agent R and accepted a drink which he purchased for her. After consuming a portion of her drink, she was called over to a male patron seated at a table who purchased a drink for her. Shortly after this Carol left with the said male patron.

At 1:30 a.m. (Sunday, May 23, 1965) a female (later identified as Betty Jean Williams) approached Agent H and sat at a stool next to him. She introduced herself as Mary, and Agent H then introduced her to Agent R, from whom she accepted the purchase of liquor. After a few minutes Mary asked Agent H "What are you fellows going to do later on tonight?" Agent H replied, "We're game for anything. We've just been talking about that. What kind of suggestions do you have?" Said she, "If you want to have some fun, you can come with me later on." Then Agent H asked her, "What's your idea of fun?" She answered, "A straight lay for both of you." The conversation continued: "Sounds good, but how much is it going to cost us?" She replied, "Fifteen. It would be a straight lay, \$15 apiece." Agent H said, "Well, that sounds reasonable. I'll have a talk to my friend." After the agents pretended to discuss it, he said to Mary, "Fifteen for him, fifteen for me; that makes \$25, right?" Replied Mary, "No. For two of you it's got to be fifteen apiece, thirty bucks."

The agents then agreed to the proposition, and a discussion took place as to where the sexual intercourse should take place. She informed them that she lived in East Orange, and that a friend of hers would provide transportation. The agents stated that they had their own transportation and, while Agent H was engaged in this conversation with Mary, Agent R questioned Jack (the bartender) who was standing directly to his right. The conversation was as follows:

Agent R: "This girl wants to take me and my buddy out to get laid, but I don't know either of them and I don't want to get mugged or rolled."

Jack: "Well, I've never seen him before. I think he just met her now. She just picked him up. But don't worry about that with Mary. She's a good girl."

Agent R: "Well, we're paying ten bucks each for the lay. Is that a good price?"

Jack: "H---, yes. That's the cheapest in here. That's the best price in here."

Agent R: "Well, as long as you think it's okay, because I don't want to get bagged or cut up."

Jack: "Don't worry a thing about anything like that. Mary's a good girl. She'll take care of you. She's a good piece."

It was then agreed that Agent R would provide the transportation, and he informed them that his car was parked several blocks away. He left the tavern at approximately 1:45 a.m. and later rejoined the agent and Mary at the bar. Both agents and Mary then left the premises together, and on the outside of the premises they handed over \$30, \$25 of which was in marked bills, the serial numbers of which had been previously recorded. Mary took the money, and placed it in a small transparent plastic change purse. At that point they were intercepted by Agents S and St who were accompanied by two Newark detectives.

Upon request, Mary produced the money from her purse and surrendered it to the police officers. Mary (otherwise known as Betty Jean Williams) was forthwith arrested, charged with soliciting for immoral purposes under the State statute. They immediately returned with Mary to the licensed premises and questioned Jack Chapman (the bartender). Chapman admitted that he recalled the conversation hereinabove reported with Agent R, and acknowledged that the same took place. Amiano was then questioned about other females being in the premises for the purpose of prostitution. He denied any knowledge of it and accused the agent of soliciting these female patrons.

Both Amiano and Chapman refused to give any written statements of what had transpired. Amiano further stated that Chapman had been a patron in these premises and, indeed, a steady customer, and that this was the first night that he was actually engaged as a bartender.

Agent S was examined with respect to a male friend of Mary who followed her out of the tavern at the time that she left the premises with the two agents. He questioned this person and asked whether he was her husband. He stated that he was just a friend of hers and, accordingly, was not arrested by the local police.

Dominic C. Amiano testified that, since he acquired his interest in this license on January 12, 1965, he worked as a bartender on week-ends and was actually engaged in that activity on the date in question. He denied that Agent R purchased drinks for any of the female patrons, and gave the following account: He came on duty at 8 p.m. that week-end and, at about 10 p.m., the place became crowded with approximately sixty patrons at the bar. Chapman (one of his steady patrons) volunteered to help him out as a bartender, and "he didn't know what to do. I had to show him a few things" and "I was not afraid to let him help out behind the bar." Chapman then started to serve patrons at the right end of the bar and, by 11:30 p.m., was serving seventeen or eighteen persons. He had never seen Mary (also known as Betty Jean Williams) before this occasion and noted that she first entered the premises at 11:40 p.m. accompanied by a male. He observed her in conversation with Agent R, and during that time Jack (the bartender) was engaged serving other patrons and in preparing to clean up prior to closing.

On cross examination Amiano again explained that Chapman had never been employed prior to this evening as a bartender, and he permitted him to help him out with the specific understanding that he was not to receive any compensation for his services. However, since that time Chapman had been employed and is presently employed as a full-time bartender for the licensee. He also admitted that he gave Chapman instructions by showing him the taps behind the bar, and he "defined the differences in those." Chapman was also permitted to ring up sales in the cash register and perform the regular duties as a bartender.

Carrie Lee Anderson, produced by the licensee, testified that she arrived at these premises at approximately 8:30 p.m. on May 22, 1965, and engaged in a conversation with Agent R at the bar at approximately 11:30 p.m. She introduced herself as Carol and refused his offer to buy a drink for her. She also stated that he asked her whether she would go out with him, and she declined. On cross examination she admitted that, several months after this incident, Amiano discussed her presence at the licensed premises with her and she recalled this specific incident.

John J. Chapman testified with respect to the incident on this date. He stated that he volunteered his services as a bartender on that evening because there were sixty and seventy-five persons present, and he felt that Amiano needed some help. He denied ever having known Betty Jean Williams before the night in question, and asserted that he knew nothing about her character or behavior. He also denied that he ever aided or solicited the agents in her behalf. He challenged the version as given by the agents of their conversation with her, and gave his version of the conversation as follows:

"As I recall the conversation, the conversation that went on was that Inspector R--- had ordered a drink. I went and got his drink and, as I was picking up his money, he says to me, he had picked up my name by this time, 'Jack,' he says, 'this guy over here,' he says, and I don't know him, 'tells me he can get this girl for \$10,' he says. But he says, 'I'm afraid to go. I don't know either one of them and I'm afraid of getting knifed.' So I looked at him and went like this and I said, 'Well, the worst you can do is get knifed.'"

When the agents returned to the premises he was quite confused and does not recall the conversation that took place at that time. On cross examination he admitted that, when the agents returned to the premises at 2 a.m., he knew that a girl was involved in their investigation, and he saw a girl in the company of the agents but he did not know her name. He was then asked whether he recalled a conversation as related by the agents, and particularly that part which said:

Q "Mary asked me and this guy next to me if we wanted to get laid for a saw buck each, but I don't know either one of them."

A "No."

Q "Adding, 'I don't want to get cut up or rolled.' You do remember that?"

A "Well, it's possible that this was the way he had put it to me."

He professed inability to recall the same, explaining that at the time of confrontation he was very upset, fearful that if he became involved he would lose his regular job with the company by which he was then regularly employed.

I have carefully evaluated the testimony presented herein and have had an opportunity to observe the demeanor of the witnesses as they appeared on the stand. I am persuaded that the version as given by the agents is a forthright and credible one; that, in contrast, the defense offered by the licensee through its agents is incredible and unbelievable. I am particularly persuaded that the conversation with Chapman, as set forth in detail hereinabove, actually took place. In fact, Chapman admits that part of it took place, namely, that one of the agents appeared to be apprehensive about the possibility of being victimized by this girl.

It is significant that Chapman does not categorically deny the version given by the agents at the time of confrontation when they returned to the tavern at 2 a.m. with Mary, but states that he was confused and very apprehensive that any involvement might cause him to lose his regular job. Nevertheless he clearly admits the possibility that the entire conversation was repeated to him, and that he might have admitted to the agents at that time that the same took place.

Amiano, of course, denies such conversation, but in reality he merely asserts that he did not overhear the conversation and, therefore, to his knowledge such conversation did not take place.

It is, therefore, abundantly clear from the preponderance of the testimony that licensee's agent Chapman permitted and suffered the solicitation as charged herein.

Counsel for the licensee argues that, since Chapman was employed for the first time on this evening and without compensation, he was not in fact an agent or employee of the licensee and, therefore, the licensee was exculpated. The facts argue convincingly to the contrary. Amiano himself admits that his bartender performed the regular duties of a bartender; was instructed as to those duties with some detail, and was in all respects an employee. The question of compensation is irrelevant to the determination as to whether or not he was an employee. Re Jacobs, Bulletin 935, Item 3; Freud & Pittala v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Kravis v. Hock, 137 N.J.L. 252, 255 (Sup.Ct. 1948).

The licensee is clearly inculpated by the profligacy of the deliberate misconduct of its employees. Such conduct constitutes a grave threat to the public health, welfare and morals and, unless eliminated, tends toward abuse and abasement. Kravis v. Hock, supra; In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

Amiano states that he was unaware of the conduct and the activity of Chapman as charged herein. However, a licensee is responsible for the acts of its agents and employees performed in the regular course of their duties. Essex Holding Corp. v. Hock, 136 N.J.L. 28; cf. Re Ritchie's Bar, Bulletin 1426, Item 1.

In Howard Tavern, Inc. v. Division of Alcoholic Beverage Control etc., decided December 4, 1962 (not officially reported, but reprinted in Bulletin 1491, Item 1), Judge Kilkenny, speaking for the court, stated:

"... The word 'suffer' as used in the regulations of the Division of Alcoholic Beverage Control imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority." Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947); Benedetti v. Bd. of Com'rs of Trenton, 35 N.J. Super. 30, 34 (App.Div. 1955).

In fact, it has been held that, even where an agent engages in proscribed activity against the express instructions of his employer, the licensee may be guilty of such violation. See Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; Olympic, Inc. v. Division of Alcoholic Beverage Control, 49 N.J. Super. 299; Mazza v. Cavicchia, 28 N.J. Super. 280; reversed (on other grounds but affirming the principle just expressed) 15 N.J. 408; cf. Benedetti v. Trenton and Division of Alcoholic Beverage Control, 35 N. J. Super. 30.

It has long been held that the solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953).

I am satisfied, therefore, that the Division has established the truth of this charge by a fair preponderance of the credible evidence and, indeed, by substantial evidence, and I recommend that the licensee be adjudged guilty as charged.

The licensee has no prior adjudicated record. I further recommend that the license be suspended for a period of sixty days (Re Talvacchia, Bulletin 1594, Item 1).

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 and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 10th day of January, 1966,

ORDERED that Plenary Retail Consumption License C-628, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to O. K. Corral, Inc. for premises 146 Mulberry Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, January 17, 1966, and terminating at 2:00 a.m. Friday, March 18, 1966.

JOSEPH P. LORDI,
DIRECTOR

DISQUALIFICATION REMOVAL PROCEEDINGS - THEFT FROM INTERSTATE SHIPMENT - CONVICTION SUBSEQUENT TO PRIOR DISQUALIFICATION REMOVAL - DEFERRED EFFECTIVE DATE OF ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R.S. 33:1-31.2.)

CONCLUSIONS
and
ORDER

Case No. 1973)
-----)

Citrino, Carella & Balsam, Esqs., by Charles C. Carella, Esq.,
Attorneys for Petitioner.

BY THE DIRECTOR:

On June 10, 1958, the then Director entered an order removing petitioner's statutory disqualification because of his convictions of crime (larceny of an automobile in 1943, auto larceny and robbery in 1945 and breaking, entering, larceny and receiving in 1949). Re Case No. 1417.

Petitioner's latest criminal record discloses that on November 4, 1960 he was convicted in a federal court for theft and possession of goods stolen from interstate shipment, as a result thereof was placed on probation for five years, and on October 17, 1964 he was convicted in a local magistrate's court for gambling (cards) and fined \$100.00. Since the conviction in 1960 involves the element of moral turpitude, petitioner was thereby again rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

Petitioner's conviction in the magistrate's court is not a conviction of crime.

A report received from petitioner's probation supervisor discloses that petitioner's probationary period was terminated by the court on April 3, 1964 because of petitioner's good conduct and excellent work record; that petitioner has been working nearly full time; that all reports received by him were very favorable and that petitioner has made an excellent adjustment.

At the hearing held herein, petitioner (38 years old) testified that he is divorced and is supporting his wife and three children under the terms of a court order; that for the past ten years has lived in the same municipality where he presently resides; that for the past year he has been employed as a newspaper route man; that for three and a half years prior thereto he had been employed as a truck driver by a transportation licensee and that, until May 15, 1964 when he visited this Division, he had no knowledge of his ineligibility for such employment.

Petitioner further testified that he is asking for the removal of his latest disqualification to be free to resume his former employment as a truck driver for a transportation licensee and that, ever since his conviction on November 4, 1960, he has not been convicted of any crime or arrested except as aforesaid.

The police department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

Petitioner produced four character witnesses (a manufacturer of ice cream, a taxicab driver, a shop officer and a caterer) who testified that they have known the petitioner for over five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

I am not satisfied that petitioner was unaware of his ineligibility to be employed by the transportation licensee following his conviction in 1960. Even if credence were to be given to petitioner's claim that he was ignorant of his ineligibility while employed as aforesaid, the fact still remains that, after having regained his eligibility to be associated with the alcoholic beverage industry, he apparently held the privilege so lightly that he became involved in a disqualifying conviction about two and a half years after his clearance in 1958.

In view thereof, and although more than five years have elapsed since petitioner's last criminal conviction, I would ordinarily deny the relief sought herein. However, I am impressed by the favorable testimony of the character witnesses, petitioner's present attitude, his excellent adjustment as evidenced by the report of his probation officer and a denial of the petition without some relief would presently work a hardship on petitioner.

Considering all of the aforesaid facts and circumstances, I shall grant petitioner's application but shall withhold relief until six months after December 22, 1965 (the date of the within hearing).
Re Case No. 1906, Bulletin 1646, Item 4.

Accordingly, it is, on this 12th day of January, 1966,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2, effective June 22, 1966 provided, however, that petitioner shall not in the interim become associated with the alcoholic beverage industry in this State in any manner whatsoever.

JOSEPH P. LORDI,
DIRECTOR

7. NEW LEGISLATION - CLUB LICENSES - NEW LICENSE PERMITTED IN PARTICULAR MUNICIPALITY WHERE VOTE WAS 'NO' AT REFERENDUM UNDER R.S. 33:1-45 - ACT EXPIRED JULY 29, 1965.

On June 14, 1965 the Governor signed into law Chapter 97 of the Laws of 1965, effective immediately. It reads as follows:

AN ACT concerning alcoholic beverages, and supplementing chapter 1 of Title 33 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. It shall be lawful for the municipal issuing authority of any municipality having a population of more than 20,000 and located in a county having a population between 700,000 and 800,000 in which a referendum has been held pursuant to the provisions of Revised Statutes, section 33:1-45, wherein a majority of the legal voters of said municipality voted "No", to the question "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle pursuant to chapter 1 of Title 33, Intoxicating Liquors, of the Revised Statutes (R.S. 33:1-1 et seq.) be permitted in this municipality?", and where club licenses have been issued pursuant to chapter 255 of the laws of 1949, to issue an additional club license as defined in and regulated by subparagraph 5 of section 33:1-12 of the Revised Statutes, after public hearing held at least 10 days after publication of notice thereof and favorable vote by said authority, to any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national organization or association which is in possession of suitable premises and which is operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety.

This act shall be operative only during the 45-day period immediately following its effective date, and thereafter shall be inoperative.

Any license issued by said municipality during the said operative period shall entitle the holder of the license to retain it and any renewals thereof notwithstanding that this act shall so become inoperative.

Nothing herein contained shall be deemed to affect any license or renewal thereof heretofore issued pursuant to chapter 255 of the laws of 1949.

2. This act shall take effect immediately.

Dated: January 3, 1966

JOSEPH P. LORDI
DIRECTOR

DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - EMPLOYMENT OF SOLICITOR BY RETAILER - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

Leo D. Faresich)
421 Lincoln Avenue)
Cliffside Park, N.J.)

CONCLUSIONS
and
ORDER

Holder of Solicitor's Permit #3760,)
issued by the Director of the)
Division of Alcoholic Beverage)
Control.)

Alexander A. Abramson, Esq., Attorney for Permittee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Permittee pleads non vult to a charge alleging that on September 3, 1965, he was employed as a bartender by a retail licensee, in violation of Rule 7 of State Regulation No. 14.

Absent prior record and considering all of the facts and circumstances as well as the plea entered, the permit will be suspended for five days. Re Bauman, Bulletin 1323, Item 11.

Accordingly, it is, on this 17th day of January, 1966,

ORDERED that Solicitor's Permit #3760, issued by the Director of the Division of Alcoholic Beverage Control to Leo D. Faresich, 421 Lincoln Avenue, Cliffside Park, be and the same is hereby suspended for five (5) days, commencing at 9:00 a. m. Monday, January 24, 1966, and terminating at 9:00 a.m. Saturday, January 29, 1966.

JOSEPH P. LORDI
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Alexander R. Hipolit
t/a Rutters Beer & Soda Distributing Co.
Route 46, Box 95 (next to Seven Gables Bar)
Budd Lake, N. J.

Application filed February 17, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-91 from 463 Victoria Terrace, Ridgefield, New Jersey.

Joseph P. Lordi
Joseph P. Lordi
Director