

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

May 6, 1970

BULLETIN 1907

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1. APPELLATE DECISIONS - LEFTWICH v. PATERSON

Lemar Leftwich & Larry )  
Leftwich, t/a Moe's & Larry's )  
Inn, ) On Appeal  
Appellants, )  
v. ) CONCLUSIONS and ORDER  
Board of Alcoholic Beverage )  
Control for the City of )  
Paterson, )  
Respondent. )  
-----)  
Diamond & Diamond, Esqs., by Emil E. Weisser, Esq., Attorneys  
for Appellants  
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 25, 1969 respondent (hereinafter Board) unanimously denied appellants' application for renewal of their plenary retail consumption license for the license year 1969-70 for premises 91 East Main Street, Paterson.

The stated reason for its action was that the premises constituted "a public nuisance and a detriment to the health and safety of the people of the City of Paterson."

Appellants challenge the Board's action in their petition of appeal as being "excessive and not justified." They also allege that the action of the Board is unconstitutional because they were not given notice of hearing or an opportunity to testify before the Board.

The Board's answer admits the jurisdictional allegations of the petition and denies the substantive allegations thereof.

Upon the filing of the appeal the Director entered an order extending the term of the 1968-69 license pending the determination of this appeal and the entry of a further order herein.

This is an appeal de novo, with full opportunity for counsel to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15. Thus full due process has been accorded appellants in these proceedings.

The attorney for appellants contended at this appeal hearing that the action of the Board was "unconstitutional" because appellants were not afforded an opportunity to be heard on their renewal application before the Board. However, Rule 8 of State Regulation No. 2 specifically sets forth that no hearing need be held if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue the license to said applicant. In its resolution the Board sets forth the reason for its action as required by the said rule.

The central issue herein is whether the evidence justifies the Board's refusal to renew appellants' license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. The burden of proof in cases involving discretionary matters where renewal of license is sought falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84; Nordco, Inc. v. State, 43 N.J. Super. 277. As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"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 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."

The evidence discloses that on July 22, 1969 appellants' license was suspended for ten days effective July 29, 1969, by the Board upon conviction of "after hours" sales in violation of Rule 1 of State Regulation No. 38. The arrest report of the local Police Department shows that there were other incidents in which the police were involved occurring on September 17, 1968, March 8, 1969 and April 29, 1969.

There was also testimony of an eighteen-year-old female minor to the effect that she had been served alcoholic beverages at the licensed premises on a number of occasions during the last licensing period; that on April 26, 1969 one of the bartenders (identified as Thomas Maddox) served her drinks of alcoholic beverages without charge, after which she became "dizzy." She then "passed out" and, upon awakening, found herself in the rear yard of the premises and the said bartender was in the act of raping her. In a voluntary statement given to police by Maddox he admitted serving her alcoholic beverages on the said date, but asserted that he did not rape her but had intercourse with her with her consent.

There was also testimony of witnesses that on Friday and Saturday nights until the early Sunday morning hours large groups of persons (mostly patrons of this facility) congregated in front of the premises, drank whiskey, wine and beer in the street, were drunk and disorderly, and blocked the sidewalk. They remain there often until 3 a.m. on Sunday morning, and there are frequent fights and disturbances. There was constant loud noises inside the tavern as well. One of the witnesses testified that, during the period of suspension of this license by the Board, the conditions in the neighborhood improved considerably and things were much quieter.

He found that there was no congregation of groups in front of the premises during that period. However, immediately after this tavern reopened, the same conditions reoccurred. There were further complaints that children going to school were afraid to pass the tavern and parents felt equally apprehensive. A petition signed by a large number of neighbors was introduced into evidence complaining about the conditions both within and outside of the tavern.

Lemar Leftwich (one of the appellants) denied some of the substantive allegations. He was questioned about the female minor and admitted that he had seen her outside the tavern but does not recall whether she ever entered the tavern. He further insisted that his bartender was found not guilty of the charge of rape in the criminal court. However, on cross examination he admitted that this minor was served alcoholic beverages in his tavern but does not know whether his bartender served her on the particular date alleged by her. The bartender was not produced as a witness in these proceedings.

I am persuaded that the testimony of the witnesses, including that of Reverend Norman L. Kolenbrander (a clergyman whose church is located a short block away from these premises) preponderates in support of the Board's determination to deny renewal of this license. I do not find the testimony of Leftwich persuasive or credible, and find that these premises were conducted in such manner as to constitute a trouble-spot and a nuisance. Responsibility resides in licensees for conditions that exist both inside and outside the premises which are caused by its patrons. Conte v. Princeton, Bulletin 139, Item 8; Kaplan and Buzak v. Englewood, Bulletin 1745, Item 1, aff'd id nom. App. Div. 1968, not officially reported, recorded in Bulletin 1790, Item 1; certif. den. 51 N.J. 464.

This license was one of a number of licenses which the Board refused to renew because it felt that certain taverns were trouble-spots and that the municipality should rid itself of those facilities. With a community already overburdened with liquor licenses, the Board properly determined that only those facilities which were operated in an orderly manner and which did not permit the objectionable conditions reflected in the record should be permitted to exercise the license privilege. Nordco, Inc. v. State, supra; Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 36 N.J. Super. 512; aff'd 20 N.J. 373.

In the area of licensing, as distinguished from disciplinary proceedings, the critical consideration is the public interest in the creation or continuance of the licensed operation. In issuing or renewing licenses, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest." Lublimer v. Paterson, 33 N.J. 428, 449 (1960).

The Director should affirm the determination of the Board unless he finds that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

After considering the totality of the record herein, I reach the ineluctable conclusion that the Board acted circumspectly, reasonably and in the best interests of the community in refusing to renew the appellants' license for the current license year. It is therefore recommended that the Board's action be affirmed, that the appeal herein be dismissed and that the order extending the term of the 1968-69 license pending further order of the Director be vacated.

#### Conclusions and Order

No exceptions were taken to the Hearer's report within the time limited by Rule 14 of State Regulation No. 15.

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 recommendation.

Accordingly, it is, on this 6th day of April 1970,

ORDERED that the action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the Order dated July 1, 1969, extending the term of appellant's 1968-69 license pending determination of the appeal be and the same is hereby vacated.

Richard C. McDonough,  
Director

2. APPELLATE DECISIONS - COLONIAL INN, INC. v. ATLANTIC HIGHLANDS

Colonial Inn, Inc.,	)	
Appellant,	)	On Appeal
v	)	CONCLUSIONS
	)	and
Mayor and Council of the Borough	)	ORDER
of Atlantic Highlands,	)	
Respondent.	)	
-----	)	

Minogue & Deakin, Esqs., by James R. Minogue, Esq.,  
Attorneys for Appellant  
Michael J. Barnacle, Esq., by William E. Russell, 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 which, by a vote of four to one of its six members (one councilman being absent) on May 13, 1969 denied a person-to-person and place-to-place transfer of a plenary retail consumption license from Joseph Hoptay and Helen Hoptay to Colonial Inn, Inc. and from premises 115 First Avenue to premises at Simon Lake Drive, Atlantic Highlands. The resolution denying the transfer in question reads as follows:

"WHEREAS, COLONIAL INN, INC. t/a HARBOR RESTAURANT has submitted an application to the Mayor and Council of the Borough of Atlantic Highlands for the transfer of a Plenary Retail Alcoholic Beverage Consumption License, now held by Joseph and Helen Hoptay, trading as Hoptay's Tavern for premises known as 115 First Avenue, Atlantic Highlands, New Jersey to Colonial Inn, Inc. for premises located on Simonlake Drive in the Borough of Atlantic Highlands, Monmouth County, New Jersey.

"WHEREAS, Charles R. Harris and Mary G. Harris, officers and directors of Colonial Inn, Inc. appeared together with counsel, James R. Minogue, Esquire and presented various arguments in favor of the transfer from person to person, and place to place as aforesaid. After due consideration of all of the matters involved, the Mayor and Council made the following findings:

"1.) The area of the building proposed to be licensed at Simonlake Drive is located in approximately the center of the present municipal harbor area and closely adjacent to the boat docking area, and municipal play area;

"2.) The building proposed to be licensed is owned by the Borough of Atlantic Highlands and is leased by the Harbor Commission of the Borough of Atlantic Highlands to the applicant by lease which expires March 30, 1974.

"3.) The area proposed to be licensed constitutes a part of a larger building which also houses the Atlantic Highlands Yacht Club, Harbor-master's Office and a snack bar.

"Based on the foregoing, findings of fact and consideration of the matter made by the Mayor and Council, it is hereby determined:

"1.) There is no need for an Alcoholic Beverage Control license in this area.

"2.) The area to be licensed is located in very close proximity to the docking and launching area for boats at the municipal yacht harbor and the sale of alcoholic beverages in this area would constitute a danger to the health and safety of those using boats in the area; this particular area of Raritan Bay being very heavily trafficked by boat users.

"3.) The area said to be licensed is immediately adjacent on the North and within 200' of a public playground which is used by children throughout the year; this area is also used for church services on Sunday and the sale of alcoholic beverages is inconsistent with these uses.

"4.) There are ample facilities nearby for the purchase of both retail and on premises consumption of alcoholic beverages.

"5.) During the peak season of boat usage at this particular location, the area is subjected to very heavy traffic by automobiles, parking and use of the adjacent roadways. The additional facility for the sale of alcoholic beverages would constitute a traffic hazard at this location.

"6.) The premises said to be licensed are owned by the Borough of Atlantic Highlands. It is not in the public interest to place the governing body in a position of enforcement of the statutes and regulations pertaining to the sale of alcoholic beverages while the said premises are under the ownership and partially under the control of the Borough of Atlantic Highlands.

"7.) The physical condition of the premises permits children and young people to be served food and non-alcoholic beverages at the snack bar immediately adjacent to the licensed premises. The sale of alcoholic beverages on these premises would be detrimental to the public health, safety and welfare of the public and particularly children using the facilities.

"On the basis of the foregoing, the proposed transfer from person to person and place to place is hereby denied."

Appellant's petition of appeal alleges that the action of respondent was erroneous and should be reversed for the following reasons:

"1) There is a need for a plenary retail consumption license in the area.

"2) The sale of alcoholic beverages in the vicinity of a boat docking and launching area would not constitute a danger to the health and safety of those using boats in the area.

"3) The proximity of the premises to a public playground is not a sufficient reason to deny the application.

"4) There are no ample facilities nearby for the purchase of both retail and on premises consumption of alcoholic beverages.

"5) The proposed facility will not increase traffic in the area.

"6) The appellant's Lease is from the Harbor Commission of the Borough of Atlantic Highlands, a separate entity; and the enforcement of statutes and regulations pertaining to the sale of alcoholic beverages by the Borough of Atlantic Highlands, would not be affected. In addition, there is already in existence a club license in the same building.

"7) The appellant will physically separate the license premises from the snack bar serving children and young people."

Respondent denies the aforesaid allegations and avers that:

"a.) The Findings of Fact and Determination as made by the Mayor and Council of the Borough were entirely proper and in accord with existing conditions and statutes of New Jersey and the Rules and Regulations of the Division of Alcoholic Beverage Control.

"b.) Appellant's lease is from the Harbor Commission and is, in part, based on the gross receipts from the operation of the restaurant owned by the appellant. Profits not used by the Harbor Commission in the operation of the Municipal Harbor have been, in the past, turned over to the Borough of Atlantic Highlands, which is actually the owner of the premises in question and such monies are applied in the reduction of general taxation.

"The Borough, in accordance with resolution adopted as aforesaid, stated that such arrangement would not be in the public interest were the Alcoholic Beverage License placed in the restaurant.

"c.) The premises constitute a public building in accordance with the terms of Revised Statutes of New Jersey, 33:1-42."

It appears from the minutes of the meeting of May 13, 1969 that at prior meetings of respondent, the transfer of the license in question was discussed but that respondent reserved decision thereon.

At the appeal hearing herein, it was agreed by the attorneys for the respective parties that extensive negotiations had been held between respondent and appellant, based on legal and other technical points facing the parties before the transfer of a liquor license to the proposed premises could be permitted. One problem was that the municipality is the owner of the building desired for the licensed premises and, therefore, the lease dated May 1964 held by appellant should be renegotiated, and the rent for the said premises should be legally arrived at. The various special conditions properly to be imposed on the license were also discussed. However, since none of these matters was resolved, it was agreed that the determination on this appeal be based on the reasons given by respondent in the appeal papers filed herein. Among the reasons for denial of the transfer listed in the resolution aforementioned, respondent set forth that there was no need for a liquor license in the area as ample facilities exist nearby for the purchase of alcoholic beverages.

J. Leonard Clark, the borough clerk, testifying on behalf of respondent, stated that there are eight retail liquor outlets on First Avenue between Route 36 and the present location. In his judgment, the distance from Route 36 to the proposed location is less than half a mile. Within 250 feet of the proposed premises, there is a recreation area which contains "three tennis courts, a swing, two swings, a small merry-go-round, and a monkey bar, and a pavilion or band shell, whatever you might want to call it, and a place which seats approximately a hundred to a hundred fifty people...During the summer months they play tennis there. Usually on a Monday night they have band concerts. They hold church services there every Sunday during the summer months."

Mr. Clark also stated that five separate parking areas are in the immediate vicinity, one of which is used mostly by the commercial boat owners, one by private boat owners, two close to the recreational area, and another used by those who operate outboard motor boats, "that's the transient type on trailers."

Mayor Edward Walder testified that he did not attend any of the discussions concerning the transfer application in question as he was out of the country at the time. From information that he had received, he was of the opinion that it would be for the best interest of the municipality to transfer the license, provided that various special conditions were stipulated between the municipality and appellant.

Appellant, in order to warrant a reversal of respondent's action, must show by a preponderance of the evidence that respondent abused its discretion in denying the transfer of appellant's license. To meet this burden, it is necessary that appellant show manifest error or some abuse of discretion on the part of respondent. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

Transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4, and cases cited therein.

The number of licenses to be permitted in any particular area, and due determination as to whether or not a license should be transferred to a particular location, come within the sound discretion of the issuing authority. The Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether proper cause exists for its opinion and,



if so, to affirm irrespective of his personal view. Rothman v. Hamilton, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1; The Grand Union Company v. West Orange, Bulletin 1155, Item 3.

In Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960), Judge Gaulkin stated, at p. 321:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof ' [0] n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26."

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications. ... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished:

'Universal distrust creates universal incompetence.'  
Graham v. United States, 321 U.S. 474, 480, 34 S.Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

The court pointed out in Fanwood, supra, at p. 320:

"No person is entitled to either [transfer of a license or issuance of an original license] as a matter of law." And "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

In the matter sub judice, the municipality did not grant, but denied, the application. The action of respondent may not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. et al. v. Hoboken et al., 135 N.J.L. 502, 511 (1947).

Appellant contends that the proposed transfer would serve the public convenience as an adjunct to its restaurant business. Although a convenience may, in a proper case, be reason for the grant of a transfer of liquor license, it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so. (Fanwood v. Rocco, supra.)

It is a settled principle that in a conflict between private interests and the interests of the community at large, the latter must prevail. Smith v. Bosco, 66 N.J. Super. 165 (App. Div. 1961). The particular location for which the transfer is sought was considered to be objectionable by respondent because there are sufficient liquor outlets in the area to supply the needs of the people. As indicated by the Borough Clerk's testimony there are within less than half a mile, eight retail liquor establishments. Although the license sought to be transferred from First Avenue to the harbor area would not be placing another liquor outlet in the vicinity, the officials were of the opinion that under the present conditions, such transfer of the license would not be conducive to the best interest of the Borough.

The Council members felt that operation of a retail alcoholic beverage business in conjunction with the restaurant at the particular site would be adverse to the public interest.

I am satisfied from the record herein that respondent acted reasonably and within its discretion in denying appellant's application. Rule 6 of State Regulation No. 15.

In view of the fact that my opinion is based on the merits of the appeal it is unnecessary to consider any other matter expressed during the hearing thereof. It is recommended that an order be entered affirming the said action 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 entire record, 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 recommendation.

Accordingly, it is, on this 6th day of April 1970,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough,  
Director

3. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - DISMISSED

In the Matter of Disciplinary Proceedings against )  
 )  
 Perrig, Inc. )  
 t/a Paddock International )  
 1643 Atlantic Avenue )  
 Atlantic City, N.J., )

Holder of Plenary Retail Consumption License C-188 (for the 1968-69 licensing year) and C-182 (for the 1969-70 licensing year), issued by the Board of Commissioners of the City of Atlantic City )  
 ----- )

In the Matter of Disciplinary Proceedings against )  
 )  
 Roydave Enterprises )  
 t/a Fort Pitt Cafe )  
 170 S. New York Avenue )  
 Atlantic City, N.J., )

Holder of Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of Atlantic City )  
 ----- )

In the Matter of Disciplinary Proceedings against )  
 )  
 Friendship House, Inc. )  
 t/a The President of Atlantic City )  
 Albany Avenue & Boardwalk )  
 Atlantic City, N.J., )

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-194 issued by the Board of Commissioners of the City of Atlantic City; transferred during the pendency of these proceedings to )  
 )  
 South Albany Avenue Corp. )  
 (for the same premises) )  
 ----- )

Edwin H. Helfant, Esq., Attorney for Perrig, Inc., and Roydave Enterprises )  
 Roy Baylinson, Esq., Attorney for Friendship House, Inc. )  
 Edward F. Ambrose, Esq., Appearing for Division. )

A single Hearer's report is herewith submitted with respect to charges preferred against the above named licensees since they involve a common question of law and are based upon stipulation of facts.

The licensees have entered pleas of not guilty to the following:

Perrig, Inc., t/a Paddock International was charged in three separate counts, that on June 5, June 13, June 14, July 18 and July 24, 1969 it allowed, permitted and suffered female impersonators in and upon its licensed premises, viz., a group of males attired as females who performed on stage for the entertainment of its customers and patrons in violation of Rule 4 of State Regulation No. 20.

Roydave Enterprises, t/a Fort Pitt Cafe was charged with a similar violation on July 19 and July 25, 1969.

Friendship House, Inc., t/a The President of Atlantic City (transferred during the pendency of these proceedings to South Albany Avenue Corp.) was charged with a similar violation on two separate counts occurring on July 18 and July 24, 1969.

It was stipulated that the licensees permitted professional male entertainers dressed as females upon the licensed premises. Each of the licensees was operating a night club during the dates alleged herein and the entertainers of the first two licensees were personnel of two well known packaged song, dance and comedy revues known as "Vive Les Boys" and "The Fantastiks."

With respect to Friendship House, Inc., t/a The President of Atlantic City, the entertainers were personnel of a famous packaged song, dance and comedy revue billed as "The Jewel Box Revue."

Each revue featured men dressed and made up as women, singing, dancing and speaking, using lavish sets, costumes and lighting. No allegation is made that these revues were objectionable, immoral or indecent, other than the fact that the male entertainers were dressed as females.

The licensees did not permit the entertainers to mingle with their customers or patronize the premises and restricted the entertainers' presence upon their premises to "show-connected" activities.

These citations are based upon the alleged violation of Rule 4 of State Regulation No. 20, which reads in pertinent part as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any prostitute, female impersonator, pickpocket, swindler, confidence man, or any notorious criminal, gangster, racketeer, or other person of ill repute;..."

Rule 4 was one of the early regulations promulgated by the then Director in 1934. Apparently the Division considered that the effeminate manifestations of the patrons brought them within the prohibition of "female impersonators", although that term relates more properly to transvestites who are, for the most part, said to be non-homosexuals. Re M. Potter, Inc., Bulletin 474, Item 1. In that matter the acting commissioner said that the mere "presence of female impersonators in and upon licensed premises presents a definite social problem"; and in line with the widespread intolerance and limited public understanding of the subject he made reference to "the deep-rooted personal contempt felt by a normal red-blooded man" and to the notion that "the mere thought of such perverts is repugnant to the normal person."

In memoranda submitted by the attorneys for the licensees it was pointed out that there has been an increased public tolerance and understanding with respect to so-called female impersonators and apparent homosexuals. It was noted that some of the more popular television programs feature chorus lines of men attired as females and some of our leading comedians have female impersonation routines.

These charges cannot be sustained because of the recent holding in One Eleven Wines & Liquors, Inc., v. Division of Alcoholic Beverage Control, et al., 50 N.J. 329 (1967). In this matter, which involved three licensees in three separate proceedings (decided in the same opinion by the New Jersey Supreme Court), this Division disciplined these licensees for permitting apparent homosexuals to congregate at bars. The licensees appealed to the Appellate Division. The Appellate Division on one of the appeals sustained the suspension of the license, and the Supreme Court granted certification of the licensee's application. The Supreme Court also certified on its own motion appeals which had been duly taken to the Appellate Division by other licensees.

It held that this Division was not justified in suspending or revoking licenses because apparent homosexuals were permitted to congregate at bars. Speaking for the Court, Justice Jacobs carefully examined the genesis of Rules 4 and 5 of State Regulation No. 20. He pointed out that in the earlier decisions the Director entertained the view that, since homosexuals might be harmful to "some members of the public", the congregating of homosexuals must be prohibited as a "threat to the safety and morals of the public." Citing Paddock Bar, Inc., v. Alcoholic Beverage Control Div'n, 46 N.J. Super. 405, 408 (App. Div. 1957).

In one of the companion cases, joined in the One Eleven Wines & Liquors, Inc., decision, (Murphy's Tavern, Inc., v. Division of Alcoholic Beverage Control) the Director held that the mere congregation of apparent homosexuals, without more, is violative of Rule 5. (Rule 5 concerns itself with permitting lewdness, immoral activity or conduct upon licensed premises.) The charge did not allege any immoral activity or lewdness itself, but simply asserted that the licensees permitted the premises to be operated as a nuisance because of such congregation of these persons.

In the One Eleven Wines & Liquors, Inc., proceedings, there was no evidence that lewdness or immoral conduct was permitted at the licensed premises. The same situation prevailed with Val's Bar, Inc., the third companion case. In One Eleven Wines & Liquors, Inc., the Division concluded that the mere congregating of apparent homosexuals in taverns is contrary to the public welfare and may therefore reasonably be prohibited under its wide policy powers, citing Jeanne's Enterprises, Inc. v. State of N.J., etc., 93 N.J. Super. p. 232. The Division argued that it has consistently tried "to increase public respect and confidence in the liquor industry" cf. X-L Liquors v. Taylor, 17 N.J. 444, 451 (1955) and suggested that permitting the congregation of apparent homosexuals, even though carefully supervised, would impair such public respect and confidence.

The Supreme Court disagreed, and stated that in this day and age "it is entirely appropriate that full sweep be given to current understandings and concepts. Under them it seems clear that, so long as the division can deal effectively with the matter through lesser regulations which do not impair the rights of well behaved apparent homosexuals to patronize and meet in licensed premises, it should do so. Such narrower course would be consonant with the settled and just principle that restrictions adopted in the exercise of

police powers must be reasonable and not go beyond the public need." One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control, supra, 50 N.J. p. 341.

I find that, since the Superior Court has taken this position with respect to the congregation of apparent homosexuals, it is forcefully applicable to the congregation of female impersonators. What is even more significant, however, is that according to the stipulation of facts, these female impersonators were professional entertainers contracted for from well known National agencies who did not mingle with the patrons and performed limited services.

It is ludicrous to consider such professional entertainers, who, as heretofore noted, are usually transvestites, within the definitive context of prostitutes, pickpockets, swindlers, confidence men, criminals, gangsters or racketeers, enjoined from congregating in licensed premises by Rule 4. Indeed, a group of such entertainers can hardly be considered as congregating, where they are engaged in such capacity.

It was specifically stipulated that their entertainment comported to good conduct and was in no way objectionable, lewd or immoral. If, on the other hand, their entertainment degenerated to the point where specific charges of improper conduct could be established and sustained, the licensees would have to bear the brunt of their comprehensive responsibilities at the peril of their licenses.

It is, therefore, recommended that the licensees herein be found not guilty of the said charges, and that the said charges be dismissed.

#### Conclusions and Order

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

After carefully considering the record and the written memoranda filed by the attorneys for the licensees, I concur in the findings of the Hearer and adopt them as my conclusions herein. Hence I find the licensees not guilty.

Accordingly, it is, on this 7th day of April 1970,

ORDERED that the charges against each of the licensees herein be and the same are hereby dismissed.

Richard C. McDonough,  
Director.

4. DISCIPLINARY PROCEEDINGS - PERMITTING LEWDNESS AND IMMORAL ACTIVITY - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Ethel E. & Hugh A. Hallaway t/a Jean's Glass Bar 238 Ferry St. Newark, N.J.,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-365, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Licensees, Pro se. Edward F. Ambrose, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensees plead guilty to charge alleging that, on January 16, 1970, they permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of the investigation disclose that, on the date alleged, a female "Go Go" dancer performed on stage and on top of the bar, during which she engaged in bumps, grinds and other bodily movements simulating sexual intercourse, completely exposed her breasts and buttocks and substantial part of her vaginal area and, with assistance of Hugh A. Hallaway, one of the partner-licensees who was acting as bartender, to come into physical contact with male bar patrons, to many of whom she placed her bare breasts within inches of their mouths and others she permitted to fondle her bare breasts with their hands and to place their lips on the nipples.

Absent prior record, the license will be suspended for seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days. Re Canterbury Caterer's, Inc., Bulletin 1863, Item 3.

Accordingly, it is, on this 6th day of April 1970,

ORDERED that Plenary Retail Consumption License C-365, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ethel E. & Hugh A. Hallaway, t/a Jean's Glass Bar, for premises 238 Ferry St., Newark, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a.m. Tuesday, April 21, 1970, and terminating at 2:00 a.m. Tuesday, June 30, 1970.

Richard C. McDonough Director

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

511 Club, Inc.  
t/a 511 Tavern  
511 Westside Ave. & 339 Union St.  
Jersey City, N.J.

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.  
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Licensee, by Robert Mitchell, President, Pro se.  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on Sunday, November 2, 1969, it permitted removal of six cans of beer from its licensed premises, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Willow Cafe & Restaurant, Inc., Bulletin 1631, Item 10.

Accordingly, it is, on this 6th day of April 1970,

ORDERED that Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to 511 Club, Inc., t/a 511 Tavern, for premises 511 Westside Ave. & 339 Union St., Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, April 21, 1970, and terminating at 2:00 a.m. Friday, May 1, 1970.

Richard C. McDonough  
Director



6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS AND SALE OF RAFFLE TICKETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against KATHERINE PESCE and MICHAEL PESCE t/a Lou's Inn 418 Valley Brook Avenue Lyndhurst, N.J., Holder of Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the Township of Lyndhurst.

CONCLUSIONS AND ORDER

Licensees, Pro se. Edward F. Ambrose, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) and (2) on divers dates between November 14 and December 12, 1969, they permitted acceptance of numbers bets, and on December 12, 1969 the conduct of a raffle on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Green Lantern, Inc., Bulletin 1859, Item 4.

Accordingly, it is, on this 25th day of March, 1970,

ORDERED that Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the Township of Lyndhurst to Katherine Pesce and Michael Pesce, t/a Lou's Inn, for premises 418 Valley Brook Avenue, Lyndhurst, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a. m. Thursday, April 2, 1970, and terminating at 2:00 a. m. Wednesday, May 27, 1970.

Richard C. McDonough

Richard C. McDonough Director