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

BULLETIN 2077 January 15, 1973

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - SILVER ROD STORES v. JERSEY CITY.

#3658, #3663)
Silver Rod Stores, et als.,)
Appellants,)
v.) On Appeal
Municipal Board of Alcoholic) CONCLUSIONS and ORDER
Beverage Control of the City of)
Jersey City, and Naples on the)
Square, Inc.,)
Respondents.)

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Max & Koenig, Esqs., by Jacob E. Max, Esq., Attorneys for Appellant Silver Rod Stores
Michael Halpern, Esq., Attorney for Appellants Terracina, Inc. and Plaza Management Corp.
Russell & McAlevy, Esqs., by John P. Russell, Esq., Attorneys for Respondent Naples on the Square, Inc.
No appearance on behalf of respondent Municipal Board.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On March 24, 1972 respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) approved a person-to-person transfer of a plenary retail consumption license for premises 2871 Kennedy Boulevard from James Feinberg to respondent Naples on the Square, Inc. (hereinafter Naples). Thereafter, on April 14, 1972, the Board approved a place-to-place transfer of that license from 2871 Kennedy Boulevard to 16 Journal Square, Jersey City.

Appeals to both actions were filed by appellants and were joined in a single hearing held de novo in accordance with Rule 6 of State Regulation No. 15. Transcripts of the several hearings before the Board were submitted and made part of the record in accordance with Rule 8 of said regulation.

Appellants' contentions were grounded upon two premises: (1) that the person-to-person transfer from Feinberg to Naples was a nullity in that Feinberg had no right to the license being so transferred and (2) the place-to-place transfer violated the existing local ordinance applicable (Ordinance 4-1-1941, sec. 4-4 (a)).

Respondent Naples denied these contentions urging that the resolution approving the place-to-place transfer properly found that such hardship existed as to provide an adequate basis for relief under the ordinance and that the person-to-person transfer was in proper form.

The facts surrounding both the person-to-person and place-to-place transfer are either uncontroverted or not in substantial dispute. Culled from the transcripts of testimony taken before the Board and the testimony offered at the hearing in this Division, the following is a distillate of the chronological background leading to the filing of these appeals.

The location of the licensed premises designated in the transfer from Feinberg to Naples was 2871 Kennedy Boulevard. Prior to August 1968 that location housed Koss's Restaurant, the then holder of the plenary retail consumption license for those premises. In that month Koss's experienced a destructive fire forcing a closing of the licensed business. Following the fire the lease was terminated by way of negotiation between Koss's Restaurant and the landlord. Koss received $2,000 rebate for the unexpired portion of the lease and a return of the security deposits. The vacating of the licensed premises, coupled with other factors, led to the appointment of a receiver who held the license as an asset for public sale.

Feinberg bought the license at auction held by the receiver in August 1970, the license having been annually renewed with the continued designation of 2871 Kennedy Boulevard as the location of the licensed premises. Meanwhile the landlord had rehabilitated the premises and rented it to a drug store.

Feinberg bought the license without any premises to which it might be assigned, paid the annual renewal fee for the following year, and sold the license to Naples on December 2, 1971, which license still continued the designation of 2871 Kennedy Boulevard as the address of the licensed premises. The following month Naples applied to the Board for a place-to-place transfer of the license from 2871 Kennedy Boulevard to 16 Journal Square, which application was approved. It is uncontroverted that the distance between these locations does not exceed 370 feet and that 16 Journal Square is surrounded by other licensed premises, including those of appellants.

From these facts the crucial issues are apparent, i.e., (a) was Feinberg the valid holder of a license subject to an approved person-to-person transfer and (b) was the place-to-place transfer such a hardship situation as to be permitted by the ordinance.

The controlling section of the ordinance is as follows:

> "Sec. 4-4 (a) No Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty feet (750') and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License. However, if any licensee holding a Plenary Retail Consumption License shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Alcoholic Beverage Control was not caused by any action on the part of the licensee, or if the landlord of the licensed premises shall consent to a vacation thereof, the licensee may, in the discretion of the Board of Alcoholic Beverage Control be permitted to have such license transferred to another premises within a radius of five hundred feet (500') of the licensed premises so vacated...."

The issue here respecting the place-to-place transfer revolves about a factual situation almost identical with those upon which the Appellate Division of the Superior Court has made a determination in Dal Roth Inc. v. Div. of Alcoholic Beverage Control, 28 N.J. Super. 246 (1953). There, as here, appellant obtained the license via an auction held by a receiver; there, as here, the licensed premises was a mere paper address; there, as here, the same Board approved the transfer on the basis of the same ordinance. Addressing itself to the same issue, the Court held (at p. 253):

"... Dal Roth, Inc. was not a licensee which had been compelled to vacate premises. It was a mere applicant for a license, hoping to take advantage of the fact that the former licensee had gone out of business, and it had no premises to vacate, it being stipulated that it had never become a tenant or entered into possession of the premises at 35 Enos Place."

On the following page (p. 254) the court added:

"There seems to be no reason why, on the basis of public policy, we should say that the escape clause should not be limited to those licensees who themselves are forced to vacate."

Dal Roth, supra, is dispositive of the present issue pertaining to the grant of place-to-place transfer to Naples from 2817 Kennedy Boulevard to 16 Journal Square. In view of that decision involving, as it did, the same Board and indeed the same general location, it is astonishing that the Board was not mindful of it and that it did not therefore deny the application for transfer.

The remaining issue respecting the person-to-person transfer from Feinberg to Naples must be resolved in favor of the respondents. Such result emanates from the conclusion of the Director in the matter of Hudson-Bergen Package Stores Assn. v. Garfield and Doris E. Jones, Inc., Bulletin 1976, Item 3, which held:

"... Generally, mere non-use will not of itself void a license. However, a municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period unless convincing evidence in explanation and justification of non-user is adduced.... The matter must be decided in the first instance by the local issuing authority ....

"Where it appears that at the time renewal of a license is sought the licensee had neither legal nor equitable interest in the premises, the license will be declared void. Czubak v. Franklin, et al., Bulletin 1808, Item 3. It stands uncontradicted that the licensee in the instant matter had neither legal nor equitable interest in the premises to be licensed.. Nevertheless it is quite apparent that the equities in the matter are more favorable to the respondent than to the appellant....

* * * * *

"Since fairness is the touchstone of the administrative process, it appears reasonable to offer Jones a fair opportunity within a limited time to obtain suitable premises...."

Referring again to Dal Roth, supra, the court commented by the following dicta (at p. 255);

"When appellant took over Rothrock's bid it could have pursued other alternatives than to seek a person-to-person and place-to-place transfer of the license to store 9-B. It could have sought a transfer to some place in Jersey City more than 750 feet distant from any existing license, as permitted by the ordinance...."

Applying the rule of Dal Roth, supra, Naples is now in comparable position as was Dal Roth or Jones' assignee in Hudson-Bergen etc. v. Garfield et al., supra. The situs of its license is a non-usable premises, but, as a holder of a license for such premises for other than a protracted period, it is not precluded from making application for transfer to such place that is permissible under the ordinance. The Board has collected annual renewal fees from Naples and prior from Feinberg.

It is therefore recommended that the action of respondent in granting transfer of the license to Naples be affirmed subject to the following special conditions:

(a) That the license shall not be issued and effective until respondent Naples on the Square Inc. be afforded an opportunity to secure approval of the Board for a place-to-place transfer of the license to such place as is whthin the scope of the applicable ordinance, i.e., minimally distant 750 feet from the nearest licensed premises;

(b) That such approval be obtained not later than four months from the date of the Director's order in the matter, or within such further time as extended by the Board or the Director;

(c) That if approval to proposed site is not obtained within the period aforesaid, the license shall thereupon be cancelled.

It is further recommended that the action of respondent in granting the place-to-place transfer from premises 2871 Kennedy Boulevard to 16 Journal Square be reversed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by respondent Naples on the Square, Inc. and an answer to the said exceptions, with supportive argument, was filed by appellants pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the matters contained in the exceptions and the answer thereto and find that these matters have either been considered by the Hearer in his report or are without merit.

Having carefully considered the entire record herein, including transcripts of the testimony, the exhibits, the Hearer's report, the exceptions and the answer to the said exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 13th day of October 1972,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City approving the place-to-place transfer of license issued to respondent Naples on the Square, Inc. from premises 2871 Kennedy Boulevard to 16 Journal Square, Jersey City, be and the same is hereby reversed; and it is further

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City in approving transfer of plenary retail consumption license from James D. Feinberg to respondent Naples on the Square, Inc. be and the same is hereby affirmed, expressly subject to the following conditions:

1. The said license shall be forthwith surrendered to the Board by respondent Naples on the Square, Inc. and thereafter retained in the custody of the Board and shall not actually be issued or become effective unless and until the Board in its discretion, and within three months from the date of this Order or any extension of time thereafter granted by the Board therefor approves the application of Naples on the Square, Inc. to be promptly filed for a place-to-place transfer to a lawful and suitable location;

2. Upon the approval of the said application for transfer of said license held in custody of the Board, the license shall be in full force and effect as soon as the transfer is endorsed on the face of the license certificate;

3. In the event the said application for transfer is not approved and the transfer granted within the above stated period of time or any extension of time authorized by the Board, the said license shall thereupon be cancelled.

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - DE ASCENTIIS v. WOODBURY HEIGHTS.

Madeline Mary De Ascentiis, Appellant,	
v.	On Appeal
Mayor and Borough Council of the Borough of Woodbury Heights, and Woodbury Heights Liquors, Inc., Respondents.	CONCLUSIONS and ORDER

Frank M. Lario, Esq., Attorney for Appellant
Higgins & Trimble, Esqs., by John W. Trimble, Esq., Attorneys for Respondent Borough
Joseph Tomaselli, Esq., Attorney for Respondents Woodbury Heights Liquors, Inc., et als.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the resolution of the Borough of Woodbury Heights (a co-respondent herein) wherein it granted a plenary retail distribution license to respondent Woodbury Heights Liquors, Inc. by resolution adopted February 14, 1972.

Respondent Borough of Woodbury Heights (hereinafter Borough) had previously adopted an ordinance increasing the number of plenary retail distribution licenses by one, in consequence of which appellant, among others including respondent Woodbury Heights Liquors, Inc. by its president William T. Juliano (hereinafter Juliano), applied for the new license.

Appellant alleges that the grant to Juliano was in error in that his notice of application contained an erroneous description of site of the proposed license and, in addition, failed to indicate that "Plans of building to be constructed may be examined at the office of the Municipal Clerk" as required by Rule 2 of State Regulation No. 2. Appellant further contends

that the grant to Juliano was invalid in that his trade name was misleading and hence violative of Rule 2 of State Regulation No. 26. Lastly, appellant contends that the grant of the license violated Article 3, Section 301, of the Use regulations contained in the local zoning ordinance. Respondents denied these contentions.

The appeal was heard de novo with full opportunity for the parties hereto to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15.

The facts are not substantially in dispute. Early in November 1971 the Borough advertised that it would hold a hearing December 13, 1971, to consider applications for the newly created distribution license. The Borough received seven applications which included, among others, the applications of appellant and respondent Juliano. On February 14, 1972 the Borough adopted a resolution reciting that one retail distribution license was available, seven applications had been received and, after due consideration, the license is issued to Woodbury Heights Liquors, Inc. No situs of the license was indicated in that resolution.

Following the initial grant of the license to Juliano, it became apparent to the Borough that its resolution of February 14, 1972 was faulty so that by Resolution #17-1972, adopted March 27, 1972, a new grant of license was made. While that resolution attempted to correct the deficiencies of the first, it was still predicated on an improvidently published notice of application.

Immediately following an initial hearing on the appeal in this Division (April 12, 1972), a new notice of application was published, which notice corrected the omissions of the notice first published. In consequence of the subsequent notice, a public hearing was held on respondent Juliano's application on May 5, 1972. Numerous objectors were heard at that hearing but a substantial number of objectors could not be heard. The hearing was continued until May 15, 1972. Eventually, on June 26, 1972, the Borough adopted a third resolution (#26) on the subject, by which it rescinded its prior resolutions and granted the license to Juliano.

From uncontroverted testimony and exhibits offered into evidence, Juliano has acquired an option to purchase a four-acres tract of land running along Route 45, a highway dividing the Borough from the neighboring municipality. Site and location plans were deposited with the municipality prior to the initial grant of the license although notice of such filing was omitted from the first notice of application. The site and location plans reveal a proposed one-story building to be attached to what appears to be a proposed shopping center. The tract abuts both Mantua Avenue (Route 45) and Alliance Street, and is accessible to traffic from either. Across Alliance Street and due south of the proposed location exists a rather large shopping center. The major portion of the tract embraced is in a commercial zone.

Appellant's contention that the grant of the license for the premises was erroneous because it violates the applicable zoning ordinance is without merit in that the contention is not based upon fact; the location of the proposed building is well within the commercial zone and the question itself cannot be validly raised before this Division. Lubliner et al. v. Paterson et al., 59 N.J. Super. 419 (1960); Carron v. Teaneck Tyron Co., 11 N.J. 294 (1953).

The central issue herein is whether the Borough acted in the proper exercise of its discretionary authority in approving Juliano's application for a plenary retail distribution license.

Councilman Frank V. Gavin testified that, upon receipt of the seven applications for the license, he and his colleagues entertained each applicant to learn of the individual proposals and followed this by visits to each of the places intended to be used as situs for the license. At least four of the councilmen visited the Juliano property. The site plan for these premises was inspected and, in addition, Gavin had meetings with nearby residents to the Juliano property to ascertain their feelings.

Municipal Clerk Catherine Chapman testified that the affirmative action of the Borough in adopting the final resolution granting the license to Juliano was the result of a tie vote among the councilmen, the Mayor casting the tie-breaking vote in favor of the resolution.

Testimony of William De Ascentiis (husband of appellant) revealed that he had seen a set of plans or sketches indicating the proposed Juliano location but it was not located within the tract in the same place as indicated on the site plan before the Borough.

Three additional applicants for the same license -- Harry F. Stanley, Robert T. Shunk and Bernard T. Taraschi -- testified that, while their individual applications were denied, they were not each advised the reason for the rejections. Stanley candidly admitted that fifty per cent. of his objection (to the Juliano grant) was because "an out-of-towner got the license."

It is well settled that the issuing authority's discretionary power in matters of this kind are broad and it has the power to determine, in the first instance, whether or not a license should be granted. The burden of proof that the Borough abused its discretion falls upon the appellant and must be established by a fair preponderance of the credible evidence. O'Hara and Yutall v. West Orange, Bulletin 1483, Item 2. The action of the Borough is consistent with the view stated in Ward v. Scott, 16 N.J. 16 (1954) where the court set forth the following applicable principle:

> "... 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 for variance. 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, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)...."

Since the municipal action is discretionary, appellant must show manifest error or clear abuse of discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (1955).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. The action of the municipal issuing authority may not be reversed by the Director unless he finds the "act of the [Council] was clearly against the logic and effect of the presented facts." Hudson Bergen, &c., Assn. v. Hoboken, 135 N.J.L. 502 (1947), at p. 511.

It is undeniable that this appeal was generated by the rejected applicants for the license. Most of these were residents of the community who felt strongly that the benefits of the proposed license should be given to a local resident. Appellant and her husband were particularly incensed in that they had spent much energy over a considerable period offering strength to the argument that an additional license should be permitted in the Borough. The grant of the license to an "outsider" gave rise to the furies of this appeal.

However inconsiderate or impolitic the action of the Borough might be in the view of its opponents, its conclusions resulted from multiple hearings and examinations of the prospective premises. Certainly a difficult decision at best was reached by weighing the relative merits of the prospective applicants. The successful applicant (Juliano) apparently offered what the Borough considered to be in the best interests of the community.

As the court stated in Lyons Farms Tavern v. Mun.Bd. Alc. Bev., Newark, 55 N.J. 292 (1970), at p. 307:

> "... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

It is here found that the action of the Borough represented a reasonable exercise of its discretion on the basis of the entire record. I have examined the other matters raised in the petition and find them lacking in merit.

Accordingly, it is recommended that the Borough's action in granting Juliano's (Woodbury Heights Liquors, Inc.) application for a plenary retail distribution license be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant pursuant to Rule 14 of State Regulation No. 15.

Subsequent to the filing of the Hearer's report, appellant filed a petition seeking a supplementary hearing based upon an allegation of newly discovered evidence. In the said petition appellant alleges that the action of respondent Borough in creating an additional plenary retail distribution license and fixing the fees therefor was illegal. This contention was advanced upon the premise that, following adoption of the ordinance, a proper notice of its passage was not timely published in accordance with law.

Hearing on this issue was not afforded appellant in that appeals to this Division generate from issues revolving about the application of the alcoholic beverage laws and the regulations adopted thereunder. Appeals from ministerial actions of municipal bodies must be taken by plenary action in a court of competent jurisdiction. Nowhere has the Legislature granted to this Division, as an administrative agency, authority to determine issues beyond the confines of the statute creating it. Cf. Ward v. Scott, 11 N.J. 117 (1952). Accordingly, the petition for a supplementary hearing is denied.

The exceptions to the Hearer's report were grounded upon the contention that the Hearer found the action of the Borough to be valid despite irregularities in the procedural steps undertaken with respect to grant of respondent Woodbury Heights Liquors, Inc. license. The exceptions allege that the Borough, in permitting the readvertising and rehearing on respondent's application, prejudiced other applicants, including appellant, by not re-entertaining all other applications.

I find such contention to be without merit. Once the Borough's decision was reached, further efforts by both respondent and the Borough to invest such action with full legal compliance obviated further need for additional hearings.

Having carefully considered the entire record herein, including transcripts of testimony, the Hearer's report and the exceptions filed thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 16th day of October 1972,

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

Robert E. Bower,
Director.

3. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against

Katherine Scheltz
232 Bloomfield Street
Hoboken, N. J.,

Holder of Plenary Retail Consumption License C-118 for 1971-72 license period and C-121 for 1972-73 license period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

CONCLUSIONS
and
ORDER

Robert H. Muller, Esq., Attorney for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to the following charge:

"On October 16 and 20, 1971, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation by and the making of overtures and arrangements by a male person on your licensed premises, with male customers or patrons thereon for him to engage with them in illicit perverted sexual acts and relations; in violation of Rule 5 of State Regulation No. 20."

On behalf of the Division Agent G testified that, pursuant to a specific assignment and in the company of Agent R, he entered the licensed premises at approximately midnight on October 17, 1971. The agents placed themselves at the bar and observed approximately twenty patrons in attendance. Additionally they observed a female tending bar enter, identified as Katherine Scheltz, licensee.

The agents observed one patron in particular and, upon questioning Scheltz, they were advised that the patron was a male who was about to have an "operation" and that the somewhat prominent busts on said male were "real." The male was subsequently identified as Gilberta Rosa Vega but was commonly referred to as "Daisy" (hereinafter Daisy). Shortly after this conversation Daisy was observed to begin dancing to the music of the juke box. In the course of the dance Daisy removed a blouse and brassiere, thereby confirming Mrs. Scheltz's comment that the breasts were indeed "real." Shortly thereafter Daisy retired to the ladies' room and reappeared fully attired.

During the course of their conversation Mrs. Scheltz advised the agents that most of her patrons were "fags" and that the agents "were probably the only straight ones in there ...." Mrs. Scheltz suggested to the agents that they "should try a fag and that the change wouldn't hurt [them]." Thereafter Mrs. Scheltz introduced Daisy to the agents, who then proceeded to arrange with Daisy to meet on Wednesday, October 20, for the purposes of engaging in perverted acts which need not be described herein but were obviously lewd, lascivious, disgusting. Mrs. Scheltz was present at the beginning of the conversation but departed shortly thereafter.

Thereafter the agents advised Mrs. Scheltz that they had arranged to have Daisy "take care" of them at Daisy'a apartment on the following Wednesday (October 20, 1971). Mrs. Scheltz assured the agents that they "were in for a good time." The agents then departed the premises.

The agents returned to the area of the licensed premises on October 20, 1971, in the company of Agents H and D. At approximately 7:30 p.m. Agent R entered alone and the remaining agents remained at a point of contact near a public telephone. It was agreed that Agent R would phone Agent G if Daisy was present. At approximately 7:10 p.m. Agent G received the call and thereafter summoned local police officers who arrived shortly thereafter. Upon briefing the police, Agent G entered the premises. The police officers remained with Agents N and D.

Once inside, G joined R and Daisy who were already together at the bar and he noted Mrs. Scheltz was again in attendance. He then testified as follows:

> "As I entered the premises, Agent R ordered a round of drinks, and as Mrs. Scheltz was serving us, Agent R had said, 'Well, Daisy kept her word. She's going to meet us' and Mrs. Scheltz made a reference that 'I told you she would be here, she would take care of you.'"

Having reaffirmed the proposed course of events for the evening with Daisy, they prepared to depart for Daisy's room. Before leaving they again conversed with Mrs. Scheltz regarding their date with Daisy and sought her asurance that they would not be "rolled" at Daisy's room. She assured the agents that "Daisy was good people" and, in response to the question of how much Daisy should be paid, Mrs. Scheltz replied, "pay her whatever she's worth."

Upon departing the premises the three were confronted by Agents H and D and the local police officers. After brief questioning, Daisy was arrested and taken to police headquarters. A complete physical examination of Daisy disclosed developed breasts and male sex organs.

Under extensive cross examination the testimony of Agent G was not significantly diluted, nor did it vary from his direct testimony. Further, Agent G denied making the initial overtures to Daisy; he denied saying, "I'm not gay but my friend is gay" and he denied asking Mrs. Scheltz if she was "gay" or if she went out with men.

Agent R testified and substantially corroborated the testimony of Agent G with respect to the events of October 16, 1971 and October 20, 1971. Additionally, he testified with respect to the period from 7:30 p.m. until 8:20 p.m. on October 20, during which time he was alone in the premises. During that period he seated himself at the bar and noted Mrs. Scheltz was again in attendance. He asked for Daisy and was advised Daisy was not present. She commented that, since R and his friend had a date with Daisy, she would keep the date. At approximately 7:45 p.m. Daisy entered and passed Agent R, greeted him and joined Mrs. Scheltz who was then on the patrons' side of the bar. He overheard Mrs. Scheltz suggest to Daisy that it might be wise to join R "so he could buy you a drink." Daisy departed briefly; Mrs. Scheltz prepared a drink for Daisy, placed it on the bar in front of the stool next to R and took ninety cents from R in payment. He thereupon telephoned Agent G who, shortly thereafter, joined R and Daisy at the bar. Thereafter a brief conversation ensued, during which R reminded Mrs. Scheltz that Daisy had kept the date, to which Mrs. Scheltz replied, "I told you she would."

Katherine Scheltz testified that Daisy, a regular patron, was on the licensed premises on the evening of October 15 and 16 when the agents arrived. Agent G informed Mrs. Scheltz that "I'm not gay but my friend is gay." In subsequent conversation he asked if certain of her patrons were "gay." They called Daisy over and Mrs. Scheltz introduced them and departed. Later they asked her if Daisy would go out with them and she expressed ignorance. They bought Daisy a drink and she left their company. They then advised her that they had made a date with Daisy for Wednesday (October 20). She did not indicate to the agents that many of her patrons were "fags", that they ever used any obscene language, nor did she suggest any lewd or immoral activity. She also denied that she suggested that the agents "try a fag" or that she assured the agents that they would have a good time with Daisy.

With respect to October 20, she testified that Agent R entered alone, asked for Daisy, and she advised him that "Daisy comes in every night." She vaguely recalled some conversation about their being surprised by other men at Daisy's room; there was no mention of money. Daisy still patronizes the premises, but Mrs. Scheltz does not really know whether Daisy is male or female. Daisy did perform a dance but Mrs. Scheltz did not speak to her about the dance. Finally, she denied committing any act which could be construed as making arrangements for immoral or perverted sexual acts or relations.

On cross examination she denied any knowledge of Daisy's homosexuality but admitted that Daisy uses Wesson oil to increase breast size. She admitted being shocked by Daisy's dance but did nothing to stop it, and she admitted knowing that Daisy made frequent use of the "ladies'" room but blamed it on a state of disrepair in the "men's" room. She admitted telling the agents to "give Daisy what she is worth" but denied knowing what type of service the agents were to pay Daisy for.

Ronald Lauria testified that he is a frequent patron at Mrs. Scheltz's bar. He has seen Daisy on the premises frequently and Daisy is generally attired in female garb, including a bouffant wig. He stated that other patrons with apparent homosexual tendencies frequent the premises. He was not present on either the 16th or 20th of October 1971.

Preliminarily, I observe that disciplinary matters before administrative agencies are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Testimony, to be believed, must not only come from the mouths of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

A review of Division-reported decisions discloses that this bizarre set of facts is one of first impression. In Re Danny's Red Ball, Bulletin 1978, Item 1, lewd performances by homosexuals formed the basis for the charge but no act of solicitation for perverted sexual acts was involved.

The testimony of the agents is forthright, credible, and has the ring of truth. As opposed to that, the testimony of Mrs. Scheltz contains numerous contradictions which render it totally incredible. Her blanket denial of the acts is unworthy of belief.

I find that Mrs. Scheltz did indeed make overtures and arrangements to G for Agents G and R to engage in perverted sexual acts with Daisy. It should be noted that it has long been held that the mere congregation of homosexuals on licensed premises is no grounds for disciplinary proceedings. In re 111 Liquors, 50 N.J. 329 (1967). However, where the conduct of those patrons becomes offensive to the public, and when the licensee not only condones but encourages such conduct, then indeed disciplinary measures of severe proportion are in order. See In re 111 Liquors, supra.

Accordingly, it is recommended that the licensee be found guilty of the said charge.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for one hundred eighty days. Cf. Re Stefanoni, Bulletin 2035, Item 3.

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 testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 12th day of October 1972,

ORDERED that Plenary Retail Consumption License C-121 for 1972-73 license period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Katherine Scheltz for premises 232 Bloomfield Street, Hoboken, be and the same is hereby suspended for one hundred-eighty (180) days, commencing at 2:00 a.m. Friday, October 20, 1972, and terminating at 2:00 a.m. Wednesday, April 18, 1973.

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary Proceedings against

The Chateau Corporation
t/a The Chalet
120 West Passaic Street
Rochelle Park, New Jersey

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Rochelle Park.

ORDER

Heller & Laiks, Esqs., by Murray A. Laiks, Esq., Attorneys for Licensee

Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On February 18, 1972, Supplemental Order was entered herein reimposing a suspension of Plenary Retail Consumption License C-1, issued to the licensee herein, for fifteen days, the effective dates of which suspension were deferred until further order. Re The Chateau Corporation, Bulletin 2034, Item 6.

Thereafter the licensee applied for the imposition of a fine in lieu of suspension of license, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question I have determined to accept an offer in compromise by the liconsee to pay a fine of $200.00 in lieu of suspension.

Accordingly, it is, on this 12th day of October 1972,

ORDERED that the payment of a fine of $200.00 by the licensee is hereby accepted in lieu of the suspension of license for fifteen (15) days.

Robert E. Bower
Director

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against Silver Crest Motels, Inc. t/a Silver Crest Motor Lodge (t/a under its current license as Plantation Room) 1609 Georges Road North Brunswick Township PO New Brunswick, N.J., Holder of Plenary Retail Consumption License C-18, issued by the Township Committee of North Brunswick Township.	SUPPLEMENTAL ORDER

Meth & Wood, Esqs., by John K. Cooper, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On November 9, 1971, Conclusions and Order were entered herein suspending the license for ninety days, commencing November 24, 1971, after licensee was adjudged guilty of a charge alleging that it allowed, permitted and suffered lewdness and immoral activity, in violation of Rule 5 of State Regulation No. 20. Re Silver Crest Motels, Inc., Bulletin 2019, Item 1.

Prior to the effectuation of the said suspension, on appeal filed, the Appellate Division of the Superior Court, by Order dated November 19, 1971, stayed the operation of the suspension until the determination of the appeal. The court affirmed the Director's Order on June 27, 1972 (Appellate Division 1971, not officially reported, recorded in Bulletin 2060, Item 1).

On September 21, 1972, the Supreme Court of New Jersey denied appellant's petition for certification, Re Silver Crest Motels, Inc., (Supreme Court A-519-71). The suspension may, therefore, now be reimposed.

Accordingly, it is, on this 12th day of October 1972,

ORDERED that Plenary Retail Consumption License C-18, issued by the Township Committee of North Brunswick Township to Silver Crest Motels, Inc., t/a Plantation Room, for premises 1609 Georges Road, North Brunswick, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. Wednesday, October 25, 1972 and terminating at 2:00 a.m. Tuesday, January 23, 1973.

Robert E. Bower
Director

6. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary Proceedings against

Dorothy Miles
t/a Joey Miles
33 First Ave.
Atlantic Highlands, N.J.

Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Borough Council of the Borough of Atlantic Highlands.

ORDER

Licensee, Pro Se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On September 19, 1972, Supplemental Order was entered herein deferring the suspension of license, heretofore imposed (Re Miles, Bulletin 2071 , Item 5), pending consideration of an application by the licensee for the imposition of a fine in lieu of a suspension of license for ten days. Re Miles, Bulletin 2071 , Item 1(Q).

Having favorably considered the application for the impostion of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971, I have determined to accept an offer in compromise by the licensee to pay a fine of $400.00 in lieu of the said suspension.

Accordingly, it is, on this 13th day of October, 1972,

ORDERED that the payment of a fine of $400.00 by the licensee is hereby accepted in lieu of the suspension of license for ten days.

Robert E. Bower,
Director

7. APPELLATE DECISIONS - MELLO-D-CLUB, INC. v. ELIZABETH - SUPPLEMENTAL ORDER.

Mello-D-Club, Inc. t/a Joe Oliveri's Niteclub, Appellant,	)	
v.	)	Supplemental
City Council of the City of Elizabeth,	)	ORDER
Respondent.	)	

Donald W. Rinaldo, Esq., by Louis M. Minotti, Esq., Attorney for Appellant
Daniel J. O'Hara, Esq., Attorney for Respondent

BY THE DIRECTOR:

On September 16, 1971, Conclusions and Order were entered herein affirming the action of the respondent City Council of the City of Elizabeth which denied appellant's application for renewal of the plenary retail consumption license for the 1971-72 licensing period. By this order I also vacated my order dated July 12, 1971, extending the term of appellant's 1970-71 plenary retail consumption license pending the determination of the said appeal "Effective immediately." Re Mello-D-Club, Inc. v. Elizabeth, Bulletin 2008, Item 3.

Upon appeal filed the Appellate Division of the Superior Court stayed the operation of my order until the determination of the appeal. The court affirmed my order on September 29, 1972. Re Mello-D-Club, Inc., t/a Joe Oliveri's Niteclub, Appellant v. City Council of the City of Elizabeth, Respondent, Superior Court of New Jersey, Appellate Division A-204-71, not officially reported, recorded in bulletin.

It is, therefore, on this 17th day of October 1972,

ORDERED that the appellant Mello-D-Club, Inc., t/a Joe Oliveri's Niteclub, be and the same is hereby directed to immediately discontinue its operation under any extension granted to it and to surrender forthwith the said license and/or permit under which it is presently operating the said premises, to the respondent City Council of the City of Elizabeth.

Robert E. Bower
Director