Director

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

BULLETIN 1920 July 28, 1970

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ITEM

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

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1. APPELLATE DECISIONS - RUBIN'S TAVERN, A CORP. v. PATERSON.

Rubin's Tavern, A Corp., Appellant	)	ON APPEAL
v.	)	CONCLUSIONS and ORDER
Board of Alcoholic Beverage Control for the City of Paterson, Respondent	)	

Goodman & Rothenberg, Esqs., by Robert I. Goodman, Esq. Attorneys for Appellant.
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

Appellant appeals from the action of respondent (hereinafter Board) which by unanimous vote of its members on June 25, 1969, denied appellant's application for renewal of its plenary retail consumption license for premises 42 Paterson Street, Paterson.

The resolution adopted by the Board reads as follows:

> "WHEREAS, application has been made to this Board for the renewal of Plenary Retail Consumption License C-112, heretofore issued to Rubin's Tavern, a Corp., for premises situated at 42 Paterson Street, Paterson, New Jersey; and,
>
> "WHEREAS, this Board having heard the testimony of witnesses and having reviewed the history of these premises based on the records of the Paterson Police Department; and,
>
> "WHEREAS, it appears that the premises sought to be licensed constitute a public nuisance and a detriment to the health and safety of the people of the City of Paterson; NOW, THEREFORE,
>
> "BE IT RESOLVED, that the renewal of Plenary Retail Consumption License C-112, be and the same is hereby denied."

In its petition of appeal, appellant urges that the action of the Board was erroneous in that the "refusal to renew said license was arbitrary."

The Board in its answer denied the substantive allegations contained in the petition of appeal.

Upon filing of the appeal an order dated July 1, 1969 was entered by the Director extending the term of the appellant's 1968-69 license until further order herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the attorneys for the respective parties to present testimony and cross-examine witnesses. Additionally the Board referred to the transcript of the hearing before the Board.

The only witness produced on behalf of the Board was William W. Harris, its secretary. He brought in the official records of the local police department which disclosed that police were summoned to appellant's tavern during the years 1966, 1967 and 1968 for reasons which may be summarized as follows:

On February 27, 1966, called by the cook who stated that a male stole his wife's pocketbook.

On January 20, 1967, a male was found sitting in the tavern unconscious. He had been struck by a male called "Nip".

On September 9, 1967, a female stated that another female stole her purse. She was sent to the detective bureau.

On November 11, 1967, two males were found fighting in street, one of whom had a baseball bat in his hand. It was stated that an argument erupted in the tavern and, after a punch was thrown by each, both men left the tavern.

On December 10, 1967, a male was found sitting on the curb holding a blood-filled handkerchief to the side of his face. He stated that, after having had some words with another male in the tavern, he was struck on the head with a beer bottle.

August 23, 1968, a man was found dead in the premises from a bullet wound. The suspect was booked on a charge of homicide.

The foregoing police reports were received in evidence as Exhibit R-4.

At the hearing before the Board, Lieutenant Giardino, of the local police department, characterized the tavern as a public nuisance.

In behalf of the appellant, Gatewood Perkins, employed as a bartender by the appellant for approximately eighteen years, testified that the patronage of the tavern consisted mainly of steady patrons, and that it was operated in an orderly manner.

Concerning the shooting incident of August, 1968, he stated that the male who fired the shot pulled out his gun in order to frighten a female sitting at the bar and a male patron coming out of the bathroom, forty feet distant, was

accidentally shot and killed. The males had not engaged in an argument prior to the shooting. The perpetrator of the homicide was convicted of manslaughter. The Board instituted no action against the licensee in connection with this incident.

The records of this Division disclose that licensee pleaded non vult to a charge that on June 22, 1966 it permitted the removal of an open half-pint of liquor during prohibited hours. Re Rubin's Tavern, Inc., Bulletin 1692, Item 12; and that licensee pleaded non vult to a charge that on Sunday, September 15, 1968, it permitted removal from its licensed premises of an open bottle of gin. Re Rubin's Tavern, Inc., Bulletin 1837, Item 7. Both charges were violations of Rule 1 of State Regulation No. 38.

In brief, the attorney for the appellant argued (1) that the proceedings below were legally defective in that licensee was not served with a notice that the question of the renewal was going to be acted upon by the Board; (2) that there was no reasonable basis for the Board's action, and (3) that the police records were hearsay and legally inadmissible.

Appellant's first contention is rejected. There is no provision in the Alcoholic Beverage Law or the rules and regulations of this Division which requires a local issuing authority to conduct a hearing under the circumstances appearing in the instant matter. In disciplinary proceedings, of course, charges must be prepared and served upon the licensee and the licensee must be given an opportunity to be heard. Therefore, the action taken by the respondent constituted no error since no such hearing was required. Lipman v. Newark, Bulletin 356, Item 6, and cases cited therein. See also Charlie's Capri, Inc., v. East Newark, Bulletin 1901, Item 1.

Rule 8 of State Regulation No. 2 provides:

> "No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

Appellant's third contention is summarily rejected. See New Jersey Rules of Evidence, Rule 63 (13); Brown v. Mortimer, 100 N.J. Super. 395 (App. Div. 1968).

We consider next appellant's chief substantive argument that there was no reasonable basis for the Board's action.

There is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). If denied on reasonable grounds, such action will be affirmed. Cf. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. It is well established that an application for re-

newal of a license may not be denied capriciously, but must be based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; Thompkins v. Seaside Heights, Bulletin 1398, Item 1. Where a license has been renewed for prior licensing periods, a refusal to renew thereafter must be founded upon valid and substantial grounds supported by the weight of the evidence. As Commissioner Driscoll stated in Monesson v. Lakewood, Bulletin 657, Item 1:

> "If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted...."

The police records reflect one episode which required the intervention of the police during the year 1968, that is, the shooting incident of August, 1968. It is significant that the Board did not institute disciplinary proceedings against the appellant as a result of this incident.

The sole police record of 1966 clearly does not inculpate the appellant with any wrongdoing.

In considering the four occasions that the police were called during the year 1967, it is apparent that the incident of September, 1967, does not inculpate the licensee. Referring to the incidents of November and December, 1967, the police investigated situations outside the licensed premises. Although there is mention that these were connected with some occurrence inside the licensed premises, again, I note for the purpose of arriving at a fair determination of this matter, that no action was taken against the licensee as a result of these calls or the two other police calls during the year 1967.

After reviewing the entire record herein, it is my view that the Board's refusal to renew this license was not justified by the evidence. See Bd. of Com'rs of Bayonne v. B & L Tavern, Inc., 42 N. J. 131 (1964). As noted above, although appellant has held the license for a number of years, no formal complaint had been filed of maintaining a nuisance based upon any of the aforementioned police calls or disciplinary action taken. As the court noted in Bd. of Com'rs of Bayonne v. B & L Tavern, Inc. (App. Div. 1963), not officially reported, reprinted in Bulletin 1509, Item 1:

> "...If the tavern was as bad as the City now says it is, it should have instituted disciplinary proceedings long ago. Had it done so, or had it even warned tavern owners generally, or the B & L Tavern specifically, that the policy of benevolent blindness was a thing of the past, we are certain that the Director would have sustained the refusal to renew. That is not to say that prior warning is necessary in every case. There may be conduct so indisputably bad that a single instance would warrant revocation or the refusal to renew, but this is not such a case."

It is elementary that the owner of a license or privilege acquires through his investment therein an interest which is entitled to some measure of protection. Cf. Tp. Committee of Lakewood Tp. v. Brandt, 38 N. J. Super. 462 (App. Div. 1955).

I therefore recommend that the action of the Board be reversed and that the Board be directed to grant the license to appellant for the 1969-70 licensing period in accordance with the application filed therefor.

Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by respondent pursuant to Rule 14 of State Regulation No. 15. No answering argument has been filed by appellant.

The Board contends that, although the incidents contained in the records of the Police Department concerning this licensee individually may not have presented sufficient cause for the institution of disciplinary proceedings to suspend or revoke appellant's license, these incidents, collectively, constitute sufficient cause to deny renewal of appellant's license. With this I do not agree.

The incidents occurring during the years 1967 and 1968 are not of sufficient degree, in number or kind, to warrant classifying these premises as a "trouble spot" or a nuisance to justify the Board's action. I believe the Board must have felt likewise but was motivated in its action herein primarily by the fatal shooting in 1968. I have particularly examined the record herein with respect to said shooting and find that its occurrence was a sudden incident, not preceded by any activity which should have alerted the licensee's agents to take preventive action.

Under the circumstances, and after carefully considering the entire record herein, I conclude that the Board's action was an unreasonable exercise of its discretionary authority. I therefore concur in the Hearer's recommended findings.

Accordingly, it is, on this 2nd day of June 1970,

ORDERED that the action of respondent be and the same is hereby reversed, and that respondent is hereby directed to renew appellant's plenary retail consumption license for the 1969-70 licensing period in accordance with the application filed therefor.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION - LICENSE SUSPENDED FOR 215 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Galicia Bar, Inc. 67-69 Ferry St. Newark, N. J.,	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-548, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	)	

- -

John J. Dios, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 6, 1970, it permitted solicitation for prostitution and the making of the arrangements therefor on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

The reports of investigation disclose that the arrangements and procurement for the prostitution were made by an officer of the licensee corporation with a procurer.

Licensee has a previous record of suspension of license by the Director for five days, effective April 19, 1965, for possessing alcoholic beverages not truly labeled. Re Galicia Bar, Inc., Bulletin 1617, Item 9.

The license will be suspended for two hundred ten days (Re Ferdinand, Bulletin 1886, Item 2), to which will be added five days by reason of record of suspension for dissimilar violation within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), or a total of two hundred fifteen days, with remission of five days for the plea entered, leaving a net suspension of two hundred ten days.

Accordingly, it is, on this 26th day of May, 1970,

ORDERED that Plenary Retail Consumption License C-548, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Galicia Bar, Inc., for premises 67-69 Ferry St., Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2:00 a.m. Wednesday, June 10, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Wednesday, November 4, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS (INDECENT ENTERTAINMENT) LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against The Garden House, Inc. 768 Stuyvesant Avenue Lyndhurst, New Jersey Holder of Plenary Retail Consumption License C-17, issued by the Board of Commissioners of the Township of Lyndhurst.	CONCLUSIONS and ORDER

Siegendorf, Michaelis, Giordano & Miller, Esqs., by Dominick Giordano, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

> "On Saturday night, July 26 into early morning hours of Sunday, July 27, 1969, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy, indecent and obscene conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered a female person to act and perform on your licensed premises for the entertainment of your customers and patrons in a lewd, immoral, and foul, filthy, indecent and obscene manner; in violation of Rule 5 of State Regulation No. 20."

Pursuant to specific assignment to investigate an allegation of a lewd show, two ABC agents (L & D) participated in the investigation which resulted in the preferment of the charge.

Agent L testified that, accompanied by Agent D, they entered the licensed premises (characterized as a night club) on July 26, 1969 at 11 p.m. The room is on two levels. The lower level contains tables and chairs, a large bar and a service bar. The raised level contains tables and chairs. An admission fee of $2 was exacted from each patron upon entry. The agents positioned themselves at the service bar. The patronage throughout their visit numbered approximately fifty males and females.

At approximately 11:55 p.m. the band leader introduced "an exotic dancer by the name of Miss Chili Pepper." After the band started playing, a female attired in a gown which covered her from her neck to the top of her knees appeared in front of the band and performed a ballet-type dance for about two minutes. She then started performing bumps and grinds and then "took her two hands and placed them by her breasts, and she rubbed them up and down.

She took her right hand and rubbed her vagina in that manner. Then at another point she turned around, and she bent over, and this showed her -- as she was bending over this showed her undergarments, her stockings and panties. She had pink panties on. She put her right hand between her legs, and she started rubbing up and down on her vagina and her buttocks. Then she would swirl and turn around, raising her dress above her waist, showing all her undergarments. She would go back and forth in bumps-and-grinds manner."

After rising from her bent-over position the performer "was simulating sexual intercourse moving in these bumps-and-grinds manner." Agent L heard someone call out "Take it off." The dancer took off her gown in a slow manner, let it drop on the floor, picked up the dress, twirled it around and threw it aside. Upon removing her dress the lower part of the dancer's anatomy was covered by stockings attached to panties. On the upper part of her body she wore an abbreviated bra held in place by a string with pasties covering the nipples. She continued performing the same routine and touching her vagina, buttocks and breasts. At this point the dancer "took off her panties, and then in very slow sexual manner, and she was wearing at this time like a 'G'-string type thing which covered her vagina." The agent described the G-string as being black in color, consisting of a "patch of material which covered from as far as you could see underneath to just above the lower stomach, just a patch to cover enough, and there was a string attached to that, one-piece I imagine, and it went to the back, and another string which appeared to be a string at this time going in the middle of the crevice of her buttocks, appearing as if her buttocks were almost completely naked, you could see everything." The dancer continued to bend over, touch her buttocks and come back up. Her breasts were "jumping around back and forth, and she would hold them and jump them up and look around and put them together." She would hold her hands underneath her breasts. She then removed the outer portion of her bra leaving her breasts covered by pasties only which were approximately the size of a quarter. She waved the bra around, danced and then threw it aside. Thus attired, she continued to dance for approximately five minutes to the accompaniment of the music. She performed bumps and grinds and continued to touch parts of her body including her vagina, breasts and buttocks. With her back towards the audience "she was doing bumps and grinds and simulating sexual intercourse and bent over doing the same thing." While bent over, her "breasts were hanging fully over, and they were moving back and forth." Her performance lasted for approximately fifteen minutes.

As the performer was observed walking off-stage, a male identified as Frank Gaccione (the one hundred per cent. owner of the stock of the corporate licensee, who was in active management of the business conducted by it) was observed shaking his finger at her and at the stage. He "appeared to be yelling at her or bawling her out for something."

The agents identified themselves to Gaccione and informed him that in their opinion they had witnessed a lewd and indecent show. Gaccione responded to the effect that

"I told her not to go this far. She shouldn't have done that. You probably saw me wave my finger up and down telling her not to do this but she did go this far." He repeated this two or three times. In the presence of Gaccione the agents confronted the female performer and informed her that the dance was lewd and indecent. The dancer responded that Gaccione did not tell her to go that far, "she knew she had gone too far but she would never do it again."

On cross examination Agent L testified that he was approximately twenty-five feet distant from the stage and had a clear view of the dancer. Although Agent L recalled that Gaccione said to him that he had specifically instructed the dancer as to what she could do and could not do, he did not recall Gaccione saying that he had stopped the show as soon as he observed that she was going to do something wrong. It appeared, however, that Gaccione was protesting the actions of the performer prior to the time that Agent L had identified himself to Gaccione.

On redirect examination Agent L testified that Gaccione did not remonstrate with the female until she had walked off the stage and had reached the bottom step. Gaccione did not bring the act to a stop, pull her off the stage or stop the music. It appeared that the music and the dance came to an end simultaneously at the end of her performance.

It was stipulated that the direct testimony of Agent D, who had accompanied Agent L during the investigation, would be similar to the testimony elicited from Agent L.

Agent D's testimony on cross examination was mainly corroborative of the testimony adduced on direct examination.

In defense of the charge, Frank Gaccione (president and sole stockholder of the corporate licensee) testified that he had operated the licensed premises for a period of seventeen years; that he is familiar with the laws relative to the New Jersey State Alcoholic Beverage Control; that he instructs his performers as to what is permissible under the law. Miss Pepper had never performed at the licensed premises prior to July 26, 1969.

On the night in question and at the time that Miss Pepper commenced her performance Gaccione observed her performance from the center of the main bar. Miss Pepper was wearing a gown for the first minute or two of dancing prior to taking her gown off. When she wore a gown he did not see her do bumps and grinds, or simulate sexual intercourse, or dance in a suggestive manner, or use her hands on any part of her body; nor was there any dialogue between her and the patrons. Upon removing her gown the dancer was attired in panties and skin-color mesh over pasties. Continuing, Gaccione testified as follows:

"That is as far as she went as far as undressing. While she was doing her dance I noticed she left the area lit up with the spotlights, and she went

> to the end of the stage, and she was fooling around with her panties, and she had her back ... She had her back to the people, customers, and she brought her panties down where you could see about an inch or so of the crevice of her buttocks. I thought at that time she was having problems with her panties, probably wouldn't stay up or something. I felt that maybe she was adjusting them and put them down further than they should have gone down."

She did not touch her breasts or vagina with her hands. She did not perform bumps and grinds in a manner simulating sexual intercourse. After a lapse of four or five minutes she "turned her back to the customers, and she took the top of her panties and brought them down about an inch, showing about an inch of the crevice of her buttocks. That is when I gave a signal for the band to cut it." The music and the dance abruptly terminated ten seconds after he signalled the band leader. Miss Pepper appeared to be astonished and came off the stage at Gaccione's order. Gaccione and the performer met at the bottom of the steps. As he was remonstrating with the performer Agents L and D approached him, identified themselves to him and informed him that in their opinion the said performance was lewd. Gaccione replied that the performance was not lewd, that he had stopped before it became lewd when he "saw her fooling around with her panties I got her off." At no time did the performer place her hands on her breasts or between her legs. Usually an exotic dancer performs for approximately one-half hour. Miss Pepper performed approximately four or five minutes. She had not completed her act. He was protesting the nature of her act prior to the time that the agents identified themselves. He was not aware of the presence of ABC agents in the premises.

When the performer bent over and pulled her panties down she was not in the area exposed to the spotlight, she was in the shadows. At no time did she remove her panties leaving only a G-string exposed to view.

On cross examination the witness testified that, when Miss Pepper was at the steps leading to the stage, she informed him that she was having trouble with her garment. He does not allow performers to do bumps and grinds. He did not think that Miss Pepper did bumps and grinds, she merely performed movements of the stomach muscles. He observed the entire performance. Upon removing her gown the dancer was attired in panties, pasties which "measured at least two inches around" covering her nipples and skin-color mesh covering the pasties. She did not place her hands under her breasts, in the area of her vagina or buttocks. She did not remove her pants, leaving her with only a G-string and patch, nor did she remove her bra and mesh leaving her with only pasties covering her breasts.

Gaccione did not definitely recall informing the agents that he had abruptly terminated the performance. The entire performance took about five minutes.

Leo F. Shields testified that he had tended bar at

the licensed premises for the past fourteen years and was on duty at the main bar on the night in question. At 8:00 p.m. that night he was present when Miss Pepper went through a "walk-through" rehearsal and he heard Gaccione instruct her relative to the limitations imposed by the State of New Jersey. He had a full bar that night and was too busy to watch Miss Pepper perform. However, he did recall that "the music and dancer had been up only what seemed a short time, and all of a sudden the music stopped, and I turned around to see what was happening, and I saw the exotic dancer walking off the stage picking up her clothes on the way and walking off the stage, and I couldn't understand what was happening." Usually exotic dancers perform for a period of twenty to twenty-five minutes. Miss Pepper performed for approximately five minutes. He saw Gaccione signal the termination of the performance. When Miss Pepper walked off the stage she was attired in a net bra, panties and stockings.

Frank R. Francisco, who had been employed by the licensee on weekends as a bartender and maitre d', testified that at about 8:00 p.m. on the evening in question he observed Miss Pepper rehearsing her dance pursuant to usual custom. He heard Gaccione instruct Miss Pepper as to what she could do and not do, what clothing she could remove, and that bumps and grinds were forbidden.

On the night in question he was tending bar at the time that Miss Pepper was performing when suddenly the music stopped. Upon turning around he observed the dancer walking off the stage Gaccione was standing in front of the bar, he had motioned that the performance be cut, and he appeared to be unhappy. Miss Pepper, who appeared to be indignant, was wearing panties, pasties and a mesh bra. He overheard Gaccione conversing with Miss Pepper and "giving her holy 'H' because he thought she was going to do an indecent routine."

Exotic dancers usually perform between twenty minutes and a half-hour. Miss Pepper's performance did not last more than five minutes. His back was towards the stage, therefore he did not see Miss Pepper perform. He did not hear anyone call "take it off" while Miss Pepper was performing.

In rebuttal Agents L and D testified that at no time did Miss Pepper step out of the spotlight during her performance. When she stepped off the stage she was carrying her dress, pink panties and the top portion of the bra. Both agents testified that the music did not end abruptly, the band completed the musical number then being played.

In matters of this nature we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

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

After carefully considering and evaluating the testimony of the witnesses herein, I accept as factual the agents' version of the performance given by the female entertainer. I find that their graphic, detailed and explicit portrayal of the performance was wholly credible. I find that the performer's manual and bodily gestures and movements were lewd and obscene. Additionally I find that the performer engaged in a strip-tease dance and that at the termination of the dance she was clothed in a G-string and pasties.

I reject the testimony offered by the licensee that the performance was terminated prior to its becoming obscene. I do not question that Gaccione did motion to the performer to terminate the performance and that he was perturbed because of the performance. However, I also find that Gaccione was dilatory in that the lewd and obscene performance had been allowed to continue for a substantial period of time prior to its termination.

Historically, "strip-tease" performances have not been countenanced in liquor licensed premises by the Division of Alcoholic Beverage Control. See Re DiAngelo, Bulletin 753, Item 4; Re Sharpe, Bulletin 1112, Item 5; Re Flo-Mae, Inc., Bulletin 1119, Item 2; Re Venetian Bar & Grill, Inc., Bulletin 1687, Item 6; Re Ask, Inc., Bulletin 1709, Item 2; Re Agron, Inc., Bulletin 1840, Item 3.

I am mindful of logic used by Judge Jayne in McFadden's Lounge v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 61 (App. Div. 1954), wherein he stated at p. 62:

> "Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession."

Furthermore, in a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the rules and regulations pertaining

thereto. A relaxation from the requirements of the provisions contained in the Alcoholic Beverage Law and the rules and regulations of this Division would be contrary to their intendment and against the dictates of sound public policy. A public convenience should not be allowed to degenerate into a social evil. See Jeanne's Enterprises, Inc. v. Division of Alcoholic Beverage Control, 93 N. J. Super. 230 (App. Div. 1966), aff'd 48 N. J. 359 (1966); cf. Paterson Tavern & Bar v. Hawthorne, N.J. Super. (1970).

Accordingly, after considering the entire record and the various precedents cited, I am persuaded by the clear and convincing proof in this case that the charge has been sustained by a fair preponderance of the credible evidence. I therefore recommend that this licensee be found guilty of the charge.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective August 25, 1963, for sale to minors, and by the Director for forty days effective February 16, 1966, for sale to minors and fraud in license application. Re The Garden House, Inc., Bulletin 1665, Item 7.

It is recommended that the prior record of suspension of license for dissimilar violation in 1963 occurring more than five years ago be disregarded but the prior record of dissimilar violations in 1966 occurring less than five years ago be considered, and that the license be suspended for thirty-five days. Re Agron, Inc., supra.

Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by the licensee pursuant to Rule 6 of State Regulation No. 16. The exceptions project a plea for a lesser penalty than the thirty-five day license suspension recommended by the Hearer. Contention is made that the licensee's manager Mr. Gaccione admonished the dancer in question prior to the time the Division agents disclosed their identities and that, therefore, there was no willful intent on the part of the licensee to violate the Division rule prohibiting indecent entertainment on the licensed premises. Additionally it is argued that the proposed suspension would be a severe hardship to the licensee.

I have carefully considered the entire record herein and find that the Hearer's recommendations are fully warranted by the facts of the case. Mr. Gaccione had ample opportunity to take action to prevent the prohibited entertainment, but failed to do so. Remonstrations coming as late as here are inadequate to protect the public interest against such exhibitions.

Also, I do not consider the proposed penalty unduly severe. The performance of the entertainer here was particularly gross and indecent. If a penalty is to

be meaningful, it should be more than a mere slap on the wrist.

Under the circumstances, I concur in the Hearer's recommended findings and penalty and shall impose a license suspension of thirty-five days.

Accordingly, it is, on this 8th day of June 1970,

ORDERED that Plenary Retail Consumption License C-17, issued by the Board of Commissioners of the Township of Lyndhurst to The Garden House, Inc., for premises 768 Stuyvesant Avenue, Lyndhurst, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2 a.m. Tuesday, June 23, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Tuesday, July 28, 1970.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (CARD GAME)- LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
WALTER L. GROPP, JR. & AUDREY I. GROPP t/a Gropp's Bar 3148 S. Broad St. Hamilton Township (Mercer County) PO Trenton, N. J.	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-20, issued by the Township Committee of the Township of Hamilton.	)	

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

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that, on April 4, 1970, they permitted gambling, viz., the playing of a card game for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

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 Walker-Dyer Post No. 181 American Legion, Bulletin 1828, Item 6.

Accordingly, it is,on this 4th day of May, 1970,

ORDERED that Plenary Retail Consumption License C-20, issued by the Township Committee of the Township of Hamilton to Walter L. Gropp, Jr. & Audrey I. Gropp, t/a Gropp's Bar, for premises 3148 S. Broad St., Hamilton Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, May 19, 1970, and terminating at 2:00 a.m. Friday, May 29, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
Ideal Lodge #470, I.B.P.O.E.W.) CONCLUSIONS and ORDER
19 Humphrey Street)
Englewood, N. J.,)
)
Holder of Club License CB-2, issued by the Common Council of the City of Englewood.)

Waldor and Hochberg, Esqs., by Nathaniel A. Boone, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on February 27, 1970, it sold drinks of alcoholic beverages to non-members, in violation of Rule 8 of State Regulation No. 7, and (2) in the application for current license it failed fully to disclose a record of prior license suspensions, in violation of R. S. 33:1-25.

Licensee has a previous record of three license suspensions by the municipal issuing authority (1) for balance of term commencing April 20, 1938 for (a) gambling, (b) fraud in license application, and (c) employment of an unqualified person, (2) for twenty days commencing February 23, 1946 for sales to non-members, and (3) for twenty-five days commencing November 23, 1949 for sales to non-members, and once by the Director for forty days commencing May 12, 1955 for sales to non-members (Re Ideal Lodge No. 470 I.B. P.O. Elks of the World, Bulleting 1065, Item 3), non-disclosure of the suspensions in 1938 and 1946 being the subject of the second charge.

The prior record of suspensions of licenses in 1946, 1949 and 1955 for similar violation for sales to non-members occurring more than ten years ago and for dissimilar violations in 1938 occurring more than five years ago disregarded for penalty purposes, the license will be suspended on the first charge for fifteen days, (Re Cran-

bury Vikings & Sportsmen's Club, Inc., Bulletin 1893, Item 5), and on the second charge for ten days (Re Marcella Bar, Inc., Bulletin 1892, Item 4), or a total of twenty-five (25) days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 10th day of June 1970,

ORDERED that Club License CB-2, issued by the Common Council of the City of Englewood to Ideal Lodge #470, I.B.P.O.E.W., for premises 19 Humphrey Street, Englewood, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 1:00 a.m. Tuesday, June 16, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 1:00 a.m. Monday, July 6, 1970.

Richard C. McDonough
Director