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

BULLETIN 2208

December 9, 1975

TABLE OF CONTENTS

ITEM

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

December 9, 1975

BULLETIN 2208

1. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against

Joseph F. Bradway, Sr. & Joseph F. Bradway, Jr. Trustees of 3100 Boardwalk Company t/a La Concha Hotel 3100 Boardwalk Atlantic City, N.J.,

Holder of Plenary Retail Consumption License C-1062, issued by the Director of the Division of Alcoholic Beverage Control.

Case No. 13,127

CONCLUSIONS and ORDER

Feinberg & Ginsburg, Esqs., by Jeffrey L. Gold, Esq., Attorneys for Licensees
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees plead "not guilty" to a charge alleging that on August 24, 1974, they sold, served and delivered and allowed and suffered the sale, service and delivery of alcoholic beverages directly or indirectly to a minor, age 15, in violation of Rule 1 of State Regulation No. 20.

Testifying on behalf of the Division, Detective Dominic Macellari, a member of the Special Investigation Bureau of the Atlantic City Police Department, gave the following account: pursuant to a specific assignment to investigate alleged sales of alcoholic beverages to minors at the subject licensed premises, he entered the premises on Sunday, August 11, 1974, at about 12:30 a.m. accompanied by Detective Charles Lusch and Norman Thomas.

While seated at the bar, he observed the female minor, accompanied by a male friend, enter the premises, shortly after which she ordered and was served a gin and tonic. She paid $1.00 for that drink to the bartender, identified as Mario Valente. Shortly after consuming that drink, she ordered another gin and tonic from the same bartender and paid him $1.00 therefor.

After she consumed a small portion of that second drink, the police officer identified himself and questioned her about her age. At first, she stated that she was eighteen years of age and produced a Pennsylvania driver's license issued to a Linda S. Ferro.

The license appeared to this witness to have been altered, and upon further questioning, she admitted that her name was Robin Lisa Regan of Philadelphia and that she was under eighteen years of age. Both Robin and the bartender were taken to Police Headquarters. The bartender was charged with sale of alcoholic beverages to a minor, in violation of N.J.S.A. 33:1-77, and released on bail for a hearing in the Atlantic City Municipal Court. The minor was charged as a juvenile, and released in the custody of her aunt to await a judicial conference.

James J. Mac Daid, employed as a senior forensic chemist at the New Jersey State Police Laboratory in Hammonton, whose qualifications as an expert chemist were stipulated, identified the seized alcoholic beverages submitted to him for analysis, as containing the requisite amount of alcohol to come within the definition of an "alcoholic Beverage" as defined in N.J.S.A. 33:1-1(b). See State v. Marks, 65 N.J.L. 84; Mazza v. Cavicchia, 29 N.J. Super. 434 (App. Div. 1954).

The evidence discloses that efforts were made to obtain the presence of the minor at the hearing herein, but to no avail. ABC Inspector Herbert J. Wright testified that in the company of ABC agent C, he went to the address in Philadelphia, Pennsylvania, given to police officers by the minor.

Arriving at the address given, he observed a female walking out of the side door of the house and, upon questioning her, she admitted that she was Robin Regan. She was on her way to school and informed the agents that she would only continue the conversation if she obtained permission from the vice-principal of the school.

In a conference thereafter with the vice-principal and the minor, she admitted that she was, indeed, the person who was in Atlantic City on the date charged herein; that her birthday was November 15, 1958; that she was fifteen years old when she was served in the licensed premises; and that she would appear at the hearing provided her parents were not made aware of that fact. She also refused to explain why she had given a different date for her birthday, when questioned at the time of the first confrontation. The description given by the witness, of Robin, coincided with the description given by Detective Macellari.

After this conference, this witness then returned to her home address and identified himself to a person who stated he was the father of this minor. After explaining the situation to him, the father stated that he would have to speak to his lawyer before stating definitely whether his daughter would appear at the hearing. The father, however, did verify the age of his daughter, as given by Robin.

ABC Inspector C corroborated the testimony of the prior witness and added the following: After speaking to the minor's father, he proceeded to the City Hall Annex where he filed an

application for the minor's birth certificate. The certified copy of the said certificate was admitted into evidence.

James Sharp, a Legal Assistant in the Prosecution Bureau of this Division, related the steps involved in the institution of this disciplinary proceeding, and the correspondence with respect to the various adjournments before the matter was finally heard in this Division. In May 1975, he spoke by telephone to the minor's mother, advised her that the hearing in this matter had definitely been set down for June 10, and inquired whether Robin would appear, in view of the fact that the parents did not respond to any of his communications. She informed him at that time that the minor had no intention of appearing.

Another telephone call was placed that evening to Mr. Regan by the witness, who informed him that, since a subpoena was ineffective when served upon a non-resident outside the State, Robin's appearance must be voluntary. Her father replied that under no circumstances would his daughter or her parents appear at the hearing.

Mario Valente, who was employed as a bartender for the licensees on the date charged herein, testified that Robin entered the premises in the company of a male friend at about 12:30 a.m. on the date charged. She had been in this bar on previous occasions, and on those occasions, as well as on this date, her male companion ordered the drinks.

He ordered a gin and tonic for himself and a non-alcoholic beverage for the minor. He did not have the ingredients for the drink ordered for Robin, so he only served the gin and tonic to her male companion, but she was not served at all. He admitted that he did not ask for identification for this couple on this occasion; however, he did ask for her identification on the previous night.

On cross examination, he asserted that the male companion actually paid him $1.25 for the drink. It was only a few minutes after he was served when Detective Macellari identified himself. He explained that when the police officer placed him under arrest, he didn't ask him why he was being arrested. In fact, he didn't find out why he was arrested until after he arrived at police headquarters. Finally, he admitted that he never obtained a written representation from the minor, but merely asked her for identification.

Orlando Sestito, who was also employed as a bartender on the date herein, testified that there were approximately one hundred-forty to one hundred-sixty patrons in the licensed premises on that occasion, as well as "a lot of detectives in the place." Robin's male companion ordered a mixed drink which he was unable to make because he didn't have the ingredients. He was then paid for the gin and tonic by Robin's companion.

He did not see Detective Macellari in the premises on that evening. He maintained that he did not know why Valente was arrested, nor did he inquire as to the reason for his arrest.

Detective Macellari, recalled for rebuttal testimony, insisted that he specifically explained to Valente "very carefully and very slowly" the alleged violation "and asked him several times if he understood it clearly and then I pulled out a card that I carry in my pocket and read him his rights off the card." He added that Valente made no denials, and was very cooperative. However, Valente mentioned nothing about any non-alcoholic drinks, allegedly ordered by the minor.

We are dealing with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Bev. Control, 20 N.J. 373, (1956); To-Glo Corp., Bulletin 2181, Item 2; Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

I have had the opportunity to observe the demeanor of the witnesses as they testified, and I am persuaded that the account given by Detective Macellari and the Division witnesses was forthright, concise and credible. Detective Macellari and his fellow officers were specifically assigned to investigate alleged sales to minors at the licensed premises and his account of what transpired was factual, forthright and believable. There was no contention, or even suggestion that he was biased or improperly motivated.

On the other hand, the testimony of both bartenders was contradictory and incredible. For example, when Detective Macellari placed Valente under arrest, Valente did not ask him the reason for the action; nor did he make any statement at all. He admits that he didn't even tell the detective that he had checked out the girl as to her age. This does violence to common expression of mankind. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954). It would be totally unnatural for a person who is being placed under arrest not to inquire as to the reason therefor and then to try to explain that such action was improper.

This would be even more likely if Valente's version of what happened is to be believed. If, as he insists, he didn't even serve the minor, wouldn't it be natural for him to inform the police officer thereof?

The account given by Detective Macellari is more consonant with human experience. He states that after seizing the drink from the minor, he explained to Valente the reason why he was placing him under arrest, and, also, very carefully read to him his rights.

Also, his testimony that he served only one drink to the minor's companion is clearly contradicted by Macellari's testimony,

which was corroborated by the minor's statement that she was, in fact, served two drinks of gin and tonic.

Moreover, the admission by Valente that he merely asked the minor and her companion for identification on a previous occasion without requiring her to make a written representation, establishes clearly that the licensee is in violation. In order to establish a complete defense provided by N.J.S.A. 33:1-77 in disciplinary proceedings involving the alleged sale of alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20, it must affirmatively appear, among other things, that the sale was made in reliance upon a written representation made by the minor at or immediately prior to the time of sale or service.

Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives her name, address, age, date of birth, and by signing the writing, makes a statement that she is making the representation as to her age to induce the licensee to make the sale. See Special Note, on page 89, of Rules and Regulations of this Division. Obviously, the failure of the licensee to comply therewith forecloses such defense. Sportsman 300 v. Nutley, 42 N.J. Super. 488 (App. Div. 1956); Jo-Gem, Inc., Bulletin 2148, Item 5.

The Division introduced into evidence a certified certificate of birth issued by the Commonwealth of Pennsylvania, Department of Health, Vital Statistics, which discloses the birth of Robin Lisa Regan to be on November 15, 1958. Thus, she was fifteen years of age on the date charged herein. This certificate was admitted into evidence because I determined that the minor was unavailable within the meaning of Rules 63 (23) and 62 (6) of the Rules of Evidence.

In order to arrive at a determination herein, reference is made to Rule 63 (23) of the Rules of Evidence adopted by the New Jersey Legislature, N.J.S.A. 2A:84A, et seq., which by order of the Supreme Court of New Jersey were made effective September 11, 1967, which reads as follows:

> "STATEMENTS CONCERNING ONE'S FAMILY HISTORY
> A statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, ancestry, relationship by blood or marriage, or other similar fact of his family history is admissible, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the declarant is unavailable as a witness."

Since the hearsay relates to a declaration made by the alleged minor concerning her birth, I find that the declaration is admissible as an exception to the hearsay rule.

Accordingly, upon considering the totality of the record herein, I find that the charge has been sustained by a fair

preponderance of the credible evidence, indeed, by substantial evidence. It is, therefore, recommended that the licensees be found guilty of the said charge.

Licensees have no prior adjudicated record. It is, further, recommended that the license be suspended for forty-five days.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by licensees, and written answering argument was filed thereto, pursuant to Rule 6 of State Regulation No. 16.

One of the basic issues herein involves the alleged service of an alcoholic drink to the minor. The licensees assert that the Hearer's acceptance of Detective Macellari's testimony establishing such service should be rejected in favor of the denial thereof by the bartender.

In the course of this argument, the licensees attack the detective's credibility by raising certain allegations that a fellow police officer of the detective was a boyfriend of the licensees' entertainer who was having difficulty with the licensees. I find nothing in the testimony to support this contention, and it must be rejected.

The Hearer was in the best position to observe the demeanor of the witnesses as they testified. Cf. State v. Conyers, 58 N.J. 123, 145 (1971), and his evaluation of such testimony must be given great weight. See 98 C.J.S. sec. 466 et seq. He noted that the detective visited the subject premises pursuant to a specific assignment to investigate alleged sales of alcoholic beverages at these premises. The Hearer found his account of what transpired to be "factual, forthright and believable." He also found that there was nothing in the record to indicate that this witness was "biased or improperly motivated."

On the other hand, the Hearer found the testimony of both bartenders to be "contradictory and incredible." My examination of the testimony leads me to the same conclusion. Several examples from their testimony will suffice.

The licensees assert that the testimony of Detective Macellari that Robin paid $1.00 for each drink is opposed to the bartender's testimony that drinks cost $1.25. However, at one point the bartender (Secrito) stated that mixed drinks are $1.25 and $1.50. Whereas, at another point, he insisted that all mixed drinks are $1.25.

Obviously, the only importance to be attached to this testimony is that it affects his credibility. Moreover, it is clear that the detective sat directly next to the minor, heard her order two drinks of gin and tonic from the bartender, and observed the bartender serve her these drinks.

It is unreasonable to believe, as the bartenders testified, that the minor ordered an unusual type of drink, which they could not serve her because they did not have the ingredients; and, therefore, her companion drank alone while she was content to sit at the bar and not be served at all.

If it were the fact that the minor was not, indeed, served any drink, would it not have been natural, as the Hearer properly notes, for Valente to vigorously protest and deny any wrongdoing when he was confronted with this allegation by the detective.

Similarly incredible is Valente's claim that he had no idea why he was arrested until he was so informed at the Police Station, in the light of his testimony with respect thereto:

> "Q Isn't it a fact that Detective Macellari came up to you with the girl [Robin] and accused you of just having served her an alcoholic beverage drink."
>
> A Yeah."

And further, in cross examination, he was asked if the detective accused him of serving the minor a gin and tonic, to which he replied "I honestly don't remember the words." (underscoring added)

Thus, the Hearer correctly found that Valente's claim that he did not know why he was arrested is incredible and should be disbelieved. I conclude that the Hearer's factual findings with respect to the service of alcoholic beverages to Robin is amply supported by the record.

Licensees take further exception to the Hearer's finding that the Division established Robin Regan's age as fifteen years on the date of service. With respect thereto, the record contains abundant substantive evidence to establish the certificate of birth of Robin showing her to be fifteen years of age applies to this girl.

Division agents visited her school and verified her name and parental verification, both from the vice-principal of the school and from her father. The personal description of Robin given by them is identical to that of the detective and the bartender. I conclude that there is a reasonable certainty that Robin Regan is the girl in question, and that her age was then fifteen years, as established by the said certificate.

I am satisfied that the Division has made every reasonable effort to produce Robin as a witness. However, because of the objections of her parents, it could not be done. Any delay in effecting

these attempts was not prejudicial to the licensees. There was no showing that any earlier attempts would have produced a different result.

Licensees, nevertheless, advocate that Robin should have been deposed in Pennsylvania. The licensees, however, have not cited any authority under which the Division could lawfully have compelled such deposition.

Although Evidence 63 (23) is applicable, it is obviously academic in view of the fact that Robin's age has been established independently of her declaration as to her date of borth.

Finally, licensees take exception to the Hearer's recommended penalty of license suspension for forty-five days. The recommended penalty is consistent with present Division precedents involving the service of alcoholic beverages to a fifteen year-old minor. This contention is, accordingly, denied.

I have examined and evaluated the other exceptions submitted by the licensees and find that they have either been considered and correctly resolved in the Hearer's report, or are devoid of merit.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the written exceptions filed on behalf of the licensees, and the answer thereto on behalf of the Division, I concur in the findings and recommendation of the Hearer and adopt them as my conclusions herein. I find the licensees guilty of the said charge.

Accordingly, it is, on this 24th day of September 1975,

ORDERED that Plenary Retail Consumption License C-1062, issued by the Director of the Division of Alcoholic Beverage Control to Joseph F. Bradway, Sr. & Joseph F. Bradway, Jr., Trustees of 3100 Boardwalk Company, t/a La Concha Hotel for premises 3100 Boardwalk, Atlantic City, be and the same is hereby suspended for forty-five (45) days, commencing 7:00 a.m. on Tuesday, October 7, 1975 and terminating 7:00 a.m. on Friday, November 21, 1975.

Leonard D. Ronco
Director

2. DISCIPLINARY PROCEEDINGS - SALE OF CONTROLLED DANGEROUS SUBSTANCES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against

Zanotti, Inc.
t/a Rest-A-Bit Tavern
Rt. #46 and Pine Street
Mine Hill Township, N.J.,

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

CONCLUSIONS AND ORDER

James, Wyckoff, Vecchio & Thomas, Esqs., by John M. Iaciofano, Esq., Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded "not guilty" to the following charge:

"On January 26, 1974, you allowed, permitted and suffered immoral activity in and upon your licensed premises and allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to constitute a nuisance, viz., in that on the aforesaid date you, through Kenneth Courter, a person employed on your licensed premises, made an offer to and an arrangement with a customer or patron on your licensed premises to obtain and procure for and/or sell to this customer or patron controlled dangerous substances, as defined by the New Jersey Controlled Dangerous Substances Act (R.S. 24:21-1 et seq.), viz., amphetamines, and did in fact sell or distribute the aforesaid controlled dangerous substance to said customer or patron on the date cited above; in violation of Rule 5 of State Regulation No. 20."

Edward Klingener, a member of the Narcotics Souad of the Prosecutor's Office of Morris County, testified that he visited the licensed premises on January 25, 1974.

Klingener explained that he became engaged in conversation with a male known as Raymond Conklin relative to the purchase of tablets commonly known as "white crosses" which are commonly known as "speed" and "uppers", and are

classified as an amphetamine, a controlled dangerous substance. Conklin related that one hundred "white crosses" were sold for $25.00; that he could deliver them to Klingener; that he did not have any in his possession then; that Klingener should return to the bar at a later date and that if he (Conklin) was not there Klingener should see the bartender identified as Kenneth (Kenny) Courter, who was then on duty.

Klingener returned to the subject tavern the following night. Not seeing Conklin in the barroom, he inquired of Kenny concerning Conklin's whereabouts.

Klingener then testified, as follows:

"...He asked, what did I want to see him about. I replied, dealing with him. Kenny further stated - - he indicated white crosses? And at that point I said yes. He said how much - - what price did he offer you? At that point I told him $25 per hundred. Kenny then departed my company and remained behind the bar, and returned with a pack of Parliament cigarettes. The contents contained white crosses. And also I handed Kenny $20, because I was short $25 at that time. I asked him if he would trust me for the other five? Which he did."

Klingener sent the box containing the "white crosses" to the New Jersey State Police laboratory for analysis of the contents of the tablets.

Klingener paid Kenny the $5.00 balance upon his return to the tavern on January 29.

Klingener did not see Conklin converse with Kenny or any employee of the tavern on January 25. On his visit on January 26, he did not see either Frank Zanotti, Jr. or Josephine Zanotti, the principal officers and stockholders of the corporate licensee.

Ellen Sloma, who was employed as a forensic specialist by the New Jersey State Police and who possessed ample qualifications in that field, testified that the chemical analysis which she performed of the subject tablets established that they contained amphetamines, a controlled dangerous substance.

Frank Zanotti, Jr., an officer and stockholder of the corporate licensee, testified, that ever since he commenced operating the liquor establishment in 1969 it has had an unblemished record, and he has, at all times, cooperated with the local law enforcement officials in the operation of the establishment.

Zanotti explained that he checks the background of all employees. He had been acquainted with Courter approximately

fifteen years, and checked with Courter's previous employer prior to hiring him approximately two years ago. He was not aware that Courter was engaged in any drug activity. Upon being apprised of the charge involving Courter, he discharged him from his employment.

Zanotti was not in the tavern on the nights of January 25 and 26, 1975.

Subsequent to the arrest of Courter, the Prosecutor's Office conducted a raid of the licensed premises. However, no illicit drugs were found therein.

Kenneth Courter testified that he had a casual social relationship with Conklin. While tending bar in the subject premises on January 25, 1974 he saw Conklin in the barroom, but he has no recollection of seeing Klingener in the barroom that night.

Relative to the night of January 26, Courter explained that Conklin patronized the bar. He then informed him that he had to leave and requested that he give a Parliament cigarette box to a male with whom he worked, named Eddie, and to inform Eddie that he owed him (Conklin) $25.00.

Courter placed the Parliament box in plain view next to the cash register. He did not look into the box.

Concerning his contact with Klingener later that night, the witness testified as follows:

"Q What did he say when he approached you?

A He said hello, you're Kenny. I said, yes, and he said I'm Klingener, I work with Roy. Did he leave anything for me? I said, Here, and I gave him the Parliament box. I told him, Ray says you owe $25. He said only have $20. I said you give the $5 to me or give it to Ray. It wasn't my business.

Q What did he respond?

A He gave me the $25."

No terminology was employed indicating that the box contained a drug. In his opinion the licensee conducts "a straight, honest business".

On cross examination, the witness asserted that his curiosity was not aroused by the transfer of the cigarette box and the money.

On February 28, 1975, Courter was convicted of the crime of distributing a controlled dangerous substance. His conviction resulted from the same transaction to which he had testified hereinabove.

Josephine Zanotti, a principal officer of the corporate licensee and the wife of Frank Zanotti, testified in substantial corroboration of the testimony adduced from her husband. She was not aware of any narcotic activity that Courter may have been engaged in.

Gerard Shannon, Robert McCarthy and Rose Apgar, who tend bar at the licensed premises and who had been acquainted with Zanotti prior to the time of the commencement of their employment therein, testified, in sum, that they were informed by Zanotti that the premises should be operated in compliance with all regulatory provisions, and to maintain a constant surveillance for possible violators or violations.

I.

In adjudicating matters of this kind 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. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

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 the 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

In arriving at a determination herein, I find convincing Klingener's testimony of his conversation with the bartender, Courter, concerning the purchase of the narcotic drug wherein Courter indicated that he was aware of the nature of the items he was delivering to Klingener. Although subjected to a vigorous cross examination by the attorney for the licensee, his testimony remained unshaken.

On the other hand, it is my view that Courter's denial that he had any knowledge of the contents of the box which he

transmitted to Klingener and for which he received payment of the sum of $25.00 is incredible. I arrive at this determination without giving any consideration to the basic principle that a conviction of a crime is evidence bearing on the subject of the credibility of the testimony of a witness.

From the evidence presented it is manifest that the licensee, through its employee permitted and suffered the sale of the narcotic drug to take place on the licensed premises, as charged.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136, N.J.L. 28 (Sup. Ct. 1947), at p. 31:

> "Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

It is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities during their employment on licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20. Violations committed by an agent becomes the responsibility of the licensee and does not depend upon his personal knowledge or participation. It has been held that the licensee is not relieved even if the employee violates his express instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 393 (App. Div. 1951); F. & A. Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961); cf, Mazza v. Cavicchia, 28 N.J. Super. 280 (App. Div. 1953), reversed on other grounds, 15 N.J. 498 (1954).

In Mazza the court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge. Said the court (at p. 509):

> "The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director

promulgated thereunder and would make the enforcement of the law an impossibility."

I conclude that a fair evaluation of the evidence and the legal principles applicable thereto, clearly and reasonably preponderates in favor of a finding of guilt of the said charge for the reasons hereinabove set forth. I, therefore, recommend that the licensee be adjudged guilty of the said charge.

II.

I do find the matter of the recommendation as to assessment of penalty perplexing. Excluding Courter, all of the employees of the licensee, including its corporate officers appeared to be upright citizens, worthy of belief and individuals who apparently deported themselves in the liquor establishment in compliance with the spirit and intent of the alcoholic beverage laws. There is nothing in the record to indicate that any of them were aware of Courter's proscribed activity on the date mentioned in the charge.

There is no evidence that Courter habitually engaged in this conduct which would thereupon lead to the conclusion that the licensee's officers or its other employees should be charged with having knowledge of Courter's activities. No narcotic drugs were found in the licensed premises. The licensee has had an otherwise unblemished record. The controlled dangerous substance involved herein, viz., amphetamine, has been classified as one of the "softer" substances in the schedule of controlled substances. See N.J.S.A. 24:21-4, et seq.

Absent prior record, the license would normally be suspended for ninety days. However, in view of the mitigating facts and circumstances herein, I recommend that the license be suspended for forty-five days.

Conclusions and Order

A written exception to the Hearer 's report was filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

The exception relates solely to the alleged "severity and nature" of the Hearer's recommended penalty.

In view of the fact that the factual findings of the Hearer are uncontradicted and correctly summarize the testimony herein, and because the charge herein involves controlled dangerous substances, as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.),viz.,

amphetamines, the recommended penalty of suspension of license for forty-five days is not unduly harsh or unreasonable. Furthermore, it is fully consistent with Division precedent with respect to this type of violation. I, therefore, find this contention to be devoid of merit.

Having carefully considered the entire matter herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exception by the licensee, I concur in the findings and recommendation of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of September 1975,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Mine hill to Zanotti, Inc., t/a Rest-A-Bit Tavern, for premises Rte. 46 and Pine Street, Mine Hill, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. on Tuesday, October 7, 1975 and terminating at 2:00 a.m. on Friday, November 21, 1975.

Leonard D. Ronco
Director