

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. ROUTE 1-9 (SOUTHBOUND), NEWARK, N. J. 07114  
P.O. BOX 2039

BULLETIN 2282

May 3, 1978

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BULLETIN 2282

May 3, 1978

1. COURT DECISIONS - 468 MARKET STREET, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-1235-76

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

468 Market Street, Inc.  
t/a Casino Royale  
468 Market Street  
Paterson, New Jersey

-----  
Submitted December 5, 1977 - Decided December 19, 1977

Before Judges Allcorn, Morgan and Horn

On appeal from New Jersey Department of Law and Public  
Safety, Division of Alcoholic Beverage Control

Philip H. Mizzone, Jr., attorney for appellant

William F. Hyland, Attorney General, attorney for the  
respondent (Erminie Conley, Deputy Attorney General,  
of counsel; Mart Vaarsi, Deputy Attorney General, on the  
brief).

PER CURIAM

(Appeal from the Director's decision in Re 468 Market  
Street, Inc., Bulletin 2248, Item 5. Director affirmed.  
Opinion not approved for publication by Court Committee  
on Opinions).

## 2. APPELLATE DECISIONS - SEMERGIDES v. ATLANTIC CITY et al.

#4120

Nicholas Semergides,

Appellant,

v.

Board of Commissioners of the  
City of Atlantic City, and  
Jimmy's Restaurant Corporation,  
t/a Jimmy's Restaurant Corporation,

Respondents.

ON APPEAL

CONCLUSIONS  
AND  
ORDER

-----  
McGahn & Friss, Esqs., by Patrick T. McGahn, Jr., Esq.,  
Attorneys for Appellant.  
Wm. Goddard Lashman, City Solicitor, Attorney for Respondent,  
Board of Commissioners of the City of Atlantic City.  
Joseph E. Robertson, Esq., Attorney for Respondent,  
Jimmy's Restaurant Corporation, t/a Jimmy's Restaurant Corporation.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellant, holder of Plenary Retail Consumption License C-221, issued by the Board of Commissioners of the City of Atlantic City (hereinafter Board) for premises 1001 Pacific Avenue, Atlantic City, appeals from the action of the Board which, on May 26, 1977 granted the application of Jimmy's Restaurant Corporation for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-158, from Elizabeth Scala, t/a Pinelli's, and from premises 120 South Florida Avenue to 1009 Pacific Avenue, Atlantic City.

Appellant, in his petition of appeal, maintains that the granting of the application violates the provisions of Atlantic City Ordinance No. 8-1956, as amended by Ordinance No. 12-1966 and Ordinance No. 22-1967. These ordinances, in essence, prohibit the transfer of a retail consumption or distribution license to a proposed location within 200 feet of an existing licensed premises, unless a waiver is obtained from the affected licensee.

In their respective answers, the respondents deny the substantive matters set forth in the petition of appeal.

A de novo hearing was scheduled in this Division on July 7, 1977, with full opportunity afforded the parties to

introduce evidence and cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

At approximately 3:30 p.m. on July 6, 1977, the Division received a call advising that the lawyer scheduled to handle the matter for appellant was ill and requested an adjournment. When questioned as to whether the lawyers for the respondents had consented to the request, the caller stated that they had not been advised. The caller was advised that consent was necessary, and requested same prior to determination. The caller then stated that another attorney would be substituted.

On the morning of the hearing neither the appellant nor his attorney appeared at the scheduled time. After waiting in excess of 90 minutes, the hearer telephoned the law firm representing the appellant and was tersely advised that, as was related to the Chief Hearer in a telephone conference of the previous afternoon, the attorney assigned to this matter was ill and therefore "they had adjourned the matter."

The hearer advised the informant that the matter would proceed ex parte, and that the attorney could, if he desired, write to the Director outlining the facts and request permission to present his case at a later date. No such request was ever made, either orally or in writing.

The record discloses that on or about August 24, 1972, the appellant, Nicholas Semergides, applied for a place-to-place transfer of a liquor license to his current premises at 1001 Pacific Avenue, Atlantic City, New Jersey. A hearing was scheduled before the Board at which, Jimmy's Restaurant Corporation, represented by Joseph E. Robertson, Esq., objected to the granting of the place-to-place transfer application of Semergides.

An informal discussion between the then applicant, the objector and members of the Board ensued. It was agreed between all parties concerned that the objection would be withdrawn on behalf of Jimmy's Restaurant Corporation and the transfer would be granted. In consideration of the withdrawal of the objection, Semergides would sign a waiver permitting Jimmy's Restaurant Corporation at any time in the future to apply for a license transfer within 200 feet of the licensed premises of Semergides.

During these proceedings, Semergides was represented by David R. Fitzsimons, Jr., an attorney with offices in Atlantic City.

Pursuant to the agreement, Mr. Fitzsimons prepared a waiver and covering letter, dated August 24, 1972, which he forwarded to Robertson. At that point the objection to the

transfer was formally withdrawn and the transfer application of Semergides to 1001 Pacific Avenue was granted by the Board.

Notwithstanding the waiver, Semergides entered objections to the application filed with the Board by the respondent for the subject place-to-place and person-to-person transfer. Appellant argues that the waiver he executed in August 1972 was for that licensing year (1972-73) only, and that he was free to revoke it thereafter.

After a hearing held on May 26, 1977, the Board granted the application over the objection of Semergides. The findings of fact made at that time are revealing and I quote that which is pertinent to the issue in this appeal:

WHEREAS, evidence introduced included a Waiver, signed and executed at a previous date, through different counsel, when the objector was applying for a license within 200' of said proposed premises, withdrawing the objection of Nicholas Semergides and consenting to allow Jimmy's Restaurant Corporation to have a restaurant and bar at a later date; and

WHEREAS, the Board of Commissioners found as a fact that the said Waiver was continuing in nature and that Jimmy's Restaurant Corporation had relied upon it, and that the objector in the person of Nicholas Semergides had performed by virtue of the existence of his own bar and restaurant.

Preliminarily, I observe that it is a firmly settled principle that the Director's function on appeal is not to reverse the determination of the municipal issuing authority unless he finds, as a fact, that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law. Schulman v. Newark, Bulletin 1620, Item 1; Monteiro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion rests with appellant, pursuant to Rule 6 of State Regulation No. 15.

The ultimate test in these matters is one of reasonableness on the part of the Board, or, to put it another way, could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Newark, 55 N.J. 292, 303 (1970); Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App. Div. 1957).

No testimony or evidence was introduced by the appellant specifying how or in what manner the Board acted erroneously in

granting the transfer, or that same was in violation of the municipal ordinance heretofore cited.

On the contrary, when one reads the ordinance in conjunction with the waiver and letter of transmittal (both dated August 24, 1972) it must, in the absence of further evidence, lead to the inescapable conclusion that this proposed transfer falls within the stated exception, and could be granted, in the discretion of the Board.

My examination of the facts and the applicable principles of law, lead me to the conclusion that, the appellant has failed to meet the burden of establishing by a fair preponderance of the credible evidence that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the actions of the Board be affirmed and the appeal be dismissed.

#### Conclusions and Order

No Exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 15.

Having fully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and the recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of November, 1977,

ORDERED that the action of the respondent Board of Commissioners of the City of Atlantic City, in granting a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-158 to respondent Jimmy's Restaurant Corporation for premises 1009 Pacific Avenue, Atlantic City, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that pursuant to the emergency Rule adopted by me on September 8, 1977, I find that the granting of the application will not be contrary to the public interest.

Joseph H. Lerner  
Director

3. DISCIPLINARY PROCEEDINGS - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCES -  
GAMBLING ON POOL GAMES - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary  
Proceedings against

Galbard, Inc.  
t/a Old Silver Tavern  
149 Freehold Road  
Manalapan Township  
P.O. Englishtown, N.J. 07726

Holder of Plenary Retail  
Consumption License C-2, issued  
by the Township Committee of the  
Township of Manalapan.

CONCLUSIONS

and  
ORDER

-----  
Tanner and McGovern, Esqs., William McGovern, Esq.,  
Attorneys for Licensee.  
Mart Vaarsi, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

The licensee pleaded not guilty to the following charges:

- "1. On April 10, 1976, you allowed, permitted and suffered in and upon your licensed premises unlawful possession of and unlawful activity pertaining to narcotic and other controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1, et seq.), viz., on the aforesaid date you allowed, permitted and suffered the possession and distribution of methamphetamine; in violation of Rule 4 of State Regulation No. 20.
2. On April 7, 1976, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., participants betting for stakes of money on games of table pool; in violation of Rule 7 of State Regulation No. 20."

A.B.C. Agent P. testified on behalf of the Division that, in the company of Detective Crowley of the Old Bridge police department, she visited the licensee's premises on

April 5, 1976. In the course of her investigative duties, she observed Detectives Penley and Kellet of the same police department seated at the bar. Penley stated that one Steve Abel had earlier sold him a spoonful of "Speed", common vernacular for a type of controlled dangerous substance, for twenty-five dollars. Crowley asked Abel for a quantity for Agent P. and himself. Later that evening Crowley and Agent P. met Abel outside the tavern where two tinfoil packets of "Speed" were purchased.

On April 7, 1976, they returned and saw a patron performing tricks at the end of the bar, following which money was passed. Agent P. was asked if she would care to bet and she responded "Okay, I'll bet Five"; she lost. Thinking that she had lost five dollars Detective Penley handed the bartender a ten dollar bill requesting change, stating "the chick just lost five bucks on me." The bartender laughed and tendered the requested change. It later developed that the bet was five cents, not five dollars, as first believed.

On April 10th, they again returned to the tavern. Penley asked the bartender if he had seen "Goober." When the bartender didn't respond, he added "(you) know, Larry, the guy with the blonde afro." The bartender then responded, "I know who you mean, but he hasn't been in yet."

Goober entered later, taking a seat at a nearby table. When the bartender served Penley a drink, Penley said, "Goober just arrived, and I'm going over to talk to him, so I can get my s--- together." The bartender smiled and began to serve drinks as Penley went to Goober's table.

After a while, Agent P. joined them at the table. Also seated at the table was another male, Andrew Colona, who stated to Penley that he could get some "Speed." He conversed with another person, returned, and handed a tinfoil packet to Penley. When asked for a second packet, Colona left and returned moments later with it, throwing the tinfoil packet on the table. The charge for both packets was fifty dollars. When Detective Crowley arrived, he too attempted to purchase a quantity, but was advised that there was none left.

Returning to the bar to retrieve her purse, Agent P. told the bartender "I got to get home to get high on the stuff I just bought, it looks like pretty good crystal." The bartender merely smiled in response.

An analysis of the contents of the packages revealed it to be Methamphetamine, a controlled dangerous substance.

Detective George Penley of the Old Bridge police

department testified that he was working undercover in cooperation with the Manalapan Police. He stated that on April 5th, while in the licensed premises, he was approached by Steve Abel and asked if he'd like to buy some "Speed." They went outside where the sale was consummated.

On April 6th, Andrew Colona advised him during a conversation in the tavern that, he was expecting some Hashish and "Speed" in a few days. They agreed to meet again at the tavern to consummate a sale.

On April 7th, Penley and Kellet saw four males gambling at the end of the bar and during the course of the evening observed gambling at the pool table. When asked to be specific he stated that two people were playing pool and at the end of the game one participant produced two bills and gave it to the other. He then asked the bartender for change of a ten dollar bill stating he had just lost five dollars on the last pool game. The bartender laughed and gave him the requested change.

On April 10th, Penley purchased a quantity of narcotics from Goober, corroborating the prior testimony of Agent P. He stated that there were two males on duty that evening, one tending bar and the other bringing stock from the supply room. Additionally, a woman was bringing food from the kitchen to patrons in the bar room.

Thomas Wallace, Chief of Police of Manalapan Township, testified that during late March or early April 1974, the then Mayor advised him that the licensee had discussed its concern about the possible existence of a narcotic problem upon its licensed premises. The Mayor asked Wallace to confer with the stockholders of the corporate licensee.

A conference was held and Wallace was asked what could be done to combat narcotic problems within the bar, including such areas as the identification of known narcotic's traffickers frequenting the premises, and preventive measures. He advised the proprietors that he would request that the county Prosecutor's Office place an undercover agent on the premises. He also identified a few individuals in the tavern who were suspected of being either users or dealers in narcotics.

As a result of this discussion, an undercover investigator was placed in the tavern by the Prosecutor's Office. This resulted in a suspected narcotics dealer being arrested for the possession of a dangerous weapon, namely, chukka-sticks.

The arrest prompted the proprietor to complain to

the Mayor about the harassment of patrons by police. The Mayor then berated Wallace, stating he was supposed to help and was not to arrest customers on "trumped up" or "chicken charges."

Inasmuch as the undercover agent's identity was now known, the Chief was asked whether or not he wanted another undercover man placed in the tavern; he declined. This was the last the Chief heard relative to narcotics activities at the Old Silver Tavern until the confidential squad of Madison Township's (now Old Bridge) police department contacted him in 1976 about information they had obtained concerning narcotic dealing within this establishment.

At no time subsequent to their conversation did the licensee ever come forward with any information or voice a suspicion of illegal activity within its establishment relative to narcotics.

The appellant called two of its employees, bartenders John F. McCarthy and Joseph Bobal to testify in its behalf.

Licensee's Attorney asked the following questions of McCarthy:

"Q: Drawing your attention again to April 10th, which was a Saturday, were you working on that night?

A: I think so, I would have to check our records for that period.

Q: Now, you would have come on duty at 6:00 p.m.?

A: I believe I still have those hours, - yes."

and the following questions of Bobal:

"Q: Mr. Bobal, directing your attention to Saturday, April 10, 1976, and Wednesday, April 7, 1976, were you employed during that period as a bartender at the Old Silver Tavern?

A: I believe I was.

Q: Were you on duty either one of those nights?

A: Most likely the Wednesday, I'm a little hesitant about the Saturday, but I think I did change days off. I may have been working that Saturday."

It is apparent from the above quotes and their subsequent testimony that, the responses are so equivocal that their testimony is almost worthless. I, therefore, attach limited credibility and probative weight to their testimony regarding the specifics on those evenings, but not as to the tavern's policy and attitude towards gambling and narcotic activity.

Mrs. Diane MacGregor, the principal stockholder of the corporate licensee testified that she has been in the liquor business as a licensee since 1963, and has never had any prior alcoholic beverage related violations. A few months after purchasing this license she, "felt there was a problem in the Township as far as drugs." She, therefore, contacted the Federal Narcotics office in Newark to ascertain whether or not a problem existed in her tavern.

The inquiry was referred to the Manalapan Township police. She had a conversation with Chief Wallace and was aware that an undercover operative was to be placed in the tavern. In fact, she was under the impression that the surveillance was continuing, and that an arrest for narcotics would be made eventually. She denied discussing the arrest of the man for possession of a dangerous weapon with the Mayor, or voicing anger that her patrons were being harassed.

MacGregor does not tend bar, but supervises the daily operations. She stated "I come down, make sure everything is running smoothly, look around, make sure everything is running quietly." She....."checks to assure the help is working and is in and out, up and down, all the time."

On cross-examination, MacGregor admitted that she became aware of a narcotic problem within her tavern - not merely within the township as she stated on direct. She became suspicious by "just seeing that there was too much going in and out of the building.....maybe Billy Parish could be sitting there and then all of a sudden he would get up and go outside and feeling he was gone, then maybe ten or fifteen minutes later he would be back again."

From the testimony of MacGregor it is obvious that the charged activities could have occurred, but she may have had no direct knowledge of same because of her movements.

# 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,

10 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. Bonnett, 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 the testimony of the Division's witnesses regarding the facts and circumstances relative to the sale of methamphetamine as charged in paragraph one of the charges. Further, it is my view that, the bartender had knowledge of the illegal activities taking place in the barroom from the comments made to him by the undercover agent, but took no action nor reported it to his employer.

From the evidence presented it is manifest that the licensee, through its employee's acquiescence or lack of reasonable diligence, permitted and suffered the sale of the 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, 31 (Sup. Ct. 1947):

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.

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. 39

(App. Div. 1951); F. & A. Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961); Mazza v. Cavicchia, 28 N.J. Super. 280 (App. Div. 1953), rev'd on other grounds, 15 N.J. 498 (1954).

In Mazza the Supreme Court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge. Said the court (15 N.J. at 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 cannot agree with licensee's argument that this matter falls within the so called Ishmael exception (Ishmael v. Div. of Alcoholic Beverage Control, 58 N.J. 347 (1971)). There, licensee had made continual efforts to eradicate a drug problem which pervaded the establishment, including close, continued cooperation with the police. Nevertheless, the problem remained solely because of the conditions that existed in the area surrounding the tavern. On these facts, it was held that licensee did not "allow, permit or suffer" the drug problem at the tavern. The record here indicates one contact with the police, over a year prior to this occurrence. On these facts I must hold that the Ishmael exception is inapplicable herein.

I concluded 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 violation of Rule 4 of State Regulation No. 20.

## II

From the testimony of the Division's witnesses, it cannot reasonably be concluded in the circumstances under which passing of money at the pool table occurred, that there had to be gambling activity or the licensee knew or should have known through the exercise of reasonable diligence of any alleged gambling.

I therefore, recommend that the licensee be adjudged not guilty of violation of Rule 7 of State Regulation No. 20 and this charge be dismissed.

### III

Absent prior record, I recommend that the license be suspended for thirty days.

### Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the licensee, and written Answers thereto were filed on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

In its Exceptions, the licensee contends the Hearer's findings inaccurately reflect testimony and create improper inferences concerning surveillances of the licensed premises on April 10, 1976, the date of the alleged violation, and several days prior thereto. I find that the record supports the factual findings, that prior drug purchases were of evidential weight and properly considered by the Hearer, and that no unwarranted inferences are set forth in the Hearer's Report. This Exception is without substance.

The licensee's further contention that the packets of narcotics were too small to have been visible to the licensee's employee has been rejected by the Hearer. Considering the circumstances surrounding the transfers, I find ample evidence to support such conclusion. Similarly, the basis for finding guilt devolves from various circumstances, including the conversations with the licensee's employee, both before and after the April 10, 1976 sale. Moreover, the April 10, 1976 sale itself with the open and notorious manner of transfer of drugs on the second occasion is a significant circumstance. This is more substantial, and contradicts the assertion of the licensee that it was merely aware of a drug problem in the licensed premises. I, therefore, dismiss these Exceptions as without merit.

Lastly, the licensee asserts that it initially, voluntarily, advised the police authorities of its belief that drug activity had occurred in its licensed premises, and that to find guilt herein would be inconsistent with the licensee's intention to prohibit such activity and its efforts to cooperate to eradicate the problem. The information allegedly given on one occasion, in March of 1974, does not support a finding of non-culpability consistent with the principle set forth in Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (1971).

The investigation conducted in 1976 did not have its

origin in the licensee's request to local police officials in 1974. The licensee provided no information in furtherance of the investigation leading to the subject charges, nor did it make any additional request for police assistance, following an arrest in December 1974, of an alleged narcotics dealer on an unlawful weapons charge at the licensed premises.

Thus, in the absence of testimony that the drug problem was the result of conditions existing in the surrounding area; that bona fide continuing efforts of the licensee to eradicate, on its own, the narcotics problem took place; or that the investigation sub judice was initiated and furthered by the licensee's cooperation, any reliance upon Ishmal, supra is without basis in fact or law. Accordingly, this Exception lacks merit.

Having carefully considered the transcripts of the testimony, the exhibits, the Hearer's Report, the Exceptions to the said Report and the Answers filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of December, 1977,

ORDERED that the licensee be and the same is hereby found guilty on the charge alleging that, on April 10, 1976, it allowed, permitted and suffered the possession and distribution of a controlled dangerous substance in and upon its licensed premises, in violation of Rule 4 of State Regulation No. 20; and it is further

ORDERED that the charge against the licensee alleging that, on April 7, 1976, it allowed, permitted and suffered gambling in and upon its licensed premises, in violation of Rule 7 of State Regulation No. 20, be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Manalapan to Galbard, Inc., t/a Old Silver Tavern, for premises 149 Freehold Road, Manalapan Township, P.O. Englishtown, N.J., be and the same is hereby suspended for thirty (30) days commencing 2:00 a.m. Tuesday, January 3, 1978 and terminating 2:00 a.m. Thursday, February 2, 1978.

Joseph H. Lerner  
Director

4. DISCIPLINARY PROCEEDINGS - PLEA TO CHARGES OF HOURS VIOLATION AND SALE TO PERSONS APPARENTLY INTOXICATED - CHARGES OF PERMITTING PRESENCE OF CONTROLLED DANGEROUS SUBSTANCES NOLLE PROSSED.

In the Matter of Disciplinary  
Proceedings against

Al's Cafe-Bar, Inc.  
t/a Al's Cafe-Bar  
138 New Street  
New Brunswick, N.J. 08901

Holder of Plenary Retail Consumption  
License C-10, issued by the City  
Council of the City of New Brunswick.

CONCLUSIONS  
and  
ORDER

-----  
Benjamin Nessenbaum, Esq., Attorney for Licensee.

BY THE DIRECTOR:

Licensee was charged with three alleged violations in and upon its licensed premises. The third charge alleged that, on several dates in 1977, it allowed unlawful activity pertaining to controlled dangerous substances; in violation of Rule 4 of State Regulation No. 20.

Subsequent to the filing of the said charge herein, further information is that it was the licensee who had initiated this investigation by requesting that the police take action to eliminate what he believed to be narcotic activity in his licensed premises. Several times while the investigation was being conducted, the licensee called the Chief of Police to report that the narcotic activity was continuing. The Chief of Police told the licensee that an investigation was being conducted, and that the licensee should act as if he were oblivious to the narcotics activity.

This evidence demonstrates that the licensee informed the Police Department of his problem and, at their request, refrained from taking any action to stop the narcotic activity in its licensed premises while the investigation, which culminated in several arrests, was carried out.

Having considered the foregoing facts and circumstances, I have determined to enter an order dismissing the third charge preferred by the Division against the licensee.

Licensee pleads non vult to the first two charges alleging that: (1) on Thursday, March 3, 1977, at about 11:30 p.m., it allowed the sale and delivery of an alcoholic beverage, viz., a one pint 7.5 ounces bottle of Yago Sangrio, at retail, for off-premises consumption; in violation of Rule 1 of State Regulation No. 20; and (2) on March 2, 1977, it allowed the sale and delivery of alcoholic beverages to a person actually or apparently in-

toxicated and allowed the consumption of alcoholic beverages by said person in its licensed premises.

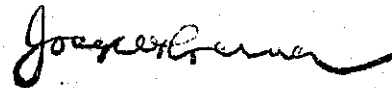
Licensee has a prior record of a suspension of twenty-five days, effective July 27, 1970, as a result of a sale to intoxicated person and a foul language violation; and a fine, in lieu of a suspension of fifteen days, for an hours violation, on January 17, 1972.

The license will be suspended for fifteen days on the first charge, and for twenty-five days on the second charge, to which will be added ten days by reason of two prior similar violations occurring within the past ten years, for a total suspension of fifty days, with remission of ten days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 23rd day of November, 1977,

ORDERED that the third charge herein be and the same is hereby nolle prossed; and it is further

ORDERED that Plenary Retail Consumption License C-10 issued by the City Council of the City of New Brunswick to Al's Cafe-Bar, Inc., t/a Al's Cafe-Bar for premises 138 New Street, New Brunswick be and the same is hereby suspended for forty (40) days commencing 2:00 a.m. on Wednesday, January 4, 1978 and terminating 2:00 a.m. on Monday, February 13, 1978.



Joseph H. Lerner  
Director