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

BULLETIN 1853 May 7, 1969

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ITEM

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

BULLETIN 1853 May 7, 1969

1. COURT DECISIONS - HAUSNER v. KEEGAN - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-393-68

JOSEPH M. KEEGAN, Director of Division of Alcoholic Beverage Control, in the Department of Law and Public Safety of the State of New Jersey,

Plaintiff-Respondent,

vs.

S. EDWARD HAUSNER, t/a Skyline Lounge,

Defendant-Appellant.

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Argued March 17, 1969 -- Decided March 28, 1969

Before Judges Conford, Kilkenny and Leonard.

On appeal from order of Director of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey.

Mr. John W. Noonan argued the cause for appellant (Messrs. Simon, Denstman & Noonan, attorneys.)

Mr. Joel L. Shain, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney; Mr. Stephen Skillman, Deputy Attorney General, of counsel).

The opinion of the court was delivered

PER CURIAM

(Appeal from the Director's decision in Re Hausner, Bulletin 1832, Item 5. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.

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| In the Matter of Disciplinary Proceedings against | ) | |
| S. EDWARD HAUSNER t/a Skyline Lounge 789 Dowd Avenue Elizabeth, N. J. | ) | SUPPLEMENTAL ORDER |
| Holder of Plenary Retail Consumption License C-111 issued by the City Council of the City of Elizabeth | ) | |

Simon, Denstman & Noonan, Esqs., by John W. Noonan, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On November 14, 1968, I entered Conclusions and Order herein suspending the license for fifty days for possession of alcoholic beverages not truly labeled. Re Hausner, Bulletin 1832, Item 5.

Prior to the effectuation of the suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed my action on March 28, 1969. Hausner v. Keegan (App. Div. 1969), not officially reported, recorded in Bulletin 1853, Item 1. Mandate on affirmance now having been received, the suspension may be reimposed.

Accordingly, it is, on this 14th day of April, 1969,

ORDERED that the fifty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-111, issued by the City Council of the City of Elizabeth to S. Edward Hausner, t/a Skyline Lounge, for premises 789 Dowd Avenue, Elizabeth, commencing at 2:00 a.m. Monday, April 21, 1969, and terminating at 2:00 a.m. Tuesday, June 10, 1969.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK.

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| CHARLIE'S CAPRI, INC., t/a CAPRI, Appellant, v. BOROUGH COUNCIL OF THE BOROUGH OF EAST NEWARK, Respondent. | ) | ON APPEAL CONCLUSIONS AND ORDER |

Lewis Stein, Esq., Attorney for Appellant
Joseph F. McCarthy, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Borough Council of the Borough of East Newark (hereinafter Borough) which, by resolution dated October 15, 1968, suspended appellant's plenary retail consumption license for premises 423 North Third Street, East Newark, for fifteen days effective November 1, 1968, after finding appellant guilty in disciplinary proceedings based on Notice of Charges which, in pertinent part, reads as follows:

"On July 14, 1968, you allowed and permitted a brawl, culminating in an act of violence.

"On July 28, 1968, you allowed and permitted a brawl on the premises and refused to cooperate with the police in signing a complaint against the individuals involved or to appear as a witness on behalf of the State,

"that continually since 1965, police reports indicate constant calls to quell or control disturbances on the licensed premises to such an extent and degree to constitute a nuisance in violation of State Regulation No. 20 Rule No. 5."

The resolution and order reads as follows:

"WHEREAS, charges have been heretofore duly served upon the above named licensee, charging that the licensee allowed and permitted on two different occasions a brawl or disturbance on the premises, and over a three year period permitted such disturbances so that the manner the licensed premises were conducted became a nuisance in violation of State Regulation Rule 5, and at a hearing duly held thereon the testimony having established the truth of the charges.

"IT is on this 15 day of October 1968, a motion was made and seconded.

"RESOLVED and ORDERED that Plenary Retail Consumption License No. C-13, heretofore issued by the Borough of East Newark Governing Body to Charlie's Capri, Inc., for premises 423 North Third Street, East Newark, be suspended for a period of 15 days effective the 1 day of November 1968 at 2 a.m."

Appellant, in its petition of appeal, alleges that the action of the Borough was erroneous because (a) its was against the weight of the evidence, (b) it was arbitrary, capricious and unreasonable, (c) respondent failed to disqualify itself upon appellant's request on the ground that the matters at issue herein were considered by the Borough shortly after the Borough was a party litigant in a Superior Court matter involving appellant.

The answer of the Borough admits the jurisdictional facts and denies the substantive allegations of the petition. It defends further that it made its determination upon the charges set forth hereinabove, and that "the matters at issue on this appeal were not the issue before the Superior Court in Docket C-2905-67."

Upon the filing of this appeal, an order was entered by the Director on October 28, 1968, staying the Borough's order of suspension until the entry of a further order herein.

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

I

Appellant is charged with allowing and permitting a brawl culminating in an act of violence on July 14, 1968. In support of this charge, the Borough produced Raymond J. Henry, a local police officer, who gave the following account: On the early morning of July 14, he was approached by Mrs. Machado (the wife of the bartender employed in these premises) who complained that there was a fight in progress at this tavern. Upon entering the premises, he did not observe any fight but noticed a number of overturned stools and some blood on the floor. He spoke to Armand V. Machado (the bartender) and was informed that there had been "a little incident and it was all over in a couple of minutes." None of the patrons was willing to volunteer any information with respect to the alleged incident.

Ruth Machado (wife of the bartender) testified that she was present in the subject premises on the night of July 13 through the early morning of July 14 when a fight erupted. This fight involved three persons, two of whom were beating the victim. A number of stools were knocked over and the victim was bleeding. When the fight started, she screamed and her husband ran from behind the bar to try to break it up. She tried to go to the telephone booth to call the police but one of the men intercepted her and prevented her from using the phone. She then ran out of the premises by the back way and stopped the police car which was in the near vicinity.

On cross examination, she stated that this incident "happened very fast." Two men walked into the premises, approached their prey, and started to beat him. Although the tavern had a great many patrons, no one interceded; in fact "they were all hollering, 'Kill him. Kill him.'...I think it could have been stopped if they really wanted to, but they didn't." She further stated that when her husband tried to break it up, he was pushed against the juke box and prevented from doing anything.

Armand V. Machado (the bartender on the date hereinabove referred to) testified that while tending bar at 1:30 a.m., two men came in, one of whom he recognized as a person known to him as Andy. Andy walked over to him and said, "Have you seen Bobby

around?" He pointed to Bobby seated in the rear of the tavern. The next thing he knew, Bobby was lying on the floor and was being kicked and pommeled by these two men. He went to intercede and was shoved against the juke box. He stated, "Let's break this up. The police will come down. I don't want any trouble. Whatever you have against him, take him outside and settle it outside and talk to him because I don't want anything done in the tavern." Bobby's girl friend tried to protect him and joined the general melee. On cross examination, this witness insisted that the two assailants were not served any drinks at the bar, but precipitated the assault within the matter of a few minutes.

The quintessential issue in my view is whether the evidence supports a finding by the Borough that appellant permitted and suffered the violation to occur. In Conner v. Fogg, 75 N.J.L. 245, 247 (Sup. Ct. 1907), the court said:

> "To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W.Rep. 4), but the term 'permit' has been often used synonymously with 'suffer', so that it may be said that one who suffers the doing of a thing which he might have prevented permits it." (Emphasis ours)

In Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947), the court said:

> "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."

The common sense rule must be applied in each given situation, namely, where the licensee or its employee, acting under the obligation of the tremendous responsibility which is reposed in the holder of a liquor license, exercised that degree of care consistent with such obligation in keeping the premises free from brawls and disturbances. Although a licensee cannot be expected to anticipate any sudden flare-up, it is well settled that a licensee must keep his place and his patronage under his control and is responsible for conditions inside and outside his premises. Seidel v. Upper Freehold, Bulletin 1246, Item 1. The reason for the imposition of such a strict rule is that the liquor business is an exceptional one, and courts have always dealt with it exceptionally. See X-L Liquors v. Taylor, 17 N.J. 444 (1955); Mazza v. Cavicchia, 15 N.J. 498 (1954).

A licensee must assume full responsibility where he or his employees fail to take appropriate action to prevent the occurrence of a brawl or disturbance on the licensed premises. Re Johnson, Bulletin 603, Item 9.

The testimony on this charge fails to convince me that the licensee permitted a brawl to take place on the premises. I am persuaded that this incident was a sudden flare-up and that the licensee's agent acted with reasonable dispatch in attempting to terminate the action. The testimony is clear that the two assailants entered the premises within minutes prior to the fracas. They were not served nor did they consume any alcoholic beverages on the premises. As soon as the bartender was aware of the fight,

he immediately sought to stop it and, instead, was roughly pushed against the juke box by the two obviously stronger men. His wife sought to use the telephone to summon police and she was prevented from doing so.

It is a sad commentary on the nature and attitude of the patronage that not only did they not take any affirmative action to intercede, but actually encouraged these men to continue assaulting a helpless victim. The bartender's wife, as noted, took the only course open to her, namely, she ran out of the tavern with the intention of going to police headquarters to report this incident. It was when she left the tavern that she saw the police officers and they responded to her call.

The liability of licensees for disturbances which occur on licensed premises always presents serious problems. It would be unfair in this case to hold the licensee liable where this distrubance occurred without warning and, under the circumstances of this case, the actions of the employee cannot be considered unreasonable. Cf. Zicherman v. Newark, Bulletin 613, Item 5; Ka Zam Bar, Inc. v. Newark, Bulletin 1595, Item 1.

In view of the aforesaid, I find that the Borough has failed to establish by a fair preponderance of the credible evidence that appellant permitted and suffered a brawl in and upon its licensed premises on July 14 and, therefore, recommend that the action of the Borough on this charge be reversed. Schaefer & Wyatt v. Newark, Bulletin 1140, Item 1; Kandell v. Newark, Bulletin 1081, Item 3.

II

The second charge alleges that on July 28 appellant allowed and permitted a brawl and refused to cooperate with the police in signing a complaint against the individuals involved or to appear as a witness on behalf of the State. In support of this charge, the Borough produced Richard Larsen (a local police officer), who gave the following account: On the date herein, he was summoned to the licensed premises to assist other police officers who were already at the premises. Upon entering, he found the bartender waiting on several patrons but saw no disturbance. He questioned Charles Augustine (the principal officer of the licensee-corporation, who was then working as a bartender) and Augustine told him that there had been a fight and disturbance but that it was all over. When he asked Augustine to identify those injured in the disturbance, Augustine refused. He also stated to the officer that he would neither file a complaint nor would he testify against anybody involved in such disturbance. The other officers gave the witness the names of the persons involved in the disturbance. He spoke to a number of the patrons to ask whether they would be willing to testify, and all of them refused.

John Frank, who was a patron at the time of the alleged incident on July 28, testified that he entered the tavern with his two brothers because it was his brother's birthday. While they were talking and laughing, a patron came from the other side of the bar and started pushing one of his brothers. All he did was try to separate them, and at that time the police came in. He added that the bartender also came from around the bar to ask what was going on, and he replied, "Well, listen, this gentleman is out of order. He came over and, you know, was pushing." The bartender just said that he didn't want any trouble.

Philip Frank, another of the brothers, testified that he was not involved in the fracas but remained seated on a stool while the pushing took place between his brother and the assailant. He estimated that the whole incident took between ten and fifteen minutes and during that time he noted that the bartender presumably went to call the police.

Natale Frank (the third brother, whose birthday it was on July 28) testified that this assailant came over and shoved him and his brother interceded and that was all that happened. Then the police came in, ordered them out of the tavern, asked them whether they wanted to sign a complaint and, when they refused, they were sent on their way.

John J. Miserak (a local police officer) testified that in response to a call from headquarters, he entered the tavern and found that there was an argument, but no actual fight. "We restrained one man." When he arrived at the tavern, police from the Harrison Police Department were already there and the place was populated with about thirty or forty patrons. He noted that the alleged assailant, who was identified as a Mr. Anderson, was bleeding on the left side. Nobody enlightened the police officers as to how this incident started, and none of the patrons was willing to volunteer any information. On cross examination he identified the cut as being a laceration over the left eye but Anderson, the victim, refused medical attention.

In applying the principles hereinabove set forth, it should be stated, with respect to the testimony, that no testimony need be believed but, rather, the Hearer must always credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (3rd ed. 1940); Greenleaf Evidence, sec. 201. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J.Super. 1; Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

From my evaluation and assessment of the testimony, I have the abiding conviction that the three brothers were playing "fast and loose" with the truth. Their version of what happened seems to be inconsistent with the realities of the case. According to them, there was only a shove and some argument, and nothing more. It is quite evident that this was not the case because Anderson received a rather severe cut over the left eye from which he was bleeding. Since this incident happened over a period of at least fifteen minutes, I do not believe that the appellant's agents acted in accordance with their obligations and responsibility. I believe that Augustine (the principal officer, who was then a bartender) could have acted more expeditiously in summoning the police and in stopping this seemingly unnecessary quarrel before blows were struck and a general brawl ensued.

With respect to brawls and disturbances on licensed premises, it has been held that while it is true that a licensee cannot be held responsible for a sudden flare-up on the premises, where he could not have reasonably been aware of its imminence, he does become responsible where he should reasonably have become alerted to the imminence of trouble or disturbance. Suppa v. Harrison, Bulletin 1783, Item 2.

In any event, the members of the Borough Council were persuaded by the testimony presented that this charge was

established by a fair preponderance of the credible evidence. They were apparently convinced, as I am, that this was not the result of a sudden flare-up and that appellant did not act with the full measure of the obligation imposed upon licensees. The obvious disinclination of Augustine to fully cooperate with the police reinforced the conviction of the Borough of appellant's inculpatory conduct.

The facts in this case are different from those in the first charge. Here there was a sufficient intervening period of time within which appellant's employees could have prevented the brawl. In view of the aforementioned findings, I conclude that the Borough has sustained the burden of establishing this charge. I therefore recommend that its action on this charge be affirmed.

III

Appellant is further charged with conducting its premises since 1965 in such manner as to require police to respond to "quell or control disturbances on the licensed premises" so that it constituted a nuisance, in violation of Rule 5 of State Regulation No. 20. To substantiate this charge, the Borough produced William B. Knowles (the local police chief) who was in charge of the records of the Police Department. He testified from department records covering the period February 26, 1965 to June 30, 1968. Many of these police reports relate to incidents occurring outside the tavern as well as some minor disturbances inside the tavern. In a number of these instances, the police were called by one of appellant's employees.

The Chief explained that he and his predecessors specifically advised tavern owners to call the police upon the imminence of breaches of the peace. As he stated, "We had had experiences with circumstances having developed in taverns, and the owners were reluctant to call figuring he would be charged with a violation, and this system led to more serious offenses that could have been eliminated if we had been brought in earlier for an unruly patron or a potential troublemaker than to have trouble start, and I told Mr. Augustine just as I told all the other licensed owners that if they see any potential troublemaker, we would rather put the damper on it before it gout of hand...It's our policy for many years [to encourage licensees to call for assistance when necessary]."

A number of the police reports indicated that when the police arrived, they found no disturbance and the matters were straightened out with police assistance. Further, there are no reports of any incidents between August 13, 1967 until June 30, 1968. During that period of time no complaints were made to the Police Department nor were there any requests for assistance.

The Chief explained that in this small Borough, there are thirteen taverns and three package liquor stores. Frequently, a call to appellant's tavern would be made as the result of a disturbance from one of the nearby taverns. It was his opinion that this tavern was not operated as a nuisance and, in fact, he made his report with respect to this tavern only because he was specifically directed to do so by the Mayor. He added that all of these complaints could be "very minor things, and most of it was noise complaints from the entertainment."

Appellant's attorney argued that the charges were brought because appellant prevailed in an action in the Superior Court wherein appellant challenged the validity of an ordinance prohibiting go-go girls on licensed premises. He felt that the members of the Borough Council were biased and that they should have disqualified themselves from sitting in judgment on these charges.

I do not believe the same justiciable issue determined in the Superior Court was involved herein. That matter was a plenary action challenging the validity of a local ordinance, whereas this is a disciplinary action against the licensee. Nevertheless, in my assessment and evaluation of these charges, I am persuaded that the third charge was improvidently brought. It will be noted that the incidents referred to therein relate to matters that allegedly arose during the past three years. Yet the license was renewed by the Borough in 1966 and 1967 and for the present licensing year. If this place were in fact conducted as a nuisance, the proper procedure should have been to refuse to renew the said license. From a practical standpoint, it seems inequitable to resurrect alleged offenses which occurred two and three years ago; such action bears the pallor of needless rancor. This is starkly emphasized by the fact that, as Chief Knowles testified, no complaint was made to the Police Department nor was any incident reported between August 13, 1967 and June 30, 1968, and presumably not until the incident upon which the first charge was based, namely, July 14, 1968.

I am further impressed with the fact that the Chief (who is the principal law enforcement officer in this community) did not consider that this operation was being carried on as a nuisance. He was asked the following:

"Q Now, you have had occasions to speak with Mr. Augustine prior to this tavern affair over the last several years in your duties as chief?

A Yes.

Q And would you say that he has done everything possible to maintain his business in a peaceful and proper manner?

A Yes, I would."

Under all of these circumstances I cannot say that the Borough has sustained the burden of establishing the charge set forth herein by a fair preponderance of the evidence.

IV

Upon reaching its determination that appellant was guilty of the charges set forth in the Notice of Charges, the Borough imposed a suspension of fifteen days. Since it is here determined that only one charge of permitting and allowing a brawl on the licensed premises on July 28 has been established by the necessary preponderance of the credible evidence, we must now consider whether there should be any modification of the said penalty.

The general rule is that a suspension imposed in a disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority. The power of

the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Delroz, Inc. v. West Orange, Bulletin 1755, Item 1, affd. id nom. App. Div. 1968, not officially reported, recorded in Bulletin 1786, Item 1. See also Torres v. Union City, Bulletin 1802, Item 1; Buckley v. Wallington, Bulletin 1772, Item 1.

Where the local issuing authority's determination and penalty were based upon guilt on all charges, the Director, upon finding guilt on less than those charges, may modify the penalty or remand the matter for reconsideration of the penalty. Cf. Clarence's Music World, Inc. v. Newark, Bulletin 1681, Item 2. However, in this instance, the penalty imposed is inordinately light in view of the nature of the charges and the finding of guilt on all of them. I consider that a penalty of fifteen days on the second charge alone would be reasonable under the precedents established by this Division for such a charge, upon which the action of the Borough has been affirmed. See Re Ewtushek, Bulletin 1351, Item 2; Jackson v. Newark, Bulletin 1600, Item 2.

It is, therefore, recommended that an order be entered affirming the Borough's action with respect to its finding of guilt as to the second charge based on the incident of July 28, 1968; reversing its determination as it relates to the first and third charges; dismissing the appeal, and fixing the effective dates for the suspension imposed by the Borough and stayed pending the entry of an order herein.

Conclusions and Order

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

I have fully considered the said exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of March 1969,

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

ORDERED that Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of East Newark to Charlie's Capri, Inc., t/a Capri, for premises 423 North Third Street, East Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Tuesday, March 18, 1969, and terminating at 2 a.m. Wednesday, April 2, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. APPELLATE DECISIONS - STRATFORD INN v. AVON-BY-THE-SEA.

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| Stratford Inn, a corp., t/a Stratford Inn, Appellant, | ) | On Appeal |
| v. | ) | CONCLUSIONS AND ORDER |
| Board of Commissioners of the Borough of Avon-by-the-Sea, Respondent. | ) | |

Joseph N. Dempsey, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellant's seasonal retail consumption license for ten days effective August 9, 1968, after finding appellant guilty in disciplinary proceedings of the following undated charge:

> "From May 1, 1968, to date you have failed to operate your licensed premises in accordance with the Order of the Director of the State Alcoholic Beverage Control dated December 5, 1967, and the Resolution of the Board of Commissioners of the Borough of Avon-by-the-Sea which granted your license for the 1968 season, in that you failed to have a Special Police Officer employed on the licensed premises on Wednesday, Friday, Saturday and Sunday evenings, from 8:00 p.m. to closing."

Appellant's premises are located at the northwest corner of Garfield and Second Avenues, Avon-by-the-Sea.

Upon filing of the appeal, an order dated August 8, 1968 was entered by the Director staying the effect of respondent's order of suspension pending determination of the appeal.

Appellant alleges, among other things, in its petition of appeal that although it made every effort to comply with the special condition imposed upon its license regarding the employment of a special police officer, it was precluded from doing so because "The municipality has refused to become involved in the matter at all and has left petitioner to its own devices except that it has accepted applications for petitioner's employees to be sworn as special police officers, but has by various devices and delays failed to swear in any of them." As a result thereof, appellant contends that "The action of the Commission in finding that there was no special police officer employed fails to make any fact findings regarding the unavailability of special police officers because of its own action and its findings of fact and its order as a consequence are arbitrary, willful and capricious."

In lieu of filing an answer and appearing at the hearing herein, respondent in a letter dated August 13, 1968, addressed to this Division gave the following reasons for its action:

"(A) The delay in the hearing has deprived the Borough of Avon-by-the-Sea of any effective punitive action to correct the conduct of the licensee, inasmuch as any suspension would be assessed after Labor Day, 1968, or prior to Memorial Day, 1969. The seasonal license runs from April 1 to November 1, although the licensee operates only from Memorial Day to Labor Day.

"(B) The action by the Board of Commissioners, acting as the local Alcoholic Beverage Control Board, was taken for the sole purpose of enforcing an Order of the State Alcoholic Beverage Control Board dated December 5, 1967, which Order set forth certain licensing conditions, including the employment by the licensee of a special police officer from the hours of 8:00 P.M. to closing on Wednesday, Friday, Saturday, and Sunday evenings.

"(C) No special police officer has been employed by the licensee to date in accordance with the December 5th Order of the State Alcoholic Beverage Control Board and the license-granting resolution of the Borough of Avon-by-the-Sea.

"(D) The Board of Commissioners feels that the State Alcoholic Beverage Control Board should cooperate fully with the local Alcoholic Beverage Control Board in enforcing the Orders of the State body."

The order dated December 5, 1967, referred to by respondent, was entered by the Director in an appeal from denial to renew appellant's seasonal retail consumption license for the period May 1 to November 1, 1967. The provision in question was that such renewal "shall be subject to the special condition that a special police officer shall be employed by appellant on the licensed premises on Wednesday, Friday, Saturday and Sunday evenings, from 8:00 P.M. to closing." Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2.

Catherine G. Gately, an officer and major stockholder of appellant, testified that in April 1968, she rerquested Mayor Clements and the two other Commissioners to assign a special police officer to be employed when the license became effective in May 1968. As a result thereof, Richard Labarre was sent by the Borough and employed by appellant but remained only four nights, resigning for personal reasons. She then spoke to the Chief of Police to assign another man to be employed by appellant but was told by him that she should "obtain one myself;" that she hired Thomas Prendergast and sent him to the Borough to be deputized; that "he picked up an application and was to fill it out. Then he was to go back; put in the application; be fingerprinted. And after the return of the investigation on him he would be deputized;" that he immediately began working for appellant but, due to personal reasons, resigned after two weeks; that she believed she again contacted the police chief but, when no special officer was assigned, she employed John Mitchell who remained in appellant's employ for a period of two months although not deputized as a special officer until September 27, 1968.

Robert B. O'Leary, brother of Mrs. Gately, testified that he was employed by appellant from May to July 1968 and, among his other duties, acted as manager of the bar and preserved order in the establishment; that to his knowledge, no complaints were made to the police because of noise or crowds; that he knew of his sister's efforts to employ a special police officer at the premises.

Richard Labarre testified that the chief of police sent him to appellant for employment as a special police officer but he worked only four days. He was not sworn as such officer.

Thomas J. Prendergast testified that he was employed by appellant "approximately between June 28th and July 7th" as a security man.

Joseph H. Clements, called on behalf of appellant, testified that he was mayor of respondent when Mrs. Gately applied for renewal of appellant's license in 1968; that the matter was deferred until a meeting could be arranged with her; that at the said meeting the Director's order was read to her "that she was to have a special policeman four nights a week, and we told her that her license would be granted on the provision that she complied with that request." Mr. Clements also testified that it was his understanding that because a special police officer employed by appellant was limited to the Stratford Inn premises, he would not be in the same category as a special policemen employed by the municipality, who are sworn at the beginning of the year either by the mayor or the borough clerk. In answer to a question by appellant's attorney as to whether or not Mr. Labarre was ever sworn in as a special police officer, he said he did not know because he had resigned as mayor.

It is apparent that there was some misunderstanding by the licensee and the municipal authorities as to what constituted a special police officer to be assigned to preserve order at a licensed premises. Mr. Clements was under the impression that there was a distinction between a special police officer sworn in by the Borough at the beginning of each year and a special police officer assigned to and employed solely by a particular establishment. Mrs. Gately testified that she did everything possible and was always willing to obtain and employ a special police officer in order to comply with the order of the Director. Although attempts were made to deputize appellant's employees as special police officers, for one reason or another none was sworn except John Mitchell, who was sworn late in September, 1968. No one appeared at the hearing on behalf of respondent to refute these statements.

In fairness to appellant, because of the confusion that existed with reference to the definition of a special police officer between appellant and the municipal authorities and a bona fide effort by appellant to employ an officer, I believe that appellant should not be penalized herein. Under the circumstances, it is recommended that the action of respondent be reversed and the charge herein be dismissed.

## Conclusions and Order

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

Having carefully considered the record herein and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 11th day of March 1969,

ORDERED that the action of the respondent be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>The Village Barn, Inc.<br>t/a Migliore's Bar<br>1131 Elizabeth Avenue<br>Elizabeth, N. J.<br><br>Holder of Plenary Retail Consumption License C-67 issued by the City Council of the City of Elizabeth | CONCLUSIONS AND ORDER |

Rinaldo and Rinaldo, Esqs., by Anthony D. Rinaldo, Jr., Esq., and Norman Robbins, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 13, 1968, it permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the date alleged, a female "go-go" dancer during the course of her performance removed one of her breasts from her bikini top and fondled it. In addition, she with moistened finger engaged her navel, manually rubbed her private parts, exposed her buttocks by lowering her bikini bottom, and performed bumps and grinds, meanwhile inviting male audience participation by beckoning motions.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective February 7, 1951, for sale during prohibited hours, and by the Director for forty-five days effective January 31, 1955, for sale during prohibited hours and hindering investigation. Re Village Barn, Inc., Bulletin 1051, Item 3.

The prior record of suspensions of license for dissimilar violations occurring more than five years ago disregarded, the license will be suspended for forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days. Cf. Re Caggy's, Inc., Bulletin 1852, Item 4.

Accordingly, it is, on this 26th day of March, 1969,

ORDERED that Plenary Retail Consumption License C-67, issued by the City Council of the City of Elizabeth to The Village Barn, Inc., t/a Migliore's Bar, for premises 1131 Elizabeth Avenue, Elizabeth, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Wednesday, April 2, 1969, and terminating at 2:00 a.m. Monday, May 12, 1969.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )
)
Admiral Bar & Liquor Store, Inc. t/a Admiral Bar & Liquor Store 2250 Admiral Wilson Boulevard Camden, N. J. ) CONCLUSIONS AND ORDER
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Holder of Plenary Retail Consumption License C-110 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden )

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John R. Bennie, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 24, 1969, it sold drinks of beer to five minors, three age 19 and two age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re William Bogatin Corp., Bulletin 1850, Item 12.

Accordingly, it is, on this 1st day of April, 1969,

ORDERED that Plenary Retail Consumption License C-110, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Admiral Bar & Liquor Store, Inc., t/a Admiral Bar & Liquor Store, for premises 2250 Admiral Wilson Boulevard, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, April 8, 1969, and terminating at 2:00 a.m. Wednesday, April 23, 1969.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - SALE TO A MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against | ) | |
| Robert Vallachi t/a Town House 41-43 Mine Brook Road Bernardsville, New Jersey | ) | CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Bernardsville. | ) | |

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Allgair, King & Kelleher, Esq., by Mahlon H. Ortman, Esq., Attorneys for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on February 23, 1969 he (1) permitted gambling, viz., wagering on a game of "Liar's Poker" utilizing serial numbers on dollar bills for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) sold drinks of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Pine Tree Inn, Inc., Bulletin 1793, Item 14) and on the second charge for ten days (Re Rocky & Joe's, Inc., Bulletin 1839, Item 6), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 1st day of April 1969,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Bernardsville to Robert Vallachi, t/a Town House, for premises 41-43 Mine Brook Road, Bernardsville, be and the same is hereby suspended for twenty (20) days, commencing at 1 a.m. Tuesday, April 8, 1969, and terminating at 1 a.m. Monday, April 28, 1969.

JOSEPH M. KEEGAN
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Joseph E. Seagram & Sons, Inc.
23 Willet Street
Bloomfield, N. J.
268-274 Terminal Avenue West, Clark, New Jersey
270 Broad Street, Bloomfield, New Jersey
Application filed May 6, 1969 for person-to-person transfer of Plenary Wholesale License W-85, Additional Warehouse Licenses AW-34 & AW-63, from The House of Seagram, Inc.

Joseph M. Keegan
Director