

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

BULLETIN 2090

MARCH 7, 1973

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1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary Proceedings
against the following licensees:

CONCLUSIONS
AND ORDERS

- A. Lomer Enterprises, Inc. t/a Con's Tavern
Route 130, Nortonville, Logan Rwp., Rd#2
Swedesboro
S-9225
Lic: C-1
Charge: Failed to keep account books on premises - Rule 36 Reg. 20.
Prior dissimilar violation within 5 years- Fine in lieu
of 10 day suspension, of \$200 - Order: Jan. 3, 1973.
- B. Rudolph Herzog, t/a New Heidelberg
68 Central Ave., Passaic
S-9401
Lic: C-34
Charge: 'hours' ordinance and 'Hours' regulation - fine of
\$1,050 in lieu of 25 day suspension - Order Jan. 4, 1973.
- C. Danica Beslic t/a The Tulip Club
89-91 Prospect St. Paterson.
S-9305
Lic: C-113
Charge: Mislabeled three bottles- fine of \$600 in lieu of
15 day suspension- Order: Jan. 4, 1973,
- D. Forpa, Inc. t/a Spirits Shop
414 High'y 71, Spring Lake Heights.
S-9398
Lic: D-1
Charges: (1) Sale to minor, 19- (2) Failure to reveal prior
suspension in application - Prior sale to minor
within five years- Fine of \$1,680 in lieu of
suspension of 28 days- Order: Jan. 5, 1973.
- E. Mary DiNick, Inc. t/a Opus I
1317 Memorial Ave., Atlantic City
S-9388
Lic: C-92
Charge: Sale to minors, 19,20,20 - two prior similar
violations within past 5 years - Suspension of
32 days- Suspension effective January 16, 1972 -
Order: Jan. 8, 1973.
- F. William Traski t/a Lincoln Cafe
210 Hamilton St., New Brunswick
S-9420
Lic: C-18
Charge: 'Hours' regulation- fine of \$400 in lieu of 10 day
net suspension - Order Jan. 9, 1973.
- G. Joseph Angiulli t/a Center Wines & Liquors
165 Lakeview Ave., Clifton, N.J.
Eun. Rev. 5505
Lic: D-21
Charge: local charge sale to minor- suspension of 10 days
retraction of application to pay fine- Suspension
of 10 days imposed by Director- Suspension effective
January 16, 1973- Order: Jan. 9, 1973.
- H. Alexgood Tavern, Inc. t/a Club Mustang
50 West Broadway, Paterson.
S-9397
Lic: C-168
Charges: 'Hours' violation on 2 occasions - suspension of
15 days on each charge- Suspension of 25 days net.
Suspension effective January 19, 1973: Order: Jan. 9, 1973.
- I. #2 Elmwood Avenue, Inc. ta/ Rush's Tavern
2 Elmwood Ave. (Hamilton Twp) Mercer Co.
PO Trenton
S-9372
Lic: C-37
Charge: No employee list- Rule 16c, Reg 20- Suspension of 5
days net- suspension effective January 22, 1973 -
Order: Jan. 9, 1973.

- J. The Cat & Fiddle Corp. S-9402
 461 Springfield Ave., Newark Lic: C-139
 Charge: Purchase liquor from unauthorized source - Rule 15 Reg.20
 Suspension of 10 days net- Suspension effective
 January 23, 1973- Order: Jan. 10, 1973.
- K. Irma Nagy t/a Roosevelt Hotel & Bar S-9327
 543-545 Roosevelt Ave., Carteret Lic: C-1
 Charge: 'Hours' violation- fine of \$400 in lieu of 10 day net
 suspension - Order: January 10, 1973.
- L. Ed & Jim's Idle Hour Inc. S-9367
 239-241 E. Blackwell St., Dover. Lic: C-14
 Charge: Gambling 'Liars Poker' - fine of \$400 in lieu of 10 day
 net suspension- Order: January 11, 1973.
- M. Appling Liquors Inc. S-9404
 275-277 16th Ave., Newark Lic: D-126
 Charge: 'Hours' regulation - fine of \$400 in lieu of 10 day net
 suspension- Order: January 11, 1973.
- N. Forpa, Inc. t/a The Spirit Shop Mun. Rev. 5549
 444 Hw'y 71- Spring Lake Heights Lic: D-1
 Charge: local charge sale to minor - fine of \$900 in lieu
 of 15 days suspension- Order: January 12, 1973.
- O. Perrig Inc. t/a Paddock International S-9430
 1643 Atlantic Ave., Atlantic City. Lic: C-218
 Charge: Female employee permitted to accept drinks - Prior
 similar offense within 5 years- Suspension of 48
 days net - Suspension effective January 18, 1973 -
 Order: January 12, 1973.
- P. Stew With Brew, Inc. t/a Showcase East S-9114
 1637 Vauxhall Rd. Union, N.J. Lic: C-37
 Charge: Mislabeled 6 bottles- fine of \$3,000 in lieu of
 20 day net suspension- Order: January 12, 1973.
- Q. Simonsen, Inc. t/a Student Prince S-9274
 911 Kingsley St. Asbury Park. Lic: C-2
 Charge: Sale to minors, 17, 20 - fine of \$600 in lieu of
 15 day net suspension- Order: January 12, 1973.
- R. P.L.D.L.Inc. t/a Coney Island Bar S-9390
 28 Market St. Camden. Lic: C-136
 Charge: Mislabeled 3 bottles- fine of \$750 in lieu of 15
 day net suspension - Order: January 15, 1973.
- S. Anthony V. and Josephine Landi t/a Landi's Lone Pine Tavern S-9381
 633 Route #10, (Hanover Twp) PO Whippany Lic: C-4
 Charges: (1) Sale to minors (6), 17, 17, 18, 19, 19, 20 (2)
 sale to minor 19 (3) Sale by glass for off- premises
 consumption, violative of N.J.S.A33:1-2 (4) permitted
 brawl - Suspension of 35 days on (1), 15 days on (2)
 10 days on (3) and 15 days on (4)- Suspension of 60
 days net- Suspension effective January 29, 1973-
 Order: January 15, 1973.
- T. Mary Russo & Joseph Mosco t/a Mosco's Tavern S-9419
 109-111 Throop Ave., New Brunswick Lic: C-43
 Charge: Sale to minor, 19- fine of \$1,750 in lieu of net
 suspension of 25 days - similar violation within 5
 years - Order: January 15, 1973.

- U. Sventy & Wilson, Inc. t/a Frank's Rip Tide Bar S-9319
 401 Boardwalk, Pt. Pleasant Beach Lic: C-14
 Charge: Hindered investigation - prior dissimilar violation -
 Suspension of 48 days net - Suspension effective J
 January 23, 1973 - Order: January 16, 1973.
- V. Perk's Tavern, Inc. S-9413
 555 Ocean Ave. Jersey City Lic: C-18
 Charge: Hours regulation- prior dissimilar offense- fine of
 \$600 in lieu of 15 day net suspension- Order: Jan. 16, 1973.
- W. S&S Cafe, Inc. S-9410
 1250 Kaighn Ave., Camden Lic: C-36
 Charge: 'Hours' regulation- prior dissimilar violation- fine
 of \$825 in lieu of 15 day net suspension- Order: Jan 16, 1973
- X. The Ark, Inc. S-9309
 401 Sea Ave., Point Pleasant Beach Lic: C-10
 Charge: Sale to minor, 19 - Suspension of 10 days net-
 Suspension effective January 24, 1973-Order: Jan. 17, 1973.
- Y. Tolbel, Inc. t/a New Mickey's Lounge S-9174
 103-14th Ave., Newark. Lic: C-325
 Charges; Four separate 'Hours' violations - failed to have
 premises closed - Two prior similar violations-
 Suspension of 75 days net reduced in mitigation
 to 50 days- Suspension effective January 29, 1973
 Order: January 17, 1973.
- Z. Wida's Brant Beach Hotel Inc. S-9391
 44th St. and Blvd.-Long Beach Twp. Lic: C-1
 PO Brandt Beach
 Charge: Mislabeling 2 bottles- fine of \$250 in lieu of
 10 day net suspension- Order: January 19, 1973.
- AA. Jimmy McGriff's Golden Slipper of Newark, Inc. t/a Reflection S-9399
 57 Branford Pl. Newark. Lic: C-6
 Charge: Mislabeling 3 bottles - prior similar and dissimilar
 violations within 5 years - similar violation within
 past 10 years - Suspension of 32 days net- Suspension
 effective January 16, 1973 - Order: January 3, 1973.

ROBERT E. BOWER
 DIRECTOR

2. APPELLATE DECISIONS - EDROB ENTERPRISES, INC. v. JERSEY CITY.

Edrob Enterprises, Inc.,)	
t/a Avenue House,)	
)	
Appellant,)	On Appeal
v.)	
Municipal Board of Alcoholic)	CONCLUSIONS and ORDER
Beverage Control of the City)	
of Jersey City,)	
)	
Respondent.)	

Boffa & Willis, Esqs., by Peter R. Willis, Esq., Attorneys for
Appellant
Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for
Respondent

BY THE DIRECTOR:

A petition of appeal from respondent's order of suspension of appellant's plenary retail consumption license for premises 779 Newark Avenue, Jersey City, for twenty days, was filed and, pursuant to N.J.S.A. 33:1-31, an order staying the suspension pending appeal was entered on October 27, 1972.

The matter came on for hearing at this Division on Monday, January 8, 1973, at 9:30 a.m., notice of which hearing was provided respective counsel for the parties.

On the date and hour of the scheduled hearing the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City appeared through the presence of its counsel and witnesses.

Counsel for appellant did not appear for the hearing at this Division at the appointed hour nor within a reasonable time thereafter, nor to this date has he provided adequate reasons for his absence or petitioned for a continuance of the said hearing. I shall, therefore, enter an order dismissing the said appeal, and shall reimpose the suspension heretofore imposed and stayed pending determination of this appeal.

Accordingly, it is, on this 16th day of January 1973,

ORDERED that the appeal filed in the within matter be and the same is hereby dismissed; and it is further

ORDERED that the previous order staying the suspension imposed by respondent pending this appeal be and the same is hereby terminated; and it is further

ORDERED that Plenary Retail Consumption License C-27, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Edrob Enterprises, Inc., t/a Avenue House, for premises 779 Newark Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, January 30, 1973, and terminating at 2 a.m. Monday, February 19, 1973.

Robert E. Bower,
Director.

3. APPELLATE DECISIONS - KNIGHT AND MORRISON v. IRVINGTON.

William H. Knight and Harmon)
 A. Morrison, t/a The Nest,)
 Appellants,)
 v.)
 Municipal Council of the)
 Town of Irvington,)
 Respondent.)
 -----)

CONCLUSIONS
and
ORDER

Grossman & Udine, Esqs., by Charles M. Grossman, Esq., Attorneys
 for Appellants
 Samuel J. Zucker, Esq., by Herman W. Kurtz, Esq., Attorney for
 Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of respondent Municipal Council of the Town of Irvington (hereinafter Council) which found appellants guilty of permitting a brawl on the licensed premises in violation of Rule 5 of State Regulation No. 20, with a further finding of guilt on an additional charge that appellants hindered an investigation in violation of Rule 35 of State Regulation No. 20, both findings resulting in a penalty of suspension of license for sixty days.

The petition of appeal contends that the action of Council was erroneous in that it was arbitrary, capricious and constituted an abuse of discretion. Additionally, it was further alleged that the penalty imposed was unduly harsh. The Council answered that its findings were proper, and denied the penalty imposed was improper.

An order was entered by the Director on April 13, 1972, upon the filing of this appeal, staying Council's order of suspension pending determination of the appeal. N.J.S.A. 33:1-31.

The attorneys for the respective parties agreed to submit the appeal on the transcript of testimony taken in proceedings before Council, pursuant to Rule 8 of State Regulation No. 15, which was supplemented by oral argument and summation at this de novo hearing. Rule 6 of State Regulation No. 15.

From a review of the transcripts of testimony and supportive arguments, it appears that an incident took place in the licensed premises on the evening of December 29, 1971. That licensed premises, which consists of a neighborhood tavern in an apparent underprivileged area, is managed by a manager and two barmaids. The appellants have another vocation and visit the premises daily, merely for the purpose of overall supervision.

The transcript of testimony at the hearing before the Council contained testimony of Irvington Detectives Louis Bernheim and Robert Reiner on behalf of the Council, and of both Knight and Morrison, together with that of a patron and a barmaid in support of appellants. While the totality of the testimony described the minutes concerning the comings and goings of the witnesses prior, during and subsequent to the fracas occur-

ring on the night in question, such testimony carried an uncontroverted recital of a basic difficult situation that resulted in a knifing and shooting, both of which were fortunately without lethal result. Such facts, distilled to their essence, are found to be as follows:

Early in the evening of December 29, one Torres, a former patron, visited the premises. Neither Knight nor Morrison was then present. Torres had been a troublemaker and had been ordered from the premises on a prior occasion. The barmaid, along with the other employees, had been directed not to serve Torres and accordingly requested him to leave. Upon his refusal to do so, the barmaid attempted to call the local police but, before being able to complete the telephone call, Torres beat her and sliced her hand with a knife. She escaped the premises and sought sanctuary in a nearby tavern from which she called Morrison at his home. Morrison arrived promptly, found Torres gone, located the barmaid and together they searched for the residence of Torres.

Later Morrison returned to the licensed premises and found that Torres had also returned. A scuffle ensued between Morrison and Torres during which a pistol emerged from somewhere, shots were fired and punches were exchanged, resulting in Torres' hasty exit suffering from a wound on his head. Shortly thereafter, calmness now prevailing, Morrison departed for his home, placing the gun in a garbage can located on the sidewalk in front of the establishment.

During the evening members of the Irvington Police Department had made three visits, none of which occurred during the described incidents. Apparently Torres arrived in the emergency room of the local hospital and complained that he had been shot. Investigating this allegation, the detectives returned to the licensed premises and there found Knight, the manager, and a barmaid, whom they escorted to the Police headquarters.

Shortly thereafter, the detectives, in the company of members of the Hillside police, visited the home of Morrison, where they inquired of him the circumstances surrounding the shooting. Morrison supplied no information whatever and, while he raised no objection to a search of his home, admitted of no consequential incident until he was later taken to the Irvington police headquarters and was confronted by Torres. Thereupon he gave a statement embodying the above stated facts.

The crucial issue surrounding the first charge herein simply involves the degree of force used by Morrison in his effort to remove Torres from the premises. In its decision the Council found that an act of violence was committed upon Torres in that Morrison struck him and used a gun. In support of that determination counsel for appellants ably explained the attitude of the Council:

"Nevertheless, he [Morrison] entered the tavern and he was the person who uttered first and he said to Torres in effect, 'You were told not to come here. Get the hell out.' There is a question as to 'Get the hell out', but in any event it was said in such fashion to this person, who I am not sure being sober or under the influence of liquor, resented that and accepted the challenge and said, 'What are you going to do about it?' This is where Mr. Morrison should have turned and left the tavern. This is our contention...."

While it is unquestionably true, and a principle of long standing that a licensee or its agents have a continuous burden of maintaining order within a licensed premises (Re Harrington & Burns, Inc., Bulletin 1878, Item 1), the common sense rule must be applied in each given situation, namely, where 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, he cannot be charged with allowing, permitting or suffering a brawl or disturbance. Charlie's Capri, Inc. v. East Newark, Bulletin 1853, Item 3.

The evidence is far from convincing that Morrison exceeded that degree of force necessary under the circumstances. After the order to leave, Torres approached Morrison in a threatening manner. Torres had already cut and beat the barmaid earlier that evening and Morrison, mindful of the viciousness of Torres, held him at bay with a chair or stool. When that matador technique failed, Morrison struck out with his fist, the suddenly-appearing gun was fired, and Torres then retreated. For his courage in facing up to the mad-dog-like actions of Torres in protection of the women and men in the premises and the establishment itself, he was rewarded with censure and penalty. Had he had done what counsel for the Council suggested, i.e., left the premises upon seeing Torres there, he could have been equally rewarded with penalty for failing to exercise proper control. It is accordingly recommended that action of Council of finding appellants guilty on the first charge be reversed.

Appellants have been further charged with hindering the investigation of the premises by the local police. In defense to that charge counsel for appellants urged reversal upon the ground that Morrison had cooperated with the police and answered their questions. The facts do not support this contention. Upon the conclusion of the incident described herein, Morrison put the gun in a garbage can and returned home to bed. He did not await arrival of the police nor did he give a fully truthful account to the police at his home. He was evasive of the truth until the fear of a possible criminal charge gave his memory the necessary stimulant to become active. The other employees of the establishment also attempted to confuse the investigation by first denying their own presence at the scene of the incidents.

Testimony given by the police detectives indicates that much of their time in investigation was spent attempting to sift the truth from the conflicting statements given by Morrison, the manager and barmaid. Officers of the law, as well as agents of this Division, have a right to receive full cooperation and truth in any investigation of any licensed premises from the licensee or its employees. Receiving less is hindering an investigation. Rule 35 of State Regulation No. 20.

It is therefore recommended that the finding of guilt of appellants on the second charge be affirmed.

However, the Council did not admeasure a penalty for each offense charged. A total suspension of sixty days on both offenses was imposed.

In recommending that the finding of Council on the first charge be reversed it is necessary, therefore, that a modification of penalty be determined in the first instance by the Council. It is accordingly recommended that the matter be remanded to the Council for the imposition of penalty on the second charge, and that the Director's order staying the suspension be continued until a modified penalty be imposed.

Conclusions and Order

Exceptions to the Hearer's report, with supporting argument, were filed by respondent pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibit, the Hearer's report and the exceptions filed with reference thereto, which exceptions I have found to have been fully considered by the Hearer or to be lacking in merit, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 16th day of January 1973,

ORDERED that the action of respondent Municipal Council of the Town of Irvington with respect to the first charge herein be and the same is hereby reversed, and the charge be and the same is hereby dismissed; and it is further

ORDERED that this matter be and the same is hereby remanded to the respondent Council for the purpose of fixing the penalty of suspension on the second charge consistent with the conclusions and order herein; and it is further

ORDERED that my order dated April 13, 1972 staying the Council's order of suspension be and the same is hereby continued until the entry of Council's modified order of suspension as herein directed.

Robert E. Bower
Director

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED CLUB - CLAIM FOR RETURN OF SUM DEPOSITED BY OWNER OF VENDING MACHINE RECOGNIZED - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure	:	Case No. 12,686
on February 18, 1972 of a	:	
quantity of alcoholic beverages,	:	On Hearing
furnishings and equipment, in-	:	
cluding juke box, pool table	:	CONCLUSIONS and ORDER
and pinball machine and \$7.75	:	
in cash at the unlicensed	:	
premises of Latin American	:	
Brotherhood Club of Newark,	:	
691 Springfield Avenue, New-	:	
ark, New Jersey.	:	

.....
Abe Wasserman, Esq., Appearing for claimant, Modern Music, Inc.
Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether seven containers of alcoholic beverages, miscellaneous personal property, furnishings, equipment and \$7.75 in cash, described in an inventory hereinafter referred to as Schedule "A" seized February 18, 1972 in unlicensed premises of the Latin American Brotherhood Club of Newark, located at 691 Springfield Avenue, Newark, N.J., constitute unlawful property and should be forfeited; and, further pursuant to a stipulation dated February 19, 1972, signed by Mario Santoro on behalf of Modern Music, Inc. to determine whether the sum of \$350.00, representing the appraised value of a pool table, juke box and pinball machine, deposited by said Modern Music, Inc., under protest, which said property was returned to Modern Music, Inc., should be forfeited or returned to it.

The seizure was made by ABC agents in cooperation with officers of the Newark Police Department.

When the matter came on for hearing, Modern Music, Inc., represented by counsel, sought return of the \$350.00, deposited in accordance with the stipulation herein. No one appeared to seek return of the alcoholic beverages or the sum of \$100.00, deposited under protest by Haydee Cuevas, Secretary of Latin American Brotherhood Club of Newark, under a stipulation which he signed February 18, 1972, representing the appraised value of miscellaneous personal property seized, and returned to him.

Reports of ABC agents and other documents in the Division file admitted into evidence with the consent of the claimant, Modern Music, Inc., disclosed the following: On February 18, 1972, ABC agents arrived in the vicinity of the premises herein. Agent R entered the premises alone and approached an adult female, later identified as Olga Belen, who was behind a counter. The agent ordered and was served a "vodka and orange juice". He paid with a one-dollar bill, the serial number of which had been previously recorded; Belen placed the bill in a drawer behind the counter and returned change to the agent.

Thereupon, the other agents of this Division and members of the Newark Police entered; Belen was arrested on a charge of sale of alcoholic beverages without a license and possession of alcoholic beverages with intent to sell without a license in violation of N.J.S.A. 33:1-2 and N.J.S.A. 33:1-50. The remaining officers then conducted the search of the premises and seized the property therein. The "marked" money was retrieved.

The Division file also included the Director's certificate that no alcoholic beverage license or permit of any kind had ever been issued to Latin American Brotherhood Club of Newark or to Olga Belen or to any person for or at premises 691 Springfield Avenue, Newark; an inventory of the seized items; affidavits of mailing and the publication of notice of hearing; a Division form containing the serial numbers of the "marked" currency used herein; and the certified report of chemical analysis by the Division chemist that the alcoholic beverages seized were fit for beverage purposes, with alcoholic content, by volume, of more than one-half of one percent.

Mario Santoro testified that he has been general manager of claimant, Modern Music, Inc., for the past twenty-two years. For about two years prior to the seizure he had known Cuevas, the owner of a grocery store. Cuevas requested that he install a pool table, pinball machine and juke box in the quarters of a club of which Cuevas was a member. Following that request Santoro investigated the premises thoroughly, spoke to many of its neighbors, checked its record with the authorities of the City of Newark and, in due course, installed the equipment late in December, 1971. His investigation convinced the claimant that the people involved were of good reputation and that the club was merely a social organization. Following the installation of equipment, he visited the premises regularly two or three times a week during the day and at varied hours from morning through late afternoon. At no time did he see any persons drinking or any alcoholic beverages. Having had possession of equipment challenged for similar cause in the past, he added that he is unusually wary of possible alcoholic beverage violations, hence both his investigation and varied hour visits were purposely thorough. All of his observations failed to reveal the presence of any alcoholic beverage activity in the premises.

The seized alcoholic beverages are illicit because they were intended for sale and sold without license. Such alcoholic beverages, the personal property and cash, as set forth in Schedule "A" herein, seized on the premises, constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-1(i), 1-2, 1-66.

The claimant, Modern Music, Inc., through its witness, Mario Santoro was vigorous in denial that there was or could have been prior knowledge of information available that the premises would be used for illicit sale and, further, during the six week interval between the furnishing of the pool table, etc., to the date of the charge, routine and spot-check visits failed to reveal either the sale or presence of any alcoholic beverages.

Under the circumstances herein, I am satisfied that the claimant, relying on the personal, reasonable inspection of its agent neither knew or reasonably should have become aware of the illicit beverage activity taking place on the premises. Seizure Case No. 12,477, Bulletin 2042, Item 6.

Accordingly, it is recommended that the claim of the claimant herein, Modern Music, Inc., be recognized, and that an Order be entered returning the monies deposited by it under the aforesaid stipulation.

It is further recommended that the money deposited by Latin American Brotherhood Club of Newark, by its secretary, Haydee Cuevas, the cash in the sum of \$7.75, and the alcoholic beverages, seized herein, be forfeited.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time permitted by Rule 4 of State Regulation No. 28.

After carefully considering the entire matter herein, including the transcript of testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 23rd day of January, 1973,

DETERMINED and ORDERED that the claim of Modern Music, Inc., be and the same is hereby recognized; and the sum of \$350.00, deposited by Modern Music, Inc. under one of the aforesaid stipulations be returned to it; and it is further

DETERMINED and ORDERED that the sum of \$100.00, representing the appraised retail value of certain personalty listed in Schedule "A" attached hereto, paid under protest by Latin American Brotherhood Club of Newark to the Director to obtain return of said items, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of N.J.S.A. 33:1-66 to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and cash, as more fully set forth in Schedule "A", attached hereto, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said alcoholic beverages be and the same shall be retained for the use of hospitals and State, county or municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Robert E. Bower,
Director

SCHEDULE "A"

- 7 - containers of alcoholic beverages
- Miscellaneous personal property, furnishings,
fixtures and equipment
- \$7.75 - cash

5. DISCIPLINARY PROCEEDINGS - PERMITTING PROSTITUTION - SUSPENSION FOR 90 DAYS DEFERRED UNTIL FURTHER ORDER.

In the Matter of Disciplinary Proceedings against)
)
 The Back Street Lounge, Inc.)
 t/a The Back Street Lounge)
 11 Lafayette Street)
 Newark, N. J.,)
 Holder of Plenary Retail Consumption License C-711, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
 -----)

CONCLUSIONS and ORDER

Licensee, by Casper Orlando, Manager, Pro se
David S. Piltzer, 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 May 19, 1972, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

The corporate licensee was represented at the hearing by Marie Orlando, its sole stockholder, and by her husband Casper Orlando who was employed by her as the manager of the licensed premises.

In behalf of the Division Agent C testified that he entered the licensed premises, which he characterized as having the appearance of a cocktail lounge, on May 19, 1972, at approximately 10:20 p.m. ABC Agents R and B had preceded him into the licensed premises by five minutes. Casper Orlando was tending bar. Upon entry the patronage consisted of eleven males and four females. Agent C positioned himself to the left of Agent R. A Vivian --- was seated to the right of Agent R. She was engaged in conversation with a male. Upon the male's departure, Vivian smiled at the agents, who had in the meantime switched seats so that Agent C was seated next to Vivian. Agent C asked Vivian "What's happening." Vivian replied, "Anything you want to happen." Agent C then asked, "What is this happening going to cost me?" She replied, "Twenty dollars." Upon being questioned by the agent relative to what he would get for the money, Vivian replied in coarse language that she would engage in sexual intercourse with him at a price of forty dollars for two males. At one point during this conversation Orlando was standing directly in front of Agent C while serving Agent R a drink.

Thereafter the agents and the female engaged in a discussion wherein it was settled that only Agent C was going to accompany Vivian because Agent R didn't have sufficient funds. At this point Orlando came to their vicinity and Agent C asked him, "I won't get ripped off if I go to get laid with this chick?" Orlando replied, "No, I don't think so." Agent C then testified that he engaged in a colloquy with Orlando as follows:

"I then said, 'She is charging me twenty dollars. Is that what they get?' Mr. Orlando replied, 'I think so.' I then stated, 'I am going to have fun tonight.' Mr. Orlando stated, 'I wish I was going with you guys. You are going to have fun.' -- 'I wish I was you guys. You are going to have fun.'"

At this point Vivian informed Agents C and R that she would direct them to her apartment. Immediately prior to leaving, Agent C called out to Orlando, "I am leaving with this chick." Mr. Orlando replied, "You guys are going to have fun." Agent D also departed from the premises and, while enroute, Agents C and R and Vivian were confronted by the local police. The entire group eventually returned to the licensed premises where Agent D identified himself to Orlando.

Agent R's testimony was corroborative of the substantive testimony of Agent C.

On cross examination Agent R testified that the female indicated that she had patronized the premises previously.

Agent D testified that he entered the licensed premises alone on May 19 at approximately 10:35 p.m. During the course of the evening he observed Agents C, R and Vivian engage in conversation. He could not overhear the conversation because he was too distantly removed. As they were preparing to leave the licensed premises he heard Agent C say to Orlando, "I am leaving with this chick." Mr. Orlando replied, "You guys are going to have fun."

After he and local law-enforcement officers confronted Agents C and R and the female and returned to the licensed premises, he identified himself to Orlando and informed him that there may have been solicitation for prostitution engaged in the premises by Vivian. He also referred to some conversation Orlando engaged in with Agent C. Orlando admitted hearing that the agents were going out with a female and conversation concerning twenty dollars and added, "What am I supposed to do?"

In defense of the charge Orlando testified that, since his wife became the operator of the business carried on by the licensee six months ago, the premises were kept "clean" and well-managed and he did not understand why the instant charge was leveled against the licensee.

On cross examination the witness asserted that unescorted females rarely patronize the tavern. He is aware of the fact that prostitutes visit the general area of the tavern. However, they do not patronize this tavern. He recalled serving drinks to Agent C and to Vivian. Due to the noise he did not overhear any of the conversation that took place between the couple. He denied engaging in any conversation with Agent C which referred to the agent's alleged solicitation by Vivian to engage in sexual intercourse either while Agent C was at the bar or immediately prior to leaving. He had never seen Vivian prior to the night of May 19.

Preliminarily, it should be observed that we are dealing with a purely disciplinary action, and such proceedings are 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 Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a basically factual situation, the credibility of witnesses must be weighed. 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 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony. I am persuaded that arrangements were made in the licensed premises for acts of illicit sexual relations as charged.

Licensee forcefully argued that it was totally unaware of the alleged arrangements for prostitution. However, I am convinced that Agent C's testimony of his conversation with Orlando (the bartender) concerning the arrangements he had made with Vivian (amply corroborated by the testimony of Agent R) was not a fabrication or improperly motivated in order to falsely and maliciously inculcate an innocent licensee. It is my view that Agent C's testimony was forthright and credible.

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 has long been held that the soliciation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from those sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App.Div. 1953).

The licensee is clearly inculpated by the misconduct of its employee. Such conduct constitutes a grave threat to the public welfare and morals and must be eliminated. Furthermore, it is a basic principle that, in disciplinary proceedings, the licensee is fully accountable for all violations committed or permitted and suffered by his servants, agents or employees. Rule 33 of State Regulation No. 20; Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948); In re Schneider, supra.

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has established the charge by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty as charged.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for ninety days. Re Carmazino, Bulletin 2044, Item 2.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

It now appears that licensee is presently serving a suspension imposed upon it by prior order of the Director upon licensee's plea of non vult to charges alleging "fraud" and "front", for the balance of its term, effective December 18, 1972 with leave to file a verified petition with the Director for lifting of said suspension upon correction of the unlawful situation, but not sooner than thirty-two days after commencement of said suspension. (Re The Back Street Lounge, Inc., Bulletin 2087, 1(B)); and by prior order of the Director, its license was suspended for the balance of its term, effective December 29, 1972, with leave to lift upon establishing proof of filing of all alcoholic beverage tax reports due and payment of \$100.00 fine.

Thus, no meaningful penalty can be presently imposed. Therefore, the effective dates of the suspension imposed herein shall be deferred until the licensee has served the suspensions imposed by the prior orders hereinabove set forth, and until the licensed business is resumed on a substantial full-time basis.

Accordingly, it is, on this 17th day of January 1973,

ORDERED that Plenary Retail Consumption License C-711, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Back Street Lounge, Inc., t/a The Back Street Lounge for premises 11 Lafayette Street, Newark, be and the same is hereby suspended for ninety (90) days, the effective dates of which said suspension shall be and are hereby deferred until further order.

Robert E. Bower
Director

6. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against Joseph Angiulli t/a Center Wines & Liquors 165 Lakeview Avenue Clifton, N.J.,

AMENDED ORDER

Holder of Plenary Retail Distribution License D-21, issued by the Board of Alcoholic Beverage Control of the City of Clifton.

Heller & Laiks, Esqs., by Herbert R. Ezor, Esq., Attorneys for Licensee.

BY THE DIRECTOR:

On January 9, 1973 Conclusions and Order were entered herein suspending the subject license for ten days, commencing on Tuesday, January 16, 1973 and terminating on Friday, January 26, 1973 after the licensee retracted his application filed with the Director for the imposition of a fine in lieu of a suspension imposed by the local issuing authority. Re Angiulli, Bulletin 2090, Item 1(G).

It now appears, from information received by the local issuing authority, that the licensee had actually served the ten day suspension imposed by the local issuing authority by Resolution dated November 1, 1972 for the period commencing 3:00 a.m., Wednesday, January 3, 1973 and terminating at 3:00 a.m., Saturday, January 13, 1973. In fairness to the licensee, I shall vacate my Order.

Accordingly, it is, on this 15th day of January, 1973,

ORDERED that the suspension heretofore imposed by Order dated January 9, 1973 upon Plenary Retail Distribution License D-21, issued by the Board of Alcoholic Beverage Control of the City of Clifton to Joseph Angiulli, t/a Center Wines & Liquors, for premises 165 Lakeview Avenue, Clifton, be and the same is hereby vacated, effective immediately.

Robert E. Bower, Director