

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

BULLETIN 2151

June 27, 1974

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

BULLETIN 2151

June 27 1974

1. DISCIPLINARY PROCEEDINGS - SALE TO THREE MINORS, ALL AGE 17, LICENSE
SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Helen D. Mularchuk)
t/a Bar H)
417 South Laurel Avenue)
Hazlet, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-10, issued by the Township)
Committee of the Township of Hazlet.)

Kantor, Burns & Kantor, Esqs., by Lawrence D. Kantor, Esq.,
Attorneys for Licensee
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 a charge alleging that on September 5, 1973, she sold alcoholic beverages to three seventeen-year old minors, in violation of Rule 1 of State Regulation No. 20.

The Division presented its case through the testimony of the three minors.

William S--- testified that he is seventeen years old. Shortly after midnight, September 5, 1973, he and two of his friends, Jeffrey K--- and Kenneth S--- entered the licensed premises, sat at the bar and ordered, received and paid for alcoholic beverages in the form of mixed drinks. The bartender who served them was identified as William Burger. William stated that he had been in the premises on prior occasions and neither then or on the date herein charged was he questioned or required to make any representation concerning his age.

Kenneth, age seventeen on the date mentioned in the charge, testified that he, in the company of William and Jeffrey visited the licensed premises, and they were served by bartender

William Burger. He ordered a mixed drink called a "Harvey Wallbanger" which consists of vodka, galiano and orange juice. For this drink and an order of applejack and coke, he paid the bartender approximately \$2.50. He, too, was not asked his age.

The third minor, Jeffrey, age seventeen, testified that he visited the licensed premises with his companions William and Kenneth. He ordered and received a Manhattan and a "Harvey Wallbanger." For the latter he paid \$1.50.

ABC Agent B testified that pursuant to an assignment to investigate the subject matter he met with the minors at the local police station a week subsequent to the alleged incident. He interrogated the minors who asserted that they had purchased the alcoholic beverages at the licensee's premises and further described the bartender as a man whose hand was deformed. Subsequent thereto, Agent B brought two of the minors namely, Kenneth and William, to the licensed premises where they identified Burger as the individual who served them the drinks. The agent observed Burger's deformity of one hand.

The bartender, William Burger, testifying on behalf of the licensee denied selling alcoholic beverages to the minors and further denied ever seeing them in the establishment. He admitted being on duty on the night in question; that would be the only evening of the week when he would work until midnight. He had no recollection of mixing a "Wallbanger"; if he served that drink he would have recalled it.

The licensee, Helen Mularchuk, her husband Andrew, and her son Peter substantially corroborated the testimony of bartender Burger. In addition to the denials that any of the minors had been in the licensed premises on the date of the charge, they outlined the usual procedure when apparent minors requested service. Their policy is to strictly observe the alcoholic beverage rules.

William J. Smith and Christopher Pettersson, both of them having had occasion to patronize the licensed premises in the past supported licensee's contention as to her strict observance of the alcoholic beverage rules. In addition, Smith, who serves as Chief of Police of the Township, testified that the licensee has an unblemished record and that she enjoys an enviable reputation in the community. Pettersson asserted that he has seen minors refused service and has observed entire groups of patrons departing together when one of them was challenged.

In adjudicating matters of this kind, we are guided by the well established principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

The simple issue raised here is whether or not the named minors were served and consumed alcoholic beverages on the licensed premises. Having observed the demeanor of the witnesses, I find credible the testimony of the minors that they did consume alcoholic beverages in the licensed premises. The corroborated description of the bartender by the minors to an agent of this Division at police headquarters and the subsequent confirmation that that bartender was on duty on the night in question, leads to the inescapable conclusion that the testimony of the minors was credible and convincing.

I find that the Division has established the charge by a fair preponderance of the believable evidence, indeed by substantial evidence. In consequence, I recommend that the licensee be found guilty of the charge.

Absent prior adjudicated record within the past five years, it is recommended that the license be suspended for thirty-five days.

Conclusions and Order

Written exceptions to the Hearer's report were filed on behalf of the licensee, pursuant to Rule 6 of State Regulation No. 16.

I have carefully examined and analyzed the said exceptions and find that they have either been satisfactorily considered and resolved in the Hearer's report or are lacking in merit.

In particular I find that the minors identification of the bartender (who was described by the minors as having a deformity of one hand) to the ABC agent was fully and satisfactorily corroborated by the agent's observation of the said deformity.

Consequently, having considered the entire record herein, including the transcript of the testimony, the Hearer's report, and the exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of April 1974,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Hazlet to Helen D. Mularchuk, t/a Bar H, for premises 417 South Laurel Avenue, Hazlet, be and the same is hereby suspended for thirty-five (35) days, commencing 2:00 a.m. on Thursday, May 9, 1974, and terminating 2:00 a.m. on Thursday, June 13, 1974.

JOSEPH H. LERNER
ACTING DIRECTOR

2. APPLICATION FOR WAIVER UNDER N.J.S.A. 33:1-42 - GLASSBORO STATE COLLEGE COOPERATIVE ASSOCIATION, INC. - APPLICATION DENIED.

In the Matter of an Application for)
a Waiver under N.J.S.A. 33:1-42 by)

The Glassboro State College)
Cooperative Association, Inc.)
College Union Building)
Glassboro State College)
Glassboro, N.J.)

CONCLUSIONS
and
ORDER

-----)
Hyland, Davis & Reberkenny, Esqs., by John S. Fields, Esq.,
Attorneys for Applicant

BY THE DIRECTOR:

The applicant, Glassboro State College Cooperative Association, Inc., applied for a waiver of the provisions of N.J.S.A. 33:1-42, to authorize the issuance of a club license to it by the local issuing authority of the Borough of Glassboro for premises located on the campus of Glassboro State College.

Petitioner contends that such waiver should be granted for the following reasons: (1) that the facility located in the building on the campus of Glassboro State College is not a State-owned or operated facility within the contemplation of the aforementioned statute; (2) that the statute is invalid and inapplicable to the applicant because it "does not specifically provide any standard pursuant to which the Director may exercise the discretion which the statute purports to delegate to him, nor were there any rules and regulations of this Division that were promulgated at the time this application ensued which offer any guidelines to us with respect to the exercise of that discretion"; (3) that the present policy of this Division is to issue special permits on State-owned and controlled property which provide that only wine and beer may be served, and that such limitation which excludes the sale of liquor has no rational basis.

Thus, in the event such waiver is granted, the applicant would be enabled to obtain a club license which would not contain such restriction.

The applicant made an application to the local issuing authority for a club license and applied to the Director for a waiver. This application was denied; the club license was not issued. Thereupon, the applicant requested and was granted a hearing to afford it an opportunity to be heard with respect thereto.

I

The principal contention of the applicant is that the building in which the proposed licensed facility is located is not, in fact, a public building, but is rather a building owned by the Student Body of Glassboro State College. The attorney for the applicant asserts that the applicant is a non-profit corporation that was originally organized under a modified name in 1958, and has been in existence since that time. This facility was constructed by the Educational Facilities Authority of this State, and that the indebtedness incurred for the said construction is being defrayed by monies collected from the students of Glassboro State College in the form of activity fees.

He was then asked:

"Who owns this building?"

and his answer was as follows:

"As I understand the procedure for the construction of this building, the land on which it was constructed was owned by the Board of Trustees of the Glassboro State College. The land was then conveyed to the educational facilities authority. The building was constructed and financed by that authority with the costs thereof and indebtedness incurred therein to be repaid from student center fees assessed against all students at Glassboro State College.

To the best of my knowledge, the only formal document that has been executed implementing this arrangement was the original deed transferring the title of the real estate to the facility, and I believe the remaining documents have been executed by the appropriate authorities and not available to me."

I find this contention unsupported by the evidence and totally lacking in merit. N.J. S.A. 33:1-42 reads as follows:

"No sales of alcoholic beverages shall be made in any public buildings belonging to or under the control of the state or any political subdivision thereof except as to the national guard as hereinbefore provided, and except as permitted by the commissioner in specified cases and subject to rules and regulations."

No testimony was offered in support of applicant's contentions with respect to the ownership of the building. However, in its application for a club license made to the local issuing authority and marked in evidence as Exhibit A-1, the following question was asked and answered:

"5. Does applicant own premises to be licensed? No.

(a) If not, give name and address of owner --
Educational Facilities Authority, Dept. of
Higher Education, Trenton, New Jersey."

It is clear that Glassboro State College is a public institution of higher education and, as such, a State agency. Buildings located on said campus are owned and operated by the State of New Jersey. The subject building, a college union building, is deeded in the name of the Educational Facilities Authority, an authority created by an act of Legislature (See N.J.S.A. 18A:72A-3 et seq.). Said Authority has been granted the authority to finance the construction of buildings on campuses of institutions of higher education.

Further information which was received by this Division with respect thereto from Mr. Edward Bambach, an official of the Educational Facilities Authority, confirms that this Authority is the owner of record of the said building and would remain as such until the year 2009, at which time the ownership of the said building and property would be transferred to Glassboro State College. The Authority leases the building to the Board of Trustees of Glassboro State College at a fixed annual rental. The Board of Trustees is in full control of the said premises. Therefore, this facility is located in a State-owned or under the control of the State and the application becomes expressly subject to the provisions of the subject statute. Although this is dispositive of the matter herein, I shall, nevertheless consider the other contentions advanced by the applicant.

II

Applicant argues that the Director has no guidelines by any rules and regulations of this Division with respect to the exercise of his discretion herein. The fact is to the contrary. As was pointed out in Faculty-Student Cooperative Association, Inc. of Montclair State College, Bulletin , Item , this statute is read in connection with N.J.S.A. 33:1-74, which sets forth, in pertinent part, the following:

"To provide for contingencies where it would be appropriate and consonant with the spirit of this chapter to issue a license but the contingency has not been expressly provided for, the Director of the Division may for special cause shown, subject to rules and regulations, issue temporary permits the fee for which shall be determined in each case by the Director of the Division and shall not be less than \$5.00 nor more than \$500.00, payable to the Director of the Division and to be accounted for by him as are license fees."

The intent of the Law is crystal clear. The Director is vested with broad authority in the comprehensive administration of

the Alcoholic Beverage Law, N.J.S.A. 33:1-39, and since the Alcoholic Beverage Law shall be liberally construed, N.J.S.A. 33:1-73, such broad authority of the Director is vested in the consideration of this application. Furthermore, the Director has a well-established and consistent policy with respect to the applicability of the aforementioned statute on applications by State-owned colleges for such permits, as noted hereinabove,

III

The applicant forthrightly admits that the reason it desires a waiver is that it may obtain a club license from the local issuing authority, whereby it may also serve liquor in addition to wine and beer. It maintains that there is no rational basis to justify such limitation on State-owned or controlled property.

On the contrary, I think it is a sound policy, and consistent with the philosophy and objectives of the Alcoholic Beverage Law, and has been effective in its operation. It has a rational basis which has been supported in Division and Case law throughout the years.

I, therefore, find that the request for a waiver is without factual support or legal merit and is, accordingly, denied. This ruling is made without prejudice to applicant's right to file an application for a special permit in accordance with the applicable statutory provisions and the guidelines established by this Division.

Joseph H. Lerner
Acting Director

Dated: May 6, 1974

3. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY ON LICENSED PREMISES - PROSTITUTION - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

Sport's Cafe, A Corporation)
t/a Arden Cocktail Lounge)
58 Church Street)
Paterson, N. J.,)

Holder of Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

CONCLUSIONS
and
ORDER

Goodman Singer, Esq., Attorney for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to a charge alleging that on December 15 and 16, 1973, it permitted lewdness and immoral activity, viz., solicitation for prostitution, on the licensed premises in violation of Rule 5 of State Regulation No. 20.

The Division presented its case through the testimony of ABC agent P, whose testimony was by stipulation corroborated in whole or in part by the statements made by ABC agents D and I. Agent P stated that on the evening of December 15, 1973, in the company of ABC agents D and I, he visited the licensed premises about 10:50 p.m. Agent I remained on the exterior of the premises as he and agent D entered and took seats at the bar. He ordered drinks, was served, and observed that a bartender (later identified as Frank Ferreolo) and a barmaid (later identified as Bulah Miranda) were on duty behind the bar, and a go-go dancer (not identified) was present. There were about fifteen male patrons in attendance.

About three-quarters of an hour later, two females entered and made their way along the bar, greeting several of the patrons. As they reached the position of the agents, a conversation ensued between one of the females and agent P. The gist of that conversation was that the first female (later identified as Laurie Battle) would for twenty dollars engage in an act of sexual intercourse with agent P and the other female would so engage with agent D for a like amount. Agent P bought a drink for the females

and proceeded to engage in conversation with the barmaid concerning the arrangements then made, to which the barmaid replied, "They're all right, especially Laurie; she is worth \$20."

A similar conversation ensued between agent P and the bartender Frank Ferreolo, in which the bartender assured him that "She's clean, she's all right." With that the females departed, indicating that they were not going to leave the premises with the men but would meet them at a local hotel. Without here recounting the detailed steps testified to by agent P, it suffices to state the female Laurie, to whom twenty dollars in marked money had been given, was eventually arrested in her hotel room by a member of the local police who had been summoned by agent I, as prearranged. The marked money was recovered.

Following the arrest of the female, the agents returned to the licensed premises, identified themselves and announced the purpose of their return. The bartender admitted the earlier conversation with the agents and the barmaid admitted the conversation with the reservation that the purpose of her remarks was "just to be friendly." Agent P denied he had observed any sign posted either in the window or on the wall of the premises enjoining the presence of female patrons unaccompanied by male escorts.

Testifying on behalf of the licensee, the bartender Frank Ferreolo, who described himself as the manager, stated that there were no unchaperoned females in his premises on that evening. He recalled only that the three agents had come in and announced that there had been a violation, with agent P stating "I told you I was taking a girl out of the place." This was denied by the bartender, whereupon the agent said, "Well, forget it." He denied any prior conversation with the agents and denied further that the barmaid could have spoken to any of them seated where they said they were, as her area of service is at the other end of the bar. Photographs of two signs, one on the wall and the other in the window, were introduced into evidence. These signs admonish females not to enter the premises unescorted.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such measures are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948). Thus the Division need establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

The signs alleged to have been in the premises prohibiting the presence of unescorted females reflect a recognition that the area has an abundance of prostitutes. Records of this Division reveal that the location of this licensed premises was, a few short years ago, the location of a prior licensee whose license was revoked because of prostitution activity. Certainly the menace to liquor licensees is such that more than mere signs are needed to eliminate the risk of disciplinary action.

The agent's version of what transpired was clear, concise and fully corroborated by his fellow agents. They are trained agents mindful of the requirement of the licensee's prior notice; hence the conversations with the bartender and barmaid, which were otherwise unnecessary, carry a loud ring of credibility. The vague recollection of the bartender coupled with his corroborative recollection of a part of the agent's statements only solidified the agents' description.

I therefore conclude that the Division has established by a fair preponderance of the credible evidence that the said licensee, through its employees, allowed and permitted immoral activity as set forth in the charge herein and accordingly recommend that it be found guilty thereof.

Absent prior adjudicated record, it is recommended that the license be suspended for sixty days on the charge herein.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed thereto, which I find either lacking in merit or to have been satisfactorily considered and resolved in 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 13th day of May 1974,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Sport's Cafe, a Corporation, t/a Arden Cocktail Lounge for premises 58 Church Street, Paterson, be and the same is hereby suspended for sixty (60) days, as follows; for the balance of its term, viz., 12:00 p.m. June 30, 1974, commencing 3:00 a.m. Monday, May 27, 1974; and it is further

ORDERED that in the event that the said license is renewed for the 1974-75 licensing period, then the said license shall be and is hereby suspended until 3:00 a.m. Friday, July 26, 1974.

Joseph H. Lerner
Acting Director

4. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITY ON LICENSED PREMISES - PROSTITUTION - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

Adeline Fernandes and Ernesto Fernandes t/a E.P.C. Club 257-263 Third Street Elizabeth, N.J.,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-20, issued by the City Council of the City of Elizabeth.

Forman, Forman & Cardonsky, Esqs., by Louis L. Forman, Esq., Attorneys for Licensees Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to a charge alleging that on December 8 and 9, 1973 they permitted immoral activity, i.e., solicitation for prostitution, on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

The Division presented its case through the testimony of an ABC Agent, two members of the Elizabeth Police Department and a police officer of the Elizabeth Housing Authority.

Officer Robert Perez, an Elizabeth Housing Authority police officer, testified that he and a fellow officer, Robert Hidalgo, visited the licensed premises on the evening of December 8, 1973. They observed a female walking about and talking to male patrons. Engaging the female in conversation, conducted in Spanish, they learned that the female was looking for a 'husband for one night. Twenty Dollars.' Thereupon, the witness informed ABC Agent D of the conversation. Agent D inquired of the bartender (who was later identified as Costa) whether the females could be trusted. The bartender responded, 'They can be trusted. They are clean.' The female departed and ABC Agent D, in the presence of the officer, feigned anger in losing the opportunity to be with her. He expressed indignation to Costa, who thereupon responded 'Don't get mad. There is a nicer one coming in ten or fifteen minutes. Don't get mad.'

Costa came around to the patron side of the bar and as another female entered, he took her by the arm and brought her to the witness and Agent D and said "Take care of him. He is my friend." The second female identified herself as Rosalia and agreed to perform an act of prostitution for twenty dollars. During the course of having conversation with the bartender, the bartender said, "You leave first. The girl will follow." Thereafter, the female was arrested in her room, the money paid to her seized and detectives of the Elizabeth Police Department took her into custody.

ABC Agent D testified that he visited the licensed premises on December 8, 1973 with members of the confidential squad of the Elizabeth Police Department, the Elizabeth Housing Authority police and the United States Department of Immigration. The purpose of the visit was to conduct an investigation pertaining to prostitution at the licensed premises. He sat at the bar and was served a drink by Costa. He engaged the bartender in conversation relative to a female who he had observed conversing with some males. In response to the question "Is she worth \$20" the bartender replied "Why don't you offer her \$10, then go to \$15, and go to \$20? Bargain with her."

Outside the premises, the female left the area with two other males. Agent D, accompanied by Perez, reentered the tavern and informed Costa that they were not successful. Costa replied, "Don't get mad. I have another one coming in. She is younger and nicer."

Arrangements were soon made with another female (Rosalia) whereupon Agent D informed the bartender "It is all set. He was right. This girl is much prettier than the other one. She is even cheaper, twenty dollars for her, but we don't have to pay for the room." The bartender responded "Didn't I tell you to stick around; I would take care of you?" words to this effect. He then advised Agent D to leave first with Perez and the female would follow. Thereafter, the Agent and Perez, reaching the place of assignment paid the female with marked money, which was later retrieved and the female was placed under arrest.

The two prior witnesses and Robert V. Hidalgo, a housing guard of the City of Elizabeth who was in the premises for only one-half hour, testified that they observed Costa and a female perform the functions of tending bar such as asking patrons for an order, serving them drinks, receiving payment therefor and making use of the cash register to record the transactions. Additionally, when Agent D returned to the licensed premises he informed Fernandes in Costa's presence of what had transpired relative to the alleged prostitution. Also, upon interrogation, a male identified as Dephino stated he worked for the owner but received no pay.

It was stipulated that the testimony of ABC Agent P would be corroborative of that of Agent D.

Elizabeth Police Detective Fred Mazura testified that he had provided Perez with "marked money", and, thereafter, followed Perez, ABC Agent D and the female to her abode, entered thereafter and found the female on the bed nude, retrieved the money and placed her under arrest. The witness recited a later conversation with a Mr. Fernances (identified as one of the licensees) who, when asked if the bartender Costa was employed by him responded "no, he was not employed by me. I am leasing my license to him."

The co-licensee, Ernesto Fernandes, testified that he was endeavoring to sell the license to others, including Costa and was also attempting to negotiate a lease of the building as part of the sale. He had been ill, hospitalized and was recuperating at the time of the raid.

He asserted that Costa was on the premises merely to observe how the business was to be conducted but had no authority to go behind the bar nor to wait on patrons. He has not seen Costa since the incident. He had no knowledge that Costa was in anywise involved with females who engaged in solicitation for prostitution. Fernandes conceded that the barmaid on duty was his employee. He further conceded that Dephino was authorized by him to act in his behalf during his absence from the tavern including the date charged.

I find that the evidence is not only overwhelming, but also uncontroverted, that acts of solicitation for prostitution and the making of arrangements for illicit sexual intercourse did occur on the licensed premises as testified to by the officers and the ABC agent.

Therefore, the status of Costa becomes of paramount importance and the sole issue remaining to be resolved. Simply stated, the question is: Was Costa an employee at the time of the occurrence of the act of solicitation for prostitution as testified herein?

"The commissioner (now Director) ... has consistently construed the word 'employed' to embrace...all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship." Kravis v. Hock, 137 N.J.L. 252, 255 (1948).

The testimony clearly and abundantly reveals that for a protracted period of time on the date charged Costa performed services in furtherance of the licensee's activity. Costa was observed to be behind the bar serving beverages to patrons and, further he was observed to accept payment and place the money in the cash register.

Fernandes' testimony, assuming it to be true, fails to absolve the licensees of guilt when subjected to the test of Rule 33 of State Regulation No. 20. That rule inculcates a licensee for the acts of its servants or agents and the fact that the employee acted contrary to instructions or that the violation did not occur in the licensees' presence constitutes no defense to the charge.

It is noteworthy that Fernandes admitted that the barmaid and Dephino were his duly authorized agents at the time of the alleged violation. Apparently, Costa was allowed and permitted by them to tend bar. Their dereliction in this regard is chargeable to the licensees. See Rule 33 of State Regulation No. 20.

I find, based on established legal principles set forth in Kravis v. Hock, supra, that Costa was an employee of the licensees at the time of the violation herein, and conclude that the Division has established by a fair preponderance of the credible evidence that the licensees herein, through their employee, allowed, permitted and suffered the procurement of the female to engage in acts of illicit sexual intercourse. It is accordingly recommended that they be found guilty of the said charge. Cf. Re Stefanoni, Bulletin 2035, Item 3 and Re Equitable Titles, Inc., Bulletin 1968, Item 2.

Absent prior adjudicated record, it is further recommended that the license be suspended for ninety days.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the licensees pursuant to Rule 6 of State Regulation No. 16. Answers to the exceptions with supportive argument were filed by the attorney for the Division.

Licensees, in their exceptions contend that guilt does not attach because Costa was not an employee of the licensees at the time of the violation. However, as the Hearer pointed out in his report, Costa was observed to be behind the bar serving beverages to patrons, accepting payment and placing the money in the cash register. Although the licensees were not in the premises at the time that Costa was so engaged, it is not uncontroverted that the licensees' agents or employees were in the premises at the time that Costa engaged in the aforesaid duties which are the normal duties performed by one who is employed or engaged in tending bar.

Furthermore, it is apparent that these agents or employees were aware of Costa's activities in tending bar and acquiesced

therein. It is fundamental that a licensee is inculpated by the acts of his agents, servants or employees even where such acts were contrary to the licensee's instructions. (see Rule 33 of State Regulation No. 20.) Thus, I find this contention as well as the other matters raised in the said written exceptions to be lacking in merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the exceptions filed with respect thereto, and the answers to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Licensees further request that in the event that the Hearer's recommendation that the licensees be found guilty of the charge is adopted, they be permitted to pay a fine in compromise in lieu of suspension. This is not the type of violation wherein the Division would normally accept the payment of a fine in lieu of suspension. The request for the payment of fine is, accordingly, denied.

Accordingly, it is, on this 14th day of May 1974,

ORDERED that Plenary Retail Consumption License C-20, issued by the City Council of the City of Elizabeth to Adeline Fernandes and Ernesto Fernandes, t/a E.P.C. Club for premises 257-263 Third Street, Elizabeth, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1974, commencing at 2:00 a.m. Tuesday, May 28, 1974; and it is further

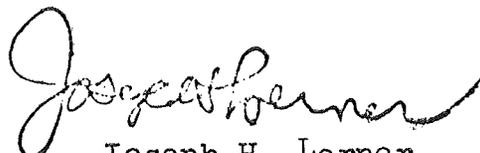
ORDERED that in the event that the said license is renewed for the 1974-75 licensing period, then the said license shall be and is hereby suspended until 2:00 a.m. Monday, August 26, 1974.

JOSEPH H. LERNER
ACTING DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

Daniel Miller and Harry Fixler
t/a Kagan Enterprises
164 Railroad Avenue
Jersey City, New Jersey

Application filed June 19, 1974
for person-to-person and place-to-
place transfer of State Beverage
Distributor's License SBD-85 (1974-75)
from Edward Gaglione, 394-396 Harrison
Avenue, Lodi, New Jersey.



Joseph H. Lerner
Acting Director