

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2401

June 8, 1981

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
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U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2401

June 8, 1981

1. COURT DECISIONS - RE: JOSEPH LUONGO - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-1605-79

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST:

Joseph Luongo  
t/a Luongo's Bar & Grill  
781 Broadway  
Bayonne, New Jersey

HOLDER OF PLENARY RETAIL CONSUMPTION  
LICENSE NO. 9091-33-083-001 ISSUED BY THE  
MUNICIPAL COUNCIL OF THE CITY OF BAYONNE.

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Argued February 18, 1981 - Decided March 4, 1981.

Before Judges Michels and Ard.

On appeal from the Division of Alcoholic Beverage Control.

F. Gerald Fitzpatrick argued the cause for appellant Joseph Luongo, t/a Luongo's Bar & Grill (Fitzpatrick & Fitzpatrick, attorneys; Mr. Fitzpatrick, on the brief).

Kenneth I. Nowak, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (John J. Degnan, Attorney General of New Jersey, attorney; Erminie L. Conley, Assistant Attorney General, of counsel; Mr. Nowak and Bertram P. Goltz, Jr., Deputy Attorney General, on the brief).

PER CURIAM

(Appeal from the Director's decision in Re: Joseph Luongo, Bulletin 2364, Item 2. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

2. COURT DECISIONS - RENAULT WINERY, INC. v. NEW JERSEY DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-3002-79

RENAULT WINERY, INC., )  
Appellant, )  
v. )  
NEW JERSEY DIVISION OF ALCOHOLIC )  
BEVERAGE CONTROL, )  
Respondent. )

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Argued February 24, 1981 - Decided March 5, 1981.

Before Judges Michels, Kole and Ard.

On appeal from final decision of the Director of the Division of Alcoholic Beverage Control.

Kenneth I. Nowak, Deputy Attorney General, argued the cause for respondent (John J. Degnan, Attorney General, attorney; Stephen Skillman, Assistant Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re: Renault Winery, Inc. v. New Jersey Division of Alcoholic Beverage Control, Bulletin 2392, Item 3. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

3. DISCIPLINARY PROCEEDINGS - ADMINISTRATIVE LAW JUDGE RECOMMENDED REVOCATION OF LICENSE FOLLOWING FINDING OF GUILTY FOR PERMITTING LEWD SHOW UPON ITS PREMISES LESS THAN TWO YEARS AFTER AN EARLIER CONVICTION UPON SAME GROUNDS - DIRECTOR AFFIRMED FINDING BUT MODIFIED PENALTY TO SUSPENSION FOR BALANCE OF CURRENT TERM AND RENEWAL WITH LEAVE GRANTED TO BONA FIDE TRANSFEREE TO PETITION FOR ITS LIFTING, BUT NO SOONER THAN 120 DAYS FROM EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary	)	
Proceedings against	)	S-12,216
	)	X-52,622-L
The Ban-Shee, Inc.	)	
t/a King's Harem	)	
Route 35	)	CONCLUSIONS
Sayreville	)	
P.O. South Amboy, N.J.	)	AND
	)	ORDER
Holder of Plenary Retail Consumption	)	
License No. 1219-33-005-001 issued by	)	
the Mayor and Borough Council of the	)	
Borough of Sayreville.	)	

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A. Kenneth Weiner, Esq., by Dean Anglin, Esq., Attorney for Licensee.  
Charles J. Mysak, Esq., Deputy Attorney General, for Division

INITIAL DECISION BELOW

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: March 26, 1980 - Received: March 27, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the licensee pursuant to N.J.A.C. 13:2-19.6.

The Deputy Attorney General representing the Division submitted an Answer thereto which stated that he does not intend "to submit Answer to the licensee's Exceptions but rather will rely on the record herein."

In its Exceptions the licensee argues that the Administrative Law Judge failed to explain why he "so fully adopted the account of the witnesses for the Division and . . . disregarded testimony from the licensee."

As the Administrative Law Judge noted, the choice of accepting or rejecting the testimony of witnesses rests with the Judge, the trier of the facts. A reasonable choice must be made. Freud v. Davis, 64 N.J. Super 242-246 (App. Div. 1960). He believed the testimony of the Agents because

he found the same credible, and his determination was based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence; Spagnuolo v. Bonnet, 16 N.J. 546. (1954).

The Administrative Law Judge was able to observe the demeanor of the witnesses as they testified and made a determination as to where the truth lies. Gallo v. Gallo, 66 N.J. Super. (App. Div. 1961). The Judge found that the licensee through its agents, servants and employees, allowed, permitted and suffered these lewd and immoral activities to take place.

Another Exception argues that there was no testimony to support the finding that Sak, the manager, was uncooperative in producing documents that have been requested of him. I find this Exception to be totally devoid of merit because all of the actions of Sak, including the implied threats of bodily harm made by Sak to Inspector Ball manifest an attitude of uncooperation and of hindering the investigation. I have examined the other matters argued in the Exceptions and find that they have either been identified and correctly resolved in the Initial Decision or are lacking in merit.

We are dealing here with purely disciplinary matters and their alleged infractions. I want to emphasize however, that these proceedings are civil in nature, and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); Pania v. Driscoll, 135 N.J.L. 164 (Sup. Ct. 1946); Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, supra. Thus, the recital of criminal law principle and the citation of cases with respect to Sak's actions are both irrelevant and inapplicable.

Consideration of any criminal liability of the employees or patrons properly resides in the criminal law authorities.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Initial Decision and the written Exceptions filed on behalf of the licensee, I concur in the findings and recommendations of the Administrative Law Judge and with the exception of the recommended penalty of revocation, I adopt them as my conclusions herein.

The attorney for the licensee points out that Miss Eleanor Korlath, the sole stockholder of the corporate licensee,

is a 66 year old woman who is suffering from crippling disabilities which have prevented her from supervising the operation of these premises. She has, therefore, permitted her nephew to manage these premises and has indeed mis-managed the premises

It is further pleaded that this is her sole valuable asset and that the revocation of the license would make her a public charge. It is suggested that the license be suspended and that the licensee be given an opportunity to sell the business to a bona fide transferee.

I am mindful of the following previous record: the licensee was permitted to pay a fine of \$3,000.00 in lieu of a 30 day suspension by the Director's Order of May 6, 1977 on the charge of permitting lewd and immoral activity; on November 29, 1978, on appeal on a 5 day suspension by the local issuing authority and permitting acts of violence and nuisance, the action of the local board was affirmed; and its license was suspended for ten days by the local issuing authority effective April 9, 1979 on a nuisance charge and failing to have a parking lot attendant, in violation of the special condition.

However, in compassionate consideration for Miss Korlath, and her special circumstances, I shall modify the recommendation of the revocation of license to a suspension for the balance of the term and for any renewal that may be granted, with leave to a bona fide transferee of the licensee to apply to the Director for the lifting of the said suspension, but in no event sooner than 120 days from the effective date of the suspension.

Accordingly, it is, on this 5th day of May, 1980,

ORDERED that Plenary Retail Consumption License No. 1219-33-005-001 issued by the Mayor and Borough Council of the Borough of Sayreville to The Ban-Shee, Inc., t/a King's Harem for premises Route 35, Sayreville be and the same is hereby suspended for the balance of its term, viz., 12 midnight June 30, 1980, effective 3:00 a.m., Friday, May 16, 1980 and any renewal of the said license that may be granted, with leave granted to a bona fide transferee of the said license to apply to the Director by verified petition setting forth the facts of such transfer to a bona fide transferee for the purpose of lifting the said suspension, but, in no event, sooner than 120 days from the effective date of the suspension herein.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX

Initial Decision Below

IN RE: THE BAN-SHEE, INC.  
 t/a KING'S HAREM  
 ROUTE 35, SAYREVILLE  
 PO SOUTH AMBOY, NEW JERSEY 08879

) INITIAL DECISION  
 )  
 ) OAL DKT.NO. ABC 3103-79  
 ) AGENCY DKT.NOS. S-12,216;  
 ) X-52,622L

APPEARANCES:

Charles J. Mysak, Esq., Deputy Attorney General, for  
 the Director of the Division of Alcoholic Beverage  
 Control, Petitioner-Complainant

A. Kenneth Weiner, Esq., by Dean Anglin, Esq., for  
 The Ban-Shee, Inc., t/a King's Harem, Respondent

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On February 4, 1980 a hearing was held on the proposed  
 revocation by the Director of the Division of Alcoholic Beverage  
 Control of license number 1219-33-005-001 held by The Ban-Shee,  
 Inc., trading as King's Harem for the following charges:

1. On March 23, 1979, you allowed, permitted and  
 suffered lewdness and immoral activity in and  
 upon your licensed premises, viz., in that you  
 allowed, permitted and suffered female persons  
 while performing on your premises for entertain-  
 ment of your customers and patrons, to engage in  
 conduct of a lewd, indecent and immoral character  
 and to engage in acts, gestures and movements of  
 and with their hands, legs and other parts of  
 their body, in a manner and form having a lewd,  
 indecent and immorally suggestive import and mean-  
 ing; in violation of N.J.A.C. 13:2-23.6.
2. On March 23, 1979, you, directly or indirectly,  
 failed to facilitate, hindered, delayed, caused  
 the hindrance and delay, and attempted to hinder,  
 delay, and cause the hindrance and delay of an  
 investigation and inspection and search of your  
 licensed business, viz., you allowed one of the  
 go-go girls to be questioned by Division agents  
 to leave the premises, and you implied threats of  
 bodily harm to Division agents, and you implied  
 the offer of a bribe to Division agents in order  
 to close the matter without further prosecution;  
 in violation of N.J.A.C. 13:2-23.30.

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The matter was filed as a contested case on August 16, 1979. The record in the case closed on February 19, 1980 with the receipt of respondent's post-hearing memorandum.

Inspector L. testified that in the morning of Friday, March 23, 1979 he and Inspectors S, B and K investigated licensed premises in South Amboy known as The King's Harem because of the possibility of a lewd show occurring there. He entered the premises alone about 12:40 a.m. He noted an L-shaped bar. To the right there was a dartboard, juke box past which was a storage room and a rear office. He sat at the front portion of the bar where two barmaids, Ann L. Kanold and Debbie A. Martin were working.

The witness ordered a mug of beer. A go-go dancer named August was performing on a raised platform in the middle of the L-shaped bar. He observed her to unhook the front portion of her bra, thus completely exposing her breasts. At the end of her act, she discarded her bra and pushed her hair to the front portion of her chest covering her breasts. He observed her for five to seven minutes.

August left the stage and another female, Debbie, entered at about 1:00 a.m. about four minutes thereafter. He observed Debbie's entire performance referring to it thusly:

"The female referred to as Debbie, after getting on to the stage began to dance in a common go-go fashion, but because of the body shirt that she was wearing you could see the outline, the outlines of her nipples through the fabric of the shirt.

Shortly after Debbie began dancing she produced an animal like doll, whether it was a monkey or a bear, I could not tell.

It appeared to be some kind of an animal type stuffed doll, and Debbie began incorporating this into her act whereupon she bit into the crotch of the doll and with her teeth pulled out a device or whatever it looked like, part of the doll, it looked like a penis which appeared to be a penis, approximately five or six inches long which was made out of cloth, it appeared to be made out of cloth. At this time, while dancing, Debbie started performing simulated fellatio on the doll while the apparent penis of the doll was in her mouth and she also began masturbating the doll while the penis was in her mouth."

Debbie danced until about 1:30 a.m. after which August took the stage and danced in a normal go-go fashion with no indecency or lewdness.

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The witness testified that the audience varied from about twenty seven to approximately sixty. In addition to the barmaids, there were several other employees on the premises. They were the manager, Bob Sak, the doorman-bouncer, Andrew Calogrides, a floor-walker-bouncer, Gary A. Grant and a parking lot attendant, Lance W. Coppola.

While he sat at the bar the witness stated he heard comments that later that night the doors would be shut to keep the A.B.C. out and that there would be a good show and that no one would be leaving or entering the premises.

August finished dancing at about 1:50 a.m. and at this point the witness noticed Inspector S. in the premises conversing with Calogrides who had positioned himself by the door.

The witness stated that:

"At approximately 2:00 the female referred to as Debbie entered the stage. She was wearing the same "co" type of outfit, the bluish type body shirt with straps, T-shirt, body shirt.

She entered the stage. At this time she started dancing to the music from the juke box. As she was dancing this Debbie would pull the front portion of her T-shirt in such a manner as to make it taut and her breasts became exposed through the sides of the T-shirt. In pulling the T-shirt down and making it taut her breasts would come out. She would then release the front portion of the T-shirt and her breasts would fall back behind the T-shirt.

After this Debbie once again brought up the doll like animal and began pulling out the penis like apparatus on it and once again feeling the penis as simulating masturbation and also simulating fellatio. The crowd, at this time, started to yell, take it off and let's do it and if you're going to do it, do it now and et cetera.

Debbie, at a point during this performance then took the top portion, the straps and the T-shirt and let them fall thereby exposing this, the T-shirt went down to her waist thereby exposing her breasts completely. She was dancing topless in this manner. She was also taking this animal and rubbing the doll like animal between her breasts. Once again the crowd kept yelling for her to take it off, take it all off.

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During this time now, the barmaids were noted to give the female Debbie dollar bills that were given from the patrons. Debbie would receive those dollar bills and began stacking them up near the wall in the back of the stage by the mirrors.

Debbie was completely exposed on top now with her T-shirt down to her waist. She danced in this manner for a while and then Debbie proceeded to unhook the snap portion of the T-shirt, the crotch portion and she proceeded then to take off her panty hose that she was wearing. After she did this she turned her back, she had discarded the panty hose from her now and she turned her back and walked back towards the mirror and bent over and exposed her buttocks to the patrons. She also spread her buttocks to expose her anus region and her pubic hairs. The crowd was clapping more and egging Debbie into completely taking it off. Debbie shortly thereafter obliged and completely took off the shirt, completely discarded it and then became absolutely naked on the stage.

At this point Debbie laid back on to the stage and this is while the music was going on and Debbie periodically danced and periodically gyrated in such a fashion to expose various regions of her body. Debbie laid down on the stage on her back and lifted up her legs, spread her legs apart and spread her pubic area, her vagina and her anus to the audience for a complete view. She would bend her body in a way that everyone was able to observe the private parts of her body.

At this time also the barmaids would approach Debbie once again with the denominations of money and hand it to Debbie and she would then once again get up and thank the person and go over and stack the bills up and also at one point Mr. Sak was observed to walk over to Debbie as Debbie was lying there nude on the stage and say something into her ear.

After Sak left her, shortly after that, Debbie proceeded to have this animal type doll with her again and while she was completely naked, laying on the stage she took the doll and she proceeded to, with her mouth, pull on the penis once again performing fellatio. She also took this doll and put it in her vagina and made actions either making contact also and pushing this doll into her vagina and she also got up from laying on her back and turned over and got on her hands and knees with her buttocks facing the patrons and started to, she put the doll beneath her and laid down on the doll and once again performed, having a simulated intercourse with taking the penis of this doll and manipulating it on her vagina.

She also, once again, in this position, on her hands and knees, took the doll's penis and put it in her mouth and once again performed fellatio on this doll. Debbie also spread her buttocks in this hand and knees position to the patrons allowing complete exposure of her anal area and her buttock area."

Debbie's performance lasted about twenty five minutes, the audience was a "captive" one and no one left the premises. Calogrides was at the door.

Debbie concluded her act, put her body shirt back on and left the stage and everyone started to leave.

Debbie changed into street clothes and conversed with Sak. August had left the premises. The local police arrived and the witness identified himself to Sak and Debbie. They informed him that they had no identification. Debbie told him that she wanted to go to the back room to get identification. He directed Inspector S to take a patrolman and accompany Debbie. Sak also walked with Debbie, the witness remaining where he was. A very short time later Inspector S came back to him and told him that Debbie was gone. Sak and Debbie went into the office, shut the door, the officers forced it open and Sak was there alone. The witness confronted Sak who told him he had not walked into the office with any girl and that there was no girl dancing.

The witness went outside with the local police to search for Debbie. At this point he asked Inspectors B and K to come in and assist. The search was unsuccessful.

The witness reentered the premises and went to Sak's office. He and Inspector B discovered that the walls of the office were secret walls used as cabinets to store bottles of liquor. Sak was present. They also found one panel of the wall behind which was an exit to the rear of the premises to the parking lot. They assumed Debbie exited in this manner while the door was closed on Inspector S.

Sak was not very cooperative in giving the inspectors the paperwork they needed in that he did not produce a license application, a list of employees and his own identification.

On cross-examination the witness stated that Sak did not appear to be drunk. He did not want to produce proper documents such as his driver's license. The witness said he was not present when the documents were produced. He explained that Sak hindered the investigation by allowing Debbie to escape, by failing to properly produce documents and also comments he made to K and B, comments which he did not hear. The witness stated that he did not personally know that the front door was locked.

Inspector S stated he investigated the King's Harem on March 23, 1979 with Inspectors B, L and K. He entered the premises about 1:40 a.m. and sat by the door. He observed a dancer just briefly finish her act and saw two barmaids, a manager, Sak, a bouncer, Grant, and a male, Copolla, in the parking lot on duty. The barmaids were Kanold and Martin and Calogrides was the doorman.

He testified about two minutes after the first dancer left the stage, Debbie entered at about 2:00 a.m. He observed her perform and he described it substantially as Inspector L had done.

Inspector S testified there were about sixty patrons yelling, cheering and egging Debbie on. They would hand tips to the barmaids who gave them to Debbie.

At about 2:25 a.m. the witness stated he tried to leave the premises. Calogrides told him that no one was leaving or entering until Debbie finished her performance. The witness sat down by the door. When Debbie pulled up her costume, Calogrides, having asked S if Debbie was decent yet, let him exit. He informed B and K what had transpired and they telephoned for assistance. He returned inside and identified himself to two Sayreville patrolmen when they arrived. Inspector L asked S to accompany Sak and Debbie to the office for their identification. Patrolman Sztukowski went with him. He discovered the office door closed and when Sztukowski opened it, Sak was alone. Sak told him that he did not come in the office with any girl. He informed L, they searched for Debbie but all was in vain.

The witness said while he and K were going over the paperwork he heard Sak tell B that he had been in the service in Vietnam and he killed a lot of people for only \$98 a month, that killing was not difficult and that he could do it again. He said Sak reached into his pocket and extracted a roll of bills and stated that things could be taken care of for a lot less. Sak patted B on the back.

On cross-examination S stated that Sak entered the office first and then Debbie. He was four feet away at the door to the store room. He did not see Sak close the door but his attention was diverted for about fifteen seconds and when he turned around the door was closed. S opened the door and found Sak.

S testified that the conversation he overheard between one of the investigators and Sak was a threat by Sak.

Inspector B testified he investigated the King's Harem on March 23, 1979 arriving at about 1:40 a.m. with Inspector K. He entered the premises, observed Inspector L seated centrally at the bar and a female go-go dancer performing on the stage

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behind the bar. There were in excess of sixty patrons. Shortly thereafter Inspector S entered the premises. The witness left the premises and joined Inspector K across the street directly in front of the premises where he remained until about 2:40 a.m. Shortly after 2:00 a.m. Inspector B noticed the exterior lights of the premises to be turned off and at least five prospective patrons went to the door but were denied admittance. At about 2:35 a.m. the lights went back on and the witness encountered Inspector S who stated he needed assistance. Inspector B called the Sayreville police. He entered the premises and identified himself to Sak and requested the license application and the list of employees. Sak complied. The witness, Sak and a Sayreville police officer went into an office and Sak stated there were no go-go girls there, that he had let them go early that evening.

On the desk in the office Sak had a large stack of bills. He conversed with Inspector B about knowing what to do with you guys and he tapped the stack of money with his hands.

The witness stated he noticed a panel which was loose from the wall. He opened it and discovered a door which led to the exterior of the premises. He and Inspector L went through the door and into the rear parking lot where they continued the search for the female who had departed. Inspector B reentered the premises, stationing himself at the bar, near the door. Sak came up to him and again started talking about his ability to kill gooks, that he had killed them in Vietnam for \$96 or \$98 a month, that killing would be easy and he could do it again. He reached into his righthand pocket and pulled out a folded amount of bills. The witness saw several one hundred dollar bills and Sak said he could take care of things, that B knew what he was talking about and he patted B on the back, gave him a little wink and walked away. Inspector B stated he took the comments by Sak as being direct threats of violence to himself (B). Subsequently Sak apologized to Inspector B for his remarks. He did not appear intoxicated. Following a brief cross-examination and redirect the Division rested.

Andrew Calogrides testified for respondent that he was employed at the King's Harem on March 23, 1979 mainly as a doorman. He was a doorman on the night of the A.B.C. raid. He had no view of the stage because people in the bar blocked it. He stated he locked the doors at 2:00 a.m. like they always do. The establishment had to be cleared out by 3:00 a.m. He stated he closed the doors at 2:00 a.m. to prevent anymore people from coming in so that they can close at 3:00 a.m. In addition to locking the door he turned off the sign lights outside and the entrance lights.

There was no cross-examination.

Bruce Barrett testified he was a patron at the King's Harem on March 23, 1979. He recalled the raid. He stated when he went to his car to warm it up he noticed one of the A.B.C. investigators bent over by the fence choking. He did not see him vomit.

He stated he watched the show on and off and did not see the go-go girl exposing parts of her body.

On cross-examination Barrett stated that Debbie danced from 2:00 a.m. to 2:30 a.m. She was "more wild like, no form of dancing or anything".

Robert Sak testified he recalled a raid that took place on March 23, 1979. He was the manager of the King's Harem but was not working that night. Gary Grant was the supervising manager.

The witness stated he had been drinking quite heavily and he would say he was drunk. He stated the A.B.C. investigators approached him about 2:40 a.m. He did not recall who approached him but he was asked for some identification. He recalled Debbie telling an investigator her identification was in the office and he told her to go get it. The investigator followed her in the office. Sak did not go with them. A few seconds or a few minutes later the investigator came out, went back in and came out and said that Debbie was gone. At this point Sak went to the office with an agent and a police officer. In the office the agent reached down to his ankle and Sak saw a gun. The police officer told him he did not need it. After producing the required documents Sak went out into the main area of the bar and spoke to an investigator by the door. He told him he did not care what it costs, that he was going to take the investigator to court for pulling a gun on him. He recalled he pulled some money out. He was upset because he felt another agent had pulled a gun on him. He stated that he had referred to his brother who had been a soldier in Vietnam where he was killed.

Sak said he did not pay attention to Debbie dancing. He was lost in his own personal problems and spent about five hours at the King's Harem that night.

He stated the doors are always locked at 2:00 a.m. to keep out the drunks from taverns in other municipalities which closed at 2:00 a.m. They also shut off the lights on the sign outside and the perimeter lights around the building.

On cross-examination Sak said he was drunk and blitzed by 2:30 a.m. and that the agent did not pull his gun, he reached for it and he resented that.

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On redirect Sak said he was only "sticking around" to break Gary Grant in before he went into his regular type of work, electronics. In response to my question he stated that the King's Harem is the trade name for the Ban Shee Incorporated.

In brief closing remarks the Division contended that the offenses warranted revocation as opposed to a suspension.

Initially, the Director has the burden of proving the charges preferred against the respondent by a preponderance of the believable evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Additionally, the choice of accepting or rejecting the testimony of witnesses rests with the judge, the trier of the facts. A reasonable choice must be made, Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960).

I have listened to the testimony of the witnesses, have observed their demeanor, assessed their credibility and canvassed the transcript of the hearing. I accept as credible the testimony of the three witnesses for the Director who successfully carried his burden of proving all charges levelled against the respondent by a preponderance of the believable evidence. Evidence of respondent's guilt of all charges is overwhelming.

Without repeating the testimony of Inspector L concerning August's first performance and Debbie's two performances and Inspector S's description of Debbie's second performance, it is clear that lewdness and immoral activity was rampant in its dirtiest and basest form at the King's Harem on March 23, 1979. I find this to be a fact. See In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971) and N.J.A.C.13:2-23.6(a)1.

I further find as a fact that the respondent, through its agents, servants and employees, Sak, Kanold, Martin and Calogrides allowed, permitted and suffered these lewd and immoral activities to take place in the licensed premises of the King's Harem. The words allow, permit and suffer are defined in Black's Law Dictionary, Fifth Edition (1979). Allow means to approve of, to adopt, to sanction, either directly or indirectly, as opposed to merely suffering a thing to be done, to acquiesce in, to suffer, to tolerate. Permit is defined as to suffer, allow, consent, let; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act. Finally, suffer is defined thusly: to suffer an act to be done or a condition to exist is to permit or consent to it; to approve of it, and not to hinder it. Sak who was at the King's Harem for about five hours on the night in question was the manager who was breaking in Grant to be the new manager. During Debbie's second performance Sak walked over to her as she lay nude on the stage and spoke to her.

The two barmaids, Kanold and Martin, received numerous tips from patrons who, I find as a fact, were cheering, yelling and egging Debbie on. The two barmaids gave the tips to Debbie.

Calogrides stood guard at the door during Debbie's second performance, barring anyone's exit or entrance.

It is clear that these four employees of the King's Harem did nothing to stop the vile and revolting antics of Debbie and August. Rather, they, each in their own way which I have described and find to be a fact, encouraged the lewd and immoral activity. They allowed, permitted and suffered it. I find as a fact that their inactions and actions were committed in the scope of their respective employments with the purpose of furthering their employer's, the respondent, business. The employer must respond and is liable for the actions and inactions of Sak, Martin, Kanold and Calogrides. Gibson v. Kennedy, 23 N.J. 150, 154 (1957). See N.J.A.C.13:2-23.28 also applicable to the instant matter. And see Mazza v. Cavicchia, 15 N.J. 498, 504-509 (1954).

As to the second count of the notice I find as a fact that Sak and Calogrides failed to facilitate, hindered and delayed the investigation, inspection and search of the licensed business and they also attempted to hinder and delay the investigation, inspection and search of the licensed premises. Sak, knowing that the A.B.C. inspectors and local police were present with intentions to investigate the lewd and immoral activity, allowed Debbie, a central figure who the inspectors wished to question, to leave and escape the premises through a door which was behind a panel in the wall in his office and which door led to the rear parking lot. Sak then brazenly stated to Inspectors L and S that he had not walked into the office with any girl and to Inspector L that there was no girl dancing.

I further find as a fact that Sak implied threats of bodily harm to Inspector B when he spoke to him about his ability to kill gooks, that he had done so in Vietnam and that killing, which he could do again, would be easy. These remarks were overheard by Inspector S.

These threats by Sak were a high misdemeanor under N.J.S.A. 2A:113-8b. in effect on March 23, 1979 and although the record does not reveal any prosecution of Sak for this conduct, its seriousness cannot be minimized nor the fact that it was an indictable offense be ignored. The gravamen of this offense involves communication of threat to kill in such terms as would in attendant circumstances convey to an ordinary individual that the language seriously threatened death, State v. Kaufman, 118 N.J. Super. 472, 474 (App. Div. 1972), certif.den.60 N.J. 467 (1972).

I also find as a fact that Sak attempted to hinder and delay the investigation when he implied the offer of a bribe to Inspector B. It is a fact that Sak attempted to bribe Inspector B on two occasions. In his office Sak had a large stack of bills and he told Inspector B he knew what to do with you guys (the inspectors), tapping the money with his hands. Subsequently, Sak came up to Inspector B who was stationed at the bar and pulled from his right hand pocket a large amount of money, stating that he could take care of things and patting Inspector B on the back and winking at him. It should be noted that Inspector S was also a witness to this conduct on the part of Sak.

Again, I cannot disregard the fact that N.J.S.A. 2A:85-5 was in effect at the time. That statute stated that an attempt to commit an indictable offense is a misdemeanor. The elements of the offense are the intent to commit the crime, the performance of some act toward commission of the crime and failure to complete the commission of the crime, State v. Tropiano, 154 N.J. Super. 452, 455 (Law Div. 1977). In State v. Begyn, 34 N.J. 35, 47 (1961) it was said:

"We next turn to common-law bribery, a very broad offense which has always existed in New Jersey as an indictable misdemeanor. It consists in receiving or offering any undue reward by or to any person whatsoever, in a public office, in order to influence his behavior in office and incline him to act contrary to the known rules of honesty and integrity."

Calogrides, the keeper of the door, hindered and delayed the investigation and also attempted to do so when he would not permit anyone, including Inspector S, to leave during Debbie's final performance the nature of which he had knowledge and when he would not permit anyone, including Inspectors B and K to enter during the performance. He was further guilty by his extinguishing the exterior lights to make it appear that the establishment was not open for business during Debbie's second act.

Finally, the principles of principal-agent, master-servant which were recited with respect to the actions of Sak, Kanold, Martin and Calogrides in count one of the notice of charges, are equally applicable to the conduct of Sak and Calogrides in the second count. See Gibson v. Kennedy, 23 N.J. 150, 154 (1957), N.J.A.C. 13:2-23.28, Mazza v. Cavicchia, 15 N.J. 498, 504-509 (1954). The responsibility of respondent for the acts of Sak and Calogrides in the second count is clear.

In this matter, the Director seeks the revocation of the license of the Ban Shee, Inc., trading as King's Harem. It is clear that he has the power to revoke any license, N.J.S.A. 33:1-31. In Mazza v. Cavicchia, supra, it was stated at pages 505-506 that:

"In addition it must be remembered that a license to sell intoxicating liquor is not a contract nor is it a property right. Rather it is a temporary permit

or privilege to pursue an occupation which otherwise is illegal. From the earliest history of our State the sale of intoxicating liquors has been treated in an exceptional manner by the Legislature. It is a subject by itself, to the treatment of which all the analogies of the law appropriate to other topics cannot be applied. The sale of intoxicating liquor is in a class by itself. As it is a business attended with danger to the community it may ...be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils.

The governmental power to regulate activities upon the licensed premises has uniformly been accorded liberal judicial support.

The right to regulate the sale of intoxicating liquors, by the Legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless."

In view of the foregoing and the overwhelming evidence of the guilt of the respondent of all charges, I ORDER that the license of the Ban-Shee, Inc., trading as King's Harem be revoked. It is difficult to conceive of anything more sordid, revolting and vile than the performances of Debbie which respondent's employees allowed, permitted and suffered to take place on the licensed premises for the erotic excitation and entertainment of customers and patrons. Furthermore, the conduct of Sak, the manager who was breaking in a new manager, in aiding Debbie's escape to avoid questioning by the inspectors was irresponsible and reprehensible. Sak's implied threats of bodily harm to Inspector B and his implied offer of a bribe to Inspector B to close the matter without further prosecution bordered on, in my judgment, the criminal.

The Ban-Shee, Inc., through the actions of its employees previously named, has proven itself unworthy to hold a license to sell intoxicating liquor in New Jersey and I adjudge it guilty on both counts of the notice and I ORDER its license to be revoked.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

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Joseph H. Lerner  
Director

