

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

BULLETIN 1677

June 6, 1966

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STATE OF NEW JERSEY
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1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE
REVOKED.

In the Matter of Disciplinary)
Proceedings against)

MURPHY'S TAVERN, INC.)
135 Mulberry Street)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-461, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Newark.)

Louis R. Cerefice, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Charges dated March 26, 1965 and May 19, 1965, respectively, were preferred against the licensee herein. The alleged violations in both charges were similar in nature and thus the initial charge hereinafter quoted will include the additional dates set forth in the subsequent charge.

Licensee pleaded not guilty to the following charges:

"During early morning hours of Saturday, March 13, Wednesday night March 17 into early morning hours of Thursday March 18, and during early morning hours of Sunday, March 21, 1965, and on Thursday night April 22, Saturday night April 24 and Friday night May 7 into Saturday morning May 8, 1965, you allowed, permitted and suffered your licensed place of business to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

(Hearing of this case took four days with 668 pages of transcribed testimony and argument.)

To attempt a detailed analysis of the testimony of the various witnesses would unnecessarily burden this opinion with much that is immaterial and irrelevant. I shall adhere strictly to the testimony adduced herein which, in my opinion, is pertinent

to the matter in issue.

Agent M testified that he and Agents C and T visited the licensee's place of business on March 13, 1965, arriving in the vicinity thereof at approximately 12:05 a.m., and immediately Agent C entered the premises followed about two minutes thereafter by Agent T and himself, remaining in the said establishment until 1:00 a.m.; that Frank Gudaitis (Frank) and Roland Gilman (Roland) were tending bar; that fifty to sixty male patrons were in the premises, of which about 90 per cent attracted his attention because a great many of them wore their hair in a fluffed pompadour style, wore "loud" shirts and bulky type sweaters, female slacks with a zipper on the side and loafers, and there was "a strong odor of perfume on them." Moreover, many of them wore female charm bracelets and watches with a small band ordinarily used by females; and wedding rings on their pinky fingers; when many of them walked, they were observed swishing their hips from side to side; they caressed and fondled each other and, when speaking, spoke in high pitched voices using such terms as "Sweetie" and "Bastard." Moreover, Agent M stated that from his observation of these patrons, he was of the opinion that "They appeared to be males impersonating females and they appeared to be, from their mannerisms and acts, homosexuals."

On March 21 shortly after 12:01 a.m., Agent M again, in the company of Agents C and T, visited the licensee's premises and upon entering observed approximately eighty-five male patrons in the place; that Frank and Abraham Hirschorn (also called "Al") were on duty as bartenders. Agent M further testified that from his observation, 75 per cent of the patrons appeared to be imitating females. Agent M described the dress and mannerisms of the persons in question as similar to those seen on the visit of March 13. Agent M further testified that he observed a male, subsequently identified as Gilbert, caress another male referred to as Brenda "about the waist and referred to him as Darling, Sweetie, and caressed him about the buttocks." He said that patrons seated at the bar held hands with one another, stared at each other and were "caressing each other and fondling each other about the neck", and that males, while walking in his vicinity, were seen "goosing each other about the buttocks", and that an "effeminate giggle" could be heard. Agent M also stated he heard Agent C say to Frank that it was not safe in the premises as he had been grabbed by the buttocks ten times but Frank made no response. Agent M was of the opinion that as a result of his observations of the said patrons' attire, mannerisms and demeanor, they were apparent homosexuals. Agent M said that he and his two fellow agents identified themselves to Frank and Hirschorn and then to patrons who appeared to them to be homosexuals. He stated that he spoke to Hirschorn, who was an officer of the licensee corporation, in the presence of Agents C and T and advised him that a violation had taken place on the licensed premises because of the apparent homosexuals frequenting the place. He pointed out several of the apparent homosexuals and Hirschorn stated, "What am I going to do? What can I do? Can't we straighten this out?"; that when he identified himself, many of the patrons quickly departed from the premises.

On cross examination, Agent M testified as to the extent of his education and that he had never had any training with respect to psychology or psychiatry. The attorney for the licensee engaged in extensive cross examination in an attempt to discredit the testimony of Agent M but Agent M testified substantially to his testimony given on direct examination.

Agents C and T testified as to the conditions on the licensee's premises on both March 13 and 21 and corroborated the testimony given by Agent M with reference to those dates.

In addition, Agents C and T testified with regard to their visits at the licensed premises on March 17 and early morning of March 18, describing the mannerisms and attire of 75 per cent of the patrons who, in their opinions, from their actions and dress were apparent homosexuals. Agent C testified that while ordering a drink, he remarked to Frank, "Looks like the only straights in the place here are me, you and Al", and in reply Frank said, "You're so right, fellow, one hundred per cent right." This conversation was verified by the testimony of Agent T.

Agent B testified that on April 22, accompanied by Agent Ca, he entered the licensee's premises at 9:05 p.m. and left at 10:20 p.m. He stated that he observed various groups of male patrons, several of which attracted his attention, especially a group of six or seven patrons who by their actions and demeanor did not appear to be normal males. He described them as using a limp wrist movement when speaking or drinking, having an effeminate gait and, during their conversation, speaking in falsetto, lispy tones of voice. Furthermore, seated several stools to his right was another small group of patrons discussing their hairdressers. It was Agent B's opinion from his observation of these persons that they were apparent homosexuals. Moreover, these persons would bounce on the stools in time with the music and sing songs to themselves while rolling their eyes. One of the persons in question was referred to as Jules. The bartenders on this occasion were called Frank and Roland.

Agent B testified that in the company of Agent Ca, he visited the licensee's premises on April 24 when the bartenders were Frank and a person called Al. At least fifty per cent of the patrons attracted Agent B's attention because of their demeanor, their mannerisms and actions being similar to those which he described as occurring on the previous visit. He observed a man called Sebastian enter the premises and as he did so, two of the apparent homosexuals ran over and gave him a hug and, when Sebastian reached the far side of the bar, another apparent homosexual got up and gave him his seat. Sebastian then crossed his legs and fluffed his hair and rolled his eyes.

Agent B testified that he and Agent Ca again visited the licensee's premises on May 7 and at one time when Agent Ca went to the men's room, Jules, who had been seen on prior occasions, came over to him and asked him if he (Agent B) and his buddy (Agent Ca) were lovers; that Agent B stated they definitely were not as both were very straight; Jules then stated he had the "hots" for his buddy and offered to make love to him. Thereafter when Agent C rejoined him (Agent B) at the bar, he related to him what Jules had stated and Jules then leaned over and asked Agent Ca if Agent B had told him what he (Jules) had said. Agent Ca nodded in agreement and Jules remarked, "'I said it and I'm glad. It took me three weeks', and then he blew a kiss to Agent Ca." Thereafter, according to Agent B's testimony, he spoke to Frank concerning the gay crowd there, but Frank just smiled and shrugged and then served the agents their drinks. As Roland came to the front of the bar, Agent B testified that he called to him and remarked concerning the gay crowd and in response thereto Gilman stated, "Oh, they're happy. They're having a good time. They don't bother anyone." At this, Agent B testified he said to Roland, "They're having too good a time" and continued, "One wants to make love to my buddy." When

Agent B identified Jules as the person, Roland immediately stated to Jules in a loud voice, "What did you do?" When Jules answered that he didn't do anything, Roland spoke to him in a very low voice and Jules and a person who appeared to Agent B to be a homosexual seated next to Jules, got up and left. At this time the agents identified themselves to Roland. The first thing that Roland said, according to the testimony of Agent B, was "I knew who you were the minute you started asking questions." Immediately, according to Agent B, "there was quite a mass exodus to the front door and within two minutes the crowd had narrowed down to thirty patrons from a height of about sixty." Agent B stated that the greater part of the patrons, because of their actions, were, in his opinion, apparent homosexuals.

On cross examination the licensee's attorney inquired as to the extent of Agent B's education and whether or not he had any special training with respect to psychology or psychiatry, to which the agent stated that he had not. Agent B admitted to Roland that he could not tell whether a person was actually a homosexual. The attorney for the licensee cross-examined Agent B extensively with regard to the patrons, but in response to these questions, he affirmed the information given during direct examination.

Agent Ca also testified concerning his visits to the licensee's premises on April 22, April 24 and May 7 and the facts related by him concerning conditions in the licensee's premises substantially corroborated those given by Agent B. Lengthy cross examination failed to change the information given by Agent Ca in his direct examination.

Roland Gilman testified that he is the secretary of the corporate licensee and that, so far as he could recollect, with the exception of March 17 he was on duty on the various dates set forth in the charge. His testimony disclosed that on March 13, there were forty to forty-five patrons in the establishment and from his observation none wore charm bracelets or had their hair in a "fluffy style"; That the average male customer "wears Ivy League, denims, sport shirts, some shirts and ties and jackets"; that on that particular evening, he did not notice anything unusual concerning the gait of the patrons or concerning their conversation. Furthermore, on the other nights in question while he was on duty, he did not notice anything unusual concerning any of the patrons. Roland admitted knowing Jules but testified that he never observed anything unusual concerning his actions. He also said he is acquainted with Sebastian and recalled the time when Sebastian came into the premises and was greeted by his friends. Sebastian, according to Roland, had undergone a serious operation and when he came into the bar many people were glad to see him. He also recalled a conversation with Agent B concerning the gay crowd of people and he (Roland) remarked, "Of course everybody's happy and gay. That's what a bar is for, for people to enjoy themselves. I don't understand that." He recalled a subsequent conversation with Agent B concerning Jules and denied his (Jules') doing anything wrong. After the agents identified themselves and advised him that the licensee was being charged with homosexuals congregating in the premises, Roland said there were no homosexuals on his premises. He denied that Sebastian was a homosexual but said he might be termed "a little sissy."

On cross examination, Roland stated that he did not have any specific recollection of the various dates in question, but his testimony was based solely on the usual crowd who patronized the licensed premises. When questioned as to what may have happened in the licensed premises on March 13, Roland said that his recollection was "Just that I worked and served drinks."

Manuel Fernandez testified that he was in the licensee's premises on March 17 as well as other nights set forth in the charges and recognized Agents C, M and T, but at no time did he observe anyone unusually dressed in the establishment. He further denied that anyone wore female slacks with a zipper in the back, swished and swayed as they walked, or any of them making advances by fondling other male patrons. Moreover, he never heard any words of endearment directed by one patron to another. Specifically with reference to March 17, Fernandez testified many of the patrons wore green ties, sweaters and "Erin Go Bragh" buttons. In fact, he stated this was the only unusual thing that he observed. Moreover, on all his visits to the licensed premises, he never saw anything which in any way suggested that the establishment was conducted other than in a proper manner.

James Evans testified that he was at the licensee's premises on March 17, arriving thereabout 8:00 p.m. and leaving about 12:30 a.m., and never observed any conduct on behalf of the patrons which in any manner might be criticized. In fact, he stated he stops in quite often at the licensee's establishment and although most of the time he sits by himself, he occasionally converses with the bartenders.

Abraham Hirschorn testified that he is the president of the corporate licensee and also tends bar in the licensed premises. He stated that he was on duty as bartender on March 17, also on March 20 and 21. However, on April 22 and 24, he was out of the state. He said he returned to Newark on April 27. In substantiation of his claim that he was not in the licensed premises on April 24, he presented certain receipted bills from a hotel in Florida and also from a garage where he had repairs done to his car. Hirschorn stated that in the center of the bar of the licensed premises is a "gondola" six feet in length, four feet in width and six and a half feet in height, whereon liquor and snacks are kept. He stated it is impossible for anyone to see a person who might be seated directly across the bar. On March 17 there were about forty to fifty patrons and that evening he was assisted as bartender by Frank. He contends that he observed nothing unusual about the dress or mannerisms of the patrons, except that some wore a green tie, green button or green hat because of it being St. Patrick's Day. He denied that any patrons wore female attire or acted other than as normal persons. Hirschorn claimed that on March 20 probably fifty-five or sixty patrons were in the establishment and there was nothing unusual about their dress or mannerisms. Furthermore, Hirschorn testified that no one ever complained about the alleged conduct of patrons. He denied that at any time he took a police club from under the bar and threatened any of the patrons because of being engaged in horse play. Moreover, he emphatically denied that at any time he had suggested to Agent M to straighten out the matter.

Harry H. Farb testified that he is a physician and has had long experience as a psychiatric consultant. In his opinion, Dr. Farb stated that observation of outward manifestation or outward conduct alone of a person is not sufficient to determine that a person is a homosexual. However, a group of persons displaying all those manifestations would possibly raise a question in his mind as to their normality.

Donald Ortel, a salesman, testified that he frequents the premises, being there on March 17, 1965. He was also in the premises on March 20 and 21 and also May 7. On his various visits to the establishment, he never saw anything unusual about the attire, mannerisms or conduct of the patrons in the place.

Frank testified that he was on duty as bartender on March 17, 18, 21, April 22 and 24 and May 7 and 8. He further testified that at no time did he see any of the patrons improperly attired, use any terms of endearment, or conduct themselves improperly on the premises. He also denied ever hearing the agents question him about the type of patrons in the licensed premises as he could not recall any conversation whatsoever with any of the agents. He said he does not assume any authority and, if anything arises, he refers it to the boss on duty with him at the time. On cross examination he stated that he did not know what was meant by homosexuality or ever heard of a person being termed a fag or fairy. Later Frank recalled that someone explained to him what constituted a homosexual.

The testimony of the witnesses produced by the Division and that given by the witnesses for the licensee is quite conflicting. On the one hand, we have five agents visiting the licensee's premises on numerous occasions and testifying as to their observations with reference to the conduct and mannerisms of the male patrons. The agents related in detail the effeminate characteristics of a large percentage of the said patrons on each visit to the licensee's establishment. From the description given of these patrons, it is quite obvious that, by their attire and conduct, they did not behave as normal males. These agents were at the licensee's place of business on specific assignments to observe what actually took place. After each visit notes were made of their observations and later a report was filed with their superior officer.

On the other hand, the two officers of the corporation and Frank, the bartender, denied that anything unusual ever occurred in the premises. Frank denied that he had engaged in conversation with any of the agents. Dr. Farb testified that mere observation of a person was not sufficient to determine that he was actually a homosexual. However, he did agree that a group of persons who acted like those described, wore female jewelry and other apparel usually worn by females, would arouse suspicion in his mind.

The evidence presented may have failed to prove that the described patrons in fact were homosexuals but it adequately disclosed that they had the conspicuous guise, demeanor, carriage and appearance of such personalities. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient. See Paddock Bar Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405. Female garb is not necessary for a finding that a person is an apparent homosexual. Re Rutgers Cocktail Bar, Bulletin 1133, Item 2. The testimony given by the agents in this case, without a doubt, established that the males in question, by their characteristics, conduct and mannerisms, were impersonating females and were persons who appeared to be homosexuals. As was stated by the Director in Jo-Stem Corporation, Bulletin 1625, Item 2:

"The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been consistently held that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of Regulation No. 20."

However, in the case herein, I am satisfied from the testimony of Agents B and Ca that Jules actually did make overtures to Agent Ca for improper purposes.

In Murphy's Tavern, Inc. v. Davis, 70 N.J.Super. 87 (App. Div. 1961), the court stated:

"In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J.Super. 405 (App.Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J.Super. 449 (App. Div. 1951)."

See also Carelis v. Division of Alcoholic Beverage Control (App.Div. 1961), not officially reported, reprinted in Bulletin 1430, Item 1.

After a careful review of all the evidence, including the testimony of the agents, the officers and bartenders of the licensee, the psychiatrist and the patrons who testified on behalf of the licensee, and the written argument of the attorney for the licensee, I find as a fact that the Division has established the truth of the charges by a fair preponderance of the believable evidence. I therefore recommend that the licensee be found guilty of such charges.

The licensee has a previous record of suspension of license (1) by the municipal issuing authority for twenty days effective March 15, 1954, for sale to intoxicated persons, (2) by the Director for sixty days effective July 18, 1961, for permitting apparent homosexuals on the premises (Re Murphy's Tavern, Inc., Bulletin 1374, Item 2; affirmed Murphy's Tavern, Inc. v. Davis, 70 N.J.Super. 87, reprinted in Bulletin 1395, Item 3; Re Murphy's Tavern, Inc., Bulletin 1405, Item 7), (3) by the municipal issuing authority for forty-five days effective September 16, 1961, for permitting apparent homosexuals on the premises and hindering investigation, and (4) (following change of stockholders and Officers in January 1963) by the Director for fifty-five days effective April 21, 1964, for permitting apparent homosexuals on the licensed premises. Re Murphy's Tavern, Inc., Bulletin 1563, Item 4.

With respect to any penalty to be imposed herein, there should be considered not only the previous record of the licensee of suspension for similar violation, but also the fact that the activities of April 22, 24 and May 7-8, the subject of the second charge, occurred after the first charge had been preferred on March 26 with respect to the activities on March 13, 17-18 and 21.

Under all of the circumstances appearing herein, revocation of the license is warranted. Re Kaczka, Bulletin 1126, Item 3; Re Butler Oak Tavern, Bulletin 1055, Item 1; affirmed Butler Oak Tavern v. Division of Alcoholic Beverage Control, 36 N.J.Super. 512; affirmed id. nom. 20 N.J. 373; Re Club Tequila, Inc., Bulletin 1570, Item 1. Cf. Re Brennan, Bulletin 113, Item 1. Thus, it is further recommended that the license herein be revoked.

Conclusions and Order

Exceptions to the Hearer's report, with supporting argument, were filed pursuant to Rule 6 of State Regulation No. 16.

Several of the exceptions, read together, seem to argue as follows: (a) the agents were not professionally qualified to determine the apparent homosexuality of the patrons in the licensed premises, (b) "in effect" the Hearer made no determination that the patrons were apparent homosexuals but, rather, "it was the agents who made that decision", (c) the Hearer "completely ignored" the testimony of the psychiatrist Dr. Farb, produced on behalf of the licensee, as well as other "disinterested witnesses", (d) the congregation of apparent homosexuals herein, within the present contemplation of "mores and customs", "did not offend public morals, safety and welfare" and (e) in any event, the congregation of apparent homosexuals is not a nuisance as contemplated under Rule 5 of State Regulation No. 20, or the Alcoholic Beverage Law.

The dispositive answers to the above contentions were convincingly made in many of our adjudicated cases both in the Division and in our appellate courts.

It has been firmly established, both in law and logic, that the agents, who have had many years of investigative experience in similar matters, are qualified to form an opinion as to the apparent homosexuality of patrons based upon their observations of the conspicuous guise, demeanor, carriage, appearance and conduct of the said patrons.

It is no more necessary for these agents to have medical or psychiatric training than it is for them to have a medical background to form an opinion with reference to an apparently intoxicated person. Such admissible opinion may be based on common observation and requires no special knowledge or skill. Castner v. Sliker, 33 N.J.L. 95; McHugh v. Hasbrouck Heights, 144 Atl. Rep. 799; Re Subar, Inc., Bulletin 1586, Item 2.

As the Hearer emphasized, the agents testified only as to apparent homosexuality. And, if the testimony of the agents was believable, as the Hearer found it to be, of the appearance, demeanor and conduct of these patrons, such evidence squarely meets the required measure defined in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405; cf. Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App.Div. 1961).

My analysis of the testimony of the psychiatrist Dr. Farb satisfies me that, while his main premise was that a person could not be conclusively identified as an actual homosexual merely by outward appearance, nevertheless he agreed with the appositional thesis as stated in the Hearer's report "that a group of persons who acted like those described, wore female jewelry and other apparel usually worn by females, would arouse suspicion in his mind" and "raise a question in his mind as to their normality." Thus the sense of his testimony as it relates to the apparent homosexuals coincides with and supports the testimony of the Division agents.

As the court stated in Paddock (at p. 408):

"True, in the present proceeding the evidence was not of the probative quality to establish beyond uncertainty that the specified patrons of the tavern were in actuality homosexuals...."

"Here, a distinguishable understanding of the accusation is imperative. The appellant was charged with the misconduct of permitting persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals habitually and in inordinate numbers (on one occasion, as many as 45) to congregate at the tavern....

"Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud."

Cf. Re Murphy 's Tavern, Inc., Bulletin 1374, Item 2.

Significantly, in the matter sub judice, patently indecent conduct was engaged in by these apparent homosexuals, such as caressing "about the buttocks", fondling of males by other males, "goosing each other about the buttocks." (Agent C complained to the bartender that he personally had been grabbed by the buttocks ten times while in the premises.)

Such congregation of the apparent homosexuals, together with the acts and conduct attributed to them by the Division agents, are clearly against the public welfare. The licensee has extended an open invitation to these persons to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, and being exposed to these conditions, may well be adversely affected. Re Hoover, Bulletin 1521, Item 1 (aff'd App.Div. Nov. 22, 1963, opinion not approved for publication).

It is thus perfectly obvious that the type of activity reflected in the record is a violation of our basic moral concepts, even under the most liberal view. It is appropriate to quote the language in In re Schneider, 12 N.J.Super. 449 (App.Div. 1951):

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra.

I agree with the Hearer that the activity on the licensed premises herein, as charged, constitutes a nuisance and gives eloquent force to the need for the applicable rule. Any relaxation of such rule can only encourage a pattern of behavior offensive to good taste and established moral standards.

One further comment with respect to the testimony of licensee's witnesses. I agree with the Hearer that their testimony as it specifically relates to their observations and knowledge of the proscribed activity is highly incredible and unworthy of belief.

The index to the said testimony is perhaps most clearly revealed by the statement of Hirschorn, a corporate officer. When Agent M pointed out several of the apparent homosexuals to him, Hirschorn

pleaded, "What am I going to do? What can I do? Can't we straighten this out?"

Counsel in his final exception contends that the penalty recommended by the Hearer was excessive and "that revocation under these circumstances is not only extremely unjust, extremely harsh, but extremely unfair." With this I cannot agree. The record discloses that the licensee has an adjudicated record of past offenses which includes similar violations. In addition thereto it permitted apparent homosexuals to congregate on the licensed premises during the period when charges were pending at the Division alleging similar violations. Such conduct on the part of the licensee evinced an open and willful disrespect for the law and rules and regulations of this Division. Cf. Re Butler Oak Tavern, Bulletin 1055, Item 1, aff'd Butler Oak Tavern v. Division of Alcoholic Beverage Control, 36 N.J. Super. 512; 20 N.J. 373; reprinted in Bulletin 1079, Item 1, Bulletin 1096, Item 1.

"The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement." Kravis v. Hock, 135 N.J.L. 259 (Sup.Ct. 1947), reversed on other grounds, 136 N.J.L. 161 (E. & A. 1947). In reality, a license to vend alcoholic beverages is merely a temporary permit or privilege to pursue an occupation otherwise illegal. Voighttv. Board of Excise, 59 N.J.L. 358 (Sup.Ct. 1896); Drozdowski v. Sayreville, 133 N.J.L. 536 (Sup.Ct. 1946); Takacs v. Horvath, 3 N.J. Super. 433 (Ch.Div. 1949); it must be carefully supervised and should be conducted by reputable people in a reputable manner. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). See In re 17 Club, Inc., 26 N.J. Super. 43.

The flagrant and repeated violations on the part of this licensee have unmistakably demonstrated that it is not fit to hold a license. Under the circumstances I have no alternative but to revoke.

I have examined each of the other exceptions and find them to be without merit.

After careful consideration of the entire record, including the transcript of testimony, the Hearer's report, all of the exceptions and argument filed with reference thereto, I conclude that the Division has established its case by the overwhelming preponderance of the credible testimony. Therefore I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 19th day of April 1966,

ORDERED that Plenary Retail Consumption License C-461, issued for the 1965-66 licensing period by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Murphy's Tavern, Inc., for premises 135 Mulberry Street, Newark, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against)

LEO BERNSTEIN)
t/a KENYA CLUB)
7 Bridge Street)
Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-121, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Grabow, Verp & Rosenfelt, Esqs., by Martin Verp, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On Sunday, October 31, 1965, at about 11:15 a.m., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage on your licensed premises; in violation of Section II of an Ordinance adopted by the Board of Alcoholic Beverage Control for the City of Paterson on May 27, 1948.

"2. On Sunday, October 31, 1965, at about 11:15 a.m., you failed to have your entire licensed premises closed; in violation of Section II of an Ordinance adopted by the Board of Alcoholic Beverage Control for the City of Paterson on May 27, 1948.

"3. On Sunday, October 31, 1965, at about 11:15 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Seagram's Seven Crown Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

The factual setting for the Division's case was delineated through the testimony of three ABC agents. Pursuant to an investigation initiated upon a specific assignment to investigate alleged sales of alcoholic beverages Before hours and on Sundays, four ABC agents proceeded to the licensed premises on Sunday morning, October 31, 1965. Two of these agents remained at a post of observation about a block away from the said premises, and Agents J and B stationed themselves immediately outside of the

premises. Five male persons were observed individually entering the alleyway leading to the side door of the said premises within a period of fifteen minutes. Each person, upon emerging therefrom, appeared to have a bulge in his pocket, indicating to the agents that each of them had obtained alcoholic beverages.

At about 11:15 a.m. on the said date Agent B walked into the alleyway and entered the hallway of the said premises, proceeded about half way therein and knocked on the door to the licensed premises. The door was partly opened by the licensee and the agent said, "Give me a pint of Seagram's 7", handing him concurrently a five-dollar bill. The licensee then closed the door and, shortly thereafter, returned, opened the door and handed this agent a bottle of Seagram's 7 whiskey together with \$1.75 in change.

The agent then left the premises and walked down the block where he was joined by the other three agents. After disclosing to them the bottle which he had just purchased, he returned to the premises with Agents C and D while Agent J remained on the outside. He again knocked on the side door, which was opened by the licensee; he identified himself, and the agents were thereupon admitted into the licensed premises. Confronted by the agents, the licensee denied that he had sold the bottle which was shown to him, but he refused to execute a written statement with reference to this alleged transaction.

Agent C then asked him to put his signature on the bottle. He also refused to do so and made the following remark, "Can we straighten this thing out", to which the agent replied, "Let's forget about it and give me the license application."

Testimony of Agent B was corroborated with respect to the initial entry by Agent J and with respect to the confrontation by Agent C.

Leo Bernstein (the licensee), testifying in his own behalf, denied selling any alcoholic beverages to Agent B and asserted that the first time he saw the agents was when the three agents appeared at the side door, loudly knocked on the door; he admitted them after one of them stated, "Open up or we'll break it in. This is the ABC." When the agents showed him the bottle of Seagram's 7, he accused Agent B of lying and insisted that he did not buy it at these premises. He suggested that it was possible that the agent may have purchased the bottle of liquor from some tenant living in the building. However, he admitted stating to Agent C "Can't we straighten this out" and explained the reason he made that suggestion was that he thought it was "a shake-down or frame-up or joke, one or the other." He admitted further, however, that the agents had shown him their official credentials prior to this conversation.

David Lee Jones, called as a witness on behalf of the licensee, testified that he is employed as a porter and was so employed on that morning. He further testified that the licensee picked him up some time that morning and he had been drinking the entire night previously and was quite "high". After he performed his duties he then went into the phone booth and went to sleep. He added that he saw "two come in with the detective" but was unable to identify any of the agents who were present in the hearing room. On cross examination he admitted that he did not know the specific date or even the month in which this incident took place, but he was certain that he had been drinking all night and was "high" when this incident took place.

Agent B, called in rebuttal, denied seeing Jones or any person other than the licensee in the premises at that time. He also denied

that the licensee had called him a liar.

Agent C, in rebuttal, refuted the testimony with respect to their entry into the premises and particularly denied threatening to break down the door. He stated that the door was opened by the licensee after they knocked on it once.

I have carefully examined and evaluated the testimony presented in this matter and have had an opportunity to observe the demeanor of the witnesses as they testified. I am persuaded that the account given by the ABC agents was a forthright and credible one and accurately portrayed what actually occurred at the premises on the date in question. The suggestion seems to have been made that Agent B had purchased this bottle of liquor elsewhere and was seeking to "frame" the licensee. There is no scintilla of evidence to support this conjecture and it must be summarily rejected.

On the other hand, I find the testimony of the licensee to be unconvincing, impersuasive, and that it does violence to the realities of the situation. It is hard to conceive that this licensee, who has been in business for a long time, did not understand the legitimacy of this confrontation after he was shown the credentials of the agent. As pointed out hereinabove, he then suggested the possibility of a bribe if the agents could "straighten this out." His explanation that he was "confused" and thought that it was either a "shake-down or frame-up or joke" is highly incredible, and I do not believe that he was so ingenuous as to mistake the true purpose of the agents' visit. The conduct and admitted conversation with its implications is, in my opinion, inconsistent with innocence. His testimony is further suspect when he states that he examined the tape on the cashregister to see whether or not a sale had been registered thereon. His testimony thus lacks credulity and honesty.

With respect to Jones, I must totally disregard his testimony because he admits that he had been drinking heavily all night and was "high" at the time of this occurrence. I might add that he was apparently in the same condition when he testified in these proceedings, and it was difficult to get coherent answers from him.

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 must establish its case by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373. In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, § 1042.

After examining all of the testimony herein, I conclude that the Division has established the truth of the said charges by a fair preponderance of the credible evidence, and indeed by substantial evidence, and I therefore recommend that the licensee be found guilty of the charges.

Licensee has a prior adjudicated record. In 1957, when the licensee held the license for these premises in partnership with Jacob Bernstein, said license was suspended by this Division, upon appeal from a finding of guilty by the local issuing authority, for ten days effective July 29, 1957, for permitting a brawl. Bernstein v. Paterson, Bulletin 1186, Item 2. Thereafter, when this license was held individually by the licensee, his license was suspended by the local issuing authority for five days effective November 29, 1958, for failure to display license certificate and hindering an investigation; by this Division for ten days effective September 6, 1960, for

permitting a brawl upon order affirming a finding of guilt by the local authority (Bernstein v. Paterson, Bulletin 1356, Item 1); and by the local issuing authority for five days effective February 24, 1964 for sale during prohibited hours on an election day.

In fixing the penalty to be imposed, it is recommended that the prior record of suspensions of license for dissimilar violations occurring more than five years ago be disregarded, but the prior record of suspension of license for similar violation of sale during prohibited hours within the past five years be considered.

The minimum penalty for a first offense of a single sale during prohibited hours in violation of both municipal and State regulation is suspension for twenty days. Re Moore, Bulletin 1659, Item 4. Where there is a prior record of suspension of license for similar violation within the past five years, the first-offense minimum is doubled. Cf. Re Club Ali-Baba, Inc., Bulletin 1654, Item 4; Re Turner, Condon and Brophy, Bulletin 1650, Item 3. Accordingly, it is recommended that the license be suspended for forty days.

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 exhibits, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of April, 1966,

ORDERED that Plenary Retail Consumption License C-121, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Leo Bernstein, t/a Kenya Club, for premises 7 Bridge Street, Paterson, be and the same is hereby suspended for forty (40) days, commencing at 3:00 a.m. Wednesday, April 27, 1966, and terminating at 3:00 a.m. Monday, June 6, 1966.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (SOLICITATION FOR DRINKS) -
 LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

RI-BO, INC.)
 t/a GLADIATORS III)
 27-29 S. Missouri Avenue)
 Atlantic City, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-181, issued by the Board)
 of Commissioners of the City of)
 Atlantic City.)

 Edwin H. Helfant, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 17 and 20, 1966, it conducted its licensed place of business as a nuisance by permitting unescorted females to solicit drinks at the expense of male patrons, in violation of Rule 5 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Milchman, Bulletin 1571, Item 3.

Accordingly, it is, on this 28th day of April, 1966,

ORDERED that Plenary Retail Consumption License C-181, issued by the Board of Commissioners of the City of Atlantic City to Ri-Bo, Inc., t/a Gladiators III, for premises 27-29 S. Missouri Avenue, Atlantic City, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. Monday, May 2, 1966, and terminating at 7:00 a.m. Tuesday, May 17, 1966.

JOSEPH P. LORDI
 DIRECTOR

4. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 20 DAYS - NO REMISSION FOR PLEA ENTERED ON HEARING DATE.

In the Matter of Disciplinary Proceedings against)

JOSEPH RIVELLI)
611 Summit Avenue)
Union City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-16, issued by the Board of Commissioners of the City of Union City.)

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

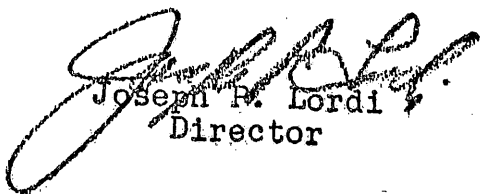
BY THE DIRECTOR:

On the date scheduled for hearing, licensee pleaded non vult to a charge alleging that on March 12, 1966, he permitted a female entertainer to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days (Re Long, Bulletin 1666, Item 2), without remission for the plea untimely entered on the hearing date (Re Arahill, Bulletin 1646, Item 1).

Accordingly, it is, on this 26th day of April 1966,

ORDERED that Plenary Retail Consumption License C-16, issued by the Board of Commissioners of the City of Union City to Joseph Rivelli, for premises 611 Summit Avenue, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Tuesday, May 3, 1966, and terminating at 3 a.m. Monday, May 23, 1966.


Joseph R. Lordi
Director