

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

BULLETIN 1687

August 10, 1966

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August 10, 1966

1. APPELLATE DECISIONS - FREEHOLD SUBURBAN TAVERN OWNERS
ASSOCIATION ET ALS. v. HOWELL AND HO-JAN CORPORATION.

Freehold Suburban Tavern Owners)
Association, Jesse Boyette,
William Joyce and John Katarinas,)

On Appeal

Appellants,)

v.)

Township Committee of the Township
of Howell, and Ho-Jan Corporation,)

CONCLUSIONS and ORDER

Respondents.)

Edwin J. Fox, Esq., by Bernard L. Greenberg, Esq., Attorney
for Appellants
Carton, Nary, Witt & Arvanitis, Esqs., by John C. Carton, Esq.,
Attorneys for Respondent Township Committee
J. William Boyle, Esq., Attorney for Respondent Ho-Jan Corporation

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee (hereinafter Committee) whereby it approved an application for a person-to-person and place-to-place transfer of plenary retail consumption license from K.M.E. Corporation, t/a Katie's Tavern, to respondent Ho-Jan Corporation, t/a Amber Lounge, and from premises located on N/E side of Highway 34 to premises to be constructed in accordance with plans and specifications on the southeasterly side of the junction of State Highways 33 and 34, Howell Township.

Appellants allege in the petition of appeal that the action of the Committee was erroneous and should be reversed for the following reasons:

"... traffic hazards will arise, there will be congestion due to the fact that there are three (3) liquor licenses already in existence within a short distance from the proposed new premises, the form of the notice of advertisement was inaccurate in that it did not follow the statutory requirements, the granting was not for the benefit and general welfare of the residents, and finally, the intent of the Ordinance is not to expand the amount of licenses but to decrease these."

The answers filed by the Committee and the respondent-licensee, respectively, deny the aforesaid allegations of appellants and further contend that the transfer of the license would be beneficial to the community. In addition thereto, the Committee's answer states that, since it is a short distance between the present location of the premises and the proposed location thereof, it will not cause an additional license to be situated in the area.

Appellants Jesse Boyette and William Joyce, both of whom operate licensed premises on State Highway 33, testified at the instant hearing. Boyette testified that he holds a plenary retail consumption license for premises 750 feet distant from the proposed premises sought for the license in question. Joyce (an officer of Joyce's Bar and Grill, Inc.) testified that its licensed premises are 1,000 feet away from the proposed premises. The objections of the witnesses are substantially similar in character, both being of the opinion that no need exists for a liquor license at the intersection of Highways 33 and 34. Moreover, the witnesses assert that the two highways are used continuously by motor vehicles, and traffic at the intersection at 4:30 and 5:00 p.m. is especially heavy. They also testified that many teenagers patronize the diner section of the proposed premises. Boyette contends that the notice of application for transfer of the license in question, as published in the local press, was ambiguous regarding the exact location of the proposed premises and, furthermore, that the notice showed the address of the transferor K.M.E. Corporation, t/a Katie's Tavern, being located on Highways 33 and 34 whereas it is located on Highway 34. On cross examination Boyette said that he and the Coddingtons (officers of Ho-Jan Corporation) negotiated for the purchase of his property and transfer of his liquor license to them. Also, Boyette testified that he appeared before the Committee when the matter of transfer of the license in question was heard.

John Miller, Township Clerk (hereinafter Clerk) testified that the location of the proposed premises sought by the respondent-licensee is "on Highways 33 and 34 at the junction" and, more specifically, "it is right at the intersection." The Clerk identified and read from a photostatic copy of the first half of the tax bill for 1966 (Exhibit RL-4) pertaining to the location of the property in question wherein, for tax purposes, the site of the proposed licensed premises was described as "BLK. 185 JCT OF HWY 33 & 34 LOT 1." According to the testimony of the Clerk, the transferor, namely, K.M.E. Corporation, t/a Katie's Tavern, is located on State Highway 34 and is approximately "800 or 900 feet" distant from the location sought by respondent Ho-Jan Corporation. Furthermore, the Clerk said that Highways 33 and 34 merge at the junction and then both highways continue as a one-way highway for a distance of approximately a mile.

M. Jeanette Coddington (an officer of respondent Ho-Jan Corporation) testified that she and her husband have operated a diner at the location in question for twelve years and the traffic is not congested or, to her knowledge, was there ever an accident occurring at the intersection. She further confirmed the fact of the negotiations with Mr. Boyette for the purpose of obtaining the transfer of his liquor license.

Harry E. Mills (a member of the Committee) testified that he voted in favor of the transfer of the license and, when the matter was discussed by the members of the Committee, the consensus of opinion was that it would be a good move and would serve the people better than at the transferor's establishment because at the proposed location "food would be available in the dining room." He also stated that sales of alcoholic beverages were restricted to the dining room and to the new addition, and expressly prohibited in the diner as a precaution against sale of alcoholic beverages to minors.

The ordinance pertaining to State Highway 33 provides that not more than five plenary retail consumption licenses may be issued thereon, and not more than three plenary retail consumption licenses may be issued on State Highway 34. At the present time, according to the testimony of the Town Clerk, there are presently four plenary retail consumption licenses on

State Highway 33 and two of the same type of license on State Highway 34. Thus it is apparent that the approval of the transfer of the license to the proposed site does not violate the existing municipal ordinance.

Although the notice of publication gave the location of K.M.E. Corporation, t/a Katie's Tavern, to be on State Highways 33 and 34, there appears to be no question that the said licensed premises are located on State Highway 34. This apparently was done through inadvertence but, since the correct location on State Highway 34 was also included, it sufficiently described the location of the premises of the transferor. Furthermore, with regard to the location of the proposed site for which the transfer of the license is sought, it appears to be set forth in conformity with the tax records of the Township. Moreover, the proposed premises are right at the junction where State Highways 33 and 34 merge. The aforesaid location appeared in the notice of application for the transfer of the license as published in the "Howell Booster" and, under the circumstances, was sufficiently accurate. Thus the premises being sufficiently identified, it is clear that the Committee and the appellants herein were not in any manner misled. Additionally, the appellants were represented by an attorney before the Committee at the hearing when the application for transfer was being considered. Furthermore, if anyone desired to enter objections to the transfer, ample opportunity to do so was afforded at the hearing of the appeal herein.

I shall now consider whether the Committee abused its discretion in granting to Ho-Jan Corporation the transfer of the license in question.

It has been well established that a local issuing authority's discretionary power is broad when called upon to determine whether a liquor license should or should not be transferred. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles were stated:

"... Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.'" Graham v. United States, 231 U.S. 474, 480. 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913).

In the Rocco case, supra, it was stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.'"

N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'" Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511.

There has been no evidence presented to indicate that the Committee was improperly motivated or abused the discretion vested in it by granting the transfer of the license in question. By its action the Committee was satisfied that the proposed location of the respondent-licensee's premises would not constitute a traffic hazard. According to photograph submitted in evidence, there is plenty of parking space provided for potential customers when using the facilities afforded by the respondent-licensee. Committeeman Mills testified that it was the consensus of opinion of the Committee that the transfer of the license from its present place on Highway 34 to the proposed premises at the junction of Highways 33 and 34 would be beneficial to the community.

After careful examination of the entire record presented herein, I conclude that the appellants have failed to sustain the burden of proof in showing that the action of the Committee was erroneous. Rule 6 of State Regulation No. 15. See Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2, and cases cited therein.

For the reasons aforementioned, it is recommended that an order be entered affirming the action of the Committee herein and dismissing the appeal.

Conclusions and Order

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

After careful consideration of all the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 21st day of June 1966,

ORDERED that the action of respondent Township Committee of the Township of Howell be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI,
Director

2. APPELLATE DECISIONS - ROTHANGE CORPORATION v. CLIFTON

Rothange Corporation, t/a)
Crossroads,)

Appellant,)

v.)

On Appeal

Municipal Board of Alcoholic)
Beverage Control of the City)
of Clifton,)

Respondent.)

O R D E R

John J. Bergin, Esq., Attorney for Appellant
Sam Monchak, Esq., by Victor Shorr, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending its license for fifteen days effective January 17, 1966, for sale to a minor. Upon filing of the appeal I entered an order staying the suspension pending the determination of the appeal.

Prior to the hearing on appeal, by letter dated June 14, 1966, appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 20th day of June, 1966,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the fifteen-day suspension be reinstated and Plenary Retail Consumption License C-113, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Rothange Corporation, t/a Crossroads, for premises 863 Valley Road, Clifton, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 3 a.m. Monday, June 27, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Tuesday, July 12, 1966.

JOSEPH P. LORDI,
Director

3. APPELLATE DECISIONS - ROTHANGE CORPORATION v. CLIFTON -
SUSPENSION DEFERRED.

Rothange Corporation, t/a)	
Crossroads,)	
)	
Appellant,)	
v.)	On Appeal
)	
Municipal Board of Alcoholic)	
Beverage Control of the City)	
of Clifton,)	O R D E R
Respondent.)	

John J. Bergin, Esq., Attorney for Appellant
Sam Monchak, Esq., by Victor Shorr, Esq., Attorney for Respondent

BY THE DIRECTOR:

On June 20, 1966, I entered an order herein dismissing the appeal and reimposing appellant's fifteen-day suspension of license by respondent, effective June 27, 1966. Re Rothange Corporation v. Clifton, Bulletin 1687, Item 2.

It is now brought to my attention by respondent that the suspension period fixed by my order coincides with "the regular closed vacation period of the licensee." Since the imposition of the penalty at the time fixed would be nugatory, my order of suspension will be vacated and a new period of suspension will be fixed when the licensee has again resumed the operation of the licensed business.

Accordingly, it is, on this 24th day of June, 1966,

ORDERED that the order of June 20, 1966 herein, so far as it fixes the effective dates of suspension of license, be and the same is hereby vacated pending entry of further order re-fixing

such suspension dates.

JOSEPH P. LORDI,
Director

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION
NO. 38 - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED
FOR 35 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Harold Sandford & Norma Sandford)
t/a Club Norma)
331 Straight Street)
Paterson, New Jersey,)

CONCLUSIONS
and
ORDER

Holders of Plenary Retail Consumption)
License C-154, issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson.)
-----)

George J. Hajjar, Esq., Attorney for Licensees
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

Licensees pleaded not guilty to the following charge:

"On Thursday, January 6, 1966, at about 10:25 P.M.,
you allowed, permitted and suffered the removal
from your licensed premises of an alcoholic beverage
in an opened container, viz., an alcoholic beverage
in an opened one-half pint bottle labeled Gordon's
Dry Liqueur; in violation of Rule 1 of State Regulation
No. 38."

The Division offered the testimony of two ABC agents
in substantiation of the charge.

Agent B testified that, accompanied by Agent J, he
arrived in the vicinity of the tavern on January 6, 1966, at
9:10 p.m. and, leaving Agent J outside to maintain surveillance,
he entered the licensed premises which he described as a neigh-
borhood tavern. The bartender was Walter Green.

Specifically referring to the subject matter of the
charge, the testimony then revealed the following:

"Q Give us the details of the purchase.

A At 10:25 I called Mr. Green over and asked him
for a half-pint bottle of Gordon's gin. He
reached on a shelf --

Q What did you say to him? Tell us what you said
to him.

A I said, 'Give me a half-pint bottle of Gordon's
gin to go.' He turned around and reached on a
shelf and picked up a bottle of gin.

Q Which bottle?

A Gordon's gin. He said, 'I'll have to open it, and
you have to take a shot of it here because the man
may be outside.' said, 'That is O.K.' He opened

the bottle, unscrewed the cap, reached behind the bar, picked up a shot glass, placed it in front of me, poured in a shot of whiskey [later described as a liqueur]. At the same time he held the bottle cap. After he poured the whiskey into the glass he placed the cap back on the bottle and handed me the bottle."

Continuing, the agent stated that, while the bartender was standing in front of him and facing him, he received the half-pint from the bartender, pulled his pants out and placed it down under his belt. Although he was wearing a three-quarter jacket, his coat was open. The agent handed the bartender a ten-dollar bill and received \$8.30 change. He then consumed the shot of liqueur, departed from the premises at about 10:25 p.m. and rejoined Agent J at his post of observation.

Agent B re-entered the tavern with Agent J, and both agents displayed their ABC credentials to bartender Green. Agent B placed the bottle of gin on the bar and, in response to Agent J's question as to whether or not he sold the half-pint to Agent B, Green responded in the affirmative. Green then summoned Harold Sandford (one of the licensees) who lived upstairs and, upon his entry into the tavern, Agent J advised Sandford of the sale of the half-pint by his bartender. Sandford shrugged his shoulders, shook his head and walked away. The half-pint less the one shot consumed by the agent and the other part missing (which the agent declared was used for chemical analysis) was admitted in evidence.

On cross examination the agent stated that he did not see a sign admonishing that bottles are not to be taken off the premises after 10 p.m. It was stipulated that the missing contents of the half-pint was four ounces. There were six patrons in the tavern, a male and female were shooting pool. The agent testified that he was in the licensed premises on December 29th and 30th, 1965, on specific assignment to make observations and did not try to purchase a bottle after hours on either of those two dates.

Agent J testified that he participated in the investigation of the instant matter with Agent B. Agent J waited outside while Agent B entered the tavern immediately upon arrival in the vicinity thereof on January 6, 1966, at 9:10 p.m. When Agent B rejoined Agent J at approximately 10:25 p.m., he showed Agent J a half-pint of Gordon's liqueur gin with the seal broken and with about one-eighth of its contents removed. Both agents entered the tavern and identified themselves to the bartender Mr. Green. The interrogation of Agent J then proceeded, as follows:

"Q What did you say?

A I asked him did he just sell this half-pint bottle of liqueur to Agent B---.

Q What did he say?

A He stated, 'Yes.'

Q Did you follow it up with another question?

A I did.

Q What was it?

A I then asked him did he sell it to him to take off the premises.

Q Any answer?

A No reply."

The co-licensee (Harold Sandford) appeared upon the scene and was advised of the sale of the liqueur for off-premises consumption.

In defense of the charge Walter Green testified that he was the bartender on duty at the time of the alleged incident.

He served Agent B a nip of beer at about 9:10 p.m., and at about 10:25 p.m. Agent B asked for a half-pint of Gordon's gin. The witness advised Agent B that "it was too late to take it out because it was after ten," to which B responded that he was going to drink it there. Green obtained the gin, poured some into a three or four ounce glass, placed the glass and bottle in front of Agent B, received payment and gave B the change. Agent B did not say that he was going to take the bottle out of the licensed premises. The witness then testified that there were three signs located in various parts of the premises containing a legend to the effect that bottled goods could not be removed from the licensed premises after 10 p.m. Two of the signs were received in evidence. The signs at the front of the bar were pointed out to Agent B by Sandford. Finally, the witness testified that he did not see Agent B place the bottle in his pants and he did not see the bottle being taken out of the premises.

On cross examination the witness testified that, when he turned around, he did not see the bottle on the bar, and he thought that B might have gone into the men's room. The questioning then proceeded as follows:

- "Q When [Agent B] asked you for the bottle how did he ask for it? What did he say?
A He said could he have a half-pint.
Q Did he say a half-pint of gin to go?
A Yes.
Q When he said that what did you say?
A I told him no, he couldn't take it out.
Q Did you say to him, 'You have to take a shot out because the man may be outside'?
A I didn't say, 'the man.' I said he had to drink it there.
Q Did you use that expression 'the man' that night?
A No, I didn't use no 'man.'
Q You know what it means?
A Yes.
Q What does it mean to you?
A Might be an ABC man or officer.
Q Enforcement officer?
A Yes."

Green obtained a full bottle with a sealed cap which he broke prior to pouring into the glass. He laid the cap on the bar, charged \$1.70 for the bottle and made change of a ten-dollar bill. The liquid was still in the glass and the agent put the change in his pocket immediately after it was placed on the bar. When Green turned around after making change for another patron about three feet away from B, he noted that the bottle and B had disappeared. He did not see Agent B walk out of the tavern. The nearest exit was near the men's room almost ten feet away. He did not inquire as to where Agent B went or look for him either in the men's room or anywhere else. About five minutes thereafter Agent B re-entered the tavern with Agent J and both identified themselves as ABC agents. He admitted that he sold the bottle but denied that any mention was made of "to go" or "to take out." At no time did he tell the agents that Agent B walked out of the premises while his back was turned.

Samuel Moody testified that he was in the licensed premises waiting to get change at the bar in order to shoot pool and heard the conversation between the bartender Green and Agent B. After Agent B asked for a "bottle of Gordon's gin to go", Green responded that he could not take it out, he had to drink it there. After the agent said that he would drink it in the tavern, Green proceeded to obtain the bottle, filled up a glass and made change of a ten-dollar bill. While Moody was waiting

for his change, Agent B departed. The witness did not see him leave because he was not looking in his direction at the time.

It was stipulated that the co-licensee (Harold Sandford) had instructed his employees to abide by the ABC rules and regulations and that there were signs displayed in the tavern cautioning against removing bottled goods after 10 p.m.

In rebuttal Agent B denied that, when he ordered the bottle from Green, he (Green) said, "it is too late" and that he (Agent B) said to Green, "I am going to drink it here." The bottle was placed on the bar with a glass and without soda or water.

The licensees' attorney contended, in effect, that the Division had failed to establish the charge by a fair preponderance of the evidence; that it was the intention of the bartender that the contents of the bottle was to be consumed upon the licensed premises, and that the size of the bottle (one-half pint) was corroborative of the bartender's intention.

It is apparent that the major inquiry presented herein is factual.

It is a firmly established principle that disciplinary proceedings against liquor licensees, such as in the instant proceeding, are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was re-echoed in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1. I am strongly persuaded that the testimony of Agent B (buttressed by Agent J's testimony) presented a true account of the occurrence in question. I am convinced that the ABC agent made known to the bartender Green and that Green fully understood that the bottle of gin liqueur was purchased for off-premises consumption.

It is a fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Rule 33 of State Regulation No. 20.

I conclude and I find that the Division has established the truth of the charge by a fair preponderance of the credible evidence, and I recommend that the licensees be found guilty of said charge.

Licensees have a previous record of suspension of license (1) by the Director for similar violation for ten days effective September 14, 1965 (Re Sandford, Bulletin 1639, Item 7) and (2) by the municipal issuing authority for fifteen days effective November 18, 1965, for sale to a minor.

It is therefore further recommended that, the prior record of suspensions of license for similar and dissimilar violations within the past five years considered, the license be suspended for thirty-five days. Re Nate Kates, Inc., Bulletin 1672, Item 4; Re Barone's Lounge, Inc., Bulletin 1670, Item 4; Re Kulnis, Bulletin 1672, Item 8.

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 June 1966,

ORDERED that Plenary Retail Consumption License C-154, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Harold Sandford and Norma Sandford, t/a Club Norma, for premises 331 Straight Street, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 3 a.m. Monday, June 27, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Monday, August 1, 1966.

JOSEPH P. LORDI,
DIRECTOR.

5. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

Nicholas Di Cosmo)
t/a Keyboard Lounge)
292 Morris Ave.)
Elizabeth, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-181, issued by the City Council of the City of Elizabeth.)

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

Licensee pleaded not guilty to the following charge:

"On Thursday night, August 26, Saturday night August 28, Wednesday night, September 1 into Thursday morning September 2 and on Friday night, September 10 into Saturday morning, September 11, 1965, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

The testimony of ABC Agent C discloses that at 10:20 p.m. on August 26, 1965 he and Agent M entered the licensee's premises and sat at a table in the dining room. Agent C observed a waitress, later learned to be Jean O'Brien (hereinafter Jean), waiting on persons seated at tables. Also there were two male bartenders and a person subsequently ascertained to be the licensee who appeared to be "acting in managerial capacity." Two females attired in dancing costumes entertained at different intervals. One was a blonde referred to as "Tracey" and the other a brunette referred to as "Diane." As each dancer finished her set,

she would mingle with the patrons in the barroom and the dining room.

The agents remained in the premises until midnight, during which time Agent C observed Diane being served two drinks and Tracey three drinks. The first time Agent C saw Tracey being served a drink by Jean, Tracey was seated at a table next to the agents and also occupied by three or four males. One of the males called to Jean, gave an order for a "Bacardi cocktail" and, pursuant thereto, Jean went to the bar, returned with an amber colored liquid and placed the drink in front of Tracey, who consumed it. Agent C noticed that, after the drink was served, Jean picked up the tab from the table, took it to the bartender who inserted the tab in the cash register and, after ringing it up, Jean returned the tab to the table where Tracey and the males were seated.

Agent C testified that on two other occasions he saw Tracey being served a drink, one when Tracey was seated at the bar with a male and again when she was seated at the piano bar with a male. At the bar, after service was made to Tracey the bartender picked up the tab and, after ringing up the sale on the register, placed it in front of the male. At the piano bar Jean served a drink to Tracey, then picked up the tab, presented it to the bartender and, after it was rung up on the register, placed the tab on the piano bar in front of the male.

Agent C further testified that he observed Diane being served two drinks, one in the dining room section and one at the bar. Service of the first drink was made by Jean, who took the tab from the table and, after it was given to the bartender, he rang it up on the register. Jean then brought the tab back to the male with whom Diane was seated.

Agent C further testified that at the time the tab for the first drink served to Tracey was rung up on the register he personally observed that the same cost 95¢.

Agent C testified that he and Agent M visited the licensee's premises at 9:45 p.m. on August 28, 1965, and took seats at the bar. He stated that two bartenders were on duty, as was Jean as waitress; that the licensee was present acting as "host" and that Tracey and Diane again entertained by dancing at different intervals. When not performing, each entertainer mingled with the male patrons at the bar, the piano section of the bar and the dining room. Agent C said he observed Jean serve a drink to Tracey who was seated at a table with "three or four males", present the tab to the bartender who rang up a 95¢ sale, then return the tab to the table.

Agent C further said he also saw Tracey seated at the bar with a male patron with whom she had two drinks, each drink being recorded on the patron's tab. He further stated that he twice observed Diane at the bar and on each occasion she drank with a male. The drinks which Diane had were rung up on the male's tab in the amount of 85¢ for each drink and the tab returned to the respective males.

Agent C and Agent M again visited the licensee's premises on September 1, 1965, at which time he observed Diane and Tracey. Although these girls were not performing that evening, they mingled and drank with male patrons and the tabs for their respective drinks were rung up in the manner described by the agent as to previous occasions.

Agent C stated that the last time he visited the premises was on September 10, 1965, at which time he was accompanied by

Agent M. The agents arrived at the premises at about 10:45 p.m. and, upon entering, observed that the licensee, two bartenders, two waitresses (one of whom was Jean) and Tracey and Diane attired in dancing costumes were present. The two entertainers would entertain separately and, when not performing, they would move around the premises mingling with the male patrons. Agent C stated he saw Tracey and Diane drinking on several occasions with male patrons at their expense. Both waitresses were also observed, after making service to patrons at tables, seated in a booth drinking with male patrons.

Jean on this occasion served Agent C and his fellow agent and, when Agent C inquired as to the name of the blonde dancer, Jean said, "Her name is Tracey. Would you like me to go and get her and seat her over here?" When Agent C said, "O.K.", Jean went to the piano bar where Tracey was seated and, as a result of a conversation with her, both came to the agents' table. Jean said, "This is Tracey, fellows" and Agent C responded, "I am Charlie, and this is John." After the introduction Tracey sat at the agents' table and Jean asked whether the agents wanted another drink. When Agent C said "Yes", Jean "went to the bar and returned with two highball drinks, one for me [Agent C] and one for my fellow agent -- and a Tom Collins drink for Tracey." Jean returned with the agents' tab, whereon had been shown the sum of \$2.65 for the three drinks.

When Diane had finished her dance she came to the agents' table and, before Tracey left to perform, she introduced Diane to the agents. Jean then came to the table and Agent C ordered three drinks, one of which consisted of "orange and vodka" for Diane. The bartender rang up \$2.55 on the cash register, which amount was recorded on the agents' tab and which represented the three drinks served to the agents and Diane. Both girls consumed part of their respective drinks, then left the agents' table and again conversed with different patrons.

The agents called to Jean, identified themselves by showing their credentials, and requested her to summon the licensee. After the licensee came to the table occupied by the agents, they identified themselves and informed him that the entertainers were accepting drinks from and at the expense of male patrons. The licensee said, "I know I am doing wrong but everybody else is doing it." The entertainers, when questioned in the presence of the licensee, admitted that they had been accepting drinks at patrons' expense. The tab showing the charge for the two drinks served to Tracey and Diane was marked Exhibit D-2 in evidence.

The licensee's attorney cross-examined Agent C at great length but elicited very little, if any, variation from his testimony during direct examination.

It was stipulated and agreed by the attorneys for the respective parties hereto that if Agent M, who accompanied Agent C on the four visits to the licensee's premises, were called as a witness, his testimony would be similar to and in corroboration of that given by Agent C.

Jean O'Brien testified that she was on duty as a cocktail waitress on the several dates in question; that on August 26 she served Agents C and M who sat at a table in the back of the room; that when she serves a patron, either at the table or at the piano bar, she obtains a tab from the bartender which she retains at the service bar until the patron is ready to leave and makes a request for the tab. She said she adds up the tab at the service bar and takes it to the respective patrons; that on many occasions

people would order a drink for either of the entertainers "but I always had tabs for the girls;" and that, when the "dancing girls" were off duty, they themselves paid for their drinks "at the end of the night;" that highballs cost 85¢ and Bacardi costs 95¢.

Jean's testimony relative to August 28 discloses that she saw Agents C and M seated at the bar and that she did not serve them. She further testified that she "couldn't say" whether Diane or Tracey were drinking that evening.

Jean testified that on September 1 she saw the two agents and that Tracey and Diane were not entertaining that evening but were in the premises as customers. She had no knowledge whether drinks were purchased for Tracey and Diane "because I did not wait on them."

With reference to the evening of September 10, Jean stated that, as she served drinks to the agents at a table, Agent C inquired as to the name of the blonde entertainer and she told him it was Tracey and also told him that the dark-haired girl's name was Diane; that, when Agent C "implied" that he wanted the girls to come to his table, she (Jean) spoke to Tracey and both she and Tracey came to the agents' table.

On cross examination with reference to the evening of August 26 Jean testified that she served Tracey and Diane three drinks apiece but the price therefor was recorded on their respective tabs. When asked whether she had the tabs in her possession, she stated that she "handed them in every night." Jean further testified that she based her testimony as to the number of drinks served Tracey and Diane on August 26 on the testimony given by Agent C and not from her own recollection.

Jean further stated that on September 10, during casual conversation with the agents Agent C indicated that he would like to meet the entertainers and that he ordered the drinks for the girls. Jean agreed that the two last numbers shown on the tab, in the amounts of \$2.65 and \$2.55 respectively, included a drink each for Tracey and Diane.

The licensee testified that he has instructed his employees not to drink with patrons; that, although he saw the agents in the licensed premises, he had no knowledge whether the agents purchased drinks for any of his employees. He denied that he stated, when speaking to Agent C, "I know I do wrong but everybody does it, too" but did say, "What did I do wrong?" The licensee further stated that, after the agents showed their credentials, there were no arguments and that the investigation continued on a friendly basis.

There is no dispute that Tracey and Diane were served drinks by Jean and that payment therefor was charged to and made by Agent C. In so far as the testimony of the agents relates to the activities of the two entertainers in the licensed premises on the dates in question, especially with reference to accepting drinks as a gift from and at the expense of male patrons, there seems to be some disagreement. Agent C's testimony, corroborated by Agent M by stipulation of the parties hereto, is set forth in great detail as to what occurred on the licensed premises during the agents' visits there. There is no doubt in my mind that the agent's story relating to the service of drinks to the female entertainers and their accepting these drinks at the expense of male patrons is both accurate and true. Lengthy cross examination by the attorney for the licensee failed to change in any manner the testimony given on direct examination. Although Jean testified that the agents directed her to serve Tracey a drink on September 10, I

believe the testimony of Agent C that Jean made service of this drink to Tracey on her own volition. Agent C said that, when asked whether he desired service of drinks, he did not expressly include a drink for Tracey. It is apparent that the activities occurring on the licensed premises followed a prearranged pattern whereby the entertainers mingled with the patrons and accepted drinks from them. When the licensee was confronted by the agent with the alleged violation, I believe the agent that the licensee stated that the practice was being carried on and stated that it was done in all other licensed establishments.

In a memorandum submitted in summation on behalf of the licensee, the attorney raises the defense of entrapment citing, as authority, two comparatively recent cases, namely, State v. Dolce, 41 N.J. 422, and State v. Dennis, 43 N.J. 418.

These cases adhere to the principle that entrapment arises only when an innocent person would not have committed the offense in question were it not for the proposal and inducement of the police officers. In the present case the testimony is quite clear and unequivocal that over a period of four separate visits the agents observed the procedure being used by the female employees accepting drinks at the expense of male patrons. It is obvious that the agents had no part in the prohibited conduct being carried on in the licensed premises.

In State v. Rosenberg, 37 N.J. Super. 197 (App.Div. 1955), when commenting on the defense of entrapment, Judge (now Justice) Francis stated that, if a police officer envisages a crime, plans it and activates its commission by one not theretofore intending its perpetration for the purpose of providing a victim for prosecution, then only is such defense available. However, as pointed out by Judge Jayne in In re Schneider, 12 N.J. Super. 449 (App.Div. 1951), "We are dealing here with a purely disciplinary measure and its alleged infraction" and that such matters are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948).

After careful examination of all the evidence presented herein, nothing leads me to infer that the agents implanted an unlawful design in the minds of the employees in question or that the agents practiced any trickery, persuasion or fraud to induce them to commit a wrongful act. The agents were investigating a specific complaint alleging that hostess activity takes place on the licensee's premises, and I believe their testimony as to what occurred on the various times in question. The female entertainers readily accepted the drinks served to them and paid for by the ABC agents. Although the activity of the agents may have been planned in advance, it merely afforded an opportunity to perpetrate in a specific instance what the evidence theretofore indicated the licensee was prepared to do as a matter of routine practice. Highlander Hotel Corp. v. Division of Alcoholic Beverage Control (App.Div. 1963), not officially reported, reprinted in Bulletin 1533, Item 1.

I have had an opportunity to judge the credibility of the witnesses and I find that the agents' version of the material facts with reference to the occurrences at the times in question was credible and convincing. On the contrary, I cannot, in view of all the circumstances in the case, give credence to the testimony of the licensee or his employee. I find as a fact that the Division has established the truth of the charge preferred herein by a fair preponderance of the believable evidence and, consequently, recommend that the licensee be adjudged guilty of said charge.

Licensee has no prior adjudicated record. The minimum suspension imposed for the violation in question is twenty days. Re Castaways Inc., Bulletin 1675, Item 4. Thus I recommend that an order be entered herein suspending the license for a period of

twenty days.

Conclusions and Order

Following receipt of the Hearer's report, by letter dated June 13, 1966, licensee's attorney advised me that no exceptions to the report would be filed, and requested that penalty be imposed to commence on June 21, 1966.

No reason to the contrary appearing, I shall adopt the Hearer's report and recommendations therein as my conclusions herein and impose the penalty as requested.

Accordingly, it is, on this 14th day of June 1966,

ORDERED that Plenary Retail Consumption License C-181, issued by the City Council of the City of Elizabeth to Nicholas Di Cosmo, t/a Keyboard Lounge, for premises 292 Morris Avenue, Elizabeth, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 2 a.m. Tuesday, June 21, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Monday, July 11, 1966.

JOSEPH P. LORDI,
DIRECTOR.

6. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Venetian Bar & Grill, Inc.
374-376 No. 5th Street)
Newark, New Jersey,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-394, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Barr, Kaplus & Cohen, Esqs., by Morris Barr, Esq., Attorneys
for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 2, 1965 it permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that, on the date alleged, a female entertainer performed a standard strip tease routine in connection with a bachelor party then being conducted on the licensed premises.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Long, Bulletin 1666, Item 2.

Accordingly, it is, on this 13th day of June 1966,

ORDERED that Plenary Retail Consumption License C-394, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Venetian Bar & Grill, Inc., for premises 374-376 No. 5th Street, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 2 a.m. Monday, June 20, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, July 15, 1966.

JOSEPH P. LORDI,
Director.

7. STATE LICENSES - NEW APPLICATIONS FILED

Famous Brands, Inc.
51 Pacific Avenue
Jersey City, New Jersey

Applications filed August 5, 1966 for
place-to-place transfer of Wine Wholesale
License WW-30 and State Beverage Distributor's
License SBD-150 from 320 13th Street, Carlstadt,
New Jersey.



Joseph P. Lordi
Director

New Jersey State Library