

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,**
Petitioner,

v.

**G. & J.K. ENTERPRISES, INC.,
T/A THE RENDEZVOUS LOUNGE,**
Respondent.

Initial Decision: February 1, 1985

Final Agency Decision: March 14, 1985

Superior Court, Appellate Division Decision Appears at: 205 *N.J.
Super. 77* (App. Div. 1985)

SYNOPSIS

The Director of the Division of Alcoholic Beverage Control sought to suspend respondent's plenary retail consumption license on the grounds that it had permitted lewd activity upon its premises in violation of *N.J.A.C. 13:2-23.6*.

The administrative law judge assigned to the case found that two undercover inspectors from the Division of Alcoholic Beverage Control had observed two "go-go" dancers performing at the licensed premises and that the evidence supported a finding that the dancing which took place was lewd and immoral. In addition, the judge found that no employee of the licensee made any effort to stop the dancing.

Accordingly, the judge ordered a 60-day suspension of respondent's license based upon its violation of *N.J.A.C. 13:2-23.6*.

Upon review, this initial decision was adopted by the Director of the Division of Alcoholic Beverage Control.

Jeanne E. Gorrissen, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)
Edward S. Bloch, Esq., for respondent

LAW, ALJ:

By way of notice, dated April 5, 1984, the Director of the Division of Alcoholic Beverage Control (the Director) sought to suspend or revoke the Plenary Retail Consumption License Number 1220-33-023-004, issued by the Common Council of the City of South

Amboy to G. & J.K. Enterprises, Inc., 601 Washington Road, South Amboy, New Jersey, trading as "The Rendezvous Lounge," grounded upon the following charge:

1. On January 7, 1984, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., you allowed, permitted and suffered female persons, while performing on your premises for the entertainment of your customers and patrons, to engage in conduct on your licensed premises of a lewd, indecent and immoral manner and to commit and engage in acts and gestures and movements of and with their hands, legs and other parts of their bodies in a manner and form having lewd, indecent and immorally suggestive import and meaning; in violation of *N.J.A.C.* 13:2-23.6.

By way of letter dated April 11, 1984, counsel for respondent entered a plea of not guilty to the captioned charges and requested a hearing. On April 24, 1984, the Director transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* and *N.J.S.A.* 52:14B-1 *et seq.* On June 28, 1984, a prehearing conference was conducted and, thereafter, the matter was heard on September 24, 25 and 28, 1984. The parties requested and were granted leave to submit posthearing memoranda. As a consequence of respondent's attorney's having taken a medical leave of absence, his request for an extension for the submission of his brief was granted and the matter was considered closed upon the receipt thereof, December 18, 1984.

TESTIMONIAL EVIDENCE

Petitioner's Proofs:

On January 7, 1984, Inspectors S.S. and J.K. of the Division of Alcoholic Beverage Control entered the licensed premises of G. and J.K. Enterprises, Inc., trading as The Rendezvous Lounge, 601 Washington Road, South Amboy, New Jersey. Inspectors S.S. and J.K. made their entry at approximately 8:00 p.m., separated and sat apart from each other at the bar. The interior of the licensed premises includes, among other things, a large rectangular and irregular shaped bar, which surrounds a raised rectangular platform that is used as a stage.

Inspector S.S. testified, among other things, that he sat at the bar with a clear unobstructed view of the stage area. At the time he and Inspector J.K. arrived on the premises, a go-go dancer, later identified

as Roxanne Walsh, was performing on the stage. Ms. Walsh was dressed in a white bikini covering the bottom of her torso with a white scarf draped to the side of her breasts. He asserted that the scarf did not cover her bare breasts and that they were exposed to the patrons during the time he observed her dancing. He testified that there were two barmaids, identified as Patricia Alaimo and Theresa Roberts, working at the time, both of whom had a clear view of the stage area and the dancer, Ms. Walsh. He asserted that neither of the two barmaids took any measure to stop Ms. Walsh from exposing her naked breasts to the patrons or to attempt to change Ms. Walsh's dress or actions while she performed.

Inspector S.S. testified that Ms. Walsh stopped dancing and left the stage at 8:08 p.m. to be replaced by another go-go dancer, later identified as Sherry Barrett. Ms. Barrett wore a white bikini bottom made of a sheer material that was transparent. She wore a white tank top which covered her breasts. In his testimony Inspector S.S. asserted that the white bikini bottom was of such transparency that, "I could without any problem see her pubic area." He testified that during her dance routine, Ms. Barrett pulled the tank top down to expose her breasts. He stated that Ms. Barrett left the stage to solicit tips from patrons seated at the bar. While so doing, he testified, she pushed her breasts together and rubbed her hand across the nipples of her breasts. He contended that the barmaids and other employees did not make any attempts to control Ms. Barrett's actions. At 8:30 p.m., Ms. Barrett left the stage and was replaced by Ms. Walsh who, during her dance routine, again exposed her bare breasts to the patrons.

At 8:45 p.m., Inspectors S.S. and J.K. left their respective seats at the bar by a pre-arranged signal, and met at another location on the premises. Subsequent to a brief conversation, Inspector S.S. left the bar to telephone the South Amboy Police Department. At approximately 9:00 p.m., two South Amboy police officers arrived at the licensed premises. Inspector S.S. did not reenter the premises but, rather, remained out of doors in a parked motor vehicle.

Inspector J.K. testified and corroborated the testimony of Inspector S.S. with respect to Ms. Walsh's attire and the exposure of her naked breasts to the patrons. His testimony corroborated Inspector S.S.'s testimony in that Ms. Barrett ". . . was attired in a see-through bikini panties bottom, which through these you could clearly visually observe her pubic area." Inspector J.K. supported the former testimony by Inspector S.S. that neither the barmaids, the manager nor the

assistant manager of the premises took any steps to control the behavior of the dancers.

Both inspectors testified that subsequent to their leaving the licensed premises at approximately 9:30 p.m., they each reduced their observations of the events to handwritten notes which were, thereafter, memorialized into a formal report.

Considerable cross-examination of the inspectors was devoted, among other things, to the formal report. Inspector S.S. asserted that it was he who executed the report and that certain statements contained therein were the composite and combination of his and Inspector J.K.'s handwritten notes. Inspector J.K. testified that subsequent to Inspector S.S.'s leaving the bar to telephone the South Amboy Police, he, J.K., remained on the premises. At approximately 9:00 p.m., upon the arrival of Patrolman Pavich and Patrolman Cheeseman, Inspector J.K. stopped the dancer and convened the barmaids, the dancers, the assistant manager and manager in the kitchen area. Then, Inspector J.K. requested and was given information with regard to the premises' license, application, employment list, together with information about the dancers, *i.e.*, name, age, address, social security number. All of this phase of the investigation was performed by Inspector J.K. in the absence of Inspector S.S.

Respondent's Proofs:

For purposes of impeaching the testimony of the inspectors, respondent offered Captain James Holovack who, on January 7, 1984, was a sergeant and shift commander of the South Amboy Police Department. The captain's duty hours on January 7, 1984, were between the hours of 3:00 p.m. to 11:00 p.m. He was responsible for, among other things, receiving incoming telephone calls and dispatching police officers in response to those calls. He asserted that at 8:55 p.m. on January 7, 1984, he received a telephone call from Inspector K. reporting a violation of the ABC regulations at the Rendezvous Lounge. Thereupon, he dispatched Patrolmen Pavich and Cheeseman. The South Amboy Police Investigation Report, dated January 7, 1984, executed by Patrolman Stephen Pavich, shows that the patrolman spoke to ABC Agent K. on the premises, among other things.

On rebuttal, Inspector S.S. testified, among other things, that he left the licensed premises at 8:45 p.m. on January 7, 1984, and proceeded to a Dunkin' Donuts where he placed a telephone call to the South Amboy Police Department. He asserted that he identified himself to the person who answered his call and stated that he was

calling for ABC Inspector K. to advise the receiver of the call of the ABC violation at the licensed premises. He did not recall the name of the person at the police department who received the call. Moreover, Inspector S.S. testified that he advised the receiver of the call that Inspector J.K. would be inside the premises and that he, Inspector S.S., would remain outside the premises on stand-by.

Sherry Rissmiller, *nee* Sherry Barrett, testified that she was a dancer on the licensed premises on January 7, 1984, and that she performed between 8:00 p.m. and 8:30 p.m. Ms. Barrett asserted that her costume consisted of a white sheer bra top and matching sheer white bottom. She testified that she did expose her bare breasts to the patrons while dancing, asserting that she considered such exposure to be artistic. She testified that her hands came in contact with her naked breasts when she touched her breasts and pushed her breasts together while performing her dance routine. She asserted that her breasts were not exposed when she left the stage area to go to the bar area and receive tips from the patrons. She contended that she covered her bare breasts with her arms while she was receiving tips.

With regard to the bottom portion of Ms. Barrett's costume, she asserted, while giving testimony, that she was wearing the costume observed by the inspectors on January 7, 1984, and volunteered to exhibit it to the court. No objections having been advanced by the parties, the court, thereupon, retired to chambers for an *in camera* inspection of the costume with Ms. Barrett, counsel for petitioner, counsel for respondent, the court reporter and the undersigned present. Observations and descriptions of the bottom portion of Ms. Barrett's costume were stated on the record by petitioner's counsel, respondent's counsel and the undersigned. The costume consisted of transparent pantyhose over which a transparent bikini bottom was fitted. The court's notes reflect that the outline of the pubic area could be observed through the costume, *i.e.*, Ms. Barrett's pubic hair.

Ms. Roxanne Walsh testified that she was a dancer at the licensed premises on January 7, 1984, and that she performed, among other things, between 8:30 p.m. and 9:00 p.m. She asserted that she exposed her naked breasts to the patrons during certain portions of her dance routine. When she left the stage to pick up offered tips by the patrons, she asserted that she wore a long white scarf draped around her neck and over her breasts. She testified that she left the stage area on six or seven occasions between 8:30 p.m. and 9:00 p.m. to receive tips offered to her by the patrons. Ms. Walsh testified that subsequent to the appearance of the South Amboy Police and the inspector's

investigation, she continued to perform her dance routines until 1:00 a.m., January 8, 1984; however, she no longer exposed her bare breasts to the patrons for the remainder of that evening.

Ms. Colleen Grobelny, a frequent patron of the licensed premises, testified that she and her husband arrived at the Rendezvous Lounge at approximately 7:30 p.m. on January 7, 1984, and remained there until 10:00 p.m. She observed the two dancers perform between 8:00 p.m. and 9:00 p.m., recalling that Ms. Barrett's costume was white. She recalled observing Ms. Barrett expose her bare breasts to the patrons but asserted she did not observe Ms. Barrett expose her pubic area.

Ms. Grobelny offered opinion testimony, as did a number of other witnesses on behalf of respondent, that neither dancer engaged in lewd or immoral conduct while dancing on the licensed premises on January 7, 1984. Ms. Grobelny opined, as did others, and characterized lewd and immoral conduct or dancing as acts of lesbianism, a dancer fondling herself, the exposure of genitals, sexual acts on stage and/or the use of profanity in connection with the foregoing.

Because of the cumulative opinion testimony with respect to lewd and immoral conduct as proffered by respondent's witnesses and as set forth above, it is not necessary, therefore, to be recited here.

FINDINGS OF FACT

Having reviewed and considered the testimony and other evidence offered in this matter, and having given fair weight thereto, and having observed the demeanor of the witnesses as they testified before me and having assessed their credibility, I **FIND** the following **FACTS**:

1. On January 7, 1984, at approximately 8:00 p.m., two inspectors of the Division of Alcoholic Beverage Control entered the licensed premises of G. & J.K. Enterprises, Inc., t/a The Rendezvous Lounge, 601 Washington Road, South Amboy, New Jersey.
2. The licensed premises includes, among other things, a large rectangular irregular-shaped bar, which surrounds a raised rectangular platform that serves as a stage.
3. At the time of their entry into the premises, the inspectors separated and sat apart from each other at the bar.
4. When the inspectors entered the premises, a go-go dancer, later identified as Roxanne Walsh, was performing on the stage.

5. Roxanne Walsh was dressed in a white bikini covering the bottom of her torso, with a white sheer scarf draped around her neck and to the sides of her bare breasts.
6. The scarf did not cover Ms. Walsh's breasts and her bare breasts were exposed to the patrons during the course of the dance routine observed by the inspectors. Ms. Walsh admitted to exposing her bare breasts to the patrons while she was dancing.
7. Subsequently, sometime after 8:00 p.m., Ms. Walsh left the stage and was replaced by a go-go dancer, who was later identified as Sherry Barrett.
8. Ms. Barrett was attired in a white bikini bottom, made of a sheer and transparent material, and a white tank top, which covered her breasts.
9. The sheer white bikini bottom of Ms. Barrett's costume was of such transparency that Inspector S.S. could clearly observe her pubic area.
10. During the performance of Ms. Barrett's dance routine, she pulled the tank top of her costume down away from her breasts to expose her naked breasts to the patrons.
11. Both dancers, Ms. Walsh and Ms. Barrett, left the stage, bare-breasted, to collect and receive tips offered to them by the patrons; each covered her breasts with her arms.
12. Ms. Barrett admitted she touched her bare breasts and pushed her breasts together while performing her dance routine.
13. No employees of the licensed premises made any attempts to stop or control the actions and behavior of the dancers while they exposed their breasts during their respective performances.
14. At 8:45 p.m., by a prearranged signal, the inspectors left their respective seats at the bar, met and had a conversation at another location on the premises.
15. Thereafter, while Inspector J.K. remained on the premises, Inspector S.S. left the premises and proceeded to a nearby Dunkin' Donuts store where he placed a phone call to the South Amboy Police Department reporting an ABC violation at the licensed premises.
16. Inspector S.S. advised the receiver of the telephone call at the South Amboy Police Department that he was calling on behalf of Inspector J.K., who is the senior inspector of the two inspectors.

17. Sergeant James Holovacko, now Captain, received Inspector S.S.'s telephone call and immediately dispatched two South Amboy Police officers to the licensed premises.
18. Patrolmen Chesseman and Pavich of the South Amboy Police Department arrived at the Rendezvous Lounge at 9:00 p.m. and assisted Inspector J.K. in his investigation.
19. Inspector S.S. returned to the licensed premises after he had placed the telephone call to the South Amboy Police Department; however, he did not enter the premises, but rather waited out of doors in a parked vehicle as a back-up to Inspector J.K.
20. At 9:30 p.m., Inspector J.K. left the licensed premises at which point he was picked up by Inspector S.S.
21. The inspectors thereafter committed their respective observations to handwritten notes on January 7, 1984.
22. On Monday, January 9, 1984, the handwritten notes of the two inspectors were translated into a formal report under the signature of Inspector S.S.
23. Opinion testimony was adduced on behalf of respondent by a variety of witnesses each of whom asserted that the performances by the dancers did not constitute lewd and immoral conduct.

DISCUSSION

It is observed at the outset that a liquor license is a privilege and that no person is entitled to a liquor license as a matter of law. *Paul v. Gloucester Cty.*, 50 N.J.L. 585 (E.&A. 1888). Once granted, the liquor license is merely a temporary permit or privilege. *Mazza v. Cavicchia*, 15 N.J. 498 (1954). The Appellate Division of Superior Court observed in *In re Club "D" Lane, Inc.*, 112 N.J. Super. 577, at 579, that:

A license to sell intoxicating liquor is not a contract nor is it a property right. Rather, it is a temporary permit or privilege to pursue an occupation which is otherwise illegal. Since it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. *Mazza v. Cavicchia*, 15 N.J. 498, 505 (1954).

Our courts have considered and addressed the question of the State's police power in regulating the liquor industry and the conduct of those engaged in the activity. In *In re Olympic, Inc.*, 49 N.J. Super. 299, 306 (App. Div. 1958), certif. den., 27 N.J. 279 (1958). Judge Goldman observed:

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Our courts have long recognized the *sui generis* character of the liquor trade, and the Legislature has from earliest times treated that subject in an exceptional manner, *Mazza v. Cavicchia*, above, 15 *N.J.* at page 505. As was there pointed out, the right to regulate the sale of intoxicating liquors is within the police power and practically without limit, and that power has uniformly been accorded liberal judicial support.

Concomitant with this police power and right to regulate the liquor industry is the attendant public policy limiting the types of permissible entertainment allowed. *Paterson Tavern & Grill Owners Ass'n Inc. v. Hawthorne*, 108 *N.J. Super.* 433, 438 (App. Div. 1970), rev'd on other grounds, 57 *N.J.* 180 (1970). Thus, the Legislature has granted the Director of the Division extensive power to supervise the conduct of those engaged in the business and our courts have assiduously and uniformly accorded liberal judicial support to such supervision. *In re Olympic, Inc.*, *supra*.

Respondent, notwithstanding, asserts that the regulations under which the Director has brought the herein charges against the licensed premises are so vague that they defy construction and interpretation. Because of this alleged vagueness and uncertainty, respondent argues that the Director has failed to comport with the Administrative Procedure Act, (APA), *N.J.S.A.* 52:14B-1 *et seq.*, to define "lewd" and "immoral" and has, rather, merely constructed a regulation on an *ex post facto* basis without giving proper notice to the meaning of the terms. This, respondent contends, fails to meet the requirements of the APA and also fails to comply with constitutional standards. *Glasser v. Downes*, 126 *N.J. Super.* 10, 18-19 (App. Div. 1973).

In a recent opinion, *In the Matter of L & R Meadowview Corp. t/a The Meadowlands* (N.J. App. Div., Nov. 10, 1982, A-5432-80T2), (unreported) the Appellate Division of the Superior Court addressed the issue of the Director's rule-making authority specifically with regard to *N.J.A.C.* 13:2-23.6(a)(1), the herein challenged regulation, and observed:

N.J.A.C. 13:2-23.6(a)(1), one of the regulations which the licensee was charged with violating, specifies in pertinent part that "[n]o licensee shall engage in or allow, permit or suffer in or upon the licensed premises . . . [a]ny lewdness or immoral activity." *The regulation falls squarely within the ambit of the broad rule-making authority conferred upon the Director by N.J.S.A. 33:1-39.* By that section of the alcoholic beverage control act, *N.J.S.A.* 33:1-1, *et seq.*, the Director may, among other things, make such rules and regulations "as may be necessary for the proper regu-

lation and control of the . . . sales and distribution of alcoholic beverages and the enforcement of [the alcoholic beverage control act],” including rules and regulations governing “standards of cleanliness, orderliness and decency . . . and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of” the act.

[emphasis added] [slip opinion at 5]

The court continued to say that, “what is lewdness or immoral activity for the purpose of alcoholic beverages control ‘may be determinable on a distinctly narrower basis than for the purposes of regulation of commercial entertainment generally.’ *Davis v. New Town Tavern*, 37 *N.J. Super.* 376 (App. Div. 1955).” *See also, In the Matter of the Disciplinary Proceedings Against Oak Street Tunnel Corp., t/a the Tunnel* (N.J. App. Div., 1982, A-3366-80T2) (unreported).

Thus, respondent has been placed on constructive, if not actual, notice of the proscribed behavior and conduct of his licensed premises. Under these circumstances, respondent has failed to demonstrate that the Director has, in any fashion, abused his regulatory authority.

The facts herein clearly show that the go-go dancers performed on the licensed premises and in so doing, exposed their naked breasts to the patrons of the establishment. In addition, one dancer performed in a costume so transparent that her pubic area was clearly exposed. At no time did respondent or respondent’s employees make any attempt to control the behavior or conduct of the dancers under the direction and control of the licensee.

Given these facts, I **FIND** and **CONCLUDE** that the Division of Alcoholic Beverage Control has proved, by a preponderance of the reliable and credible evidence, that respondent licensee was in violation of *N.J.A.C.* 13:2-23.6(a)(1), on January 7, 1984, by allowing and permitting the dancers in its employ to engage in conduct of a lewd, indecent and immoral character while performing on the licensed premises.

Accordingly, it is hereby **ORDERED** the licensed premises, G. & J.K. Enterprises, Inc., t/a The Rendezvous Lounge, and operating under the Plenary Retail Consumption License Number 1220-33-023-004, be and is hereby **SUSPENDED** for operation for a term of 60 days. This suspension is to commence following the date upon which this decision becomes final or the date of receipt by respondent of a final decision adopting the within findings and conclusions to be calculated from the actual date established by the Director of the Division of Alcoholic Beverage Control.

FINAL DECISION BY THE DIRECTOR OF THE DEPARTMENT OF LAW AND PUBLIC SAFETY, JOHN F. VASSALLO, JR.:

Written Exceptions were filed on behalf of the appellant in accordance with the provisions of *N.J.A.C.* 13:2-17.14. Appellant takes exception to the credibility of the Division's witnesses and in consequence argues against the administrative law judge's findings of fact. The appellant also argues that the Division's evidence was insufficient to sustain its burden of proof. Finally, appellant takes exception both to the conclusions of law arrived at by the administrative law judge along with the penalty which he recommends should be imposed in this case.

The Appellant was charged with allowing, permitting and suffering lewdness and immoral activity in and upon its licensed premises in violation of *N.J.A.C.* 13:2-23.6. The administrative law judge found that the Division sustained its burden of proof and imposed a suspension of 60 days.

I have carefully considered the entire record in this matter and I concur in the basic factual findings, the conclusions of law and the recommendations of the administrative law judge as set forth in the initial decision, and I adopt same as my conclusions herein. The exceptions raised by the appellant are substantially the same as appellant has raised in a recent prior proceeding before me. *In the Matter of Disciplinary Proceedings Against G & J Enterprises, Inc.*, Agency Dkt. No. S-13,952, OAL DKT. Nos. ABC 1305-84 and 1306-84 (consolidated) decided February 13, 1985. I find that the judge has either properly resolved such exceptions or they are without merit.

With respect to the proper penalty to be imposed in this matter, I note that the administrative law judge recommended a 60-day suspension of license, but he does not state on what basis his recommendation was made. In the typical situation the violations which occurred in the present instance, based on precedent penalty, result in a suspension of license for 30 days. Nevertheless, I am aware that this is the second similar violation for this licensee within a period of two years. Accordingly, it is Division practice to double the precedent penalty in such instances. Since this administrative law judge heard both cases, it is likely that he took such prior violation into account in recommending this suspension. Nevertheless, I am stating my reasons for imposing this enhanced penalty for record purposes. *See, e.g., Butler Oak Tavern v. Division of Alc. Bev. Con.*, 36 *N.J. Super.* 512 (*App. Div.* 1955), *aff'd*, 20 *N.J.* 373 (1956).

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Accordingly, it is on this 14th day of March 1985

ORDERED that Plenary Retail Consumption License No. 1220-33-023-004 issued by the Common Council of the City of South Amboy to G. & J.K. Enterprises, Inc., t/a The Rendezvous Lounge for premises at 601 Washington Road, South Amboy, be and the same is hereby suspended for 60 days commencing at 2:00 a.m., Friday, April 5, 1985 and terminating at 2:00 a.m., Monday, June 3, 1985.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey Courts.