26 Rose Avenue,
Madison,
Morris County, New Jersey.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1040 DECEMBER 8, 1954.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - BENEDETTI v. TRENTON.

2. DISCIPLINARY PROCEEDINGS (Lodi) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE, INDECENT SONGS, INDECENT ACTIONS AND LANGUAGE) - HOSTESS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

3. DISCIPLINARY PROCEEDINGS (Lodi) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - HOSTESS - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1040 DECEMBER 8, 1954.

1. APPELLATE DECISIONS - BENEDETTI v. TRENTON.

JOHN PETER BENEDETTI, trading as ACE TAVERN,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Joseph Felcone, Esq. and Charles A. Stanziale, Esq., Attorneys for Appellant.
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on July 8, 1954, whereby it revoked appellant's plenary retail consumption license, effective immediately, after appellant had been found guilty of the following charges:

"Charge 1 - On December 22, 24 and 25 of 1953, and on January 13, 14, and 15, and February 1, 6, 7, 8, 15 and 19 of the year 1954, and on divers days prior thereto, you allowed, permitted and suffered prostitutes in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"Charge 2 - On December 22, 24 and 25 of 1953 and on January 8, 9, 13, 14, 15, 16, 17, 22, 23, 24 of 1954 and on February 1, 6, 7, 8 and 15 of 1954, and on divers days prior thereto, you allowed, permitted and suffered persons of ill repute in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"Charge 3 - On December 22, 24 and 25 of 1953, and on January 13, 14 and 15 of 1954, and on February 1, 8, of 1954, and on divers days prior and subsequent thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse, in violation of Rule 5 of State Regulations No. 20.

"Charge 4 - On all the occasions aforementioned, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance, in that you permitted unescorted females to frequent your licensed premises and to make overtures to male patrons for illicit sexual intercourse; you encouraged such females to meet male patrons for such purposes and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them, and otherwise conducted your licensed place of business in a manner offensive to common decency and morals, in violation of Rule 5 of State Regulations No. 20."

In his petition of appeal appellant contends that respondent's action was illegal, erroneous, arbitrary and capricious for the following reasons:

"(a) The evidence failed to establish that the appellant or his agents, servants or employees had committed the charges as set forth in the notice of hearing.

"(b) That the respondent board was biased and prejudiced against the appellant.

"(c) The respondent board throughout the said hearings was grossly unfair, partial, biased and hostile.

"(d) The board approached the trial with a preconceived determination to revoke the appellant's license and considered only such evidence that tended to confirm its preconceived determination and rejected or refused to consider all competent and credible evidence which would lead them to an opposite conclusion. The board admitted and acted upon incompetent, immaterial and hearsay evidence.

"(e) The findings and judgment of the board were not supported by and were grossly contrary to the evidence.

"(f) The hearing accorded to the appellant was injudicious, improper and contrary to law.

"(g) The penalty of revocation invoked by the board was unreasonable, unjustified and unduly harsh in light of all of the circumstances."

Respondent, by its answer, denies these allegations.

When the appeal was filed, appellant applied for a stay of the order of revocation and, pursuant thereto, on July 8, 1954 I entered an order granting such stay until further notice.

On this appeal, by stipulation, the matter was submitted on the evidence adduced at the disciplinary proceedings conducted by respondent. Rule 8 of State Regulations No. 15. To complete the record, counsel have agreed to the inclusion in the record of a certified copy of the minutes of respondent's meeting of July 8, 1954, which minutes contain the resolution finding appellant guilty of the charges hereinabove set forth and revoking his license, a record of the vote thereon (the three members who heard the testimony voted "aye," the other two members abstained) and the following statement of the Commissioners read by the Clerk:

"The evidence in this case indicates that men were picked up in said Tavern for immoral purposes; that women of ill repute were frequent visitors in the Tavern. It is true that the proprietor and his employees deny that they had any knowledge of the soliciting activities. We would have to be naive to believe that these women could have solicited on the premises without anyone connected with the management learning of it. It is the opinion of this Board that persons connected with the Tavern knew what was going on but turned their backs to it."

At the disciplinary proceedings which resulted in the revocation of appellant's license numerous witnesses were called and hearings were held on four separate days. It is unnecessary to set forth herein, in detail, all of the testimony of all of the witnesses. There follows a general summary of the testimony together with some specific references to particularly significant testimony.

Nine females who had been patrons of appellant for periods ranging from several weeks to two years testified for respondent. While some frequented appellant's licensed premises for only a part of the period covered by the charges herein, others went there almost every night and the entire period is covered by the testimony of all of

them, taken together. Most of these females testified that they had frequented appellant's licensed premises during the period from November 1953 to February 1954; that they usually went there in the evening unescorted; that appellant was usually upon the premises and that he and his bartenders tended bar. They all testified that they met strange men there, principally soldiers, and most of them testified that they talked and drank with male patrons who bought them drinks and had seen other females do the same and that they had seen some of them leave with men. Some of them, including Grace ---, Ruth --- and Ruby ---, denied that they left the licensed premises with men but most of them testified that, while seated at the bar or at a table in the licensed premises, they made arrangements with men whom they met there to go elsewhere for illicit sexual intercourse and that, in fact, they left with the men and proceeded to a hotel, motel, apartment or automobile where they engaged in the planned immoral activity. These witnesses admitted that they also met and took men from other licensed premises in the city. Most of them denied that appellant had asked them to go out with males and one of them testified that appellant had put a stop to "smooching" (kissing) in the premises.

In addition to the foregoing general summary of the testimony of the female patrons, some specific examples of the testimony of several of them are here given.

Doris --- testified that, on December 17, 1953, she had gone to Trenton from New York with one Angelo ---; that, although she is not married to him, she shared with him an apartment to which she took soldiers from appellant's licensed premises for illicit sexual intercourse; that, from sometime in December 1953 (near Christmas) until February 1954, she had frequented said licensed premises where she made arrangements with a number of soldiers (approximately ten) to take them out for intercourse; that, on one occasion, she and Carmela --- took two soldiers from there to her apartment for that purpose; that the licensee was usually upon the licensed premises when these arrangements were made, but that she did not know whether or not he had heard them made. She admitted having "hustled" in New York, but denied that she ever asked for money for engaging in intercourse with the soldiers aforementioned. However, she testified that, sometimes, they would <u>give</u> her some money.

Carmela corroborated that part of the testimony with respect to making such arrangements with soldiers in appellant's licensed premises and testified that she and Doris took the soldiers to the latter's apartment. She also testified that she had been going to the licensed premises for two years; that, in the period covered by the charges, she went there mostly on weekends, and that she had taken men from said premises to automobiles and cabins. However, on cross-examination, she denied leaving with men except Walter Hughes, hereinafter mentioned.

Sarah --- testified that she had been going to the licensed premises almost every night from July 1953 to February 1954; that she had seen Doris and the other females there; that she usually paid for her own drinks until some man would come along and pay for them; that she met men there, talked with them at the bar or at a table and made arrangements to take them out for illicit sexual intercourse; that she had met Angelo at the licensed premises and had gone from there to the apartment and had intercourse with him there; that she had taken other men out of the licensed premises and had stayed out with them all night but, on other occasions, had left there with a man and had returned the same night; that she had taken several different men out of the licensed premises in one night and that, on some occasions, the price was agreed upon in the licensed premises. She also testified that appellant was usually upon the licensed

premises on these occasions and that it would be possible for him to have heard these conversations but she did not know whether he had heard them. However, she testified that, while in appellant's licensed premises, Angelo had told various male patrons that they could "go with" Doris for a certain amount of money and that, on one occasion when she had an argument with appellant he had thrown whiskey in her face and had told her to take herself and her "pimp friends and get out." She further testified that, on another occasion appellant had told her that she was "making money" for herself and "wasn't making any for him." She also testified that, on several occasions when a man came in with a sizeable bankroll, appellant would give her "a high-sign" to help the man spend his money and that she would strike up a conversation with the man.

Emma --- testified that she had visited the licensed premises for a year and a half and that, during the months of November and December 1953 and January and February 1954, she had been there every day, sometimes in the daytime and sometimes in the evening; that she went there unescorted to be with men; that she had left there with approximately two hundred men for intercourse and that, on Christmas Eve, she met a soldier there and went to a motel three separate times on the same night, twice returning to the licensed premises. She also testified that, on occasion, the licensee would ask her to remain saying, "Stick around. There'll be fellows with money in to take you out and show you a good time."

Ellen --- testified that she had visited appellant's licensed premises for several years; that she had been there in November and December 1953 and January 1954; that she met men there and took them out to cabins but did not charge them; that she did not discuss the arrangements in the premises, but that "nature took its course." She testified that the licensee had called her a "whore" and a "slut"; that he "chiseled drinks off people"; that, "...the girls that were in there, regardless of what they were drinking, if somebody offered to buy them a drink, he'd give them the most expensive drink in the house and then also take it and pour it down the drain or tell the girl to spit it in the Coke she used for a chaser; ...somebody'd come in there just about half drunk and he'd charge them double for it and when their head was turned, he'd pour it down the drain"; that the licensee told her more than once to pour it out; that she had seen aspirins being put in patrons' drinks; that the language the licensee "used around there isn't fit for a dog to hear," and that such language was used in the presence of females.

Margaret --- testified that she had been in appellant's licensed premises almost every night during the months of November and December 1953 and January and February 1954; that she had met strange men there and had talked with them concerning intercourse when the licensee was upon the premises; that she had taken some of these men out of said premises and had engaged in sexual intercourse with them but had not been paid; that, some time after New Year's Day 1954, Angelo had "propositioned" a soldier seated at the bar with her to have intercourse with Doris for $10.00; that she had told appellant who said "Yes, Margaret, I know, but I can't prove it." She further testified that, after she had gone to dinner and a theatre with a man she had met in appellant's premises, appellant had said, "You're not any better than anybody else ... I can prove it ... I'll bet you a twenty dollar bill that you went out to the cabins. I can even tell you what cabin you went to last night." She also testified that, on another occasion, she told appellant that Doris was running "a house" and that appellant did not answer and walked away and that she had seen Doris take three different men from appellant's premises in one night. She further testified that appellant asked her to sign a statement for him in connection with the instant matter.

Elmer Hughes, appellant's former bartender, and his father, Walter, also testified for respondent. Elmer testified that he had worked for appellant on several occasions, the last time being from

July to November 1953; that, during that period, he had seen the females, hereinabove named, in the premises; that appellant had asked them to "stick around" and that they would get free drinks; that appellant had told him to "cut down on the drinks"; that the "cut down" drinks were sold at the same price as a regular drink; that, sometimes, the girls paid for these drinks but usually the customers paid; and that the females came earlier and stayed later on week-ends and "on the pay day of either the men or soldiers." He further testified that appellant's premises opened at 3:00 p.m. and closed at 2:25 to 2:30 a.m.; that he went on duty at 5:30 or 6:00 p.m.; that appellant usually was there in the evening and until closing and that he had not heard appellant discuss with the females the matter of drinking with men. He also testified that he "quit" in November 1953 and that, thereafter, appellant refused to serve him and told him that it would be better for all concerned if he stayed out of the premises.

Walter Hughes testified that he had frequented the premises for two years up to New Year's Day 1954; that he had seen there some of the females hereinabove mentioned; that he had taken several of them out of the licensed premises for intercourse after making the arrangements therefor in said premises; that he had heard appellant call some of these females "whores"; and that appellant had told him that one of the females was a "three-way broad." He also testified that when someone "wanted to treat the bar. If you were drinking beer, John threw a whiskey glass in front of you and if you said you're not drinking whiskey, he'd say it's on somebody else at the bar what do you care. You're not paying for it." He further testified that he had heard appellant scold females "for taking guys out of there that were spending." He admitted that his son no longer works for appellant but denied that he is angry with appellant or ever threatened to "get" him. He also admitted that he did not know whether appellant had heard his conversation with the various females but added that "he'd have to be blind not to see what's going on."

Officer Lee testified that, as a member of the vice squad, he was directed to look for Emma during February 1954 but that he later learned that she had gone to police headquarters; and that he also learned later that she was living with Walter.

On behalf of appellant, Mrs. Moore (City Alcoholic Beverage Control Investigator), appellant, his bartender, his waitress and ten persons who are either patrons or neighbors appeared and testified.

Mrs. Moore testified that she had made numerous inspections of appellant's licensed premises and had found nothing unusual until November 5, 1953, when there was a "little disturbance between three soldiers"; that one soldier claimed that a girl in appellant's premises had stolen his wallet but that he had the wallet in his inside shirt pocket; that she (Mrs. Moore) then barred the girl who is loud "and a bit coarse"; that she had not seen any solicitation by females at appellant's premises; that she has seen some of the aforementioned females there; that Ella is "a vicious and dangerous person" who "rolled" a man; that she is "a menace to any saloon keeper and should be kept out of every one of them"; that she (Mrs. Moore) was "shocked" when she read the contents of Grace's statement; that she knew that Ruth was "indiscreet" but was "surprised" by the testimony of some of the other girls; that she believed that appellant tried to run his place "clean;" that appellant's license had been suspended on two occasions for sale of alcoholic beverages to minors but that she thought that he would not knowingly permit any indecent or immoral acts in his premises.

Mrs. Moore further testified that appellant and his waitress, Jessie Eleuteri, had been "cooperative"; that the latter had supplied

her with information; that after an interval of nearly a month, she made an inspection of the licensed premises at approximately 1:30 a.m. on Tuesday, January 29, 1954, at which time the aforementioned waitress told her of the activities of Doris and Angelo who had a "rendezvous" nearby, that they were "soliciting" and had been barred from the premises for a long time, adding, "I don't want to tell the police because I don't want to get anyone in trouble ... John (appellant) and I have talked about it and he said to tell you. Will you have something done about it?"; and that, as she (Mrs. Moore) was leaving, appellant asked the waitress whether she had told Mrs. Moore what he had asked her to tell her. Continuing, Mrs. Moore testified that, early in the following week, she went to City Hall to see Police Commissioner Duch and relayed to him the information supplied by appellant's waitress; that, as a result thereof, Doris was arrested and, later, after a conversation between Mrs. Moore and Police Captain Gress, Sarah was also arrested.

Appellant testified that he had been a licensee since March 1949; that he owns the building where the licensed premises are located; that he has $65,000.00 invested in the building and the business; that the licensed premises are open from 3:00 p.m. until approximately 2:00 a.m.; that week-ends are busy; that soldiers visit the premises; that he runs a clean place; that he does not chisel drinks; that he always asks customers what they want; and that he never has charged double for drinks. He further testified that he sometimes tends bar and sometimes walks around on the customers' side of the bar; that he has seen male and female patrons conversing with each other in the premises; and that he does not listen "to talk." He denied that anyone picked up females at the premises and denied the allegations contained in the charges and the accusations of respondent's witnesses.

He admitted that he knows most of the females hereinabove mentioned and that they have visited his licensed premises from time to time unescorted. He further testified that he made them "behave" themselves and that he disciplined them by putting them out of the premises.

As to Sarah, he testified that she had been there during November and December 1953 and January and February 1954; that he had put her out on November 22, 1953 and on two previous occasions because she did not "behave" herself; that he found out that she was an "undesirable"; that, when she returned a week after being put out, he ordered her out and threw a drink in her face.

As to Doris and Angelo, he admitted that they had visited his premises three times before Christmas but denied that Doris was there in January or February 1954. He further testified that he suspected Angelo of soliciting; that his waitress told him that Angelo was "propositioning" four soldiers to go out with Doris and Sarah and that he had put all three of them out of the premises; that he went to see the Chief of Police a few days later but, after waiting there an hour, could wait no longer and returned to his business. He also testified that he went to See Captain Gress but that he was not in. He admitted that he did not talk to any of the subordinates in the police department or to any of Mrs. Moore's associates. When asked to explain why he waited "two weeks to a month" before reporting the Doris and Angelo incident to Mrs. Moore he testified "I am not getting paid to go out and look for people" and that he was waiting for Mrs. Moore because she was the person who frequently came to his premises. He explained his reason for not talking with the officers on the vice squad by saying that he knew the Chief of Police personally and that he wanted to see "the head one" because he was "not getting paid for doing that, I am only doing it as a civic duty." He admitted that the matter was not discussed with Mrs. Moore until January 29, 1954, but claimed that, on January 15, he gave her "a little hint about what was progressing."

As to Margaret, he denied that he had bet her $20.00 that he knew that she went to the cabins or that he had discussed with any

patrons where they went after leaving his premises, or that Margaret had told him of the activities of Doris and Angelo, or that he had told her that he had suspicions which he could not prove. He further testified that he once put her out of the premises.

As to Emma, he testified that she was there in November and December 1953, but that she stopped coming in after he put her boy friend (Walter) out in January; that she never left the premises with men except her boy friend; that she was "lying" when she testified that she had taken 200 men out of the premises; that he did not know that she left the premises with a man on Christmas Eve; that she had left with a female on that night; and that he did not know that she engaged in unlawful activities. He testified that he "respected" Ruth and Grace; that he had put Ruth out of the place in September 1953 for "smooching"; that he had put Ella out before Christmas after which she had not returned and that, although she talked with men, he did not know that she made dates with them in the premises. He denied having called her names or having had any conversations with her concerning money which she received from men or that he had introduced her or any other female to men or had asked them to go out with her.

As to Ruby he testified that she went with Elmer, aforementioned, but that he had no knowledge of solicitation by her and that he had not had any trouble with her.

As to Carmella he testified that she is a "nice" woman; that she visited his premises between November 1953 and February 1954; that he did not see her leave the premises with Doris and does not think that she did and that, two years ago, he put her out when she failed to heed his admonition that she stop kissing a male patron.

He testified that, the second time Elmer worked at the licensed premises, he was discharged because he made several "mistakes" in change in one evening and that said bartender is now "mad" at him.

Appellant further testified that Walter Hughes sought to "shake him down"; that he demanded $100.00; that he threatened to "frame" appellant if the money was not paid; that he (appellant) refused to pay but did not notify the police because he thought it was "a lot of bull." He denied knowing that Walter was "propositioning" women in the premises.

Mrs. Weber, one of appellant's patrons, testified that she visits the licensed premises three or four times a week, usually with her husband; that appellant stopped soldiers who attempted to talk to her; that the premises are run in a clean, decent and orderly manner, that she has seen some of the aforementioned females upon the premises but has seen no improper advances made; that Ellen, who has a "foul mouth," was put out by appellant and had threatened to "get even" with him; and that she (Mrs. Weber) was shocked when she read of this matter. She admitted that she was not in the licensed premises during December 1953; that she resumed her visits in late January or early February 1954; and that she was not there after 6:00 p.m. during the late months of 1953.

The other patrons, who visited appellant's premises with varying degrees of frequency during the period covered by the charges, testified that they had not seen any of the alleged conduct, and that appellant bears a good reputation and conducts a respectable place. One of them, Frank Arene, Jr., testified that Ellen had told him that appellant would not serve her a drink and that she would "fix" him. The neighbors testified that they never observed any of the alleged conduct.

The waitress, Mrs. Eleuteri, testified that she has known appellant all of her life; that she has been in his employ since he became

a licensee in 1949; that she usually works from 5:00 p.m. until after closing; that she knows the female patrons aforementioned; that she has not heard them soliciting for immoral purposes; that she does not know whether they went out with men; that she never heard appellant attempt to make dates for male and female patrons; that she saw no lewd acts there; that kissing had been stopped; that appellant barred certain females; that, at Mrs. Moore's request, he barred Ruth; that there are a number of families coming into the premises; that Mrs. Moore usually makes an inspection there once or twice a week; and that the police usually come in four or five times a night; that the vice squad inspected the premises but found nothing objectionable.

She corroborated appellant's testimony with respect to the incident involving Doris and Angelo and her report to Mrs. Moore. She further testified that appellant told her to tell Mrs. Moore of the incident "if she comes in"; that she waited for Mrs. Moore until some time in January 1954; that, when Mrs. Moore came in, she told her what had happened and that Mrs. Moore had said that she would tell Police Commissioner Duch. She also testified that, thereafter, she learned that Doris and Angelo were running a house of ill repute; that she learned where it was and that she thinks she called Mrs. Moore by telephone for "advice." She admitted that, although police officers had visited the licensed premises, she had not disclosed any information to them but that she waited for Mrs. Moore because she "could talk to Mrs. Moore" and that she talks "better to a woman."

She also testified that, after he was put out of appellant's premises, Walter Hughes threatened to have the place "closed."

In rebuttal for respondent, Police Officer Nardelli testified that he and another officer (Lee) were assigned to special duty; that he had seen Doris in appellant's premises on the night of January 1, 1954 and again on January 8, 1954; that several of the other females were present on the night of January 1, 1954; that he had also seen Doris on the street with two soldiers coming from the direction of said premises on January 2, 1954; that appellant had been present when he saw her on January 8, 1954; that appellant did not ask him to put Doris out of the premises; that, during January 1954, he learned where Doris was living; that he reported to Captain Gress who said that he had certain other information and wanted them "to follow it through" and to investigate and report; and that they continued the investigation and had planned to make a raid on the night of February 5th, 1954. When asked whether he went to Doris' apartment on the night of February 5, 1954, he testified as follows: "No we did not. On the morning of the 4th, as the result of the report of the foot patrolman on the night before --." At this point he was interrupted and then continued to testify to the arrest of Doris and Angelo (on February 4, 1954). He further testified that Doris implicated Sarah who named the other females, aforementioned.

It was stipulated that, if called as a witness, Commissioner Duch would testify as follows: "As a result of this information Commissioner Duch immediately gave this information to the Chief of Police, and on February 3, 1954 this girl and her male companion were picked up by the Trenton Police."

Counsel for appellant submitted an extensive memorandum digesting the testimony and arguing the law and appeared before the Director in oral argument. This was supplemented by several letters. Appellant's principal contentions are that respondent's members who heard the testimony were biased and prejudiced against appellant; that they disregarded the testimony, especially that of Mrs. Moore; that they accepted the testimony of wholly unreliable witnesses; that they seek to justify the decision upon the ground that appellant should have known and that they presumed, without evidence, that he should have known what was going on; that, even if this were so, it was, at best, only negligence on his part; that appellant cannot be found guilty or his license be revoked in the absence of actual knowledge on his part; that the finding of guilt is not supported by

the evidence; that, in view of the evidence, appellant's investment and his "clean record," the penalty was too harsh, and that the charges were preferred based upon information supplied by appellant himself.

The burden of establishing that the action of respondent was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 20; Aquino v. Belleville, Bulletin 1035, Item 1; Tumulty v. Dunellen, Bulletin 1024, Item 3; Neu v. Irvington, Bulletin 923, Item 3; Bill Bloch, Inc. v. Union City, Bulletin 787, Item 7.

With respect to appellant's contention of bias and prejudice on the part of respondent's members, it has been held that bias, prejudice or improper motivation on the part of public officials may not be presumed but may be established only by direct proof or by proof of circumstances from which they may reasonably and cogently be presumed. There is no such proof here. Cf. Hall Liquor Co. v. Union, Bulletin 1032, Item 2; Redfield v. Long Branch, Bulletin 1027, Item 1.

As to appellant's claim that, in effect, he is being convicted on information which he himself supplied, it is not at all clear that the report to Mrs. Moore concerning the activities of Doris and Angelo was the sole or even the principal cause of the events which followed. There is evidence that the police already had some information on the subject and were continuing their investigation. Indeed, Officer Nardelli testified that a raid upon the apartment of Doris and Angelo had been contemplated for the night of February 5, 1954. Even the report to Mrs. Moore was made, admittedly, a considerable period of time after the incident and, although appellant claims that Doris did not visit his premises after being put out, there is considerable evidence to the contrary. Furthermore, the evidence in support of the charges was not limited to the activities of Doris and Angelo. On the contrary, and as has already been pointed out, the evidence covered the activities of numerous other persons and involved not one but many incidents on many different occasions. Although appellant appears to have taken some measures to correct certain conditions at his licensed premises, his over-all conduct fell far short of what the public is entitled to expect from a licensee and he cannot expect the disclosure of one incident to absolve or excuse him from a long course of misconduct.

As to the weight and sufficiency of the testimony, it must be remembered that respondent's members had the opportunity to see and hear the witnesses and their determination on the question of credibility must be given proper weight. The mere fact that Mrs. Moore gave testimony favorable to appellant is by no means dispositive. First of all, respondent is not bound by her testimony or her estimate of appellant as a licensee. The primary responsibility to enforce the law pertaining to retail licenses rests upon respondent (R.S. 33:1-24) which also is vested with the power to conduct disciplinary proceedings to suspend or revoke retail licenses (R.S. 33:1-31). Moreover, it is not at all clear that respondent "disregarded" Mrs. Moore's testimony as contended by appellant. Nor is the contention that the decision is based upon the proposition that appellant should have known what was going on or that the Commissioners presumed without evidence that he should have known, supported by the record. On the contrary, there is considerable testimony by a number of witnesses tending to show that appellant discussed with them the proclivities and activities of some of the patrons at his licensed premises and that, thus, he knew what was going on. Certainly the record is replete with testimony relating the activities of a number of these patrons, principally females, including the testimony of the females themselves admitting that they met strange men at appellant's licensed premises, made arrangements for and left the premises with men to engage in illicit sexual intercourse and that such activities occurred with great frequency over a long period of time. Respondent took the position that appellant and his employees knew what was going on but turned their backs on it. After considering the entire record in this

case I cannot disagree. Indeed, as was pointed out in Re Paton, Bulletin 898, Item 3, it has long been held that:

> "...even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not void their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises.' Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 366; 23 Atl. Rep. (2d) 140.'"

As to charges 3 and 4, the finding of guilt is amply supported by a considerable body of testimony describing the activities of appellant's patrons and his reaction thereto. With particular reference to charge 4, it has been held that the word "nuisance," as used in the regulation, has the ordinary dictionary meaning, namely, "an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance." Webster's New International Dictionary. See also Re Cosfair, Bulletin 875, Item 9; Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3.

As to charges 1 and 2, appellant contends that there was no proof that any of the patrons were prostitutes or persons of ill repute and reference is made to the statute (N.J.S. 2A: 133-1) which defines prostitutes as including "the giving or receiving of the body for sexual intercourse for hire, and the giving or receiving of the body for indiscriminate sexual intercourse without hire." The record clearly warrants a finding that some of the females, aforementioned, had engaged in prostitution even if this strict criminal definition is applied. In my opinion the finding of guilt as to both charges 1 and 2 was amply justified by the evidence. However, even if this were not so, the revocation of the license was clearly warranted by the proofs establishing the violations set forth in charges 3 and 4.

I cannot agree with appellant's contention that, in view of appellant's alleged clear record and large investment, the penalty is too harsh, citing In re Larson, 17 Super. 564 (App. Div. 1952) and Greenbrier Inc. v. Hock, 14 Super. 39 (App. Div. 1951). These cases are factually not in point. For cases, the facts of which are more comparable to those in the instant case, and in which revocation by the local issuing authority was affirmed on appeal, see Miche v. Hoboken, Bulletin 509, Item 10; Van den Koov v. Hoboken, Bulletin 618, Item 11 and Bilowith v. Passaic, supra.

Counsel asserts that appellant has a "clean record." However, the records of this Division disclose that appellant received a suspended sentence from the local issuing authority on December 14, 1950 on a charge of sale of alcoholic beverages to minors and that his license was suspended by the then State Director, for fifteen days, effective February 26, 1951, for another similar violation (sale to a minor). Re Benedetti, Bulletin 899, Item 7.

Much stress is laid on appellant's financial investment, estimated at $65,000.00 for the building and the licensed business, and the prospect that he will sustain a substantial loss through revocation of his license and suffer greatly thereby. I have little doubt that that may be so. However, mere severity of penalty does not justify reduction on appeal. Porton v. Roselle, Bulletin 974, Item 3. Furthermore, proper protection of the public interests and morals cannot be made to depend upon the size of a licensee's business or the amount of his investment. The public is entitled to expect and to receive protection from these sordid and dangerous evils without regard to the size or value of the place where they occur.

The contention that, assuming that appellant should have known what was going on, "it was negligence on his part in not knowing, and revocation was hardly called for," is wholly without merit. As was said in Re Arlington Inn, Bulletin 982, Item 1:

> "It is well settled that a licensee may not by inaction avoid his responsibility as a licensee and, in terms of basic responsibility, there can be no distinction between a licensee who violates the law and one who negligently refuses to take affirmative action to prevent a violation of the law. Williams v. Newark, Bulletin 571, Item 5."

A liquor license is a mere privilege, Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954) and, as Judge Jayne speaking for the Court In re 17 Club, Inc., 26 Super. 43, 52 (App. Div. 1953), said:

> "The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

In the exercise of that power the legislature invested the issuing authority (respondent) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations including violation of the law or of state or local regulation. R. S. 33:1-31. The extent of respondent's power and authority in this regard was reviewed in Porton v. Roselle, supra, as follows:

> "The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive. Santore v. West New York, Bulletin 958, Item 2; Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1; Dzieman v. Paterson, Bulletin 233, Item 10. The mere fact that the Director may have imposed a lesser penalty in a somewhat similar case instituted at the Division does not preclude the local issuing authority from imposing a more severe penalty, in a proceeding instituted locally, within the limits of sound discretion. Ruoff v. Gloucester, Bulletin 749, Item 1. Penalties may vary in different municipalities and according to the circumstances surrounding the offenses. Pawelek v. Sayreville, Bulletin 456, Item 10. The fact that a penalty is severe does not, of itself, justify reduction on appeal. Ebony Corporation et al. v. Trenton, supra; Creston Holding Co. v. Belleville, Bulletin 544, Item 2. Neither does the fact that it is a licensee's first offense preclude revocation. Santore v. West New York, supra; McGuire v. Hoboken, Bulletin 550, Item 3; Wellens v. Passaic, Bulletin 134, Item 4."

Under all of the circumstances, I cannot find that respondent's revocation of appellant's license was unreasonable or constituted an abuse of its discretionary authority, requiring reversal. Its action will be affirmed and the appeal herein will be dismissed.

Accordingly, it is, on this 16th day of November, 1954,

ORDERED that the revocation of appellant's plenary retail consumption license for premises 13 East Front Street, Trenton, by respondent be and the same is hereby affirmed and the petition of appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my previous order of July 8, 1954, granting a stay of respondent's order of revocation be and the same is hereby vacated, effective immediately.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE, INDECENT SONGS, INDECENT ACTIONS AND LANGUAGE) - HOSTESS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

NEW FRISCO CLUB & RESTAURANT, INC.
8 Sherman Avenue
Lodi, N. J.,

Holder of Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Lodi.

CONCLUSIONS AND ORDER

DiMaria & DiMaria, Esqs., by Martin J. DiMaria, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On September 25, 26 and October 2, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that female entertainers performed in a lewd, indecent and immoral manner and a male entertainer sang songs and uttered words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasions aforesaid, 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 Regulations No. 20."

The file herein discloses that ABC agents visited defendant's licensed premises on two separate occasions on the morning of September 25, 1954. The first visit was between 1:15 a.m. and 3:00 a.m. The floor show included an acrobatic dancer named "Pat." During her dance she said, "So you think I have talent," meanwhile stroking her breasts and then removed from under her brassiere a pair of rubber "falsies" which she tossed toward the all-male orchestra saying, "Here, have some."

After the master of ceremonies had introduced himself with a suggestive remark, a female dancer known as "Roxan" appeared in a split skirt and fur neckpiece which she promptly removed. Her outer garments then consisted of a short black fringed skirt and black brassiere. As she danced she removed these, revealing a net brassiere and a jeweled "G string." Thus scantily attired she moved the lower portion of her body in a circular grinding motion, performing the "bumps and grinds" so familiar to burlesque and ended her performance with increasingly rapid forward and backward motions of her body. After a short intermission "Pat" also did "bumps and grinds" and otherwise made suggestive movements with her body.

During this first visit "Juanita," another of the female performers, was observed drinking with several male patrons. She accepted at least six drinks, most of which she solicited, at the expense of these patrons. The bartender took the money for some of these drinks from a man who was seated next to the agent and who remarked, "Boy your money goes fast in here."

The piano player introduced the agent to another of the female entertainers, "Carla," who immediately ordered a drink for herself. The piano player also ordered a drink "on the gentleman" and, after pouring these drinks, the bartender took three one-dollar bills from the agent's money on the bar and returned sixty cents in change. When the agent protested to the bartender concerning "double shots" the latter merely walked away.

The agent saw other female entertainers drinking at the expense of other male patrons. Later, he was joined by Carla and Pat who ordered and were served three rounds of drinks at his expense. Pat produced from her bosom a "falsie" and handed it to him with a vulgar remark. The agent protested when they ordered another round of drinks but Pat told him that, the night before, they had run up a bill of $189.00 on a male patron, adding, "Don't worry honey, I won't clip you, you look too sober. Do you want me to start clipping you? I'll show you how it's done."

Another ABC agent visited the premises from 3:30 a.m. to 5:15 a.m. on the same day. The same entertainers performed in much the same objectionable manner as on the earlier occasion and the female entertainers again mingled with the male patrons and consumed drinks at their expense.

On September 26, 1954, two ABC agents entered the premises at 12:35 a.m. and remained until 3:00 a.m. Carla joined them at the bar and solicited a drink which was served by the bartender who took a dollar bill from in front of the agents, rang up eighty cents and returned twenty cents in change. Pat performed in much the same manner as before but this time threw her "falsies" to some patrons seated at a table. The master of ceremonies introduced himself as on the previous occasion and sang a song containing expressions too vulgar to be repeated. Roxan also performed her "strip-tease," complete with "bumps and grinds" but, in addition, while holding on to the drapes, moved her body in such a manner as to simulate sexual intercourse, loudly applauded by the patrons. After singing several popular songs Carla rejoined the agents at the bar where she solicited and received another drink at their expense and the other female entertainers sat with other male patrons and had drinks at their expense.

When the same agents returned at 12:50 a.m. on October 2, 1954, the same master of ceremonies and some of the same female entertainers were present. Roxan performed "bumps and grinds" but did not take

hold of the drapes as on the last previous occasion. Pat also danced but did not remove "falsies" from her breast as on the previous occasions and, in general, the entire performance was "toned down." The master of ceremonies performed an imitation "strip tease" during which he stripped to the waist. Only one of the female entertainers drank with a male patron and Carla studiously avoided the agents. Convinced that they were under suspicion they left the premises and, after communicating with other agents engaged in similar investigations in that area, they re-entered the premises at 3:00 a.m. and identified themselves as agents.

On behalf of defendant it was admitted that the female entertainers were employed upon the licensed premises and that there had been some changes made in their dance routines. The alleged reason for the changes was that the performances were "not the type" for defendant's clientele.

As was said in Re DiAngelo, Bulletin 753, Item 4:

> "Entertainment, if presented upon licensed premises, must be of such character as not to be inimical to the public welfare and morals or to the best interest of the industry."

Clearly, the type of entertainment provided by defendant on September 25 and 26 was highly improper and will not be permitted on licensed premises. Even the "toned down" entertainment provided on October 2, which included "bumps and grinds," has no place on licensed premises.

Defendant has no prior adjudicated record. I shall suspend defendant's license for thirty days on charge 1. Re The Bell Club, Inc., Bulletin 1006, Item 8. The usual penalty for a "hostess" violation is a twenty-day suspension of the license. Re Lee Club, Bulletin 1030, Item 8. However, because I deem this to be an aggravated "hostess" case I shall suspend defendant's license for thirty days on Charge 2. This makes a total of sixty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 10th day of November, 1954,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Lodi to New Frisco Club & Restaurant, Inc., for premises 8 Sherman Avenue, Lodi, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. November 16, 1954, and terminating at 3:00 a.m. January 10, 1955.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - HOSTESS - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

DANIEL S. YOUNG, JR.
T/a RHYTHM CLUB
74 Sidney St. (rear) Route 46
Lodi, N. J.,

Holder of Plenary Retail Consumption License C-29, issued by the Mayor and Council of the Borough of Lodi.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On September 25, 26 and October 2, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that female entertainers performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasions aforesaid 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 Regulations No. 20."

The file herein discloses that on Saturday, September 25, Sunday, September 26 and Saturday, October 2, 1954, ABC agents visited defendant's licensed premises between the hours of 1:00 and 5:00 a.m. and observed therein numerous couples being entertained by a three-piece orchestra and a floor show. The highlight of each performance was "Thelma" who was introduced on October 2 as "Very sexy. We call her the body beautiful." "Thelma" appeared upon the dance floor clad in a spangled gown which, after some preliminary kicks and twirls, she tantalizingly unfastened to reveal abbreviated paneled shorts and a fringed brassiere. Rippling the muscles of her torso and buttocks rhythmically with the syncopated music, "Thelma" heeded the exhortations of the patrons to "take it off", removed the appendages from her scanty garments and, lying upon the floor, concluded her performance with suggestive "bumps" and "grinds."

On two occasions during their visits the ABC agents observed the female entertainers accept alcoholic beverages which were paid for by male customers.

After the last performance on October 2, 1954, the agents identified themselves to Daniel Young, Jr., licensee, and Grayce Houston, manager of the tavern, the latter of whom, in a signed statement, said that "Thelma" had been employed on the licensed premises as an entertainer "on and off" for nearly three years.

Defendant has no prior adjudicated record. In fixing the period of suspension herein I am not considering the fact that, effective May 3, 1951, the license for the above premises (then in the name of

Grayce Houston, mother of the defendant herein) was suspended for sixty days by the State Director for hostess activities and possession of a "refill." See Bulletin 905, Item 3. I shall suspend defendant's license for thirty days because of the violation set forth in Charge 1, and for an additional period of twenty days because of the violation set forth in Charge 2. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days. Re D'Augustine, Bulletin 985, Item 3, and cases therein cited.

Accordingly, it is, on this 9th day of November, 1954,

ORDERED that Plenary Retail Consumption License C-29, issued by the Mayor and Council of the Borough of Lodi to Daniel S. Young, Jr., t/a Rhythm Club, for premises 74 Sidney St. (rear) Route 46, Lodi, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. November 15, 1954, and terminating at 3:00 a.m. December 30, 1954.

William Howe Davis
Director.