

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

BULLETIN 982

AUGUST 19, 1953.

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1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(PROSTITUTION) - OBSCENE LANGUAGE - NUISANCE - CHARGE OF PERMITTING  
PROSTITUTES ON PREMISES DISMISSED - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

ARLINGTON INN (A Corp.)  
36 Arlington Street  
Newark 2, N. J.,

Holder of Plenary Retail Consumption License C-69 for the 1952-53 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark; and renewed for the 1953-54 licensing year to

CONCLUSIONS  
AND  
ORDER

ARLINGTON INN

for the same premises.  
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Lawrence Friedman, Esq. and Michael Salandra, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to the following charges:

"1. On August 16, 17, 26, 1952 and September 5, 6, 9, 10, 19, 26 and 27, 1952 you allowed, permitted and suffered prostitutes in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On the occasions aforesaid 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.

"3. On the occasions aforesaid you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"4. On the occasions aforesaid 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 solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by such females and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

(Hearing of this case took two full days, the second day thereof was three weeks after the first, with 414 pages of transcribed testimony and argument.)

Four of the Division's agents participated in the investigation which resulted in the institution of the aforementioned charges. The three ABC agents who were called to testify on behalf of the Division will not be referred to by name but, instead, will be referred to as "F", "M" and "P" respectively.

FOR THE DIVISION

The early morning of August 16th (Agent "F" testifying).

Agent "F" arrived at defendant's licensed premises at 12:01 a.m., at which time he was accompanied by Agent "M". Both agents stationed themselves at the bar and Agent "F" observed that there were four bartenders on duty and about twenty patrons present, eight of whom were females. One of the bartenders was called Benny and another was referred to as Sam. Benny was subsequently identified by Agent "F" as Benjamin Green and Sam was subsequently identified by Agent "F" as Samuel Lutsky (Vice-president and a stockholder of defendant corporation.) The agent observed several of the females sitting at the bar with male companions. The females were being served drinks, the payments for which were taken from the money on the bar belonging to the male companion. The agent observed that whenever a male entered the barroom and took a seat at the bar, after several minutes had elapsed a female would approach the male who had just entered and engage in conversation with him. The female would then call a bartender, who would pour whiskey into a shot glass that he had placed in front of the female and would take the payment for the drink from the money belonging to the male. As he sat there, Agent "F" heard Benny state to a male talking with a female, "You want to go out with her? Go home and get some paper, she'll go out with you." Then Benny added, "You going to buy her a drink?" The male then purchased a drink for the female who was alongside him.

At 1:00 a.m., a female approached the agents and introduced herself to them as "Marcella". She asked, "You boys want to go out tonight?" Agent "F" asked, "What's the tab?" Marcella answered, "13, ten plus three." Agent "F" said, "I don't know." The female said, "Well, think it over", then she called Benny and said, "Benny, give me a drink." Benny complied with her request and received payment from Agent "F".

When the female left, Agent "F" asked Benny, "What makes with Marcella? How is she?" Benny answered, "She's O. K." Agent "M" then asked "Is Marcella clean?", to which Benny replied, "Yes, she's clean." Agent "M" then asked Benny if he had any "rubbers" (contraceptive devices). Benny said he had none. Agent "F" said to Benny, "But she's asking thirteen bucks." Benny shrugged his shoulders and said, "Maybe you can get it down to ten."

Agent "F" testified that during his stay on defendant's licensed premises for a period of 2-3/4 hours, patrons used filthy language and that the bartenders did nothing to stop the persons from using said language. The language used, as testified to by Agent "F", is much too filthy to be repeated here. The agents left defendant's licensed premises at 2:45 a.m.

The night of August 28th (Agent "F" testifying).

Agent "F" and Agent "M" arrived at defendant's premises at 10:00 p.m. They stationed themselves at the bar and observed that Sam (Samuel Lutsky) and a young man were tending bar. There were about twenty patrons present, eight of whom were females. Three of the females were with male patrons who were treating them to drinks. The

patrons used filthy language without interference by either bartender. Agent "M" asked Sam if Marcella was around. Sam said; "I haven't seen her around tonight." Agent "M" then said, "Well, we have a date with Marcella to get laid here tonight. I wonder if she'll be in." Sam remarked that he didn't know if Marcella would be in that night. The agents left the premises at midnight.

The night of September 5th (Agent "F" testifying).

Agent "F" and Agent "M" arrived about 10:30 p.m. Benny was tending bar on this occasion. There were about twenty-five patrons in the barroom, six of whom were females. The latter were sitting with and drinking at the expense of male patrons. The females would go from one male to another and engage in conversation with them. There were two males to the right of the agents at the bar. The bartender was standing in front of the agents as a female approached the two male patrons and introduced herself to them as "Emma", asking whether they would like to go out that night. In answer to one of the male patron's questions regarding the cost, Emma said, "\$13, ten and three for the room." Emma then introduced a female called "Terry" to the two male patrons and Terry immediately ordered drinks. The group of four remained together for approximately twenty minutes when Emma and Terry left the premises and the two male patrons left a minute or two thereafter.

Agent "F" observed a soldier approached at the bar by a female who put her arms around him and kissed his neck and the soldier put his hands on her private parts. The bartender was behind the bar, about three feet away, during the occurrences. A male walked over to the female and placed his arms around her, at the same time remarking, "This is my baby. I love this kid. Take her out, she's the best screw in the joint." As Benny served them, the female continued to kiss the soldier on the neck and also on the face, which conduct continued for half an hour.

Agent "M" asked Benny, "Is that the best price you can get laid for me, \$13?"; to which Benny answered (in foul language) to the effect that he could not do a thing with the females, but suggested that the agents should come in "on Monday and Tuesday when business is quiet; it's slow on Monday or Tuesday." Agent "F" again complained to Benny about the price of \$13 the females were asking because it was a day's pay. Benny shook his head and accepted a tip from the agents. The agents left the premises at 2:00 a.m., September 6th.

The night of September 9th (Agent "F" testifying).

Agents "F" and "M" arrived at defendant's licensed premises at 9:00 p.m. and observed eight or nine patrons, two of whom were females, in the premises; Benny and a young man were tending bar. Shortly after 10:00 p.m., the place became quite crowded with thirty or forty people being present. A little while after male patrons arrived in the premises, the females would approach them, talk to them and drink with them, going from one male patron to another. One female said "Hello" to Agent "F", sat next to him and asked him if he was going to buy her a drink. When the agent consented to do so, she ordered a drink from Benny, called over a girl and said, "This is my girl friend; Emma. I'm Terry." The agent said, "I'm Tony and Walt." Terry asked, "You fellows going out tonight or you going to stay here and drink?" Agent "F" said, "Well, it all depends. What do you charge? What's the price?" Terry said, "\$13, ten plus three." Agent "F" said, "What do you mean \$13? For a lay and a room?" Terry answered, "That's right." Agent "M" thereupon turned to Agent "F" and remarked, "Emma wants \$12." Agent "F" then said, "Terry, Emma Says, \$12 for the lay and the room." Terry answered, "It's O.K. by me if it's \$12 only." Agent "F" then said that he didn't have too

much money and therefore they would not go out that night. Terry said, "All right. Next time you're in, drop in and you come and see me. We are usually here every night." The conversation lasted about twenty minutes, during which time Benny was serving drinks in the area. As a male patron entered, Terry left the agents and exclaimed, "Here comes a prospect." As she left, a female called "Cora" approached the agents and spoke to them, using a foul expression whose import was whether they desired to engage in sexual intercourse. She stated, in response to their questions as to price, "\$8, five for the lay and three for the room." After a conversation as to the manner of intercourse, Cora asked the agent if they would buy her a drink. She ordered a drink of whiskey from Benny and Agent "F" paid for the drink. After Cora left, Agent "M" told Benny that Terry and Emma were asking \$13 for a lay. Benny shrugged his shoulders. Agent "M" then said to Benny, "Going up to the room with the two broads, is there any chance of getting rolled or mugged?" to which Benny answered, "No, don't worry about that." The agents told Benny that they had a date with Emma and Terry for the following night for the purpose of getting laid. Agent "M" then asked Benny if the females were clean; to which Benny replied, "You don't worry about it." Agent "M" asked Benny if he ever had sexual intercourse with Emma and Terry. Benny replied (using foul language) to the effect that he didn't bother with the females in defendant's premises. The agents left at 12:30 a.m., September 10th.

The night of September 10th (Agent "F" testifying).

Agents "F" and "M" entered defendant's licensed premises at 9:00 p.m., remaining therein for a period of two hours. When they entered there were twelve patrons, four of whom were females, and Benny was tending bar. The females were seated with male patrons and whenever a male patron entered the barroom and sat at the bar a female would approach him and a short time thereafter Benny would pour a glass of whiskey for the female and take the money in payment therefor from the male patron's money on the bar. Agent "F" observed Emma and Terry in the barroom. Agent "F" told Benny about a date he and his fellow-agent had with Emma and Terry to "get laid" but said they were broke. Emma and Terry came over to the bar and joined the agents, and immediately Terry ordered and was served a drink of whiskey and Benny also poured a drink of whiskey and a glass of beer for Emma. Agent "F" told Terry that he and his fellow-agent intended to lay her and Emma that night but said they would not be paid until the next day. He said: "When we get a fresh bank roll we'll come in and look for you." Terry expressed her agreement to this. Emma gave Agent "F" a slip of paper upon which was written a telephone number and informed Agent "F" he could reach Terry during the day at that number and at night "you will find us here." Benny was standing at the time immediately in front of them. The girls then walked to the end of the bar and engaged in conversation with male patrons. The agents told Benny they were "broke" and for that reason "again couldn't go out with the girls" but that to show good faith they gave them a "dollar apiece to take off the top for that \$13 they wanted for a lay." The agents further told Benny that when they "get a fresh bank roll" they were coming in to meet the girls and that they had the telephone number where they could reach them during the day. Benny "shook his head up and down." Earlier, while Emma and Terry were in the agents' company, a man called "Smokey" came over to them and asked them to buy a drink. For seven or eight minutes he used filthy language. The bartender ordered him out with the use of a foul expletive. Just before leaving, prior to 11:00 p.m., Agent "M" asked Benny, "Now, look, give me the straight dope on these broads. Are these broads clean? There's no chance of getting a dose?" Benny answered, "Don't worry about a thing, they're clean."

The night of September 19th (Agent "F" testifying).

Agents "F" and "M" arrived at defendant's licensed premises at 9:30 p.m. Benny was tending bar at the time. Upon entering, observed twenty patrons, among whom were Emma and Terry. The females

approached the agents, sat with them and ordered drinks for themselves from Benny. The agents paid for these drinks. Whenever males entered the premises, various females approached them, conversed and drank with them. At no time during this and prior visits did he (Agent "F") observe any of the females pay for their own drinks. Agent "F" told Terry that he and his fellow-agent had no money and, after discussing the place where Terry intended to take them to engage in sexual intercourse as promised, Terry left to make a telephone call. Agent "F" told Benny that Terry wanted \$13, ten for the lay and three for the room, and Benny said, "Maybe you can get it for ten." Terry rejoined Agent "F" and stated "Benny used to get as high as \$5 for every lay every time she took a guy out of that joint." At the time Benny was four feet away across the bar, and when Terry referred to him regarding any desire Benny might have to have sexual intercourse with her, he walked away. Before leaving at 11:30 p.m., Agent "F" told Benny that he and his fellow-agent had a date with Emma and Terry to go to their rooms for a lay and that the girls had taken \$2 apiece from them.

The night of September 26th (Agent "F" testifying).

Agents "F", "M", "P" and "C" arrived in vicinity of defendant's licensed premises, and at approximately 9:15 p.m., Agents "F" and "M" entered. The other two agents remained outside. Agents "F" and "M" each had in his possession two five-dollar bills and three one-dollar bills, the serial numbers of which had been typewritten on a slip of paper. Agent "M" had an old wallet in his possession. Upon entering Agent "F" observed that there were twenty persons present, eight of whom were females. Males came in from time to time and were joined at the bar by females. The agents observed one couple drinking, then saw the male go out the side door and the female go out the front door. Benny was tending bar. Terry and Emma came over to the agents and had some drinks at the agents' expense. As Benny was standing in front of the group of four, Agent "F" said to Terry, "Well, Terry, tonight is the night." Terry spoke to Emma and then said to Agent "F", "We are going to go up to Emma's apartment and you meet us on the corner of Newton and 13th Avenue." Terry told the agents that they would leave first and that the agents should follow about five minutes later. Before Terry proceeded to the telephone booth, she took a dollar of Agent "F's" money from the bar and remarked, "This I will use for cab fare." A short time after making the telephone call, a man entered and inquired if anyone called for a cab. Emma shouted, "Out in just a moment" and took a dollar from Agent "M's" money on the bar remarking, "This, Honey, I'm taking this dollar for cab fare." The females then left. Agent "F" told Benny that they were going out to engage in sexual intercourse with Terry and Emma, and remarked to Benny "...you know the girls, got to take a chance." Benny said, "Don't worry about a thing. Everything is all right." Agent "M" handed Benny a wallet, saying, "I can't take a chance. We might get rolled up there. Can't take a chance. You hold it." Benny said he would take care of it and put it in his pocket. Benny then asked Agent "F" if he were going up and Agent "F" said, "Sure. The most they can beat me for is sixty cents. We'll see you later." Benny said, as the agents were leaving, "Have a good time." They left the premises at 10:15 p.m. After contacting the agents who were outside, Agents "F" and "M" proceeded by automobile to Newton Street and 13th Avenue. Upon arrival at the corner he observed Emma standing there and, following her instructions, they entered a house and ascended the stairs to the third floor. Terry opened a door from the inside and the three entered. Terry took off her coat and Agent "F" also took off his coat. At this time he handed Terry \$13, the serial numbers of which had been previously noted. Terry placed the money in her coat pocket. Agent "M" and Emma remained in the first bedroom that they entered and then Terry and Agent "F" went to another bedroom. Agent "F" saw Agent "M" hand Emma some money which she put on

a bureau. A short period thereafter there was a knock on the door and the other two agents, who had remained outside the premises in the company of two municipal (police) detectives, entered the apartment. Terry produced the money from her pocket on request of a detective and he and Agent "P" checked the bills against a list that Agent "P" had in his possession. The serial numbers corresponded with two of the four five-dollar bills and three of the six one-dollar bills that were typewritten on the list. All of the agents and detectives, along with the two females, were driven in two cars to the defendant's licensed premises. Agent "P" and a detective entered. A short time later Benny came out with them and entered the car and sat in the rear seat with a detective. Agent "M" was driving and Agent "F" sat alongside him. Agent "F" said to Benny, "What the hell's the score here, Benny? What's going to happen. We get caught with a couple of pigs in the room." Benny nudged him in the back and said, "Don't worry about nothing." Upon the arrival at police headquarters, Agents "F" and "M" and Benny were put in a small room. Agent "F" said to Benny, "What's going to happen? Who is going to draw bail? What's going on here?" Benny said, "Don't worry about a thing. The boss will be down with a bondsman and you will get out right away." Agent "M" then said, "Benny, that wallet had money in there. Where is it?" Benny asked, "How much did it have in it?" Agent "M" answered, "Three bucks." Benny then said, "Don't worry, I'll give you the \$3." Then Benny said, "Now, look fellows, you knew these broads a long time, you're friends, you come quite often. Don't forget, stick to the story. That's what you've got to do, stick to the story."

The testimony of Agent "M", who accompanied Agent "F" on all the occasions in question, substantially corroborated the testimony of Agent "F" so far as the occurrences and conversations that took place between the agents and the females and also between Benny and the agents on the licensed premises, what took place in the car while en route to police headquarters and what transpired at police headquarters where Benny was involved. Agent "M" testified that when the agents and detective entered the room which he and Emma occupied, ABC Agent "C" asked Emma if the money on the dresser belonged to her and she said that it did.

Agent "P" testified that after Agents "F" and "M" contacted him outside defendant's licensed premises on September 26, 1953, he, Agent "C" and the two detectives drove to the corner of Newton Street and 13th Avenue; that he observed a female wave to Agents "F" and "M" and saw them enter a house; that he and his companions went to the third floor, entered a door of an apartment and there he observed Agents "F" and "M" and the two females; that he found various denominations of paper money on a bureau which Emma claimed to belong to her; that upon checking these bills, the serial numbers corresponded with some of those on a slip of paper which he had in his possession; that he asked Terry to produce any money she had and upon checking the serial numbers of the bills found them to correspond with the remaining serial numbers which were noted on the slip of paper. Agent "P" further testified that he and a detective entered defendant's licensed premises after arrival there and identified themselves to Benny; that when Benny emptied his pockets he produced the wallet given him by Agent "M" from his back pocket; that Benny was taken to police headquarters.

#### FOR THE DEFENDANT

Benjamin Green testified that he was employed as a bartender for defendant and worked in that capacity during August and September 1952. He testified that he remembered seeing Agents "F" and "M" in the licensed premises on five or six occasions. He further testified

that the only conversation he ever had with the agents was about horse races. He further testified that he did not remember dates when he observed the agents in defendant's premises; that he never spoke to them about girls; that he never heard any conversation that the girls had in defendant's premises; that he never remembered talking to the agents at police headquarters. His testimony consisted of repeated denials of things that allegedly happened on the licensed premises. He claimed to be hard of hearing.

Samuel Lutsky testified that he did not remember seeing the agents; that he never heard any foul or filthy language; that he did not know the reputation of Emma and Terry and "on a couple of occasions" when he saw them he did not observe them solicit anybody. When he saw them in the premises he ejected them. He admitted that he and Charles Cammarata, an officer and stockholder of the defendant corporation, had been summoned before the local Alcoholic Beverage Control Board because Terry and Emma were soliciting on the licensed premises. He testified that he didn't remember what the Chairman of the Board had said at that time.

As to charge (1): While the evidence raises a strong suspicion with respect to the allegations set forth in the charge, suspicion, no matter how reasonably inferable, is not a substitute for the quantum of proof necessary for a finding of guilt. Re Tulipano, Bulletin 978, Item 1. See also Re Doyle, Bulletin 469, Item 2, and cases therein cited. Consequently, I find the defendant not guilty as to charge (1).

As to charge (2): I am satisfied, from all of the evidence, that the acts and conversations claimed by the agents to have occurred on the licensed premises did in fact take place there and that, standing alone, they are sufficient to establish the licensee's guilt.

With respect to the question raised by defendant as to the admissibility of testimony concerning conversations with the bartender and the occurrences which took place after the agents and the females in question left defendant's licensed premises, it is well established that such statements, acts or conduct are admissible as part of the res gestae. 32 C. J. S. Evidence, § 411. The definition of the res gestae adopted by the late Chief Justice Beasley, speaking for the New Jersey Court of Errors and Appeals, in Hunter v. State, 40 N. J. L. 495, on pages 538-539, and restated by the late Justice Gummere, speaking for the New Jersey Supreme Court, in State v. Kane, 77 N. J. L. 244, on page 246, is:

"The res gestae may therefore be defined as those circumstances which are the undesigned incidents of a particular litigated act, which are admissible when illustrative of such act. These incidents may be separated from the act by a lapse of time more or less appreciable. They may consist of speeches of any one concerned, whether participant or bystander; they may comprise things left undone as well as things done. Their sole distinguishing feature is that they should be the necessary incidents of the litigated act; necessary, in this sense, that they are part of the immediate preparations for, or emanations of such act, and are not produced by the calculated policy of the actors."

It is obvious that the declarations and acts which occurred outside the defendant's licensed premises are embraced in the aforesaid definition and were in furtherance of the agreement made by Emma and Terry with Agents "M" and "F", respectively; to engage in illicit sexual intercourse at a designated building, and I find that the testimony relating to such declarations and acts was properly received in evidence. That testimony of this nature has heretofore

been admitted in evidence in similar disciplinary proceedings, see Re Fillipone, Bulletin 875, Item 6; Re Paton, Bulletin 898, Item 3; Re Schumacher, Bulletin 901, Item 5, and Re Guittari, Bulletin 974, Item 4.

With particular reference to the testimony concerning conversations with the bartender, such testimony is admissible as a necessary corollary of Rule 31 of State Regulations No. 20, which makes a licensee responsible, in disciplinary proceedings, for violations committed by his agent, servant or employee. Re Belair Inn, Inc., Bulletin 981, Item 1.

I find defendant guilty on charge (2) as to all dates except August 17 and September 27, 1952.

As to charge (3): The record discloses that foul, filthy and obscene language was uttered openly by both male and female patrons on the licensed premises and that, on occasion, the bartender also indulged in such language.

I find defendant guilty on charge (3) as to all dates except August 17 and September 27, 1952.

As to charge (4): Defendant contends that the question is "whether the permission to unescorted females to frequent the place and solicit male patrons...constitutes a nuisance" and asserts that the law does not prohibit unescorted females from accepting a drink from a male, and points out that such conduct is not made a nuisance either by the common law or by statute. Defendant cites State v. Rodgers, 91 N. J. L. 212 (E. & A. 1917), wherein it was held that a public or common nuisance is either something the product of which works an annoyance or injury to the entire community, or the product itself.

These arguments reveal a misunderstanding both of the charge and of the meaning of "nuisance" as used in the regulations. The charge alleges that the licensee allowed, permitted and suffered the licensed place to be conducted in such a manner as to become a nuisance, in that the licensee permitted unescorted females to frequent the licensed premises and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by such females and otherwise conducted the licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20. The evidence discloses a well developed practice whereby unescorted females attached themselves to various male patrons as soon as the latter entered the licensed premises and that such females were served drinks of alcoholic beverages at the expense of these male patrons, many of whom were not even consulted before the drinks were served. While there is no evidence that these females were "hostesses" within the meaning of the rulings in Re Cosfair Corporation, Bulletin 875, Item 9, and Re Washington Cafe (A corp.), Bulletin 896, Item 2, nevertheless it is clear that the licensee allowed, permitted and suffered these "bar flies" to prey upon male patrons. There is no doubt that defendant's tavern was frequented by persons of questionable character. It appears from the evidence that, prior to the institution of the present proceedings, defendant had ample warning by the local Alcoholic Beverage Control Board that Emma and Terry, who were frequenting the premises, were soliciting men there for immoral purposes. In fact, two of its officers (Lutsky and Cammarata) had been summoned before said Board. The continued presence of Emma and Terry on the licensed premises, notwithstanding the Board's warning, indicates a complete disregard of the proper way to conduct the licensed premises. It is axiomatic that licensed premises should not be a haven for prostitutes, parasites or other undesirables. Cf. Re Bryant v. Newark, Bulletin 492, Item 1.

In addition, the various other acts and conditions disclosed by the testimony demonstrate beyond peradventure that the licensee did nothing to control the conduct of its patrons but, on the contrary, permitted the licensed premises to be conducted in a highly improper manner. I do not find anything in the record indicating that defendant made any serious effort to control conditions at its licensed premises.

The meaning of the word "nuisance", as used in Rule 5 of State Regulations No. 20, is the dictionary meaning. As was said by then Commissioner Driscoll, in Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3:

"The State regulations prescribe rules of conduct which licensees are duty bound to observe. The word 'nuisance' as it is used in Rule 5 of State Regulations No. 20 is not to be restricted by technical definitions applicable in criminal cases. One readily apparent reason for this distinction is that the licensee is engaged in the exercise of a privilege, not a property right. Accordingly, in defining the word 'nuisance', I am not unmindful of its everyday usage. The word 'nuisance' has been defined as 'an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance'. Webster's New International Dictionary."

This doctrine has been reaffirmed in Re Cosfair Corporation, supra, and more recently in Santore v. West New York, Bulletin 958, Item 2, and Re Volino & Maheltz, Bulletin 978, Item 3.

Considering all of the evidence in this case, I find defendant guilty on charge (4) as to all dates except August 17 and September 27, 1952.

Defendant contends that, because the charges allege (in the conjunctive) that defendant allowed, permitted and suffered the various violations to occur (the State Regulations being worded in the disjunctive), such charges connote knowledge. This question was decided adversely to defendant's contention, in Essex Holding Corp. v. Hock, 136 N. J. L. 28 (Sup. Ct. 1947). Defendant seeks to distinguish the instant case from Essex Holding Corp. v. Hock, supra, and Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951) on the ground that the findings of guilt in those cases were based upon charges preferred in the disjunctive. Such is not the fact. In both of those cases the charges were (as here) preferred in the conjunctive. Under the regulations, it is sufficient that the licensee either allowed, or permitted, or suffered the violations to occur and the courts have held that if any of a series of acts, charged in the conjunctive, is proved, a finding of guilt will be sustained. State v. Hill, 73 N. J. L. 77 (Sup. Ct. 1905); affirmed 74 N. J. L. 689 (E. & A. 1906); Essex Holding Corp. v. Hock, supra. See also Murphy v. Zink, 136 N. J. L. 235 (Sup. Ct. 1947); affirmed 136 N. J. L. 635 (E. & A. 1948) and State v. Jusiak, 16 N. J. Super. 177 (App. Div. 1951).

Defendant further seeks to distinguish the instant case from Greenbrier, Inc. v. Hock, supra; In Re Schneider, 12 N. J. Super. 449 (App. Div., 1951) and Re Larsen, 17 N. J. Super. 564 (App. Div., 1952) on the ground that, in those cases, the defendant did something affirmative while "This is a case where the defendant did nothing...." This is a most curious defense. May a licensee escape his responsibilities merely by avoiding direct complicity in the violations? Of course not. See Essex Holding Corp. v. Hock, supra, where the licensee's violation was one of omission rather than one of commission.

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.

Furthermore, the violations in this case occurred either in the presence of one of the officers of the corporation or in the presence of one of its employees (the bartender). This matter has been fully dealt with in Re Paton, supra, wherein former Director Hock said:

"...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 avoid 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. 356; 23 Atl. Rep. (2d) 140.'"

The public is entitled to be protected against these sordid and dangerous practices. For the purpose of sound enforcement and effective alcoholic beverage control, the only appropriate penalty is revocation. Re Tulipano, supra, citing 17 Club, Inc., Bulletin 949; Item 2 (affirmed In Re 17 Club, Inc., 26 N. J. Super. 43 (App. Div., 1953)); Re Bond Service Center, Inc., Bulletin 939, Item 1; Re Ewaski, Bulletin 937, Item 1; Re Schumacher, Bulletin 901, Item 5. The license will be revoked.

Although this proceeding was instituted during the 1952-53 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 5th day of August, 1953,

ORDERED that Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Arlington Inn, 36 Arlington Street, Newark 2, be and the same is hereby revoked, effective immediately.

DOMINIC A. CAVICCHIA  
Director.

2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1952 to JUNE 30, 1953 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club No. Issued	Fees Paid	Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid			No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	490	\$208,442.37	71	\$ 26,075.00	17	\$ 1,600.00					1	577	\$236,117.37
Bergen	815	299,002.18	299	83,712.00	84	7,815.36	58	\$2,623.63	11	\$2,940.24	8	1259	396,093.41
Burlington	186	72,525.00	33	8,687.00	39	5,175.00	1	25.00				259	86,412.00
Camden	456	218,500.00	82	31,725.00	70	6,673.23			2	750.00	1	609	257,648.23
Cape May	133	64,650.00	11	3,550.00	18	1,811.23						162	70,011.23
Cumberland	81	34,450.00	13	3,600.00	30	4,031.23						123	42,081.23
Essex	1378	764,469.25	351	205,658.30	105	14,364.05	32	16.00	2	1,500.00	4	1862	987,591.60
Gloucester	108	34,400.00	13	2,750.00	15	1,442.05						136	38,592.05
Hudson	1556	675,117.32	298	117,810.00	80	9,290.51	64	2,750.00			5	1993	804,967.83
Hunterdon	79	25,250.00	7	2,162.50	6	700.00					1	91	28,112.50
Mercer	425	257,550.00	51	20,850.00	53	7,448.35			1	107.50	1	529	285,955.85
Middlesex	635	303,905.00	74	22,449.12	77	7,020.61	5	250.00			1	790	333,624.73
Monmouth	548	277,095.00	119	40,244.65	32	3,840.55	11	460.00	57	24,062.19	31	736	345,702.39
Morris	353	122,307.60	98	29,891.67	48	4,473.97	22	1,100.00	12	2,861.66	8	525	160,634.90
Ocean	193	103,969.16	46	19,065.00	18	1,861.86					1	256	124,896.02
Passaic	877	357,049.31	167	51,370.00	37	4,382.60	11	525.00			1	1091	413,326.91
Salem	50	19,000.00	7	1,300.00	16	1,315.48			1	525.00	1	74	22,140.48
Somerset	186	76,468.99	38	10,345.00	22	2,400.00						246	89,213.99
Sussex	170	45,155.00	19	3,555.00	10	547.33	1	50.00	2	450.00	2	200	49,757.33
Union	546	295,980.82	144	59,500.00	70	7,861.37	34	1,650.00			2	792	364,992.19
Warren	148	42,555.00	17	4,157.50	32	3,165.00			4	596.59	2	199	50,474.09
Totals	9411	\$4,297,842.00	1958	\$748,457.74	879	\$97,219.28	239	\$11,033.63	92	\$33,793.18	70	12509	\$5,188,346.33

DOMINIC A. CAVICCHIA  
Director.

August 6, 1953

- 3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF TAX PAID ALCOHOLIC BEVERAGES THROUGH NEW JERSEY WITHOUT COMPLIANCE WITH STATE REGULATIONS NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - APPLICATION FOR RETURN OF MOTOR VEHICLE DENIED BECAUSE APPLICANT SURRENDERED CONTROL THEREOF AND ALSO CHARGEABLE WITH KNOWLEDGE BY REASON OF FAMILY RELATIONSHIP - MOTOR VEHICLE RETAINED BY STATE, UPON PAYMENT OF LIEN RECOGNIZED IN FAVOR OF INNOCENT LIENOR - REQUEST OF LIENOR FOR ALLOWANCE OF ATTORNEY'S COLLECTION FEE DENIED.

In the Matter of the Seizure on ) Case No. 8318  
 April 21, 1953, of 375 bottles of )  
 alcoholic beverages and a Mercury )  
 sedan on U. S. Highway No. 130, ) ON HEARING  
 Bridgeport, Township of Logan, ) CONCLUSIONS AND ORDER  
 County of Gloucester and State of )  
 New Jersey. )

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 Milton F. Caufield, Esq., Attorney for Sadie Carter.  
 Albert B. Melnik, Esq., Attorney for Universal C.I.T. Credit Corporation.  
 Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 375 bottles of alcoholic beverages, and a Mercury sedan, described in a schedule attached hereto, seized on April 21, 1953 on U. S. Highway No. 130, Bridgeport, Logan Township, New Jersey, constitute unlawful property and should be forfeited.

The alcoholic beverages were being transported by Alexander Carter in the Mercury sedan registered in the name of Sadie Carter, when taken into custody by New Jersey State Troopers pending investigation.

Alexander Carter told the troopers that he was transporting the alcoholic beverages from Washington, D. C., where they were purchased, through this state to his home in New York City. The motor vehicle and alcoholic beverages were turned over to the Division of Alcoholic Beverage Control because Carter apparently had not complied with the law of this state governing such transportation.

When the matter came on for hearing pursuant to R. S. 33:1-66, Sadie Carter appeared and sought return of the Mercury sedan. An appearance was also entered for the Universal C. I. T. Credit Corporation, which sought recognition of its lien claim on the motor vehicle. No one opposed forfeiture of the alcoholic beverages.

Alexander Carter did not have a transportation insignia on the vehicle, or have in his possession a special permit, or a waybill or other document containing pertinent specific information, as required by Rule 2, State Regulations No. 18.

For lack of any of these requisites, the transportation of the alcoholic beverages was unlawful. The alcoholic beverages are therefore illicit and, together with the motor vehicle in which they were transported, are subject to forfeiture. R.S. 33:1-1(i), (y), R. S. 33:1-2, R.S. 33:1-66. Sadie Carter seeks to invoke my discretionary authority to relieve her from forfeiture of the car. R.S. 33:1-66(f). She must either establish that Carter intended the alcoholic beverages for legitimate use, or if that is not the fact, that she is the actual owner of the motor vehicle and was not aware, or chargeable

with knowledge, of such intended unlawful use. See Seizure Case No. 8234, Bulletin 979, Item 2.

Alexander Carter turned over the following documents to an ABC agent: his invoice dated April 21, 1953 from a Washington liquor dealer for the purchase of \$722.83 of alcoholic beverages; a Retail Liquor Dealer Federal Internal Revenue Special (occupational) Tax Stamp for the period expiring June 30, 1953; and a receipt dated February 24, 1953 issued to Carter by the Federal Collector of Internal Revenue for the District of Maryland evidencing payment of Retail Liquor Dealers Occupational Tax for the period October 1950 to June 30, 1953. These payments of Federal Tax on the occupation of a retail liquor dealer indicate a strong likelihood that Carter intended to sell alcoholic beverages. See Seizure Case No. 7594, Bulletin 888, Item 6.

Alexander Carter did not appear at the seizure hearing, and Sadie Carter professed to have had no reason to anticipate that he intended to purchase and transport the alcoholic beverages.

An ABC agent states that Carter told him that some friends in New York had given him money to purchase alcoholic beverages for them when he was in the South, and that he had made a previous trip of that nature.

This unlikely story, even if formally presented by the claimant, would be even more emphatically rejected than it was in Seizure Case No. 8234, supra, in view of Carter's possession of a current Federal Retail Liquor Dealer Tax Stamp. The plain inference is that Carter intended to sell alcoholic beverages. There is no evidence to the contrary, nor is there evidence that Carter was licensed to sell alcoholic beverages in New York.

I am satisfied from the evidence submitted that Carter intended the alcoholic beverages for an unlawful enterprise.

Sadie and Alexander Carter have lived together for the past 15 years. She does not operate, or have a license to operate, a motor vehicle. For the most part she had the use of the car only when it was operated by Alexander Carter. The normal presumption that she knew or is chargeable with knowledge of Alexander Carter's unlawful liquor activities by reason of their close relationship for over 15 years is not overcome by her mere casual denial that she knew Carter was in possession of the Retail Liquor Dealer Stamp, or that she knew that Carter intended to purchase whiskey in Washington while operating her car. See Seizure Case No. 8234, supra. Another factor adverse to her claim is that she is responsible for whatever use Carter made of her car because she permitted him to have what amounted to exclusive control thereof. Seizure Case No. 8227.

The application of Sadie Carter for return of the Mercury sedan is therefore denied.

The motor vehicle was sold to Sadie Carter on August 29, 1952, under conditional sales contract signed by herself and Alexander Carter. Part of the purchase price, amounting to \$1,799.64, was financed by the Universal C.I.T. Credit Corporation to be paid in 36 monthly installments. The balance due thereon is \$1,108.33; but if prepaid, \$125.93 of the finance charges included in said balance would be rebated, leaving a net balance of \$982.40 to be paid.

The finance company had previously financed another car for Alexander and Sadie Carter, and at that time the finance company checked information furnished by them, and ascertained that Alexander Carter was employed at the address given by him, at a weekly salary of \$50.00. When financing the Mercury sedan, it made

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - ALCOHOL ALLEGEDLY USED FOR "RUBBING PURPOSES" - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

BROADWAY CAFE, INC. )  
589 Broadway )  
Bayonne, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-135, issued by the Board of Commissioners of the City of Bayonne. )

-----)  
Sidney Simandl, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On April 10, 1953, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which did not bear any label describing its contents or any indicia of tax payment as required by the laws of the United States, viz.,

One quart bottle containing 189.5 proof alcohol; in violation of Rule 27 of State Regulations No. 20."

On April 10, 1953, an Inspector employed by the Alcohol and Tobacco Tax Division of the Internal Revenue Service, who was making a routine inspection of defendant's premises, observed a one-quart bottle on a shelf in a bin in the cellar of the premises. The bottle, containing a substance which appeared to be alcohol, had no label or tax stamp or any evidence of tax payment. Subsequent analysis by the chemist employed by this Division disclosed that the bottle contained a very good grade of alcohol, having a proof of 189.50 and fit for beverage purposes. The Inspector reported that the bin also contained a barrel of vinegar, several cases of whiskey, preserves and peppers.

In a written statement given during the course of the investigation herein Celestine D'Angelo, President of defendant corporation, stated that he could not remember where, when or from whom he obtained this alcohol; that it must have been on hand a long time; that he had it on hand originally to use for rubbing purposes and stated that, years ago "I would mix it half and half with water and then use it to preserve cherries."

Defendant has a prior record. Effective July 23, 1945, its license was suspended by the local issuing authority for five days for being open and selling alcoholic beverages during prohibited hours. However, since this dissimilar violation occurred more than five years before the violation charged herein, I shall not take it into consideration in fixing the period of suspension in this case.

The serious implications which may arise in a case of this kind are referred to in Re Woerner, Bulletin 743, Item 10. If there were any evidence that the seized alcohol had been used or was intended to be used, I would be inclined to revoke defendant's license. Cf. Karas v. Paterson, Bulletin 120, Item 7. Considering all the facts of this case, I shall suspend defendant's license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 7th day of August, 1953,

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Commissioners of the City of Bayonne to Broadway Cafe, Inc., for premises 589 Broadway, Bayonne, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. August 17, 1953, and terminating at 2:00 a.m. September 11, 1953.

DOMINIC A. CAVICCHIA  
Director.

5. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

PATERSON LODGE NO. 60, B.P.O. ELKS )  
151 Ellison Street )  
Paterson, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-60, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

-----)  
Paterson Lodge No. 60, B.P.O. Elks, Defendant-licensee, by Robert Worsley, Secretary.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On July 21, 1953, you possessed, allowed, permitted and suffered in and upon your licensed premises, six slot machines or devices in the nature of slot machines which might be used for the purpose of playing for money or other valuable thing; in violation of Rule 8 of State Regulations No. 20."

The file herein discloses that on July 21, 1953 an ABC agent found six slot machines on defendant's licensed premises, five of which were in working order.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of ten days. Re Lakewood Lodge No. 1432, B.P.O. Elks, Bulletin 948, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 7th day of August, 1953,

ORDERED that Plenary Retail Consumption License C-60, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Paterson Lodge No. 60, B.P.O. Elks, 151 Ellison Street, Paterson, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 a.m. August 17, 1953, and terminating at 3:00 a.m. August 22, 1953.

*Dominic A. Cavicchia*  
Dominic A. Cavicchia  
Director.