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

BULLETIN 974 JUNE 22, 1953.

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ITEM

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

BULLETIN 974 JUNE 22, 1953.

1. COURT DECISIONS - GREENSPAN v. DIVISION ET AL. - ORDER OF DIRECTOR AFFIRMED BY SUPREME COURT.

SUPREME COURT OF NEW JERSEY
No. A144 September Term 1952

IRVING GREENSPAN and AARON GREENSPAN,

Appellants,

-vs-

DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY; HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSN., a New Jersey Corporation; and JERSEY CITY RETAIL LIQUOR DEALERS ASSOCIATION, a New Jersey Corporation,

Respondents.

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Argued May 25, 1953. Decided June 8, 1953.

On appeal from Superior Court, Appellate Division, whose opinion is reported in 23 N. J. Super. 567.

Mr. Raymond Chasan argued the cause for the appellants.

Mr. Samuel B. Helfand argued the cause for the respondent, Alcoholic Beverage Control. Mr. Theodore D. Parsons, Attorney General of New Jersey, Attorney.

The opinion of the court was delivered by

BURLING, J.

This appeal stems from the invalidation of the transfer of a 1950-1951 license and cancellation of a 1951-1952 license (both being Plenary Retail Consumption Licenses for the sale of alcoholic beverages) by the Acting Director of the Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey, hereinafter called the Director. The licensees, Irving Greenspan and Aaron Greenspan, hereafter called the appellants, perfected an appeal to the Superior Court, Appellate Division which resulted in an affirmance there. 23 N. J. Super. 567. We allowed certification on the appellants' petition therefor. 11 N.J. 581 (1953).

The factual determinations of the Director were not appealed on the merits. They are summarized here merely to show the course of proceedings.

Empire Restaurant, Inc. held a plenary retail consumption license for 754 Newark Avenue, Jersey City, for some ten years. On February 14, 1950, the 1949-1950 license was extended to Empire's receiver. The appellants "bought" the license from the receiver at an auction on February 16, 1950 and on February 21, 1950 applied to the Municipal Board of Alcoholic Beverage Control, of Jersey City, for transfer of the license to themselves and their premises at 618 Newark Avenue. This was denied. The receiver of Empire applied for

and was allowed a "renewal" license for 1950-1951 although he then had no right to possession of 754 Newark Avenue. The appellants applied to the Municipal Board for transfer of the 1950-1951 license on August 14, 1950 and that transfer was granted on May 14, 1951.

The respondents Hudson-Bergen County Retail Liquor Stores Association, a New Jersey corporation incorporated not for pecuniary profit, and the Jersey City Retail Dealers Association, a New Jersey corporation incorporated not for pecuniary profit, appealed the Municipal Board's issuance of transfer license to the Director.

The Director held that the Municipal Board's purported renewal of the 1950-1951 license was a nullity, and that even if it were treated as a grant of a new license it was invalid as a "violation of the State Limitation Law" (L. 1947, c. 94) as well as a violation of the pertinent local ordinance. The appellants do not attack these findings and conclusions.

The Director on March 26, 1952 reversed the action of the Municipal Board as to transfer of the 1950-1951 license and also cancelled plenary retail consumption license C-545, the 1951-1952 license which had been issued to the appellants as a renewal of the 1950-1951 license.

The appellants appealed to the Superior Court, Appellate Division. They agreed with the respondents to confine their appeal to two specific questions involved. The appeal was so confined and the judgment of the Appellate Division, affirming the Director's order, was limited to disposition of those questions. The appellants' petition for certification and its present appeal as a result of the allowance of that petition, hereinbefore mentioned, present the same questions and do not attack the merits of the Director's determination.

The questions involved are: (1) Did the respondents Hudson-Bergen County Retail Liquor Dealers Ass'n, and Jersey City Retail Liquor Dealers Association have legal status to appeal to the Director in the matter of the issuance of the license to the appellants? (2) Did the Director have jurisdiction to cancel the appellants' 1951-1952 license in the absence of a specific appeal for that year from the action of the Municipal Board in issuing that license?

The appellants admit that the precise question of the status of the respondent corporations' right to appeal to the Director in the matter of the issuance of a license for the sale of alcoholic beverages was decided adversely to the appellants' present contentions in Hudson-Bergen &c., Assn., v. Hoboken, 135 N.J.L. 502, 510 (E & A 1947). The Hudson-Bergen &c., Assn. case, supra, is dispositive. We find no merit in the appellant's contention that the decision of this court in New Jersey Bankers Assn. v. Van Riper, 1 N.J. 193 (1948) impliedly overrules that case. The Bankers Assn. case, supra, involved a construction of the Declaratory Judgments Act. The Hudson-Bergen case, supra, determined that the Alcoholic Beverage Law (R. S. 33:1-1 et seq.) specifically clothed associations and corporations of the category of the corporate respondents with appropriate status for appeal in alcoholic beverage license matters. The two decisions are not parallel in point of law or fact.

Upon the second question involved the appellants contend that Regulation 15, Rule 13, of respondent Division of Alcoholic Beverage Control is invalid as an excess of delegated legislative power and therefore the Director improperly cancelled appellants' 1951-1952 license. The rule in question reads:

"When appeal is taken in any matter, any transfer or extension or renewal of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered by the director for proper cause."

R.S. 33:1-39, as am. L. 1943, c. 154, p. 435, sec. 1, provides:

"The commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith, and may alter, amend, repeal and publish the same from time to time.

Such rules and regulations may cover the following subjects: . . . instructions for municipalities and municipal boards; . . . and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this chapter."

L. 1939, c. 281, p. 702, sec. 1 as amended by L. 1944, c. 187, p. 695 sec. 1 (N.J.S.A. 33:1-96) relating to the renewal of licenses requires the existence of a valid license as a prerequisite for renewal. Cf. L. 1952, c. 284, sec. 1 (N.J.S.A. 33:1-12.26); L. 1947, c. 94, p. 502, secs. 1, 2 (N.J.S.A. 33:1-12.13, 12.14). Further R.S. 33:1-31 relating to the suspension and revocation of licenses provides in part:

"A revocation shall render the licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of two years from the effective date thereof and a second revocation shall render the licensee ineligible to hold or receive any such license at any time thereafter. Any revocation may, in the discretion of the commissioner or other issuing authority as the case may be, render the licensed premises ineligible to become the subject of any further license, of any kind or class under this chapter, during a period of two years from the effective date of the revocation." (emphasis supplied).

These provisions, read together with R.S. 33:1-22 as am. L. 1946, c. 316, p. 1028, sec. 1, relating to appeals to the Director, are adequate to sustain Rule 13 of Regulation 15 of the Division of Alcoholic Beverage Control as a valid exercise of the power delegated under R.S. 33:1-39, as amended, supra. Further, based upon the findings of the Director, which are not questioned on this appeal, it seems that the said Rule 13 is merely declarative of the pertinent law. Cf. Brush v. Hock, 137 N.J.L. 257, 261 (Sup. Ct. 1948).

For the reasons expressed the judgment of the Superior Court, Appellate Division, is affirmed.

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2. DISCIPLINARY PROCEEDINGS - INADEQUATE PENALTIES - NO DISCIPLINARY PROCEEDINGS HEREAFTER REFERRED TO LOCAL ISSUING AUTHORITY IN BOROUGH OF LITTLE FERRY.

June 11, 1953

Alfred W. Kiefer, Esq.
Little Ferry Borough Attorney
Hackensack, N. J.

Dear Mr. Kiefer:

This acknowledges your letter of May 20th reporting disposition in disciplinary proceedings conducted by the Little Ferry Mayor and Council against Scarne Enterprises, Inc., t/a Scarnes Majic Club, Route #6 & Frederick Street.

It is noted that the licensee, charged with sale of alcoholic beverages and failure to close the licensed premises during hours prohibited by municipal regulation, on plea of guilty was penalized by suspension of license for 5 days.

Please express to the Mayor and Council our appreciation for conducting these proceedings. However, the penalty imposed is woefully inadequate.

In the first place, notwithstanding Little Ferry's overly liberal 4:00 a.m. curfew, this licensee was apprehended selling alcoholic beverages as late as 4:25 a.m. at which time there were still approximately 18 patrons (3 of whom had entered the premises at 4:10 a.m.) at the bar. In the second place, this licensee had been penalized only two months before the date of the instant violation by suspension of its license for 3 days for a similar violation. Under the circumstances, the absolute minimum penalty indicated by our precedents (of which the Mayor and Council was advised before disposing of this matter) is suspension of license for not less than 30 days with possible remission of not more than 5 days for entry of a confessive plea prior to hearing.

The Mayor and Council will recall that in our most recent letter to you dated January 9th commenting on the penalty imposed in the previous disciplinary proceedings against this licensee (copy of which letter was routinely furnished to the Mayor and Council through the Municipal Clerk), it was necessary for me to say:

"The recent record of the Mayor and Council in its handling of disciplinary proceedings involving violation of Little Ferry's 'hours' ordinance is not imposing, particularly in view of the unwarranted dismissal of charges against Maloney & Menotti (the subject of our letter of November 19, 1952) and the imposition of the negligible penalty in the instant proceeding. In view of that record, unless there is a sharp about-face and a reversal of what appears to be a tendency to condone violations of the Little Ferry hours ordinance, I shall be compelled to consider withholding from the Mayor and Council future disciplinary cases made by our agents and conducting such cases directly at the Division.

"Much as I might dislike the 'blacklisting' of any municipality, I cannot condone a breakdown in liquor law enforcement resulting from the reluctance of any municipal issuing authority to find guilt in a proper case or to impose adequate penalties once guilt is admitted or established."

From its handling of the instant case, I must conclude that the Mayor and Council is wholly unwilling to discipline its liquor licensees even for flagrant and repeated violation of Little Ferry's own ordinances. Accordingly, effective immediately, Little Ferry is "blacklisted" and no future cases made by agents of this Division against Little Ferry licensees will be referred to the Little Ferry Mayor and Council.

Very truly yours,
DOMINIC A. CAVICCHIA
Director.

3. APPELLATE DECISIONS - PORTON v. ROSELLE.

HARRY and JULIA PORTON, trading as HARRY'S GREEN ROOM,

Appellants,

-vs-

MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ROSELLE,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

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Ryan and Saros, Esqs., by John J. Ryan, Esq., Attorney for Appellants.
Guy W. Gordon, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's order of February 26, 1953, revoking appellants' plenary retail consumption license for premises 1229 St. George Avenue, Roselle, effective March 16, 1953, at 3:00 p.m., after appellants were found guilty of the following charges:

"1. Engaging in and allowing, permitting and suffering gambling, viz., the making and accepting of horse race bets, in and upon the licensed premises on February 5, 10, 11 and 13, 1953; in violation of Rule 7 of State Regulations No. 20.

"2. Allowing, permitting and suffering gambling, commonly known as 'numbers writing', in and upon the licensed premises on February 10, 11 and 13, 1953; in violation of Rule 7 of State Regulations No. 20.

"3. Allowing, permitting and suffering tickets and participation rights in a lottery, commonly known as 'numbers game', to be sold and offered for sale, in and upon the licensed premises on February 10, 11 and 13, 1953; in violation of Rule 6 of State Regulations No. 20."

In Paragraphs 4 and 5 of their petition of appeal appellants contended that respondent's action was erroneous for the following reasons:

4. "(a) It was against the weight of the believable evidence.
(b) There was no evidence of the truth of the charges made.
(c) It was based upon illegal evidence.
(d) It was unreasonable, harsh, excessive, arbitrary or unjust so as to be an abuse of discretion.
(e) The finding of the respondents was based on an alleged confession of the appellant, Harry Porton, which was obtained from said appellant in violation of his constitutional rights, both Federal and State."

5. "The finding was based upon an alleged confession obtained from the appellant, Harry Porton, without due process of law."

Respondent by its answer denied the allegations contained in the petition of appeal.

When the appeal was filed, appellants applied for a stay of respondent's order of revocation and, pursuant thereto, on March 12, 1953, I entered an order granting such stay until further order.

At the hearing on this appeal appellants' attorney conceded that appellants' guilt had been "clearly established" by the evidence adduced at the hearing before the local issuing authority and that such issuing authority had been "justified" in finding as it did and stated that the only question remaining is whether or not the penalty was unduly harsh in view of some alleged "extenuating circumstances" contained in the record below. No question of improper motivation was raised and there is no evidence of any.

It was stipulated that the appeal be presented solely upon the stenographic transcript of the proceedings before the local issuing authority, pursuant to Rule 8 of State Regulations No. 15. The stay previously granted was continued, without objection.

The testimony of two ABC agents, who were the principal witnesses for respondent, may be briefly summarized as follows: On February 5, 1953, appellant Harry Porton, after examining certain printed matter and discussing horse race bets with a male companion in appellants' licensed premises, personally obtained information with respect to the betting odds and placed a bet by means of a telephone located behind and beneath the bar. On February 10, 1953, Harry Porton examined racing forms and discussed horse race betting with the two ABC agents and at his own suggestion, placed such a bet for himself and for one of the agents, by means of the same telephone. Later he placed a similar bet for the other agent, collecting the money for both bets and placing it in his pocket. On the same day the agents saw a male patron, later identified as Franklin Roberts, holding whispered conversations with other male patrons and saw him write something on a large roll of paper which he carried in his pocket.

On February 11, 1953, in the absence of appellants, the agents conversed with appellants' bartender who had been present on both previous occasions. The bartender informed one of the agents that he (the agent) had won $16.00 on his horse race bet and that Harry Porton would be in soon. Both agents discussed "numbers writing" with the bartender and the participation therein by Franklin Roberts and later placed "numbers" bets with Roberts, the bartender passing the money for one of these bets. The bartender also placed, by telephone, a horse race bet for one of the agents and put the money he accepted for such bet next to the cash register.

The same agents returned on February 13, 1953. Roberts was already in the barroom and, when Harry Porton entered shortly thereafter, he paid over to the agents their winnings on previous horse race bets. He then accepted a similar bet from each agent together with the money therefor and transmitted the bets by means of the same telephone as before. When the agents told him that they wanted to place "numbers" bets, Harry Porton called over Roberts, who accepted one dollar from each agent therefor. The money given to Porton and Roberts had been marked previously in order to facilitate its identification. Other agents and local police officers then entered appellants' barroom and found the agents' betting slips and the marked money in the possession of Porton and Roberts. One of the agents saw Porton tear into small pieces a piece of cardboard upon which there had been written what appeared to be horse race bets.

Statements obtained from Harry Porton and Franklin Roberts were introduced in evidence. In his statement, Porton admitted telephoning his own bets from the licensed premises to a particular bookmaker for "three weeks on the average of five times a week" and admitted placing bets for and accepting the money from the agents, but claimed that no other persons had placed bets through him during that time. He admitted paying their winnings to the agents. He also admitted that he had called Roberts over to take numbers bets from the agents and that they had each placed a one dollar bet with Roberts but claimed that that was the first time he knew of Roberts' activities.

In his statement, Roberts admitted discussing horse race bets with the agents and admitted taking "numbers" bets from them on February 11 and February 13, 1953 in appellants' barroom. He further stated that, on the latter occasion, Harry Porton had called him over to take the "numbers" bets from the agents. He identified a roll of used cash register tape as the roll of paper he carried in his pocket for the purpose of recording the "numbers" bets which he received. He claimed that the first time he was aware of the fact that Harry Porton or his bartender knew of his "numbers" writing activities was the day of the arrest (February 13, 1953).

Both appellants, Roberts and the bartender testified for appellants. Harry Porton admitted that he bets on horse races; that he has done so all his life and characterized it as a "disease." He further admitted that the bookmaker visited the licensed premises at night either to collect the money for his bets or to pay off on bets he (Porton) won; that he placed bets for the agents and gave them their money which they had won and that he had called in his own and the agents' bets, using the telephone in the barroom. He denied knowing of Roberts' "numbers writing" activities.

Appellant Julia Porton disclaimed any knowledge of gambling activities upon the licensed premises but admitted that she knew that her husband bet on horses, saying he "always did."

The bartender testified that Harry Porton telephoned his own and the agents' bets from the barroom; that he (the bartender) personally telephoned the agents' bets on February 11, 1953 and that he found the number to call in a small "Personal Telephone Directory" belonging to Harry Porton. He denied knowledge of Roberts' "numbers writing" activities.

Roberts testified that he had taken "numbers" bets at appellants' licensed premises and that he had taken bets from the agents. He denied that Julia Porton knew of his activities but as to Harry Porton he testified "I can't say . . ." adding that, when he accepted the agents' bets on February 13, 1953, Harry Porton was nearest to him in a small group twelve feet away.

In view of all of the evidence, it is clear that respondent's finding of guilt must be affirmed. The only question remaining is whether or not the penalty (revocation) should also be affirmed. In this connection appellants contend that, since they have no prior adjudicated record, the penalty is excessive.

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.

Without question, the penalty in this case is severe but the violations attributable to appellant, Harry Porton, an admitted and confirmed "horse player", are serious in their nature and implications. The fact that this is the first time appellants have been in difficulty is a matter which might properly have been considered by respondent in imposing the penalty, but affords no basis for reversal on appeal.

Considering all of the facts and circumstances in this case and in the absence of any hint of improper motivation by respondent, I cannot find that respondent's revocation of appellants' license was unreasonable or constituted an abuse of its discretionary authority. Any plea for mitigation should be made, if at all, to respondent, which may grant relief in the event it determines such action advisable. Triano v. Bloomfield, Bulletin 677, Item 10; Lindenbaum v. Belleville, Bulletin 179, Item 10; Wellens v. Passaic, supra.

Respondent's action in revoking appellants' license will be affirmed and the appeal herein will be dismissed.

Accordingly, it is, on this 27th day of May, 1953,

ORDERED that the revocation of appellants' plenary retail consumption license for premises 1229 St. George Avenue, Roselle, by the 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 March 12, 1953, granting a stay of respondent's order of revocation be and the same is hereby vacated, effective immediately.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - ALLOWING PROSTITUTE IN AND UPON LICENSED PREMISES - LEWDNESS AND IMMORAL ACTIVITIES (PROSTITUTION) - ALLOWING OBSCENE LANGUAGE AND PERMITTING PATRONS TO SING INDECENT SONG ON LICENSED PREMISES - SALE TO INTOXICATED PERSON - PRIOR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against CHARLES GUITTARI T/a CHARLES TAVERN 159 First Street Hoboken, N. J., Holder of Plenary Retail Consumption License C-88, issued by the Board of Commissioners of the City of Hoboken.	CONCLUSIONS AND ORDER

Chris G. Pappas, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. On October 22 and 24, 1952, and on divers days prior thereto, you allowed, permitted and suffered a prostitute in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On October 22 and 24, 1952, and on divers days prior 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.

"3. On October 22 and 24, 1952, you allowed, permitted and suffered patrons to use foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"4. On October 22, 1952, you allowed, permitted and suffered a female patron to sing a song with verses having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"5. On October 24, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

Four of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth, each agent will be referred to as "Investigator" and the full name will not be used but, instead, just the initial letter of the last name: "C," "P," "S" and "W."

At the hearing held herein, the testimony of Investigator "C" (who has been an ABC agent since 1939) was substantially as follows: At 2:30 p.m. on October 22, 1952 he entered defendant's licensed premises and took a seat at the bar near the front entrance. At that time there were seven male and three female patrons in the establishment, and a female called "Ann" (subsequently identified by the Division's agents as Ann Guittari, wife of the licensee) was tending bar. Among the females was one called "Joanne" and another called "Sissie." The latter "every once in a while" pounded her fist on the bar and addressed an indecent remark to Joanne. Ann, the barmaid, pointed to a sign above the back bar on which was printed "No profanity allowed." Another female, referred to as "Irene," said to Ann that Sissie didn't mean what she said and Sissie then stated that she didn't say a certain word, which in gutter language means sexual intercourse and which she spelled out, but rather a word which sounded like it. Ann smiled. A short time thereafter Sissie sang three double-entendre verses of a song (the recitation of the verses would serve no useful purpose although it may be said that they were unquestionably suggestive), at the conclusion of which Ann again smiled. Irene approached Investigator "C" and he asked whether she would have a drink with him and, upon her acceptance, ordered a glass of beer from Ann. While Irene was drinking she stared at the back bar; whereupon Investigator "C" remarked "You aren't very responsive." Irene replied "Well, you name the time and day and I will respond." Investigator "C" then asked her what she meant by that remark and Irene answered "Well, you name the time and day and I'll take you out." The conversation between Investigator "C" and Irene continued in this vein and culminated in Irene's agreement to meet Investigator "C" on the following Friday night for the purpose of engaging in sexual intercourse at a nearby hotel for a stipulated fee. Investigator "P" had entered the premises a moment or so after "C" entered, and had sat on a stool near "C."

At 6:15 p.m., on Friday night, October 24, 1952, Investigator "C" (according to his further testimony) arrived in the vicinity of defendant's premises in the company of three other agents, Investigators "S," "P" and "W." At 6:30 p.m. he and Investigator "S" entered the defendant's licensed premises and took seats at the bar alongside each other. He observed Joanne and Irene seated with a man at the far end of the bar. On this occasion a man, subsequently learned to be Joseph Guittari the son of the defendant, was tending bar. Investigator "C" observed a man seated at the bar about four or five stools away from him who "was sort of wavering around on his seat at the bar and when he got up to go to the men's room he walked in a zigzag fashion, and when he came back he bumped against the people at the bar. He got boisterous and abusive. His tongue was very thick. You could hardly understand him.... His hair was disheveled, his face was flushed, his eyes were bloodshot and heavy eyelids." Investigator "C" testified that in his opinion the man was intoxicated. He observed Joseph Guittari, the bartender, thereafter serve to this man a beer, part of which the man consumed and part of which he spilled on the bar. This man became involved in an argument with Irene, who requested Joseph Guittari, the bartender, to "Tell that man not to be personal with me." The man answered this request by uttering several times an indecency (the word uttered denoting excrement from a bull). Neither Joseph Guittari, the bartender, nor any other person requested him to desist from using the offensive expression. Investigator "C" then confirmed with Irene their date for eight o'clock that evening and soon thereafter said to Joseph Guittari, the bartender: "Joe, Irene here is taking me out for a lay. Have you got any rubbers [contraceptive devices] on you? I wonder if she's clean?" Joseph Guittari put his hands towards his pocket and said "No, I haven't got any rubbers. I don't know if she's clean. You will have to find out for yourself." Investigator "C" took a wallet from his pocket and handed it for safekeeping to

Joseph Guittari, who asked him how much money was in it and, after being told "Just a few dollars," opened the wallet, looked at the contents and asked if the agent were coming back. The agent said "Yes, I'll be back as soon as I get through laying Irene C---." Joseph Guittari placed the wallet alongside the cash register. A short time thereafter Investigator "C" said to Joseph Guittari, "Joe, she's asking me for $10. Do you think she's worth it? What do you think I ought to give her?" To this Joseph Guittari replied "that's up to her."

Continuing, Investigator "C" testified: Shortly after 8:00 p.m., and just prior to leaving the premises with Irene, he gave her five one-dollar bills and one five-dollar bill, the serial numbers of which had previously been noted. Irene put the money into her right-hand coat pocket. Joseph Guittari again asked Investigator "C" whether he was coming back to the tavern and was told that he would return in a little while. Investigator "C" and Irene left the tavern. On the street a short distance from the defendant's licensed premises they were stopped by several municipal detectives and the other ABC agents. Irene, in answer to a questio' as to where she was going, stated that she was taking Investigator "C" to a hotel. The money given Irene by Investigator "C" was handed to a detective and Investigator "P." Investigator "C" returned to the defendant's premises in the company of Investigator "W" and two municipal detectives, where Investigator "W" identified himself to the bartender, Joseph Guittari. Investigator "W" asked Joseph Guittari whether he had seen Investigator "C" leaving the place and, upon receiving an answer in the affirmative, then asked with whom Investigator "C" left the place. Joseph Guittari said "He went out with a woman." Investigator "W" asked whether Investigator "C" had given him a wallet, to which Joseph Guittari said that he had. Joseph Guittari produced a wallet from alongside the cash register. Investigator "C" heard Investigator "W" ask Joseph Guittari whether he had inquired where Investigator "C" was going with the woman and for what reason, and Joseph Guittari said that it was none of his business to ask any questions. Investigator "C" observed the man who had been in the tavern earlier in the evening, and he appeared to him to be more intoxicated but Joseph Guittari served him a glass of beer. After taking a sip of the beer, Investigator "W" seized the drink.

The testimony of Investigator "P" was substantially as follows: He accompanied Investigator "C" on the visit to defendant's licensed premises on October 22, 1952. Ann tended bar during the time that he and Investigator "C" were in the licensed premises on that date; Sissie used an indecent expression when told to keep quiet by Joanne and Ann pointed to a sign located above the cash register. He heard Sissie use the expression thereafter and explain that it was not the word which it sounded like; Sissie sang three double-entendre verses of a song; Ann did not caution Sissie to stop the singing of the song. Investigator "P" observed a female, whose name he learned to be Irene, come over to Investigator "C" and that he bought a drink for her. Later he heard Investigator "C" and Irene make plans to go to a hotel on Friday at 8 o'clock and that her charge would be $10.00. Investigator "P" participated in the investigation on October 24, 1952. Investigator "C" and Investigator "S" went into defendant's licensed premises while he and Investigator "W" remained outside. At 8:03 p.m. he observed Investigator "C" and Irene come out of the defendant's tavern, and he, Investigator "W" and three municipal detectives followed them. They stopped them and, upon asking where they were going, Irene said "We are going to a hotel." Irene then produced five one-dollar bills and one five-dollar bill from her right-hand coat pocket, and Investigator "P" and a detective found upon comparison that they checked with the list of the serial numbers of the bills that had been prepared at the time the money was given to Investigator "C."

The testimony of Investigator "S" was substantially as follows: He entered the defendant's premises on October 24, 1952 at 6:30 p.m. or a little thereafter in the company of Investigator "C." He observed a man, later identified as Joseph Guittari, tending bar. He also observed two female patrons subsequently identified as Irene and Joanne. He observed a man at the bar whose "hair was disheveled, he had a very rough looking appearance as far as his clothes, his face was flushed, at times his head would sink down and then he's snap it up again. I saw him once go to the male lavatory and he staggered, both going and returning to his position at the bar" and "I thought he was under the influence of liquor." The man was served beer "About two or three" times thereafter by Joseph Guittari. This man and Irene entered into a discussion and an indecent expression was mumbled and repeated. When Joseph Guittari returned to the bar after answering a telephone call he heard Investigator "C" ask him for contraceptive devices. Joseph Guittari stated he had none. Investigator "C" then remarked to him "I am taking Irene out for a lay. I wonder if she's clean or not"; to which Joseph Guittari replied "Well, you will have to find out for yourself. I don't know." Investigator "C" gave Joseph Guittari a billfold to hold for him until he returned. Joseph Guittari placed it on the side of the cash register. Thereafter he (Investigator "S") and Investigator "C" leaned over the bar and Investigator "C" said to Joseph Guittari "I'm taking Irene out for a lay. She wants $10. How much do you think I ought to give her?" Joseph Guittari said "I don't know. That's up to Irene." He (Investigator "S") left the premises at 7:30 p.m. and contacted his two fellow agents who had remained outside the tavern, returned to the tavern, and shortly after 8 o'clock he heard Irene say to Investigator "C": "Let's go." Investigator "C" helped Irene with her coat and then handed her a roll of bills which she placed in her coat pocket. He followed as they left and was present when they were stopped by the other officers, at which time he heard Irene state that they were going to a hotel.

Investigator "W" testified that he arrived at 6:30 p.m., on October 24, 1952, in the vicinity of the defendant's licensed premises; that he remained on the outside with Investigator "P" while Investigator "C" and Investigator "S" entered the premises. At 7:30 p.m. Investigator "S" came out of defendant's tavern and, after speaking to him, returned to the tavern. Thereafter, he observed Investigator "C" and a woman, whom he subsequently learned to be Irene C---, come out of the defendant's tavern and "they went east on First Avenue or First Street, and turned right on Bloomfield Street." He (and the others) followed them and after overtaking them questioned Irene. She stated she was taking her male companion (Investigator "C") to a hotel and handed some money from her coat pocket to Investigator "P." Investigators "W" and "C" and Detectives Sullivan and Connors returned to defendant's tavern. Investigator "W" asked Joseph Guittari whether Investigator "C" left a wallet in the premises. Joseph Guittari said he did and obtained the wallet from a place near the cash register. Joseph Guittari stated that when Investigator "C" left with a woman he requested him to hold the wallet for him so that he would have some momey when he came back. He observed a man at the bar with his hair disheveled, his face flushed, and who spoke in an incoherent manner. Although he did not observe the man, subsequently identified as Rudolph W---, being served with beer, he did seize the glass when he saw him consuming some of the contents thereof.

Detective Harry Sullivan testified that, while cruising around in a radio car on the night of October 24, 1952, he received a call from police headquarters to meet ABC men. Pursuant thereto, at 7:50 p.m., he met Investigator "W" and Investigator "P." A "few minutes past 8:00 p.m." he observed Investigator "C" and a woman come out of defendant's tavern. He and Investigator "P" followed them, and after

overtaking them (as did the others) asked the woman where she was going. The woman said she was going to the Globe Hotel and produced ten dollars and admitted that Investigator "C" had given her this money for going to the hotel with him. He and Investigators "C" and "W" returned to the defendant's premises. Investigator "W" inquired from Joseph Guittari about a wallet Investigator "C" had left with him in the premises previously that evening. Joseph Guittari produced the wallet after admitting that Investigator "C" had left it with him. He observed Rudolph W--- who appeared to him to be under the influence of liquor, with a glass of beer in front of him.

Detective Vincent Connors testified that he participated in the investigation relative to defendant's tavern on October 24, 1952. He observed Investigator "C" and a woman come out of defendant's tavern. When she was stopped by ABC agents, Detective Sullivan and himself, she stated that she and Investigator "C" were going to the Globe Hotel. She took out a roll of bills and handed it to Investigator "P." He and Investigator "P" checked the serial numbers with the list the latter had and they corresponded. He went back to the defendant's tavern and he heard Joseph Guittari acknowledge that Investigator "C" had left a wallet with him. He saw Rudolph W--- in the premises who appeared to him to be under the influence of liquor.

Detective Matthew Dempsey, called as a witness by defendant-licensee, testified as follows: He is a "Detective in the Hoboken Police Department" and was in charge of the police investigation that took place with reference to the defendant's tavern on October 24, 1952. He and Detective Connors waited at First and Bloomfield Street and "A few minutes after eight a fellow and a girl came up First Street from Charles' Tavern, turned the corner off Bloomfield Street, went south on Bloomfield Street to about the middle of the block. At the same time Sullivan, Investigator 'W' and 'P' came along and they motioned to us. We went down Bloomfield Street and among us all we stopped a fellow and a girl who were later identified as Investigator 'C' and Irene C---. Irene C--- was questioned as to where she was going with the man. She stated she was taking him to the Globe Hotel. While there, about 79 Bloomfield Street, Investigator 'W' asked her if anybody had given her any money. She said yes. She produced this money which Detective Connors and 'P' checked against a list that 'P' had in his pocket, checked the serial numbers. Then she was brought to police headquarters."

Ann Guittari testified that on October 22, 1952 she opened defendant's tavern "Between six and quarter after six in the morning" and that she was relieved by the defendant at 10:30 or 11 o'clock in the morning. She further testified that she is the only barmaid employed but never works after noon. She denied ever conversing on any occasion with male patrons during the month of October 1952 concerning various 'phone calls at night, although admitting that she had received 'phone calls at home at night but the parties on the other end had hung up when she answered. She denied ever having heard Sissie use any indecent language or sing a <u>double entendre</u> song.

The defendant testified that he relieved Ann Guittari, his wife, on October 22, 1952 at 10:30-10:45 in the morning and remained as bartender until "Quarter to six"; that he did not see any of the ABC agents in the tavern that afternoon; and that he did not hear Sissie sing the <u>double-entendre</u> song or ever hear anybody "curse" in the licensed premises.

Joseph Guittari testified that he relieved his father, the defendant herein, on October 24, 1952, "About ten minutes to six." His testimony as to Rudolph W--- was that he came into the tavern

"around 6:30" dressed in working clothes; that he never dresses in a neat fashion and that in his opinion he is "simple minded"; that he talks slowly, drawls a little bit and that his hair is never combed; that in his opinion Rudolph W--- was not intoxicated. Joseph Guittari further testified that Investigator "C" called him (Joseph Guittari) over to the end of the bar and, leaning over, whispered to him "Irene wants $10. to lay for me and I think it's too much money. What do you think I should do?" and that he answered "Listen pal, I don't know nothing about that stuff. If you keep on talking like that you are going to have to leave"; that Investigator "C" thereupon sat down. Later he asked him: "Joe, will you hold the wallet until I come back because I want to have some money when I come back. I am going out for a while." Thereafter Investigator "C" asked him for rubbers or contraceptives but was told that "Listen, I don't. I never carry them. We never have them in this place." Joseph Guittari testified that he did not hear Rudolph W--- and Irene C--- use any indecent language.

Arthur Porcelli, a witness produced on behalf of the defendant, who admitted that he and his brother have helped in defendant's licensed premises at various times, testified: He visited defendant's licensed premises at 3:15 p.m. on October 22, 1952 and the defendant was tending bar. He borrowed $2.00 from him and left the premises at "twenty minutes to four." On Friday, October 24, 1952, he again visited defendant's tavern, arriving there "Around six o'clock that night." He observed Irene C--- come into the premises at "about seven or seven-fifteen, something like that." He saw Rudolph W--- leave the tavern and then return about 7:30 p.m.; he has known him "about twelve years"; he served in the army with him, and Rudolph W--- has always been untidy in his dress and, in his opinion, Rudolph W--- was not drunk that night; he observed Investigator "C" and Irene C--- drinking together; he answered the telephone and called Joseph Guittari to the 'phone. Although Joseph Guittari stopped to talk to Investigator "C" he did not hear the conversation nor did he observe the ABC agent hand anything to Joseph Guittari "Because it was none of my business"; Investigator "C" left the premises "About four or five minutes" before Irene left. He did not know what time it was because (as he stated) "I'm no timekeeper." He knew Irene "Off and on about six months" from seeing her in defendant's tavern.

I have recited at length the testimony which I deem pertinent in the instant case. The testimony of Investigator "C" and Investigator "P" is in agreement that when they visited defendant's licensed premises on the afternoon of October 22, 1952, a woman addressed as "Ann" by the various patrons was tending bar; that she waited on them and when a female patron called "Sissie" made an indecent remark to a female called "Joanne," Ann pointed to a sign above the back bar which read "No profanity allowed." At no time did she verbally caution Sissie to refrain from using the remark or to desist from singing the double-entendre song consisting of three verses. Ann Guittari, wife of the licensee, denied ever working during the afternoon at any time in the licensed premises. Her testimony is corroborated by her husband. Both testified that no other woman tends bar in the establishment of the defendant herein. However, the ABC agents who visited defendant's premises on October 22, 1952 positively identified Ann Guittari as the woman who was tending bar at the time. Investigator "C" testified that on October 24, 1952, pursuant to the appointment made with Irene on October 22, 1952, he again visited defendant's licensed premises for the purpose of taking Irene to a hotel to engage in sexual intercourse. Investigator "C" further testified that he told Joseph Guittari, who was tending bar, that he was taking out Irene for immoral purposes. He inquired from Joseph Guittari whether she was clean and was told by him that he would have to find out for himself. Investigator "C" gave Joseph Guittari his wallet to hold for him and when asked whether he was

coming back, Investigator "C" answered "Yes, I'll be back as soon as I get through laying Irene C---." Thereafter, according to the testimony of Investigator "C," he (Investigator "C") said to Joseph Guittari: "Joe, she's asking me for $10. Do you think she's worth it? What do you think I ought to give her?", to which Joseph Guittari replied "Well, that's up to her." The aforementioned testimony with respect to the occurrences in the licensed premises on the night of October 24 is substantially corroborated by Investigator "S."

Joseph Guittari admitted that Investigator "C" conversed with him relative to his plans to engage in sexual intercourse with Irene but contends that he told Investigator "C" that he knew nothing about that "stuff" and advised him if he continued talking like that he would have to leave. He admitted, however, that despite this admonition he accepted the wallet of Investigator "C," engaged in conversation with Investigator "C" concerning contraceptive devices and observed him leaving the defendant's licensed premises with Irene. I am satisfied from his testimony that he was aware that Irene made plans in the defendant's licensed premises with Investigator "C" to engage in illicit sexual intercourse. Furthermore, that Irene frequented defendant's establishment for some time was testified to by Arthur Porcelli, defendant's own witness, who stated that he has known Irene "Off and on about six months" from seeing her in defendant's tavern.

Joseph Guittari, Arthur Porcelli and Anthony Raimondo, witnesses produced on behalf of defendant, were of the opinion that Rudolph W---, despite his appearance and actions, was not intoxicated or apparently intoxicated on the evening of October 24, 1952. On the other hand, Investigators "C," "W" and "S," and Detectives Sullivan and Connors were of the opinion that Rudolph W--- was intoxicated when they observed him. Joseph Guittari admitted that he served alcoholic beverages to Rudolph W---. I am satisfied that Rudolph W---, from the description given of him by the law-enforcement officers, was intoxicated on the evening of October 24, 1952, and that, although he was in that condition, he was served alcoholic beverages by the bartender, Joseph Guittari.

Although the defendant by his testimony claims that he was present on the afternoon of October 22, 1952, I am satisfied that he was not.

Testimony of what occurred after Investigator "C" and Irene left the licensed premises was admitted over objection of defendant. When defendant called Detective Matthew Dempsey as his witness, practically all questions asked of him related to events that occurred after Investigator "C" and Irene left his licensed premises.

I am convinced 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 of the admissibility of the disputed testimony of the witnesses produced by the Division, it is well established that evidence of facts which happened before or after the transaction in issue, but which relate directly to it, may be admissible, as where they were, or probably may have been, the cause or the effect of a fact in issue. 31 C.J.S., Evidence, Sec. 162. Statements, acts, or conduct accompanying or so nearly connected with the main transaction as to form a part of it, and which illustrate, elucidate, qualify or characterize the act, are admissible as part of the res gestae. 32 C.J.S., Evidence, Sec. 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 Chief 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 Irene with Investigator "C" to engage in illicit sexual intercourse at a nearby hotel; and I am satisfied that the testimony relating to such declarations and acts was properly received in evidence. Testimony of this nature has heretofore been admitted in evidence in similar disciplinary proceedings. See Re Filippone, Bulletin 875, Item 6; Re Paton, Bulletin 898, Item 3; Re Schumacher, Bulletin 901, Item 5.

The record preponderantly supports the truth of the allegations made in the charges preferred herein, and I find defendant guilty of charges (1), (2), (3), (4) and (5).

Defendant has a prior adjudicated record. Effective November 27, 1951 defendant's license was suspended for ninety days as a result of his plea of non vult to charges that (1) he allowed, permitted and suffered lewdness and immoral activity on his licensed premises, in that a female patron danced in a lewd and indecent manner and that she and other patrons used foul, filthy and obscene language; (2) sold and served alcoholic beverages to a person actually or apparently intoxicated; (3) permitted and suffered brawls in and upon the licensed premises and (4) permitted a card upon his licensed premises containing indecent, filthy and disgusting printing. Re Guittari, Bulletin 921, Item 2.

The only appropriate and justifiable penalty in this case is revocation. Cf. Re Garaventi, Bulletin 953, Item 1.

Accordingly, it is, on this 1st day of June, 1953,

ORDERED that Plenary Retail Consumption License C-88, issued by the Board of Commissioners of the City of Hoboken to Charles Guittari, t/a Charles Tavern, 159 First Street, Hoboken, be and the same is hereby revoked, effective immediately.

Dominic A. Cavicchia
Director.