

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1149

FEBRUARY 5, 1957.

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1100 Raymond Blvd. Newark 2, N. J.

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FEBRUARY 5, 1957.

1. APPELLATE DECISIONS - GARCIA v. FAIR HAVEN (CASES NOS. 1 AND 2).

#2471-
ELADIO GARCIA and JESSE GARCIA,)
t/a CLUB 605,)

Appellants,)

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
OF FAIR HAVEN,)

Respondent.)

Case No. 1)

ON APPEAL

#2489-)
ELADIO GARCIA and JESSE GARCIA,)
t/a CLUB 605,)

Appellants,)

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
OF FAIR HAVEN,)

Respondent.)

Case No. 2)

CONCLUSIONS AND ORDER

Emanuel Gersten, Esq., Attorney for Appellants.
Parsons, Labrecque, Canzona & Combs, Esqs., by John C. Givens,
Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"In Case No. 1 appellants appeal from the action of respondent taken on July 16, 1956, whereby respondent revoked their plenary retail consumption license issued for premises at 605 River Road, Fair Haven, and declared said premises ineligible to become the subject of any further license prior to July 19, 1958. Upon the filing of this appeal the Director entered an order on July 18, 1956, staying the order of revocation and disqualification until the entry of a further order herein. R. S. 33:1-31.

In Case No. 2 appellants appeal from the denial of renewal of (or failure to renew) their license for the present licensing year. Upon the filing of this appeal the Director entered an order on July 18, 1956, extending the term of their 1955-56 license until the entry of a further order herein. R. S. 33:1-22.

During the latter part of the 1955-56 licensing year respondent instituted disciplinary proceedings against appellants and served upon them a copy of fourteen charges alleging that on various dates they permitted brawls and sold alcoholic beverages to and permitted the consumption of said beverages by various minors upon their licensed premises. Lengthy hearings in the disciplinary proceedings were held by respondent on June 12, 1956; June 19, 1956; June 26, 1956, and July 10, 1956. Thereafter, on July 16, respondent adopted a resolution and order finding appellants guilty of ten of the fourteen charges, revoking their license and declaring the premises

ineligible as hereinabove set forth. On August 13, 1956, after the filing of the appeals herein, respondent adopted a resolution unanimously denying appellants' application for the renewal of their license for the present licensing year. Said resolution refers to the revocation of the license and additionally sets forth, among other things, that:

- (a) Appellants have so operated their licensed premises as to endanger the safety of persons passing the same upon the public sidewalk and public street upon which said premises front.

- (c) Appellants have so operated their licensed premises that the public sidewalk, public street and property in the vicinity of said premises are continually littered with broken glass, papers and other refuse.

- (f) Appellants have so operated their licensed premises that it has been necessary for the Police Department of the Borough of Fair Haven to maintain itself upon an alerted and emergency status almost continuously from the later part of 1955 up to and including the present time thereby imposing improper and undue strain upon the police facilities of the Borough of Fair Haven and unduly increasing the cost thereon to the citizens of said Borough ***.

As to Case No. 1: At the hearings held by respondent appellants were found not guilty as to Charges 2, 7, 13 and 14 and guilty as to Charges 1, 3, 4, 5, 6, 8, 9, 10, 11 and 12.

In Charge 1 it is alleged that on February 4, 1956, appellants permitted a brawl, disturbance and unnecessary noises upon their premises. At the hearing below, Sergeant Chandler (of the Fair Haven Police) testified that, in response to a call, he entered appellants' premises on the evening in question and observed that there were broken bottles upon the floor and that everything was disarranged. He testified that Jesse Garcia told him there had been a riot. Chief of Police Jacubecy testified that, when he arrived in response to a call from Sergeant Chandler, the place was disrupted, glasses broken and chairs tipped over. Both of these witnesses testified that, after they had left the premises to check license plates on cars parked outside, they heard a woman screaming in the premises and, upon re-entering, were told that another fight had occurred. At the hearing below Jesse Garcia testified that, when a fight started, he went from behind the bar and tried to stop it and that, when he saw that he couldn't, he instructed an employee to call the police. He further testified that, by the time the police arrived, everything was under control. The evidence discloses that this was not a single, sudden 'flare-up' as in Ferdinand v. Newark, Bulletin 1084, Item 3, but, rather, a general brawl. The evidence fully sustains the finding of guilt as to Charge 1.

In Charge 3 it is alleged that on April 14, 1956, appellants permitted a brawl, disturbance and unnecessary noises upon their premises. Sergeant Chandler testified that, on the date in question, three men were stabbed in or near appellants' premises. Cornelius Bentley testified that he had a fight with two other patrons near the side door and that, as he started out the door, someone hit him in the back with a knife. John

Holmes testified that he was at the bar when Cornelius Bentley passed and started an argument with him; that, later, as he and another patron started towards the side door, Cornelius (who had been standing near the piano) came towards them with a knife in his hand. It appears from the testimony of other witnesses that, after these patrons left the premises, the fight continued in a nearby parking lot, with the result that Newman Williams was cut with a knife and taken to Riverview Hospital and John Bentley (brother of Cornelius) was also cut by a knife and taken to Memorial Hospital. As to this incident Jesse Garcia testified that Cornelius Bentley, who was in the premises, exchanged words with two fellows who were outside; that he 'heard a commotion by the piano;' that he instructed one of his employees to close the door, and that Cornelius ran out after the two fellows. He further testified that there was no fight inside of the licensed premises. I conclude that the fight started in the premises and was continued outside. The evidence sustains the finding of guilt as to Charge 3.

Charges 4, 5, 6 refer to alleged sales to and consumption of alcoholic beverages by three named minors, and Charge 8 refers to an alleged brawl, all on April 22, 1956. At the hearing below, Jack J--- (19 years of age) and his brother Frank J--- (20 years of age) admit that they were in appellants' premises on the evening in question but deny they had anything to drink. Frank H--- (age 19) did not testify below. However, the evidence of other witnesses indicates that the three minors were in the premises at least one-half hour and Policeman DeVito testified that the three minors were 'pretty well intoxicated' when he questioned them shortly after they left the premises. Merlin Alston (a member of the Long Branch Police Reserve) testified that, on the evening in question, he saw Frank J--- drinking a bottle of beer while seated at the bar. The evidence is sufficient to sustain the finding of guilt as to Charge 5. As to the brawl, Anna May (age 17) testified that Jack J--- pushed her; that she fell to the floor and that she was crying when she was carried out of the premises. Jack J--- testified that Anna May --- asked him to leave with her; that he refused and pushed her and she fell to the floor; that Willie Davis picked her up, carried her from the premises and then returned and invited Jack J--- outside. Jack J--- had a knife and Davis had a gun. The police arrived and Davis threw the gun in a car. Frank J--- testified that he took the gun from the car, carried it into the licensed premises and tried in vain to get a girl to put it in her pocketbook. He eventually left the premises with the gun in his pocket. At the hearing below, Jesse Garcia testified that he was 'there all day' but saw no disturbance and did not know about the incident until the following Wednesday. The evidence is clearly sufficient to sustain Charge 8.

Charges 9 and 10 refer to alleged sales to and consumption of alcoholic beverages by two minors (Phyllis --- and Luther ---) on April 27, 1956. At the hearing below Phyllis did not appear and, hence, there is no competent evidence as to her age. Luther --- testified that he is 18 years of age; that he visited appellants' premises with a companion on the day in question but had nothing to drink. However, Merlin Alston testified that he also was present and saw Luther --- drinking a bottle of beer. Jesse Garcia testified that drinks were purchased by Luther's companion (33 years of age) but that the minor had nothing to drink. The evidence is sufficient to sustain the finding of guilt as to Charge 10.

Charges 11 and 12 refer to alleged sales to and consumption of alcoholic beverages by two minors (Norvell --- and Samuel ---) on May 1, 1956. At the hearing below Norvell --- testified that he is 20 years of age and that, on the day in question, he bought and consumed the contents of a bottle of beer. Samuel --- testified that he is 18 years of age and that, on the day in question, he bought and consumed one drink of whiskey. Jesse Garcia testified that he doesn't remember serving either minor. The evidence is sufficient to sustain the finding of guilt as to Charges 11 and 12.

In view of the foregoing, I conclude that the finding of guilt as to Charges 1, 3, 5, 8, 10, 11 and 12 should be affirmed.

Despite the fact that appellants have no prior record, the numerous violations committed during a three-month period would be sufficient to warrant a revocation of the license. Santore v. West New York, Bulletin 958, Item 2. However, it appears that for the past eleven years appellants have held a liquor license in the City of Newark. Revocation of the license considered herein would prevent appellants from being associated in any capacity whatsoever with the alcoholic beverage industry in any municipality in this State for a period of two years. R. S. 33:1-31. Under the circumstances, a suspension of appellants' license for the balance of its term would be sufficient and I, therefore, recommend that an order be entered reducing the revocation to a suspension of the license for the balance of its term. Downie v. Somerdale, Bulletin 1119, Item 1. The evidence indicates that a copy of the charges was served upon the owner of the building (Maffeo) but there is nothing in the record to show that the owner of the building was in any way connected with the violations or that he had any reason to believe at the time he rented the premises to appellants that they would improperly conduct the licensed business. Under these circumstances, I recommend that an order be entered reversing respondent's order declaring the premises ineligible to become the subject of any further license prior to July 19, 1958.

As to Case No. 2: The action of respondent in failing to renew the license and subsequently denying appellants' application for said renewal may be sustained solely upon the evidence set forth above. Malone v. Bordentown, Bulletin 129, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Kaplan v. Newark and K & K Co., Inc. v. Newark, Bulletin 269, Item 6; Zicherman v. Newark, Bulletin 647, Item 5. Moreover, the evidence given by Mayor Denise and Councilman Hunting at the hearing of these appeals supports the additional reasons (a), (c) and (f) set forth in the resolution denying the application for renewal. The testimony of Jesse Garcia denies the existence of the conditions described by the Mayor and Councilman. Some of his testimony seems to imply that he believes that licensees are not responsible for conditions on the outside of their licensed premises. However, in Conte v. Princeton, Bulletin 139, Item 8, the principle was established that a licensee is responsible for conditions in and outside of his licensed premises which are caused by patrons thereof. This principle has been uniformly followed to date. As to appellants' contention that they were not afforded a hearing upon their application to renew, it is sufficient to point out that Rule 8 of State Regulations No. 2 provides that no hearing need be held if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue the

license. Zicherman v. Newark, supra. Under the circumstances, I conclude that the action of respondent in denying the application for renewal of the license should be affirmed, and I recommend that an order be entered accordingly."

The Hearer assigned to hear these cases filed a report wherein the above facts and pertinent principles were set forth and recommended the entry of orders in accordance therewith. Thereafter, pursuant to Rule 14 of State Regulations No. 15, the attorney for appellants filed exceptions and written argument and the attorney for respondent filed answering argument.

I have carefully considered the entire record, including the transcripts of testimony, the Hearer's Report and the exceptions and written arguments of counsel.

In his written argument, the attorney for appellants contends that the police officers who testified and the Mayor and members of the Borough Council were prejudiced against appellants but I find nothing in the record to support his contention. The attorney for appellants also contends that the evidence does not establish that appellants, and especially Jesse Garcia, allowed, permitted or suffered the violations to occur. In Connor v. Fogg, 75 N.J.L. 245 (Sup. Ct. 1907) the court said "To permit is defined as meaning to authorize or to give leave [McHenry v. Winston, 49 S.W. Rep. 4], but the term 'permit' has been often used synonymously with 'suffer', so that it may be said that one who suffers the doing of a thing which he might have prevented permits it." In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947) the court said "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. Gustamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2nd) 140." The evidence herein is clearly sufficient to establish that appellants allowed, permitted and suffered the numerous violations to occur and unsatisfactory conditions to prevail inside and outside their licensed premises. The attorney for appellants likewise contends that, because Councilman Hunting is employed as a salesman by Borus Agency (which conducts a real estate business at premises opposite appellants' premises and which filed the only written objection to renewal of the license), "We have here an 'interest' which prejudiced the decision of the Boro Council." In Mackler v. Board of Education of the City of Camden, 16 N. J. 362 (Sup. Ct. 1954) the court said "The fundamental reason that supports disqualification of a judge is personal interest in the case or the manifestation of malice or ill will towards the accused."

Under the particular circumstances it might have been the wise course for Councilman Hunting to have abstained, but the fact that he happens to be employed by a company which objected to renewal does not demonstrate that he has any direct or indirect private interest in the outcome of the cause or that his participation therein should be deemed to vitiate respondent's action. He denied under oath any personal bias or prejudice against appellants, and I find no evidence that he bore any malice or ill will towards appellants. This contention is also without merit.

I hereby adopt the conclusions in the Hearer's Report as my conclusions herein. I shall modify respondent's action in Case No. 1 and affirm respondent's action in Case No. 2.

Accordingly, it is, on this 4th day of December, 1956,

ORDERED that the penalty of revocation of Plenary Retail Consumption License C-3 (for the 1955-56 licensing year, as extended by Special Permit SM 1422), held by appellants for premises 605 River Road, Fair Haven, be and the same is hereby modified to a suspension of the extended license for the balance of its term; and it is further

ORDERED that the action of respondent declaring said licensed premises ineligible to become the subject of any further license of any class prior to July 19, 1958, be and the same is hereby reversed; and it is further

ORDERED that the action of respondent denying renewal of said license for the 1956-57 licensing year be and the same is hereby affirmed; and it is further

ORDERED that my previous order dated July 18, 1956, extending the term of License C-3, held by appellants, be vacated, effective at 2:00 a.m. December 8, 1956, at which time all activity under the license as extended shall terminate.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - GULAS v. SPRING LAKE HEIGHTS.

STEVE GULAS, trading as)
STEVE'S 71 CLUB,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF SPRING LAKE HEIGHTS,)

Respondent.)
-----)

Herbert & Isherwood, Esqs., by Howard Isherwood, Jr., Esq.,
Attorneys for Appellant.

Lloyd E. Newman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the respondent's action whereby it suspended appellant's license for twenty days, effective October 1, 1956, after finding appellant guilty by a vote of three to two on a charge of selling alcoholic beverages to a minor. Appellant's premises are located at 800 State Highway, Spring Lake Heights, N. J.

"Upon the filing of the appeal, an order was entered on September 27, 1956 staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"By stipulation of the parties and pursuant to Rule 8 of State Regulations No. 15, the appeal was presented solely upon the transcript of the proceedings below.

"The primary evidence presented at the hearing below to establish the defendant's guilt was that of Fred ---, age 17. He

testified that on July 3, 1956, 'We stopped at Steve's 71 Club, we parked to the right side of the bar ***. I got out of the car, I entered the bar, I walked up to the bar and I called the bartender and I, and he actually, he must not have heard me because, you know, it was crowded, and there was a man sitting on a stool next to me and he asked me what I wanted. I said I would like to get two half gallons of beer, he called the bartender down, the bartender poured the two half gallons of beer, he put it in a cardboard container, I put my money on the bar, I picked up the two cardboard containers and walked out to the car'.

"During the course of his testimony, Fred gave further details of the incident: that the bartender did not come toward him when he sought to attract his attention; that he told the man (what he wanted) and the man told the bartender; that Fred did not have any conversation whatsoever with the bartender; that the bartender placed the two containers of beer in a cardboard box and put the box on the bar in front of the man; that he did not hand any money to the bartender; that the bartender picked up the money from the bar and as he placed the money in the register, Fred picked up the beer; and that he does not know whether the bartender observed him do so.

"A New Jersey State Trooper testified that on July 3, 1956, he and another trooper, during routine patrol of traffic, came upon a motor vehicle parked on the highway; that three young boys were in the car, one of whom was Fred; that the troopers discovered two cartons of beer in the car and Fred told them that he went inside of the defendant's tavern, asked the bartender for beer, that the bartender drew the beer for him, took his money, gave him change and Fred left with the beer. Two of Fred's companions testified that they observed him enter defendant's licensed premises and emerge therefrom with the beer.

"The statements attributed to Fred by the trooper and Fred's sworn testimony at the hearing, although somewhat inconsistent, does not evidence a definitive contradiction. The trooper states that he has no special interest in ascertaining the exact details of the purchase of the beer because he assumed that was the function of ABC agents, who were immediately notified of the incident and who appeared on the scene within a short time. In any event, no finding of guilt can legally rest on contradictory statements of the same witness. The record discloses that the respondent evidently found guilt on the basis of the sworn testimony of the minor at the hearing.

"The defendant licensee and his two bartenders, all of whom were on duty at the time in question, each testified that he had not seen Fred in the licensed premises and did not sell him any containers of beer.

"The finding of guilt was seemingly influenced by the argument at the close of the hearing of counsel for the respondent quoting the Division precedent that notwithstanding that alcoholic beverages may have been sold or served to an adult, who, in turn, served such beverages to a minor or permitted the minor to consume such beverages, the licensee is fully responsible and the eventual delivery of a drink to a minor will be viewed as an actual delivery by the licensee to the minor via the instrumentality of the adult and, as such, may be deemed a sale to the minor.

"This is a correct statement of the principle as it applies to an instance where consumption of alcoholic beverages on the licensed premises by a minor is charged. Typical examples, referred to in Re Rogoff, Bulletin 836, Item 2, are where a bartender provides an extra glass so that a customer may give beer to a minor, or serves liquor at empty places at a table where it may be intended for a minor, or serves two drinks to one person at the bar when the second person who is not at the bar may be a minor, or serves three drinks to two persons. The plain import of this principle is that any reasonably prudent licensee or his employee is placed on notice under such circumstances that a person or persons other than the one who purchased the alcoholic beverages intends to consume part of such beverages, and hence, a licensee's only safe and proper course is to determine that such other person is not a minor.

"However, when a sale of alcoholic beverages is made to an adult for off-premises consumption, it has generally been held that in order to prove an indirect sale to a minor, it is necessary to show that the licensee or his employee had some knowledge that the purchase was made on behalf of the minor. Thus, in Hall Liquor Co. v. Union, Bulletin 1032, Item 2, aff'd. Super. Ct. App. Div. 1955, unreported, the charge was sustained because it was found that the employee had such knowledge. On the other hand, in Re Rosenberg, Bulletin 924, Item 8, Director Hock dismissed the charge because the evidence was insufficient to show that the licensee or his employee had any knowledge that the purchase was made by the adult on behalf of the minors. The Director stated 'the situation might be different if the beer was served for consumption on the licensed premises'.

"For the reasons above expressed, I recommend that respondent Borough Council's finding of guilt be reversed."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

Having carefully considered the evidence herein, I agree with the conclusions and the recommendation of the Hearer and adopt his conclusions as my conclusions herein.

Accordingly, it is, on this 18th day of December, 1956,

ORDERED that the action of respondent herein be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - MARPLANE CORP. v. NEWARK AND GRANT LUNCH CORP.

MARPLANE CORPORATION,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK, and GRANT LUNCH)
 CORPORATION,)
)
 Respondents.)

ON APPEAL
 CONCLUSIONS AND ORDER

 Jack L. Cohen, Esq., Attorney for Appellant.
 Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
 for Respondent Municipal Board.
 Daniel G. Kasen, Esq., Attorney for Respondent Grant Lunch
 Corporation.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant, the owner of property at 58-62 Market Street, appeals herein from the action of respondent Board on June 19, 1956, whereby it granted an application to transfer License C-737 (for the 1955-56 licensing year) from Jerome Stein, Receiver in Bankruptcy for Joseph Ross, to respondent Grant Lunch Corporation and from 221 Washington Street to 74-76 Market Street, Newark.

The petition of appeal alleges, in substance, that the action of respondent Board was erroneous because:

- (1) the transfer was without proper legal basis and in violation of law;
- (2) there was no competent evidence before respondent Board upon which the transfer could properly be based and the action of the Board was an abuse of discretion;
- (3) the Board committed legal error in the acceptance and rejection of evidence at the hearing held before it.

The evidence discloses that Grant Lunch filed its application for transfer on April 17, 1956. At that time and at all times mentioned herein, it held another similar license for the premises at 74-76 Market Street, where it has been conducting a licensed business for many years. The evidence further shows that 'as far back as December 1954' there have been rumors that the Newark Parking Authority plans to condemn the entire block upon which said premises are located for a multiple-story parking building and that, while no condemnation proceedings have been started, the Authority has obtained permission to condemn. At the time the application herein was filed the President and Secretary-Treasurer of Grant Lunch Corporation (through Courtier Corporation which they control) were negotiating for the purchase of 124 Market Street which is located on another block and in which another licensed business was being conducted by other persons. Courtier acquired title to 124 Market Street about May 1, 1956, but permitted its present tenant to remain. At the hearing below and at the hearing

herein the then attorney for Grant Lunch (who is not its attorney herein) and the President of Grant Lunch testified that they desired the transfer of License C-737, not for the purpose of selling it but for the purpose of seeking a place-to-place transfer of said license to 124 Market Street if their present premises are condemned and Courtier Corporation terminates its arrangement with the present tenant at 124 Market Street and leases said premises to Grant Lunch Corporation. It was contended that this was a desirable business arrangement because of the usual lapse of time between the institution of condemnation proceedings and the actual demolition of the buildings condemned. Both 74-76 Market Street and 124 Market Street are within 750 feet of 221 Washington Street.

The evidence further shows that a sign concerning the contemplated transfer was posted in the window of 74-76 Market Street from May 11, 1956, to June 20, 1956, except that it was removed between May 31, 1956, and June 4, 1956. An ordinance of the City of Newark provides that such sign shall be so maintained until the granting or denial of the application. The then attorney for Grant Lunch testified that he instructed an agent of Grant Lunch to remove the sign after a hearing had been held by the Municipal Board on May 29, 1956; that his attention was called to the fact that the ordinance required that it should remain until disposition of the case and that he immediately ordered it replaced on June 4, 1956.

As to (1): There is nothing in the Alcoholic Beverage Law or the Rules and Regulations of this Division which prevents the existence of two similar licenses for the same premises.

As to (2): The question as to whether the license should or should not be transferred was a matter resting in the sound discretion of respondent Board. Baker v. Newark et al., Bulletin 1018, Item 1. Under the circumstances of this case appellant has failed to sustain the burden of proof in establishing that the action of the Board constituted an abuse of discretion. Rule 6 of State Regulations No. 15.

As to (3): It has not been shown that the Board improperly admitted or rejected evidence at the hearing below.

As to the sign on the licensed premises: Upon the evidence, I find that there was substantial compliance with the provisions of the ordinance concerning the posting of the sign. It was on the premises for approximately thirty-five days before final disposition and there is nothing to show that its absence for four days misled anyone. Cf. Newark Tavern Owners Assn., Inc. v. Newark & Newler, Bulletin 910, Item 4.

After considering the evidence and the briefs filed herein, I find that appellant has not sustained the burden of proof in establishing that the action of respondent Board was erroneous and, hence, I recommend that an order be entered affirming the action of respondent Board."

After the Hearer filed his report the attorney for appellant, pursuant to Rule 14 of State Regulations No. 15, filed exceptions to the report, and written argument. The attorney for respondent Board filed no answering argument and the attorney for respondent Grant Lunch Corporation advised me, in writing, that he was filing no answer to appellant's exceptions and argument because "I think they call for no answer on my part."

I have carefully considered the entire record in this case, including the Hearer's Report and the exceptions and written argument. I agree with the statement of facts and conclusions of law set forth in the Hearer's Report except that I cannot agree that an order should be entered affirming unconditionally the action of respondent Board. It is apparent from the statement made by the Chairman of the Board at the close of the hearing below that the transfer was granted upon the distinct understanding that no application would be made thereafter to transfer said license to premises other than 124 Market Street. The Chairman clearly indicated that the Board is opposed to "peddling" of licenses. Hence, while I otherwise adopt the conclusions of the Hearer as my conclusions herein, I shall enter an order remanding the case to the local Board solely for the purpose of inserting the express condition that the license may hereafter be transferred only to 124 Market Street. Since the license considered herein has been renewed, the same express condition should be imposed upon the license issued for the current licensing year.

Accordingly, it is, on this 18th day of December, 1956,

ORDERED that the case be remanded to respondent Municipal Board solely for the purpose of imposing upon the license considered herein and the license issued in renewal thereof the express condition set forth above.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR
ILLCIT SEXUAL INTERCOURSE) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against
NEW TRAYMORE BAR & GRILL
(A Corporation)
1089 Broad Street
Newark 2, N. J.,
Holder of Plenary Retail Consumption License C-486, issued by the
Municipal Board of Alcoholic Beverage Control of the City of
Newark.

CONCLUSIONS
AND ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendant pleaded not guilty to the following charge:

'On March 13, 1956 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.'

The evidence adduced at the hearing herein establishes that on Tuesday, March 13, 1956, an ABC agent visited defendant's licensed premises wherein two females approached him and in the presence of the bartender and with the connivance of the president of the corporate licensee they made arrangements to have meretricious relations with the agent and a male with whom they had been drinking. Pursuant to said arrangements, one of the females escorted the agent to a nearby hotel room to consummate the illicit purpose. However, as prearranged, the act was frustrated by the appearance of local detectives who apprehended the female and seized from among her effects marked currency which she admittedly had accepted from the agent for her intended promiscuity. To particularize the testimony respecting the aforesaid profligacy would serve no useful purpose. Suffice to say the evidence indicates a flagrant disregard by the licensee of both moral and legal precepts and might well justify revocation of the license. Re Merjack Corp., Bulletin 998, Item 1. However, since the proofs herein are insufficient for a finding of guilt as to similar violations on prior dates, as charged, and considering the fact that defendant has no previous adjudicated record, I recommend that the license be suspended for a period of one hundred and eighty days. Cf. Re 204 Mulberry Street Corporation, Bulletin 1095, Item 3."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulations No. 16.

After carefully considering the facts and circumstances appearing herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as the conclusions in this case. I shall suspend defendant's license for one hundred and eighty days.

Accordingly, it is, on this 17th day of December, 1956,

ORDERED that Plenary Retail Consumption License C-486, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to New Traymore Bar & Grill, 1089 Broad Street, Newark, be and the same is hereby suspended for the balance of its term expiring at midnight, June 30, 1957, effective January 2, 1957, at 2:00 a.m.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PERMITTING PROSTITUTES ON LICENSED PREMISES - PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR ILLICIT SEXUAL INTERCOURSE) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against NEHOC TAVERN, INC. T/a SUNSET INN 27 Paterson Street Paterson, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-348, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

George S. Grabow, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On August 29 and 30, 1956, you allowed, permitted and suffered prostitutes in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On August 29 and 30, 1956, 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."

The file herein discloses that, acting on a specific complaint that prostitution was occurring at the licensed premises, Division agents made undercover inspections on the dates specified in the charges. A man called Willie acted as bartender on both occasions. On the first date, from the very outset, Willie spent considerable time talking with one of the agents about "women" during which he stated that every female in the premises was available for sexual intercourse at "different" prices, some "cheaper" than others. Within a short time, one of the women called Mattie joined the agent at the bar, solicited drinks from him and arranged to meet him at the premises the next day. The agent returned the next day, pursuant to that arrangement. Again Willie discussed "women" with him and the agent indicated that he was desirous of engaging in sexual intercourse with Mattie, who entered while they were talking. Accordingly, Willie informed Mattie that the agent was present and Mattie joined the agent. She stated that, while she was not available, she would get another woman for him. Accordingly, she left the premises and returned within a few minutes with a woman whom she introduced to the agent as "Jean". Immediately Jean solicited the agent for sexual intercourse and fixed her price at ten dollars, which amount she accepted from the agent at the bar in the form of two five dollar bills, both of which had been previously marked. The agent informed Willie that Jean had just completed arrangements to take him out of the premises for sexual intercourse and shortly thereafter Jean and the agent left. Jean took the agent to an apartment on the second floor of a building next to the tavern where she gave one of the previously marked five dollar

bills to a woman in the apartment for use of the bedroom after which she and the agent entered the room. Later other ABC agents and officers of the Paterson Police Department entered the apartment and found Jean in the bedroom with the agent. Jean produced one of the marked five dollar bills from her shoe and the other marked bill was found in the possession of the woman in the apartment. In a signed sworn statement, Willie admits that he engaged in conversation with the agent on August 29, 1956 with respect to prostitutes being then in and frequenting the licensed premises, as hereinabove detailed, and further, that on August 30, 1956, he knew Jean had made arrangements with the agent and had taken him out of the premises for sexual intercourse.

The attorney for the licensee has submitted a statement urging leniency in that, among other things, the corporate officers and manager of the business had no actual knowledge of the violations and that the actions and conduct of the bartender were contrary to specific instructions. 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 knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140".

Were it established that the bartender had actually procured Jean to engage in sexual intercourse with the agent, the license would be revoked outright. Re Merjack Corporation, Bulletin 998, Item 1, and cases cited therein. However, in the absence of such concrete proof and in view of all the facts and circumstances including the matter urged by way of mitigation on the licensee's behalf, which is being honored and given full credit, and the fact that the licensee has no prior adjudicated record of violations, I shall suspend the license for a period of one hundred eighty days. Re 204 Mulberry Street Corp., Bulletin 1095, Item 5.

Accordingly, it is, on this 18th day of December, 1956,

ORDERED that Plenary Retail Consumption License C-348, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Nehoc Tavern, Inc., t/a Sunset Inn, 27 Paterson Street, Paterson, be and the same is hereby suspended for the balance of its term expiring at midnight, June 30, 1957, effective at 2:00 a.m. January 2, 1957.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS -
 LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
)
 MARY HINKSON)
 T/a HINKSON'S CAFE)
 3014 Marlton Pike)
 Pennsauken Township)
 PO Pennsauken, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-17, issued by the)
 Township Committee of Pennsauken)
 Township.)

CONCLUSIONS
 AND ORDER

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on November 21, 1956 and on divers days prior thereto, she sold and permitted the sale of alcoholic beverages to four minors and permitted the consumption of such beverages by said minors in her licensed premises, in violation of Rule 1 of State Regulations No. 20.

On November 21, 1956, ABC agents entered defendant's premises at about 10:15 p.m. and shortly thereafter observed Harry Clark, a bartender, serve glasses of beer to three young men and a glass of whiskey to another young man. The agents identified themselves and took statements from the young men, namely, Ottavio ---, age 17; Joseph ---, age 17; Ronald ---, age 18; and Gordon ---, age 19. In their statements, each minor admitted that he had been served alcoholic beverages by the bartender and each stated that the bartender had not then questioned him as to his age. Three of the four minors stated that they had previously purchased and consumed alcoholic beverages on the premises on an unspecified date or dates.

Defendant has no prior adjudicated record. Considering the fact that two of the minors were only 17 years of age and that alcoholic beverages were served to four minors, I shall suspend defendant's license for twenty-five days. Re Hafner, Bulletin 1139, Item 10. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 27th day of November, 1956,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of Pennsauken Township to Mary Hinkson, t/a Hinkson's Cafe, 3014 Marlton Pike, Pennsauken Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. November 29, 1956, and terminating at 2:00 a.m. December 19, 1956.

WILLIAM HOWE DAVIS
 Director.

7. STATE LICENSES - NEW APPLICATION FILED.

Gallo Wine Sales of New Jersey, Inc.
85 Empire Street
Newark, N. J.

Application filed January 30, 1957 for place-to-place transfer of Wine Wholesale License WW-5 to include additional space.

WILLIAM HOWE DAVIES
Director.

8. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

EDWARD J. PROUSE)
T/a FORT PITT)
168-170 S. New York Avenue)
Atlantic City, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-60, issued by the Board of Commissioners of the City of Atlantic City.)

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Edward J. Prouse, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

It appearing that, by an order dated October 29, 1956, the license held by the above named defendant was suspended for twenty days and that the effective dates of said suspension were to be fixed by subsequent order (Bulletin 1143, Item 10); and

It further appearing to my satisfaction that defendant's premises are sufficiently opened for the penalty to become effective at the present time;

It is, on this 20th day of December, 1956,

ORDERED that the twenty-day suspension heretofore imposed shall commence at 7:00 a.m. January 8, 1957, and terminate at 7:00 a.m. January 28, 1957.

William Howe Davis
Director.