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

BULLETIN 901 APRIL 2, 1951.

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

BULLETIN 901 APRIL 2, 1951.

1. APPELLATE DECISIONS - LONDA v. ELIZABETH, BERMAN AND GOLD.

JEAN LONDA,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH, and NATHAN BERMAN and JOHN GOLD,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

John L. McGuire, Esq., Attorney for Appellant.
Louis P. Longobardi, Esq., Attorney for Respondent Municipal Board.
Julius Kwalick, Esq., Attorney for Respondents Nathan Berman and John Gold.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board whereby it transferred from 363 East Jersey Street to 1041 North Avenue, Elizabeth, the plenary retail consumption license held by respondents Berman and Gold.

Appellant, who resides at 1027 North Avenue, alleges, in substance, that the transfer will adversely affect the health, welfare and morals of the public in the general area of the premises to which the license was transferred, and that public necessity or convenience does not warrant or justify the transfer.

From the evidence it appears that respondents Berman and Gold have operated under their license for the past four years at 363 East Jersey Street. No complaint has ever been made as to the manner in which they conducted the business. They were forced to vacate their premises at 363 East Jersey Street because that property was taken over by the New Jersey Turnpike Authority and the building demolished. On December 22, 1950, the members of respondent Municipal Board, after a hearing held on written objections, unanimously granted their application to transfer the license to 1041 North Avenue.

Appellant and twelve other persons who own homes or reside near 1041 North Avenue testified that, in their opinion, the area is residential and that the transfer of the license will depreciate the value of their property. They testified also that there are a number of taverns within a radius of a few blocks of 1041 North Avenue. Petitions opposing and favoring the transfer were presented at the hearing below, and about forty people appeared in opposition to, and about ten people appeared in favor of, the transfer at said hearing.

The building known as 1041 North Avenue was erected more than twenty-five years ago at the northwest corner of North Avenue and Jackson Avenue. It has always had stores on the first floor and living apartments above. The stores, now vacant, have been occupied successively by a butcher, the Great Atlantic & Pacific, and a cleaning establishment. North Avenue is a heavily-traveled street, connecting State Highway #25 and North Broad Street, Elizabeth. Although there are numerous one-family and two-family houses on both North Avenue and Jackson Avenue, it appears that there are stores on all of the four corners of the intersection of these streets. Thus, in addition to the premises in question, there is a drug store on the northeast corner; a grocery and vegetable store on the southeast corner, and a building containing a grocery store, a barber shop

approximately 800 feet away, and the nearest church and school is approximately the same distance from the premises in question.

The question as to whether licensed premises should be permitted in a section of a mixed residential and business character, as this appears to be, is primarily to be determined in the sound discretion of the local issuing authority. So also is this true of the question of the number of licensed premises which should be permitted in such a section. Admittedly, there is much traffic on North Avenue. The building in question has contained stores for at least twenty-five years. There would seem to be no reason why licensed premises, if properly conducted, should be detrimental to the health, welfare and morals of persons residing in this area. I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent Municipal Board was erroneous. Rule 6 of State Regulations No. 15.

Accordingly, it is, on this 15th day of March, 1951,

ORDERED that the action of respondent Municipal Board be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

2. APPELLATE DECISIONS - SHAPIRO v. LONG BRANCH.

PAULINE R. SHAPIRO,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF LONG BRANCH,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Edward F. Juska, Esq., Attorney for Appellant.
Julius J. Golden, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of an application to transfer a plenary retail consumption license from William, Victor and A. George Mignoli to appellant, and from premises 26 Laird Street to premises 13-15 North Second Avenue, City of Long Branch.

The petition of appeal alleges that the denial of the application was erroneous because (1) appellant was denied the right to produce credible evidence showing the need and public convenience in the area of her premises 13-15 North Second Avenue; (2) appellant was denied the right to offer credible evidence as to the type, place and manner of her operation of the premises; and (3) the said action of the respondent Board of Commissioners was against the weight of the evidence adduced at said hearing.

On December 13, 1950, at a meeting of the respondent Board, consisting of five members, two members voted in favor of the application to transfer the license in question and three members voted against the application to transfer.

It is unnecessary to consider the first and second grounds for reversal since the appeal was heard de novo, with full opportunity for counsel to present testimony under oath and to examine and cross-examine the witnesses. See Rule 6 of State Regulations No. 15.

There remains to be considered, therefore, only the third ground for appeal.

The appellant and her husband testified that their premises are located about two hundred feet from Broadway, the main business street of Long Branch, and that they planned to operate the licensed premises in conjunction with a restaurant specializing in sandwiches and "chicken in the basket".

Mayor James W. Jones testified that he voted in favor of the transfer. The Mayor, when asked whether there is a public need and necessity for the license at the site for which application to transfer was made, testified, "I think this license if granted would be a credit to that particular section and would be a great help to the different people that work around there. During the noon time they can get a good sandwich and at the right price and if they want a glass of beer in their noon hour they could get it." Commissioner Sherman, who also voted in favor of the transfer, was unable to appear at the hearing held herein. James Cleffi testified that he lives "two to three hundred" feet from the proposed premises and that there is a need for and a convenience to be served by the transfer of the license to appellant herein. Mr. Cleffi agreed that there are numerous licensed premises in the vicinity. A petition containing the names of about one hundred residents and taxpayers approving the transfer was presented to respondent at the hearing below.

Commissioner Joseph P. McCarthy testified that he voted against the transfer. Commissioner McCarthy testified, "First I would like to remark by agreeing what has been said before that there is no objection in any way, shape or form to Mrs. Shapiro or Mr. Shapiro as individuals. *** However, I objected to the transfer because in my opinion there are excessive number of taverns in the general area of Second Avenue and Broadway, which is the center of the down town business district. I probably assume that the map there is correct which would indicate all the taverns that are in that neighborhood and we have almost all types there. Some serve food and some do not serve food. Some are what could be called 'high class' places. Some may not be qualified as such, but we have too many taverns in my opinion in that general area and I did not think any public need or necessity would be served by having any additional taverns in this area." Commissioner McCarthy testified that in his opinion the particular site desired is approximately "a little shorter than a half a mile. Not as far as a half a mile" from the present location.

Commissioner Basil B. Bruno testified that he voted against the transfer of the license because "Well, I felt there were too many in this particular area. There were six within a distance of about seven hundred feet. I thought that was sufficient on that particular busy corner."

The third Commissioner who voted against the transfer did not appear at the hearing herein.

It is now well settled that a municipal issuing authority, in the exercise of its discretionary authority, may refuse to grant a transfer to premises in another neighborhood where, in its judgment, there are already ample facilities in the neighborhood to which the transfer is sought. Each case must, of course, stand upon its own merits. In the instant case appellant seeks to transfer the license a distance of nearly half a mile into another section of Long Branch. There is a tavern at 4 North Second Avenue; two taverns on North Broadway near Second Avenue, and four taverns on South Broadway near Second Avenue. The weight to be accorded to a petition is entirely within the discretion of the issuing authority. Dunster v. Bernards, Bulletin 99, Item 1. The denial of the appellant's application,

under the circumstances, has not been shown to be unreasonable and, therefore, respondent's action must be affirmed.

Accordingly, it is, on this 20th day of March, 1951,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

3. APPELLATE DECISIONS - REX TAVERN, INC. v. NEWARK.

REX TAVERN, INC.,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDERS

Maurice H. Pressler, Esq., Attorney for Appellant.
Charles Handler, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for a period of ten days after it had adjudged appellant guilty in disciplinary proceedings of the charges hereinafter set forth.

Upon the filing of the appeal an order, dated December 18, 1950, was entered by me, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The charges preferred by respondent against appellant are as follows:

"1. In that you did on the morning of September 17th, 1950 between the hours of 2:00 A.M. and 12:00 noon, permit the service of alcoholic beverages on the licensed premises, in violation of Section 1 of Ordinance #1359 adopted by the Board of Commissioners of the City of Newark, September 18th, 1945.

"2. In that you did on the morning of September 17th, 1950 between the hours of 2:00 A.M. and 12:00 noon, allow the licensed premises to remain open for said prohibited period or a portion thereof, in violation of Section 3 of Ordinance #1359 adopted by the Board of Commissioners of the City of Newark, September 18th, 1945."

In accordance with Rule 8 of State Regulations No. 15, the instant appeal has been submitted, by stipulation, upon the transcripts of the testimony taken before respondent Board.

Sections 1 and 3 of Ordinance 1359 of the City of Newark provide as follows:

"1. No person or persons, partnership, firm or corporation shall sell or serve any alcoholic beverage between the hours of two a.m. and seven a.m. on week days, including legal holidays, except as hereinafter set forth, and between the hours of two a.m. and twelve o'clock noon on Sundays, even though a legal holiday should fall upon Sunday, except as hereinafter set forth.

"3. No place or establishment licensed, for the sale of alcoholic beverages for consumption upon the premises, under any act of the Legislature of the State of New Jersey entitled 'An Act Concerning Alcoholic Beverages,' or any acts supplemental thereto or amendatory thereof, shall be open during the above prohibited hours except that restaurants and other establishments, where the principal business is other than the sale of alcoholic beverages, may remain open during the above prohibited hours for such other purposes only; also, except such cases where closing hours are regulated by statute and regulations of the State Commissioner of Alcoholic Beverage Control."

It appears from the testimony of Officer William J. Knowles that, while passing appellant's licensed premises at 2:45 a.m., on September 17, 1950, he observed "too many lights" burning in said licensed premises; that upon peering into the premises he observed Arthur Rogers (subsequently identified as the president and major stockholder of appellant corporate licensee) behind the bar with "a bottle of gin" in front of him and that other persons were in front of the bar. The witness testified that, in response to his knock, he was admitted into appellant's licensed premises and was told by Arthur Rogers that "he was having a drink while he was waiting for his help to get the place cleaned up". Officer Knowles further testified that, in addition to Arthur Rogers and his employees, there were two women on the premises, subsequently identified as the wife and the mother-in-law, respectively, of one employee. All persons in the licensed premises, according to the testimony of Officer Knowles, with the exception of Arthur Rogers, were wearing their hats and coats. The witness testified that he did not see any person drink anything at any time that morning.

The testimony of Officer Knowles, by stipulation of counsel, was corroborated by Officer Joseph Rodgers, who had accompanied Officer Knowles at the time in question.

The fact that two women, in addition to Arthur Rogers and three other employees, were in the premises, as testified to by the officers, is not disputed by appellant's witnesses. Arthur Rogers contends, however, that about "five minutes before 2 o'clock" he had a drink of gin and that the glass remained on the bar when the officers entered the licensed premises. Furthermore, the witness testified that the two women, related to the bartender, had arrived at the licensed premises "about a quarter to 2, 10 minutes to 2" and at the time in question were merely waiting for the bartender to accompany them from the licensed premises. The two women corroborated the testimony of Arthur Rogers. The statement given by Arthur Rogers indicated that he consumed a drink after 2 a.m. Be that as it may, I conclude, after reviewing the facts concerning charge (1), that there is not sufficient evidence presented by the respondent that the defendant permitted the service of alcoholic beverages on the licensed premises after 2 a.m. Respondent's finding of guilty as to this violation is reversed.

A licensee may "keep open" his licensed premises despite the fact that he has locked its doors. Richards v. Bayonne, 61 N.J.L. 496 (Sup. Ct.) 1897; Re Casarico, Bulletin 268, Item 1. It has been consistently held that the mere presence of members of the public on licensed premises during prohibited hours constitutes a violation of a closing-of-premises ordinance. Town House, Inc. v. Montclair,

Bulletin 792, Item 3. It clearly appears from the evidence that the defendant's licensed premises were open after 2 a.m., within the meaning of Section 3 of Ordinance 1359. Hence, the finding of guilt under the second charge must be, and is, affirmed.

I do not find, from the record before me, that the ten-day suspension, here appealed, was unreasonable and, therefore, I shall not reduce that penalty, despite my reversal of the respondent's finding of guilt on the first charge. Both charges herein were brought and based upon the same acts or occurrences. The present appeal will, therefore, be dismissed and the ten-day suspension reinstated.

Accordingly, it is, on this 20th day of March, 1951,

ORDERED that the above appeal be and the same is hereby dismissed; and it is further

ORDERED that the order, dated December 18, 1950, be and the above is hereby vacated, effective at 2 a.m., March 26, 1951; and it is further

ORDERED that the ten-day suspension by the respondent of the appellant's Plenary Retail Consumption License C-868, for premises at 56 South Orange Avenue, which suspension was held in abeyance pending disposition of the instant appeal, be and the same is hereby restored, to commence at 2:00 a.m. March 26, 1951, and terminate at 2:00 a.m. April 5, 1951.

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - MILESTONE CATERING CO., INC. v. ENGLEWOOD CLIFFS.

MILESTONE CATERING CO., INC., trading as THE MILESTONE,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF ENGLEWOOD CLIFFS,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Cohen & Turtz, Esqs., by Theodore Cohen, Esq., Attorneys for Appellant.
Thomas S. Clancy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of the respondent whereby its License C-5, issued for the 1950-51 licensing year for premises at Sylvan Avenue and Sherwood Place, was suspended for a period of ten days. The suspension was imposed by respondent after appellant had been found guilty of allowing, permitting and suffering a disturbance and brawl on its licensed premises on August 6, 1950, in violation of Rule 5 of State Regulations No. 20.

At the time of the filing of the appeal an order was entered by the Director staying the effect of the suspension until the entry of a further order herein. R. S. 33:1-31.

At the hearing Richard Stone testified that he and a companion visited appellant's licensed premises on the evening of August 6, 1950; that after they had eaten, the witness walked to the kitchen

and spoke to the chef; that he then proceeded to the bar and conversed with two girls formerly employed by the appellant; that Mrs. Marie Cohen Beyer (an officer and principal stockholder of appellant corporate licensee) requested that Richard leave the premises; that Richard called Mrs. Cohen Beyer a "fat pig"; that Harry Beyer, the husband of Mrs. Cohen Beyer, requested Richard to apologize to his wife and, upon refusal to so do, Harry Beyer grabbed him by the collar of his coat, and the witness stated, "He ripped my shirt. When he grabbed me he said 'You will come out the back exit with me.' I said, 'I'll go out the front.' I put my hand up to try to loosen his grip and then he pushed me back up against the bar and picked up a bottle and he said, 'You are not going any place, you little son of a bitch'.... When I was pushed against the bar and Mr. Beyer raised the bottle my friend went up to knock it out of his hands, I guess and in the tussle.....my glasses fell off and I dropped down or I tried to go down to the floor to get them and then Mr. Beyer came down on top of me kicking and punching me and then after that all I heard was screaming and Mrs. Beyer yelling, 'Harry stop.' And then Ray and one of the waitresses grabbed me out from under Mr. Beyer...."

Raymond Voege testified that he accompanied Richard Stone to the licensed premises of appellant on the evening in question. The witness described the events taking place with relation to the alleged disturbance or brawl as follows: "We sat down at a table and ordered something to eat and finished our dinner or meal or whatever it was, and I got up and Richard went to see someone in the kitchen. Well, when we finished, the same as he just said, Dick went into the kitchen. I waited there because I didn't know anybody up there and he came out again and he went over to the bar and I followed him and he said hello to this girl at the bar there and Mrs. Cohen Beyer came over and they started to talk. I paid no attention to it because it was none of my business. I didn't know her and she didn't know me, so I figured to keep out of something that is none of my business what they were talking about. One thing led to another and Mr. Beyer came over and they had words also, Richard and Mr. Beyer, and again I kept out of it because it was none of my business. So one thing led to another. I really don't know; I can't go into detail what they were talking about because I wasn't listening. Mr. Beyer took Richard by the shirt or coat or whatever it was -- I believe he had both on -- and asked him to leave by the back way. Richard tried to break the grip, whatever he was holding him with, and this proceeded on and it was only a short while. There was a bottle on the bar and Richard wouldn't go and Mr. Beyer grabbed the bottle like this and I just touched his hand and the bottle disappeared. I didn't know where it went. I didn't touch the bottle at all. Then Richard went down. It was sort of a huddle and Mr. Beyer was in front of us there blocking my view so I couldn't see what was going on. There was a lot of noise and confusion and this girl Doris Mitchell and I pulled Richard out and some other man, I don't know who he was. I guess it was just a patron there. Well, they started pulling Mr. Beyer away to get Dick out, other people on the other side and a woman and there was a lot of confusion and everybody came over to see what was happening and we got Richard out and we left and went down to the police station."

Raymond Voege, upon being asked by the attorney for the appellant "....whether Richard grabbed or pushed or shoved or struck Mr. Beyer first or whether Mr. Beyer grabbed him first..." testified, "Well, Mr. Beyer grabbed him first."

Marie Cohen Beyer testified that she is the principal stockholder of the corporate appellant and that she was present on the evening of August 6, 1950. Mrs. Beyer testified that as she was

walking toward the kitchen, Richard Stone, who had formerly been in the employ of the appellant, said to her, "You big fat whore." The witness testified that she ordered Richard to leave the establishment and, upon his refusal to d so, she threatened that she would call the police. Mrs. Beyer further testified that her husband, Harry Beyer, spoke to Richard and immediately the latter took hold of her husband's thumb, causing Mr. Beyer to exclaim, "Richard leave go my finger, you are hurting it", and in response Richard said, "I will not. I am going to make plenty of trouble for you." Mrs. Beyer testified that her husband never struck Richard but that "He threw himself on the floor like a baby and started to holler, 'I'll get even with you.'"

Harry Beyer testified that he is the husband of Marie Beyer and that he helps on the licensed premises on occasion. Furthermore, Harry Beyer testified that when he heard Richard call his wife a vile name on August 6, 1950, he requested him to leave but before doing so to apologize to his wife. Richard said he would not leave, according to the witness, and grabbed his thumb and started bending it. Mr. Beyer denied striking or kicking Richard and also denied picking up a bottle at any time during the incident.

The testimony presented herein by appellant's witnesses and those testifying on behalf of respondent is very contradictory. I am satisfied, however, after careful scrutiny of the evidence, that respondent's witnesses have given a true representation as to what occurred on the evening of August 6, 1950. I am satisfied that a disturbance and brawl took place on the licensed premises and that Harry Beyer participated in said incident. The appellant is guilty as charged.

The present appeal will, therefore, be dismissed and the ten-day suspension reinstated.

Accordingly, it is, on this 20th day of March, 1951,

ORDERED that the Order dated December 1, 1950 be and the same is hereby vacated, effective at 2:00 a.m. March 26, 1951; and it is further

ORDERED that Plenary Retail Consumption License C-5, issued for the 1950-51 licensing year by the Borough Council of the Borough of Englewood Cliffs to Milestone Catering Co., Inc., t/a The Milestone, for premises at Sylvan Avenue and Sherwood Place, Englewood Cliffs, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 26,1951, and terminating at 2:00 a.m. April 5, 1951.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PROSTITUTION) - CONTRACEPTIVES - SALES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - CHARGE OF ALLOWING PROSTITUTION ON LICENSED PREMISES DISMISSED - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

RAYMOND GEORGE SCHUMACHER
28 Harrison Avenue
Harrison, N. J.,

Holder of Plenary Retail Consumption License C-28, issued by the Town Council of the Town of Harrison.

CONCLUSIONS AND ORDER

Schlosberg & Joseph, Esqs., by James R. Schlosberg, Esq., Attorneys for Defendant-licensee.
Vincent T. Flanagan, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has entered a plea of not guilty to the following charges:

"1. On or about October 13 and November 10, 1950 and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., the making of arrangements for illicit sexual intercourse and prostitution and providing females for such purposes; in violation of Rule 5 of State Regulations No. 20.

"2. On or about October 13 and November 10, 1950 and on divers days prior thereto, you allowed, permitted and suffered prostitutes in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"3. On or about October 13, 1950, you possessed and allowed, permitted and suffered the sale and distribution of contraceptives or contraceptive devices in and upon your licensed premises; in violation of Rule 9 of State Regulations No. 20.

"4. On Friday, November 10, 1950, at about 10:45 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Clinton Private Stock sherry wine at retail in its original container, for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38 which prohibits any such sale or delivery before 9:00 A.M. or after 10:00 P.M. on any weekday."

An ABC agent testified that at 9 P.M. on October 7, 1950 he and another ABC agent visited defendant's licensed premises; that they engaged in conversation with the bartender (subsequently identified as Munford Townsend and referred to hereinafter as Munford) for the ostensible purpose of meeting females to engage in sexual intercourse; that the bartender introduced the agents to a girl known as Alice who ordered a drink at the agent's expense; that after the girl left them he questioned the bartender relative to the physical hygiene of the girl and was advised by the bartender that she was "very clean" and that, around 12 o'clock, the agents left the licensed premises.

The same agent further testified that, on October 11, 1950, at 8:00 p.m., he and the same fellow agent again visited the defendant's

licensed premises. The witness testified that he and his companion spoke to Munford, the bartender, concerning the availability of females for immoral purposes but was told that none was present. The bartender, according to the witness, suggested that the agents return the following Friday night and that he would make arrangements with females to be present who would engage in illicit intercourse. The agent further testified that he and his fellow agent returned to defendant's licensed premises on Friday evening, October 13, 1950, and that, while he played a few records on the juke box, one of which was entitled "I want to be loved", a female standing near the juke box said to him "you look like you are looking for some loving tonight, boy" to which the agent replied, "I sure am ---", but when he asked her if she were "available tonight" she replied, "no, I think you are a little late." He then asked of Munford, the bartender, the name of the girl to whom he had been talking and the bartender said, "Oh, that's Ethel. She is pretty good", and when the witness inquired of the bartender whether she would indulge in sexual intercourse he was told "I think so". When the witness asked the bartender whether Ethel was "clean" he replied, "Yes, you don't have to worry about that." Pursuing this line of conversation, the agent said that he didn't want to "take a chance without any protection" and asked the bartender if he had any "rubbers" (contraceptive devices), to which the bartender replied, "Well, if you want me to, I got some in the drawer. I'll let you have them, if you need any." The bartender, according to the ABC agent, then informed him that Ethel was busy that evening but that, if the agent came down to the licensed premises during the early part of the week, he would fix things up for him with Ethel. The witness testified that he left the premises about 10:10 p.m. but returned that evening about 10:30 p.m. at which time there was another bartender on duty; that he asked for "rubbers" (contraceptive devices); that, while the bartender was looking in the drawer, Munford came into the premises; that he (the witness) told Munford that he wanted some "rubbers" (contraceptive devices) in a hurry and that he then ordered two drinks and put $1.50 on the bar. The witness further testified that Munford started looking through the drawer as the witness and his companion drank their drinks and that Munford then came over to them and threw on the bar a package containing rubber contraceptive devices saying, "there they are"; that, when the agent asked Munford how much he owed him, Munford looked at a dollar and a half which the agent had placed on the bar, said it would be "all right" and picked up the dollar and a half which he put in the cash register. The witness left the premises and returned at 8:00 p.m. on October 16, 1950. On this occasion he was alone and reminded Munford that the latter had promised to provide him with a female for illicit sexual intercourse the next time he was in the licensed premises but was told by Munford that no females were present or available.

The witness further testified that he and his fellow agent again entered defendant's licensed premises at 9:00 p.m. on November 10, 1950; that he and his companion engaged in conversation with Munford, the bartender on duty, and were told by him that "I had it all fixed up the other night but you guys never came down." The witness then observed a girl with a male companion and inquired of Munford Townsend if that was Ethel at the end of the bar and was told by Munford, "Yes, that's her. That's who I had you fixed up with", adding "there she is, go ahead now." The agent testified that he remarked to Munford "The last time you told us she was clean" and that Munford answered, "She's OK, you don't have to worry about her." Thereupon the other ABC agent gave Munford a dollar bill saying, "Here, I am giving you a dollar bill, go over and fix us up with Ethel and tell her we want to --- (engage in sexual intercourse) tonight" and, after Munford spoke to Ethel, he returned to where the agents were stationed and said, "Well, everything is OK, I got it all fixed up. It is up to you guys from now on in." The witness testified that he then ordered a drink from Munford for Ethel and that she acknowledged receipt of same by lifting her glass as a gesture of

thanks. Ethel's male companion left the premises at 9:25 or 9:30 p.m. and, thereupon, Ethel came to where the two agents were seated and took a seat between them. The witness then danced with Ethel and, while so doing, made arrangements with her to engage in sexual intercourse at an agreed price. Ethel left the premises to inform her mother that she intended to be out for awhile and the agent joined his companion at the bar. Munford asked, "How are you guys making out?" and was told that arrangements had been made with Ethel to engage in sexual intercourse with one of the agents in his automobile for which she was going to charge the agent $10.00. When the agent asked Munford "where is a good place I can go and --- (engage in sexual intercourse) around here?" Munford directed him to a "dark block" nearby saying, "You can park anywhere around there and I don't think nobody will bother you there." The witness said that he saw his fellow agent, at 10:45 p.m., purchase a bottle of wine for which he paid Munford and then left the premises. The witness waited for Ethel and, upon her return, each had a drink. Ethel then suggested that he leave first and meet her at the corner, adding "I'll follow you out in a couple of minutes." The agent then testified, over objection, that he then left the licensed premises, got in his car and that, "right after", he was joined by Ethel; that after he parked the car he and Ethel got into the back seat where she partly disrobed, exposed her privates, and made efforts to get the agent to "commit sexual intercourse" with her; that meanwhile Ethel asked for and received the $10.00 previously agreed upon and that the police arrived shortly thereafter at which time the money was found in Ethel's pocket.

It was stipulated that the testimony of the other ABC agent referred to herein would be similar to that of the aforesaid witness in so far as the visits to defendant's licensed premises on October 7, 11 and 16 were concerned. The other agent took the stand, however, and testified that he was on the premises on November 10, 1950, and corroborated in substance the testimony of his fellow agent (the previous witness) in so far as the occurrences taking place on that evening. He further testified that he had asked Munford if he had any "rubbers" (contraceptive devices) and that, after looking around the drawers of the back bar, Munford said that he was "all out of them". The witness verified the testimony of his predecessor on the witness stand that the purchase of the bottle of wine for off-premises consumption was at 10:45 p.m., adding that he was told by Munford to put the bottle in his pocket.

A third ABC agent testified that he accompanied the first witness to defendant's premises on the evening of October 13, 1950, and that he was present when the package of rubber contraceptive devices was purchased from Munford by his fellow agent. He further testified that Munford had told them that he "had rubbers available in case we were ready to have intercourse".

Munford Townsend testified on behalf of the defendant. Although admitting that he was asked by the ABC agents if there were "any girls hanging around", he denied that he had made arrangements to bring any women into the premises for immoral purposes. He further denied knowing that Ethel was a prostitute but admitted procuring rubber contraceptive devices for the ABC agents. However, he denied charging them for these items. He admitted obtaining a one dollar bill from the agents but stated that this was a gift to purchase "a cigar or something" and claimed that he sold the bottle of wine to the agent at twenty minutes or one-quarter to ten on the evening in question.

Although, from the testimony, it appears that at least one female who frequented the licensed premises made arrangements (and

accepted money) for the ostensible purpose of engaging in illicit sexual intercourse, the planned illegal act never took place; nor is there any evidence in the record that she (or any other female who visited the premises) ever engaged in illicit sexual intercourse and thus there is no proof that she (or they) were prostitutes. Consequently, I shall dismiss Charge 2.

As above indicated, testimony was admitted with respect to acts of Ethel and the agent immediately after they left the licensed premises and continuing for approximately twenty minutes thereafter. This was objected to on the part of the licensee, apparently on the theory that, as counsel said, "Any subsequent events occurring off the premises --- have no bearing upon any transaction which may have taken place upon the premises." It was agreed that the Director would ultimately determine "whether the testimony --- is material to the issue at hand".

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 agent I hereby determine that it is admissible and was properly received in evidence. It is well established that evidence tending to prove one fact which explains, gives meaning to, or tends to prove some fact in issue or make it more or less probable, is admissible. 31 C.J.S. Sec. 156, et seq. Evidence is not inadmissible merely because it concerns an event which was not precisely contemporaneous with the main fact in issue; it may precede or follow it. Such acts are generally admitted as part of the res gestae. 32 C.J.S. Sec. 411, et seq. See also State v. Kane, 77 N.J.L. 244; Murphy v. Brown & Co., 91 N.J.L. 412. So long as they are "the necessary incidents of the litigated act in this sense that they are a part of the immediate preparation for or emanations of, such act, and are not produced by the calculated policy of the actors" such acts are admissible. Hannaford v. Central R. R. Co. of N. J., 115 N.J.L. 573, 575. Similarly, in cases involving criminal conspiracy, acts or declaration of a conspirator or of a co-defendant which, although after the actual commission of the crime, were so closely connected therewith in point of time, place, etc. as to constitute part of the res gestae are admissible against defendant on trial. 16 C. J. Sec. 1318. See also 22 C.J.S. Sec. 711, et seq. Such evidence is admissible even where the indictment does not charge conspiracy. 22 C.J.S. Sec. 777.

Clearly the testimony of the agent concerning his own and Ethel's acts immediately after leaving the licensed premises and ostensibly in furtherance of the plan originating in the licensed premises was material to Charge 1 and admissible. That 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.

It was stipulated that the defendant was not present on the licensed premises on any of the dates mentioned in the charges preferred herein. In addition, there was introduced in evidence a written statement made by the licensee on October 10, 1950, during another investigation by this Division with respect to other matters, in which he admitted that he was regularly employed at an automobile assembly plant in a nearby city from 5:00 p.m. to 1:30 a.m. and had been so employed for the past three weeks; that he employed Munford

as bartender at his licensed premises for which the latter was to receive 20% of the gross; that he (the licensee) works at the licensed premises only on Saturday but stops in there two or three times a week to check the cash register and the stock (Munford having no key to the stock room).

From the foregoing it is obvious that, for several weeks preceding the investigation and continuing for the entire duration thereof (approximately seven weeks) the licensee spent very little time at the licensed premises. Although he did not take the witness stand to claim ignorance of the events which took place upon the licensed premises during that period such claim can fairly be inferred from the stipulation hereinabove referred to. "However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents such as are hereinabove related on his licensed premises. He cannot hide behind his employees". Re Paton, Bulletin 898, Item 3.

The licensee's lack of knowledge cannot be excused, particularly where, as here, he absents himself from the licensed premises and, for appreciable periods of time, leaves the management of the licensed business to another, thus substantially abandoning supervision over the licensed premises; nor can such lack of knowledge save him from the full impact of the merited penalty. Re Filippone, Bulletin 875, Item 6.

Under all the circumstances I find the defendant guilty as to Charges 1, 3 and 4.

The conduct of the licensed premises as disclosed by the record in this case constitutes a grave threat to public health, welfare and morals. For the purpose of sound enforcement and effective alcoholic beverage control the only appropriate penalty is revocation. See Re Paton, Bulletin 898, Item 3; Re Filippone, Bulletin 875, Item 6.

Accordingly, it is, on this 14th day of March, 1951,

ORDERED that Plenary Retail Consumption License C-28, issued by the Town Council of the Town of Harrison to Raymond George Schumacher, for premises 28 Harrison Avenue, Harrison, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE OF FACTS IN APPLICATION, IN VIOLATION OF R. S. 33:1-34 - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO FILE PETITION FOR RELIEF IF ILLEGAL SITUATION IS CORRECTED.

In the Matter of Disciplinary Proceedings against	)
HARRY COHEN & MOLLIE KORNFELD T/a La RUMBA BAR 705 Madison Avenue Lakewood, N. J.,	) CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-32, issued by the Township Committee of the Township of Lakewood.	)

Milton Miller, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. You failed to file with the Lakewood Township Committee, within 10 days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 30 and 31 of your license application dated October 25, 1950, upon which you obtained your current plenary retail consumption license, such changes being that in or about November 1950 you entered into an agreement with Joseph Cunio whereby the latter acquired an interest in your licensed business as the real and beneficial owner thereof and was permitted to retain all the profits from the business after payment to you of a fixed fee; your failure to file such notice being in violation of R. S. 33:1-34.

"2. From in or about November 1950 to the present time, you knowingly aided and abetted Joseph Cunio to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52."

The file herein discloses that in November 1950 Joseph Cunio entered into a verbal arrangement with Harry Cohen (one of defendant-licensees) whereby Cunio paid a sum of money as rental of defendants' bar business for the season. Under the arrangement it was agreed that Cunio was to operate the bar, pay all bills and retain any profits. So far as appears, the unlawful situation continues to exist at the present time.

From the facts stated above, it is clear that the licensees, in violation of R. S. 33:1-34, failed to notify the local issuing authority of the change of facts set forth in the license application and that they "farmed out" their license to Joseph Cunio. Hence they are guilty as to Charges 1 and 2.

Under the circumstances I have no alternative except to suspend the license for the balance of its term. Leave is given to file a petition for relief if and when the illegal situation is corrected. If such a petition is filed, testimony must be presented as to the eligibility of Joseph Cunio to hold a license so that a proper period of suspension may be fixed if relief is granted.

Accordingly, it is, on this 20th day of March, 1951,

ORDERED that Plenary Retail Consumption License C-32, issued by the Township Committee of the Township of Lakewood to Harry Cohen & Mollie Kornfeld, t/a La Rumba Bar, for premises 705 Madison Avenue, Lakewood, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. March 24, 1951.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WALTER MORYL)
500 Passaic Avenue) CONCLUSIONS
East Newark, N. J.,) AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Borough Council of the Borough of East Newark.)

Gerald A. Caruso, 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 he sold, served and delivered and permitted and suffered the sale, service and delivery of alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

On the night of February 17-18, agents of the State Division of Alcoholic Beverage Control observed on the defendant's licensed premises Henry ---, a minor, then slightly under 20 years of age, being sold and served beer and being allowed to consume the said alcoholic beverage.

Defendant has a prior record. In August 1950, his license was suspended for two days by the local issuing authority after a plea of guilty to a charge of sales of alcoholic beverages in open containers for off-premises consumption. I shall suspend the license for the minimum period usual in unaggravated cases of sales to minors, ten days, adding five days for the prior record. Remitting five days for the plea will leave a net suspension of ten days.

Accordingly, it is, on this 15th day of March, 1951,

ORDERED that Plenary Retail Consumption License C-11, issued by the Borough Council of the Borough of East Newark to Walter Moryl, for premises 500 Passaic Avenue, East Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 23, 1951, and terminating at 2:00 a.m. April 2, 1951.

ERWIN B. HOCK
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph, Alfred, George, Walter and Charles Nash,
t/a Chas. Nash & Sons
64 Hutton Street
Jersey City, N. J.
Application for transfer of additional warehouse from 345 Essex St., Hackensack, N. J. to 3711 Dell Avenue, North Bergen, N. J. filed March 14, 1951.

Lehigh Warehouse & Transportation Co.
Ft. of Doremus Avenue
Port Newark, N. J.
Application for Public Warehouse License filed March 15, 1951.

New Jersey Apple Growers, Inc.
Cottrell's Road, Browntown, Madison Township, Middlesex County, N.J.
Application for Limited Distillery License filed March 15, 1951.

Waugh Beverage, Inc.
19 Francis St.
Gloucester City, N. J.
Application for additional warehouse at Intersection of Filmore St. & Ridgeway St., Gloucester City, N. J. filed March 16, 1951.

Joseph Gallopo, Sr.
1003 Florence Avenue
Union Beach, N. J.
Application for Transportation License filed March 21, 1951.

Metropolis Brewery of N. J., Inc.
N/E Cor. Lalor & Lamberton Sts.
Trenton 10, N. J.
Application for Limited Brewery License filed March 22, 1951.

Paulsboro Bottling Co., Inc.
26-28-30 Capitol St.
Paulsboro, N. J.
Application filed March 27, 1951 for transfer of State Beverage Distributor's License from Frank Alampi.

Erwin S. Hoch

Director.