

BULLETIN 1062

MAY 19, 1955.

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

BULLETIN 1062

MAY 19, 1955

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR
ILLCIT SEXUAL INTERCOURSE) - ALLOWING PREMISES TO BE
CONDUCTED AS A NUISANCE - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

219 TAVERN, A Corporation,)
t/a Club Four Roses,)
219 Ellison Street,)
Paterson 1, N. J.,)

CONCLUSIONS

AND

Holder of Plenary Retail Consump-)
tion License C-290, issued by the)
Board of Alcoholic Beverage Control)
for the City of Paterson.)
-----)

ORDER

Burton B. Wiener, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

- "1. On Wednesday night, November 10, and early Thursday morning, November 11, 1954, 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.
- "2. On September 14, 16, 17, 18, 22, 29, October 5, 9, November 9, 10 and 11, 1954, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you made offers to procure, permitted the making of offers to procure, and procured females for male patrons for the purpose of illicit sexual intercourse, permitted unescorted females frequenting your premises to make overtures to male patrons for illicit sexual intercourse and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them, permitted lewdness, immoral activity and foul, filthy and obscene language and conduct, and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

At the hearing, three ABC agents appeared and testified in support of the charges. In the following summary of their testimony and the comment thereon, each will be designated "Investigator" and will be referred to by the first initial of his last name, namely, "K", "M" and "T". Their testimony may be summarized as follows:

On all of the dates mentioned in the charges, one or more (usually two) of the investigators visited the barroom of defendant's licensed premises. Almost all of these visits were made at night and varied in duration from a short time to several hours.

After a preliminary visit on September 11, 1954, two of the agents, Investigators "M" and "T" returned to the licensed premises on the afternoon of September 14, 1954. Virgil O'Dell, husband of one of defendant's stockholders (hereinafter referred to by his nickname "Red") was tending bar. A female patron, unknown to the investigators, sitting across the bar from them asked for a light for her cigarette. When Investigator "T" went over to her and lit her cigarette she asked in a loud voice, "Who is going to buy me a drink?" "Red" said "I didn't hear nobody say I can give you a drink", whereupon Investigator "T" told him to give her a drink, which he did, taking the money from the bar in front of said investigator. The aforementioned female then approached the agents and took 50¢ (two quarters) from in front of Investigator "T", saying that she wanted to play the juke box and to purchase cigarettes. When the investigators questioned "Red", he said she was a "lush" and that he had previously ejected her from the premises.

At 4:00 p.m. Frank Cheff (hereinafter referred to as "Frank") relieved "Red" as bartender. Investigator "M" asked him if the aforementioned female was the only kind of "broads" hanging around the place. Referring to the aforementioned female, Frank stated, in vulgar language, that she would be all right for sexual intercourse if she "sobered up". He also said that "better ones" are present at night. Frank then reached behind the cash register and exhibited a picture of two females, pointing out one as "Judy". He explained that he had gone to Livingston to get "Judy", and that now that the summer season is over at the seashore, he will go out and "look for girls to come in to the place". Before the agents left at 6:00 p.m., Frank told them that "Judy" was there almost every night.

The agents returned at 9:00 p.m., at which time a man called "Eddie" was tending bar. A female named "Beverly" was sitting alone at the bar and was later joined by a male patron who bought her several drinks. Investigator "M" asked "Eddie" if Frank had been "kidding" him with respect to "Judy". He replied "No", and produced the aforementioned photograph. He then said that three men had taken her out on the same night and that all had had intercourse with her.

When Frank, the bartender, entered at 11:00 p.m., Eddie told him that four men had been waiting for him; that two had left but that the other two (the investigators) were still there. Frank asked "Eddie" if "Judy" had come in. "Eddie" replied, "No, she hasn't been in. She has probably gone with the guy that takes her to New York for a couple of days." Investigator "T" asked Frank how much it would cost to have intercourse with "Judy", to which he replied, "It wouldn't be too much." Before the agents left at 11:45 p.m., Frank told them to call him before coming there the next time. He suggested they make it on a week end because "there was more stuff hanging around" and that he would "fix them up" and wouldn't give them a "bum steer".

The agents returned on September 16, 1954 at approximately 10:00 p.m., at which time Frank was tending bar. He pointed out to them "Judy" who was seated at the bar with a man. Investigator "M" again asked Frank how much it would cost to have intercourse with "Judy". He replied that he had nothing to do with the price but that it wouldn't be too expensive. Frank said that, when she was through with the other man, he would tell her to join the agents. However, they did not speak to "Judy" that night but, before they left, Frank told them to call up and that he would "hold Judy" for them.

On September 17, 1954 Investigator "M" telephoned to

the licensed premises at 4:00 p.m. and asked for Frank, identifying himself and his companion as the fellows who were at the licensed premises earlier that week. The man who answered the telephone said, "This is Frank", and the agent testified that the voice sounded like that of Frank. Investigator "M" asked whether "Judy" would be there that night. Frank told him that he had talked with her on the telephone; that she was in Asbury Park to pick up her clothes but would be there at 11:00 p.m. He agreed to talk to her when she came in.

Investigators "M" and "T" entered defendant's barroom at 11:00 p.m. that same night. "Judy" was talking with another female at the bar. Frank suggested on several occasions that the agents go over and talk to "Judy" but they did not do so. Instead, they asked Frank if he had discussed price with "Judy". He said that he had not had a chance to talk to her. Finally, Investigator "M" approached "Judy" and told her that he was one of the fellows Frank had mentioned to her. After they danced, "Judy" joined the agents at the bar, where Frank served her a drink without either of the agents instructing him to do so. While Frank was serving them, Investigator "M" said to "Judy", "You know the score and I know the score and Frank here knows the score", and asked her how much it was going to cost them "to get fixed up -- get laid". She replied, "I'm not cheap." However, she explained that she had a date that night but agreed to meet them the following Wednesday at 1:00 a.m., at which time they would discuss price. Before leaving, the agents relayed this conversation to Frank, who said, "Well, if she says she is going to be here, she is going to be here."

The same agents returned at midnight on September 22, 1954 to keep the date with "Judy". Frank was tending bar and "Judy" was seated at the bar with a man. Frank, referring to "Judy", said, "I told you she would be here." Investigator "M" complained to Frank that they hadn't yet found out how much it was going to cost them "to get laid". "Judy" later joined them and explained that she would be unable to go out with them that night. There followed a conversation during which Investigator "T" asked her how much it would cost "to lay" her, to which she replied, "Some men offer me \$50.00." Investigator "M" complained that that was too much money and, when he relayed the information to Frank, the latter agreed. After dancing with Investigator "T", "Judy" returned to the bar and said that she had "bad news"; that the price would be \$25.00 apiece but that they could each have intercourse with her twice. She then made a date to meet them the following week.

The same investigators returned to the licensed premises on September 29, 1954, around midnight, at which time Frank was tending bar and "Red" was sitting at the bar with a male patron. Frank told the agents that "Judy's" mother was sick and that she would not be in that night. They told him that they had had a date with her and that she was going to charge them \$25.00 apiece to have intercourse with her. He said that it was "too much" and suggested that they take her to a room, have intercourse with her, and give her a \$10.00 bill.

The agents again returned at approximately 9:30 p.m. on October 5, 1954. They again asked Frank, who was tending bar, if "Judy" had returned, and he replied in the negative. Investigator "M" said that she probably had found a "better spot to hang

out", and Frank merely shrugged his shoulders.

At approximately 9:35 p.m. on October 9, 1954, Investigator "T" entered the licensed premises followed shortly thereafter by Investigator "K" and Investigator "M". When Frank told Investigator "M" that "Judy" had not returned to the licensed premises, the investigator repeated that she had probably found a better place "to hang out in" and Frank shook his head in the affirmative.

On November 10, 1954 Investigators "M" and "T" returned to the licensed premises at approximately 9:45 p.m. Investigator "K" remained outside. Frank was tending bar and "Red" was asleep in a booth. Frank started the conversation by saying that a "nice girl" would be in at approximately 11:00 p.m.; that it would cost them \$15.00 for "a lay", and admonished them not to do as a friend of his had done, namely, have intercourse with her and then pay her only \$10.00, adding, "Her price is \$15.00, and that is what she wants." Investigator "T" asked Frank if the girl had a room to take them to, and Frank replied "No." Frank later told the agents that they should have been there on the previous Monday night, explaining that they had had a party; that they had locked the doors at 3 o'clock; and that there had been seven men and two girls in the premises. In most vulgar language, he told them that they had engaged in various types of normal and abnormal sexual activity and that the party had lasted until 8:30 a.m. Thereafter, "Red" joined them at the bar and confirmed the fact that there had been such a "party". The investigators then asked "Red" if Frank was "kidding" them when he told them that he would have them "fixed up" with the girl he had mentioned. "Red" said that Frank was not "kidding"; that he had had intercourse with her himself; and that he usually gives her a "sawbuck" (\$10.00). Frank joined the conversation saying, "You thought I was kidding about the girl." During the conversation, Investigator "M" asked "Red" if "Judy" had returned to the premises. He said that she had not and then added that approximately 50 men had been around asking for her, adding, "She must have had some business." He stated that he had had intercourse with her and that it had cost him a total of \$34.00, \$20.00 for intercourse and the rest for a room and a meal. During this conversation Frank was in the general vicinity of the agents pouring drinks for them and joined in the conversation.

At approximately midnight, a girl named "Jean" entered and sat at the bar with a male patron. Frank served her a drink paid for by said male patron. Frank approached the agents and said, "There is the girl now." Investigator "M" asked "Red" if he had had intercourse with "Jean." He replied that he had and that it had cost him \$10.00. At this time "Jean" removed from her pocketbook an object which she handed to Frank and which he exhibited to a number of customers at the bar. The agents testified that, held in one position the object had the appearance of the male sex organ while, when turned the other way, it was in the shape of the female. Frank handed the object to "Red" who made an obscene display of it in the presence of a female patron. The object was returned to Frank and then to "Jean", who replaced it in her pocketbook.

As "Jean" was leaving the premises with the aforementioned male patron at approximately 12:15 a.m. on November 11, 1954, she stopped to talk to the agents, asking them if they were waiting for her. When they replied in the affirmative, she said she would be back in a half hour and they indicated that they would be there. After "Jean" had left the premises, Investigator "M" asked Frank where they could take her to have intercourse. Frank suggested that they go to certain named cabins; that they should

tell the proprietor that he (Frank) had sent them; and that they would then be charged \$4.00 instead of \$6.00. "Jean" returned alone at approximately 12:45 a.m. and sat at the bar with the agents. While Frank was serving them drinks "Jean" said that she would not go out with everybody but that Frank had told her that they were "Okay" and that, for that reason, she would go out with them, adding "You know the price is \$15.00", and indicated that she engaged only in normal intercourse and not in perversion. Frank, in the vernacular, confirmed this fact. "Jean" suggested that if they wanted a girl who would engage in acts of perversion they could make up a party including another girl whom she knew. Investigator "M" again asked Frank where to take "Jean" and he again suggested the same cabins and again told them to tell the proprietor that he (Frank) had sent them. Investigator "T" left the premises at approximately 1:10 a.m. and contacted Investigator "K", who in turn contacted the Paterson Police Department. During the absence of Investigator "T", Frank asked Investigator "M" where he had gone. Investigator "M" told Frank that the other agent had gone to get his car because they were going to take "Jean" out "to get laid" and that "Jean" did not want to use her car.

Shortly thereafter, Investigator "T" returned to the licensed premises and rejoined Investigator "M" and "Jean" at the bar. "Jean" again removed the aforementioned lewd object from her purse and both agents handled and examined it. They returned it to "Jean" who replaced it in her purse. Shortly before 2:00 a.m. the agents left defendant's licensed premises with "Jean" and, as they were leaving, said "good-bye" to Frank.

The two agents and "Jean" drove in Investigator "T's" car to the cabins mentioned by Frank. "Jean" told Investigator "T" to park his car in the parking area while she and Investigator "M" went to the office. "Jean" asked for and received from Investigator "M" \$4.00 to pay for the room. Investigator "M" told the proprietor of the cabins that they wanted a cabin, to which he replied "Okay." "Jean" then talked with the proprietor privately, after which he handed Investigator "M" a key and said, "Cabin 22." Investigator "M" and "Jean" proceeded to Cabin 22 and were joined there by Investigator "T". All three entered the cabin, which contained a double bed, a television set, dresser, and other furniture, as well as a bathroom and a clothes closet, which was empty. Investigator "T" said that he would give Investigator "M" and "Jean" some privacy and left the cabin. "Jean" proceeded to undress until she was completely nude.

Investigator "M" asked "Jean" how much it was going to cost him, and mentioned the sum of \$10.00. "Jean" looked at him in a peculiar manner and said, "What are you trying to pull?" Thereafter, Investigator "M" took \$15.00 in bills, the serial numbers of which had previously been marked for purposes of identification, and said to "Jean", "Well, I'll put this money in your pocketbook." He then proceeded to place the money in her pocketbook which was on top of the television set. Meanwhile, "Jean" had entered the bathroom and had closed the door. Shortly thereafter she emerged from the bathroom and, hearing a noise, peered out the window. When someone knocked on the door, Investigator "M" opened it and Investigators "K" and "T", Detective Kuiper of the Paterson Police Department and the proprietor of the cabins entered. Investigator "M" was fully clothed and "Jean" had put her coat on over her otherwise nude body. She, at first, claimed that Investigator "M" was her "boy friend".

Investigator "M" called attention to the money, part of which protruded from the pocketbook. "Jean" denied any knowledge of the money, and stated that it had not been given to her and

that she had not received it. She exhibited a wallet which she claimed contained her own money and which, in fact, contained a few bills. The aforementioned lewd object was not in "Jean's" purse and could not be found.

"Jean" was taken to Police Headquarters. Frank and "Red" later appeared there but, after some questioning, both refused to give signed sworn statements.

On cross-examination, Investigator "M" admitted that he had had no conversation with "Jean" in the automobile concerning the aforementioned lewd object; that she did not exhibit it in the car; that he had not seen the object after it was exhibited for the second time in the licensed premises; that "Jean" later said that she had thrown it out of the window of the automobile; that she was seated in the middle; that he had not seen her throw anything from the automobile, and that he could not find the object. He testified that he had left the automobile once to ask directions. He also admitted that "Jean" had not asked him for the money; that he did not see where "Jean" was when he placed the money in her pocketbook, and that she apparently was in the bathroom when he placed the money in her purse. He further admitted that, when he was asked by the detective whether "Jean" had accepted the money from him, that he admitted that she had not done so.

On behalf of defendant, Detective Kuiper, the proprietor of the cabins, Frank Cheff (the bartender), and Josephine O'Dell, wife of "Red" and one of defendant's stockholders, appeared and testified.

Detective Kuiper testified that, in company with Investigator "K", he watched the licensed premises and saw the two agents and "Jean" emerge therefrom on the morning in question; that he and Investigator "K" followed them to the cabins; that they met the proprietor outside; that they all entered the cabin where they found Investigator "M" and "Jean"; that they identified themselves; that "Jean" claimed that Investigator "M" was her boy friend; that the agent pointed out the money in the pocketbook and produced a list of the serial numbers of the bills; that the numbers on the bills corresponded to the numbers on the list; that "Jean" denied that it was her money and asked, "What are you trying to pull?"; that Investigator "M" had admitted placing the money in the pocketbook when "Jean" was in the bathroom; that "Jean" exhibited her wallet; and that no charge of prostitution was made against her.

On cross-examination, he testified that "Jean" was nude except for her coat; that the wallet was in the coat pocket; that it is the policy of the Paterson Police Department to require proof that a female accepted money before making a complaint against her for prostitution but admitted that he did not ask her whether she had gone to the cabin for the purpose of having sexual intercourse.

The proprietor of the cabins testified that "Jean" had rented the cabin from him on November 9, 1954; that she left a \$10.00 deposit; that she agreed to pay the weekly rate of \$24.00 for one person; that the weekly rate for two people is \$30.00; that, when he saw "Jean" on the morning in question, she paid him \$4.00 and promised to pay the balance of the weekly bill; that he proceeded to Cabin 22 because he thought he saw a man

following her; that he knocked on the door but was pushed aside by the detective; that he found a man there fully clothed; that "Jean" had her coat on; that he heard the conversation with respect to the bills; that "Jean" asked "What's going on here?"; that she denied receiving the money; that a search was made for a certain object but that she denied having it. He further testified that he did not know defendant's bartender Frank and that he had no arrangement or connection with the tavern or its patrons.

On cross-examination he testified that he had not known anyone connected with the licensed premises until after the morning in question; that, at the request of Mrs. O'Dell, he had visited the licensed premises thereafter; that he believed that "Jean" was having some family trouble; that he was not concerned over the money owed by "Jean" because the deposit exceeded the daily rate; and that he had refused to show the register to the agents because he did not like their attitude.

Frank Cheff testified that he had been employed at defendant's licensed premises only since September 16, 1954; that he commenced work there at 7:00 p.m. that evening; that he had not worked at the licensed premises on September 14, 1954; and that he never tended bar in the afternoon. He further testified that he had seen Investigators "M" and "T" at the licensed premises on two occasions. He denied that he had offered to get girls for them; he denied that he had any conversations with the agents concerning intercourse on any of the dates mentioned, and denied that he had worked on the licensed premises on October 5, 1954. He testified that a man called "Whitey" had been working on the licensed premises between 10:30 p.m. on September 17, 1954 and 1:30 a.m. the following morning. He further denied that he had told the agents of any all-night party at the licensed premises. He admitted that the agents were on the licensed premises on the night of November 10, 1954 and that "Jean" was there with a man, but claimed that he had seen her there previously with the same man. He denied that Jean had exhibited any lewd object while on the licensed premises. He admitted that "Jean" had left the licensed premises and had returned and that the agents had been on the licensed premises on the night of November 10, 1954 for a considerable length of time; that they had been talking to "Red" and to "Jean"; and that he had seen them leave with her. However, he denied that he had introduced "Jean" to them and testified that they had endeavored to buy "Jean" a drink, which she refused. He further testified that he and "Red" had appeared at Police Headquarters because they had learned that the police were looking for them; that Investigator "M" had used filthy language to him at Police Headquarters; had threatened him and had been very nasty to him. He denied that he had had intercourse with "Jean" and testified that "Jean", at Police Headquarters, had denied having had intercourse with him.

He also testified that he did not show any photograph to the agents upon the licensed premises and accused Investigator "M" of ridiculing a female patron, referring to her as "Miss Rheingold of 1939" and claims to have told them to leave her alone because she was drunk.

On cross-examination he testified that he is no longer working at defendant's licensed premises; that he had "quit"; that, on one occasion when the agents were upon the licensed premises, "Red" had been asleep in a booth; and that he saw them leave with "Jean" on the morning of November 11, 1954. He categorically denied the testimony of the agents with respect

to promising to procure women for them or discussing the subject of sexual activities or the price therefor. He denied overhearing any conversations in connection with such activities and denied recalling any of the conversations testified to by the agents. He admitted that he knew "Judy" but denied that the agents had spoken to him either personally or by telephone concerning her. He also denied having any conversation with the agents concerning "Beverly".

Mrs. O'Dell testified that she is an equal stockholder in defendant corporation with her sister and sister-in-law; that the corporation has held the license for five years; that there have been no violations of the law or regulations; that none of the stockholders ever tend bar; that they visit the premises occasionally on evenings and week ends, although not regularly; that Virgil O'Dell ("Red") is her husband; that he is presently ill and out of the State; that she never heard any conversations at the licensed premises concerning intercourse or the making of arrangements or appointments for intercourse; and that she has not seen any wrongdoing at the licensed premises.

On cross-examination she admitted that she is a housewife; that her husband managed the licensed premises; that he was there on the afternoon of September 14, 1954; that she does not know whether Frank tended bar for him that day; that her husband had called her from the licensed premises on September 16, 1954 to tell her that he had discharged a bartender and wanted to hire Frank; that Frank had previously installed some linoleum on the tables in the licensed premises; and that she does not remember whether she was personally present upon the licensed premises on any of the occasions mentioned in the testimony of the agents.

Investigator "M", called in rebuttal, testified that no one knocked on the door before the agents and Detective Kuiper knocked and, immediately thereafter, entered the cabin. He denied that he had been nasty to Frank Cheff or that he had used foul language to him or that he had said that they were out to "get" the licensee or that he had threatened him. He denied that he had referred to any female upon the licensed premises as "Miss Rheingold of 1939" and denied that he had had any trouble with Frank Cheff during the questioning at Police Headquarters, but testified that Frank had suddenly said "I'm not going to tell you what you want to know anyway; might as well stop", and had walked over to "Red" saying, "Come on, 'Red', don't tell these guys anything."

At the conclusion of the hearing, counsel for defendant argued that, despite their earlier visits, the agents made no contact with any female for any definite arrangement until November 10 and 11, 1954, and referred to some testimony to the effect that they were being "strung along" by the bartender. He also charged that at least one of the investigators used "filthy gutter talk". He characterized as "unworthy of belief" the testimony of the agents with respect to the lewd object and claimed that they used methods of investigation which are unfair. Finally, he urged that the Director apply the principle of "reasonable doubt" in the determination of this matter.

After considering, most carefully, all of the evidence in this case, I am convinced that the events and conversations related by the agents, in fact, took place upon defendant's licensed premises.

With respect to the contentions of defendant's counsel, while it is true that the agents did not leave the licensed premises with a female ostensibly for the purpose of sexual intercourse until the morning of November 11, 1954, nevertheless they testified that, on a number of prior occasions, arrangements (definite at the time) were made upon the licensed premises to meet there on a particular day and at a particular hour for that purpose. Furthermore, if in fact the agents were being "strung along" by defendant's bartender, this can hardly be viewed as a mitigating circumstance. To encourage male patrons to frequent the licensed premises by the promise of introductions to females allegedly willing to engage in illicit sexual activities is reprehensible indeed.

With respect to the claim that one of the agents engaged in "gutter talk", such claim was emphatically denied. If such language were used, it would appear that it was uttered by the bartender.

Counsel's claim that the agents used "unfair" methods of investigation is without merit. Obviously, in matters of this kind, licensees and their employees studiously avoid any immoral conduct or semblance thereof in the presence of law enforcement officers known to them to be such. The agents did not initiate the conversations with any of the females involved, nor did they produce any of the females. Frank procured "Jean" for the agents and, by Frank's own admission, "Jean", who, at the licensed premises, actually arranged with the agents to take them from such premises for the purpose of sexual intercourse, had previously visited defendant's licensed premises. In fact, only a short time before she left defendant's licensed premises with the agents, she had left such premises with another male and had returned alone. The investigative methods employed in the instant case are not unlike those employed in Re 17 Club, Inc., Bulletin 949, Item 2, where the license was revoked by the Director by reason of activities similar to those alleged in Charge 1. The Director's action in that case was affirmed In re 17 Club, Inc., 26 N. J. Super. 43 (App.Div. 1953).

With respect to counsel's last contention that the doctrine of "reasonable doubt" should be applied, it should be noted that disciplinary proceedings are civil in nature, not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948). I might add, however, that even if the doctrine were invoked in this case, the proof of defendant's guilt on both charges is plenary.

Defendant is, of course, responsible for the actions of its employees. Re Sevak, Bulletin 1012, Item 2, and cases there cited. See also Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951).

I find defendant guilty on Charge 1.

With respect to Charge 2, it has long been held that the meaning of "nuisance", as used in the regulations, is the dictionary meaning, namely, "an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance". Webster's New International Dictionary. See also Benedetti v. Trenton, Bulletin 1040, Item 1, affirmed by the Appellate Division in Benedetti v. Trenton (decided April 5, 1955; Docket A-131-54; not yet officially reported); Re Cosfair Corporation, Bulletin 875, Item 9; Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3.

I find defendant guilty on Charge 2.

The applicant testified that he is presently engaged in the food business in another municipality; that if the license were transferred to him he would establish a beer route in connection with the proposed soda business; that he intended to visit the homes of potential customers to solicit orders for soda and that in the course thereof some customers might indicate a desire for beer; that there are no arrangements with any brewery to supply malt beverages to him if the license were transferred; that he was not taking over any customers' route from the present holder of the license nor has he any experience in the business which he contemplates entering.

The City of Elizabeth has, according to the 1950 Federal census, a population of 112,817. There are presently issued and outstanding in the said City 262 plenary retail consumption licenses and 30 plenary retail distribution licenses. Also, there are four State Beverage Distributors' licenses with licensed premises in Elizabeth. I am cognizant of the fact that the privileges of a State Beverage Distributor's license are state-wide and, thus, the question of public necessity and convenience cannot be determined on the narrow basis of the municipality in which the prospective licensee will have his principal office or warehouse. Re Vigar Beverages Co., Inc., Bulletin 941, Item 9. Nevertheless the transfer of a license to other premises is not a right inherent in a license. If good cause appears an application for transfer may be denied in the discretion of the issuing authority. Re Warren, Bulletin 945, Item 6; Re Variety Beers and Soda Distributors, Bulletin 1000, Item 6; Re Ciccarone, Bulletin 1048, Item 5.

A careful examination of the evidence adduced herein fails to disclose a need or necessity sufficient to warrant the transfer of the license in question to the proposed premises. The present licensed premises are located in a different municipality at a distance of four miles from the proposed premises. Thus, transfer of the license as applied for would in effect be the establishment of what is essentially a new liquor business in the City of Elizabeth which at the present time is well supplied with liquor outlets. Under the circumstances appearing in the instant case, I am of the opinion that it would not be to the best interests to approve the transfer now under consideration. Therefore, I shall deny said application.

WILLIAM HOWE DAVIS,
Director.

Dated: April 6, 1955.

- 3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - OWNER'S CLAIM THAT PERSON CLOSELY RELATED IS RESPONSIBLE FOR PRESENCE OF ALCOHOL IN CAR WITHOUT OWNER'S KNOWLEDGE REJECTED - MOTOR VEHICLE AND ALCOHOL ORDERED FORFEITED.

In the Matter of the Seizure on)
November 19, 1954 of 20 one-gallon) Case No. 8760
jugs of alcohol and a Buick sedan, on)
the White Horse Pike, near Route 39,) On Hearing
in the Town of Hammonton, County of)
Atlantic and State of New Jersey.) CONCLUSIONS and ORDER
-----)

L. Milton Freed, Esq., Attorney for Cleveland Calloway.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 20 one-gallon jugs of alcohol and a Buick sedan,

described in a schedule attached hereto, seized on November 19, 1954 on the White Horse Pike, near Route 39, Hammonton, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, Cleveland Calloway, the registered owner of the Buick sedan, entered an appearance and sought its return. Forfeiture of the alcoholic beverages was not opposed by any person.

The Hearer's Report setting forth the facts presented at the hearing in the case, and his recommendation thereon was mailed to counsel for Cleveland Calloway. No objection or exception to such report was filed within the time limited therefor.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's Report, and make the following findings as established by the evidence presented:

On November 19, 1954, New Jersey State Troopers and local police officers halted the Buick sedan on White Horse Pike, Hammonton, New Jersey. The driver of the car was Cleveland Calloway. Lillian Williams and Clayton Robinson were passengers therein. The 20 one-gallon jugs of alcohol were in the trunk. There was no label, or stamp indicating the payment of tax on alcoholic beverages, on any of the jugs.

The officers detained the occupants of the car, and took custody of the alcohol and motor vehicle. The Division of Alcoholic Beverage Control was notified and the alcohol and car were turned over to ABC agents. The contents of one of the jugs was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content of 40.8 per cent by volume.

Cleveland Calloway seeks to disclaim knowledge of, or responsibility for, the presence of the alcohol transported by him in his car. Such a claim is contrary to the normal presumption that a person knows what articles he is transporting in his car. Seizure Case No. 8669, Bulletin 1042, Item 11.

Cleveland Calloway offered this explanation: Lillian Williams asked him to drive her to the country where she was to obtain eggs and ham. Clayton Robinson was invited to go along for the ride. Lillian Williams did not tell him the specific destination, but directed him to a lunchroom in Lawnside, which he had not previously visited, and stopped there for food. Lillian Williams asked him for the keys to the car and walked outside. About 10 minutes later Calloway and Robinson left the lunchroom. Lillian Williams was standing nearby. Asked for the whereabouts of the car, she told them that a man took it to get eggs and ham. A few minutes later a man arrived with the car at the place where the group was standing, delivered the car to Calloway and his companions, and they were enroute to Atlantic City when stopped.

Lillian Williams arranged to purchase the illicit alcohol with the purpose of selling it at a profit. She is also known as Lillian Calloway, and both she and Cleveland Calloway reside at the same address. She operates a small lunchroom there.

Cleveland Calloway states that Lillian Williams is his girl friend, who uses both names, and whom he has on occasion referred to as his wife. There is some evidence of mutual financial transactions between them.

In determining Calloway's veracity, it is to be noted that his fingerprint record discloses convictions in 1935, 1937, 1943, 1948, and 1952 for criminal offenses other than liquor law violations and that he was on probation at the time of the seizure.

The alcohol is illicit because of the absence of any label, or tax stamp on any of the jugs. R. S. 33:1-1(i), R. S. 33:1-88. Such illicit alcohol and the Buick sedan in which it was transported and found constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

I am authorized to return property subject to forfeiture to its owner if he establishes to my satisfaction that he is personally innocent of any unlawful liquor activities and had no reason to suspect that his property would be used in connection therewith. R.S. 33:1-66 (e & f). Cleveland Calloway had a close personal relationship with Lillian Williams, and it is therefore extremely doubtful that while both were on the trip she managed to place the alcohol in the car without his knowledge. The evidence presented does not overcome the natural presumption that persons so closely related know of each other's unlawful conduct. Cf. Seizure Case No. 8682, Bulletin 1045, Item 8. The evidence in the case creates a strong inference that Cleveland Calloway either had a direct interest in the purchase of the bootleg alcohol, or had knowledge of such purchase. His request for return of the Buick sedan is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS,
Director.

Dated: April 20, 1955.

SCHEDULE "A"

- 20 - one-gallon jugs of alcohol
- 1 - Buick sedan, Serial No. 14435974,
Engine No. 46102035, 1954 N. J.
Registration AE282.

4. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

IRVING LIPTON,
t/a Lipton's Wines & Liquors,
267-269 Paterson Avenue,
East Rutherford, New Jersey,

CONCLUSIONS

AND

Holder of Plenary Retail Distribution License D-4, issued by the Mayor and Council of the Borough of East Rutherford.)

ORDER

Irving Lipton, Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold an alcoholic beverage at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that at about 9:45 p.m., Friday, March 25, 1955, an ABC agent entered defendant's licensed premises and ordered a pint of Gallagher & Burton's Black Label Blended Whiskey. The clerk took the whiskey from a shelf, put it in a paper bag and placed it on the counter. Meanwhile, another ABC agent who was outside entered the premises when signaled and observed the first agent give the clerk in payment for the whiskey two one-dollar bills and a fifty-cent piece. The clerk rang up on the cash register \$2.55 (the then current minimum resale price). The agents made known their identities to the clerk and later to the licensee and his wife, and after informing them of the violation obtained a signed sworn statement from the clerk admitting the sale of the item in question at the reduced price.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of ten days. Re Weisbrot, Bulletin 1052, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 25th day of April 1955,

ORDERED that Plenary Retail Distribution License D-4, issued by the Mayor and Council of the Borough of East Rutherford to Irving Lipton, t/a Lipton's Wines & Liquors, 267-269 Paterson Avenue, East Rutherford, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m., May 2, 1955, and terminating at 9:00 a.m., May 7, 1955.

WILLIAM HOWE DAVIS,
Director.

5. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR
SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against
 BUDD LAKE AMUSEMENT CORP.,
 t/a Oasis Bar and Grill,
 Shore Road,
 Mount Olive Township,
 PO Budd Lake, N. J.,
 Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Mount Olive.

On Petition

ORDER

Michael N. Steinberg, Esq., Attorney for Defendant-licensee.

BY THE DIRECTOR:

By Conclusions and Order dated January 18, 1955, I suspended defendant's license for the balance of its term, effective immediately, after defendant had pleaded non vult to charges alleging that in its current license application it had (1) falsely denied an agreement to pay its manager a percentage of the net profits from the licensed business, (2) falsely represented that its officers, directors and stockholders were bona fide residents of New Jersey, (3) falsely denied that its license had been previously suspended and (4) failed to answer several questions. Leave was given to apply to me for an order lifting the suspension upon proper proof of correction of the violations, provided, however, that (since I had determined in the Conclusions that the violations warranted a minimum suspension of forty-five days and since the premises were then closed for the winter season) the suspension would not be lifted until the expiration of forty-five days after the time (to be determined) defendant would normally be ready to open for business. Re Budd Lake Amusement Corp., Bulletin 1050, Item 2.

It appears from the testimony of Samuel Katz, Jean Nadel and Blanche Pomerantz (defendant's officers, directors and stockholders), given at a hearing on April 7, 1955, that (a) within a few days thereafter each of them would take up residence in an apartment (then undergoing alterations) on the second floor of the licensed building and would thenceforth maintain domicile in this State, that (b) they will themselves take active charge of the operation of the licensed business, instead of leaving the operation in the hands of a manager as was apparently done heretofore, and that (c) the licensee normally begins to do business in an appreciable amount about the middle of May of each year. There being nothing in the record to contradict this testimony, I shall accept it as true.

Accordingly, it is, on this 25th day of April 1955,

ORDERED that the forty-five day suspension shall be deemed to commence at 2 a.m., on May 13, 1955 and to terminate at 2 a.m., on June 27, 1955 and that License C-10 be restored to full force and effect at the latter time.

WILLIAM HOWE DAVIS,
Director.

6. RETAIL LICENSEES - EXTENSION OF CREDIT BY MEANS OF BLANK CHECK - PRACTICE UNDULY DESIGNED TO INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - DISAPPROVED.

April 28, 1955.

Gentlemen:

From reports of a recent investigation it appears that you have been engaging in the practice of extending credit to your patrons, many of whom are soldiers stationed at nearby Fort Dix, under a plan whereby the patron signs a blank form of check in a certain amount and when the amount of his credit reaches that sum and remains unpaid, you fill in the name of a bank, with knowledge from the outset that the patron has no account in that bank, then deposit the check and, upon its return marked "No Account" (or similar notation), you threaten the patron with criminal prosecution for issuing a "bad check" unless your bill is paid.

While a retail licensee's extension of credit to his customers is not prohibited by State Law or State Regulations or by the ordinance of your particular municipality, your scheme is a highly reprehensible "trick" by which you "mouse trap" and "high pressure" unsuspecting customers, principally servicemen, many of whom are far from home. Indeed, your scheme is so questionable that you may be courting trouble with the law.

Moreover, your practice is one which, in the words of the Alcoholic Beverage Law (R. S. 33:1-39), is a practice unduly designed to increase the consumption of alcoholic beverages.

Accordingly, I hereby specially rule, under the provisions of R. S. 33:1-39, as aforesaid, that you immediately cease and desist from engaging in the above mentioned practice in its present form or any variation thereof.

Violation of this special ruling may be cause for the suspension or revocation of your license.

You are directed to acknowledge, forthwith, receipt of this special ruling by letter signed personally by both of you, advising that you have discontinued this practice and giving pledge of strict future compliance with the above special ruling.

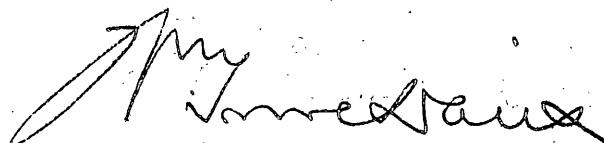
Very truly yours,

WILLIAM HOWE DAVIS,
Director.

7. STATE LICENSES - NEW APPLICATION.

Donald Perretti,
t/a Valley Beverage Distributors,
190 Norwood Street,
Northvale, New Jersey.

Application filed May 17, 1955, for State Beverage Distributor's License.



William Howe Davis,
Director.