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

October 7, 1953

BULLETIN 986

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ITEM

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

BULLETIN 986 OCTOBER 7, 1953

1. APPELLATE DECISIONS - THOMPSON v. MOUNT OLIVE TOWNSHIP.

SIDNEY A. THOMPSON,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MOUNT OLIVE, Morris County, New Jersey,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

David Young, 3rd, Esq., Attorney for Appellant.
Shuback & Orr, Esqs., by Edwin W. Orr, Jr., Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of an application for the transfer of a plenary retail distribution license from Joseph N. Giannetti to Sidney A. Thompson and from Shore Road to State Highway Route #46, near Mt. Olive Road. The two premises in question are about four or five blocks apart.

The record discloses that, due to illness, one of the members of Respondent Township Committee (Mr. Marsh) was absent when the application for transfer was considered on May 5, and on May 19, 1953; that appellant requested final action on the application on May 19th despite the absence of Mr. Marsh; that appellant voluntarily proceeded to Mr. Marsh's home and returned with a statement from him which read as follows: "May 19, 1953 -- I am against the transfer -- Wm. Marsh"; and that when the chairman asked for a roll call on the granting of the transfer the vote was recorded as follows: Mr. Hickey "no"; Mr. Gerian (chairman) "not voting" and Mr. Marsh "absent".

Appellant contends that respondent's action was erroneous for reasons which may be summarized as follows: The proposed transfer would serve public necessity and convenience because (1) appellant conducts a general store (with delivery service) on a main thoroughfare in the business zone of the township whereas the licensed premises are presently not so located, (2) the transfer would make it more convenient for shoppers to make all of their purchases of foods and beverages in one store and (3) the proposed new location, with proper parking facilities, would be more convenient for the large summer population.

In its answer respondent denies that the transfer would serve public necessity or convenience and asserts that, on the contrary, the area to which appellant proposes to transfer the license is already adequately served by other licensed premises; that the transfer would result in an undue concentration of licensed premises in that area and that the proposed new premises are not suitable for a license.

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15.

Appellant, his wife, Mr. Giannetti (the proposed transferor) and four of appellant's customers testified in his behalf. From their testimony it appears that, for a number of years, appellant

has conducted a large general store and retail food store, described as a supermarket, where all kinds of foods are sold, including meats, groceries, vegetables and frozen foods; that said store is in a built-up area located near the intersection of State Highway Route #46 and Mount Olive Road in the center of the business section of that part of the township very close to the post office; that appellant's business is conducted from 7:30 a.m. to 9:00 p.m. on a year 'round basis and that appellant has delivery service. It further appears that the present licensed premises are located on Shore Road across from Budd Lake; that the business is conducted on a seasonal basis, being closed for some time in October until Spring and that the present license has no delivery service. It also appears that while the population of the township, according to the 1950 Federal census is 2,597, the population in this general area is increased substantially during the summer months.

It is not disputed that there are eighteen plenary retail consumption licenses and four plenary retail distribution licenses in the township or that there are no plenary retail distribution licenses in the immediate vicinity of appellant's store. Appellant's witnesses estimated that the nearest "package goods" stores are one-half mile and one mile, respectively, from appellant's store while the member of the township committee who voted to deny the proposed transfer estimated these distances to be one-quarter of a mile and three-quarters of a mile, respectively. None of the holders of plenary retail consumption licenses issued for premises in the vicinity of appellant's premises enjoys the "broad package privilege" which would authorize the holder of the license to conduct a separate "package goods" store.

Appellant's witnesses testified that his store was the largest in the area; that, because of the wide variety of food products sold there, the addition of alcoholic beverages would make it a "one stop" store; that, while "package goods" may be purchased from plenary retail consumption licensees, some people (especially women) hesitate to enter such premises and prefer to purchase such merchandise at "package goods" stores; that numerous people had asked for alcoholic beverages at appellant's store and that there are ample off-street parking facilities there.

Two petitions which were presented to the township committee were introduced in evidence. One petition, favoring the transfer, contained 291 names; the other, opposing the transfer, contained 104 names. In addition, another petition favoring the transfer (addressed to the Director but not submitted to the Township Committee) was received.

On behalf of respondent, Mr. Hickey, who voted to deny the transfer, and Mr. Marsh, who was absent due to illness, testified at the hearing on this appeal.

Mr. Hickey testified that he had voted to deny the transfer because he believed that public necessity and convenience were already adequately served by the existing licensed premises in the area and that the proposed transfer would cause a concentration of licensed premises there. Referring to five premises for which plenary retail consumption licenses have been issued he testified that "The one license, the Grey Court abuts the Thompson property, directly adjacent to Grey Court the Budd Lake Inn, cater corner across from Thompson's property is the Candle Light Inn * * * Going West on the Highway, Route 46, less than eighth of a mile there's the Highway Bar and Grill; going east on Route 46 less than a quarter of a mile is the Blue Bird Tavern." He also testified that he had talked with a number of people who expressed opposition to the proposed transfer and that some of those who had signed petitions for appellant had admitted doing so because of "friendship" or "because they don't like to refuse

anybody". On cross-examination he admitted that some (but not all) people might object to entering a plenary retail consumption premises to buy "package goods" and admitted that a "one stop" store might be more convenient for some people and that a year 'round store might better serve the public "...If there wasn't any other tavern or any other licenses in that area". He also testified that there are as many year 'round residents within a half mile radius of the present location as there are within the same radius of the proposed location; that both premises would serve the same people and that the increased summer population is adequately served now.

Mr. Marsh testified that he was not present at the meeting on May 19, 1953, when the application for transfer was denied but that he was opposed to such proposed transfer because the number of licenses in the vicinity of appellant's store is adequate and that the transfer would result in a concentration of licenses in that area. He admitted that a plenary retail distribution license at appellant's store might be convenient but added "It is impossible for us to place these package stores where it's going to be convenient for everybody. You see somebody has to drive to go into them; that's my opinion." He further admitted that, after the end of the summer season, when the present licensee closes his premises, people have to go elsewhere.

"'A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik et al. v. Milltown, Bulletin 283, Item 10.' Biscamp & Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949).

"The question of whether or not a place-to-place transfer is to be granted is within the sound discretion of the Board in the first instance and, on appeal, the burden is on appellant to show that the Board abused its discretion. Rule 6 of State Regulations No. 15. Bock Tavern Inc. v. Newark, Bulletin 952, Item 1; Segal et al. v. Clifton et al., Bulletin 732, Item 5; Christian v. Passaic, Bulletin 928, Item 2." Bramberger v. Clifton, Bulletin 971, Item 1.

"In determining whether a plenary retail distribution license should be issued, a local issuing authority may properly take into consideration the number of retail consumption licenses, which licenses, subject now to P. L. 1948, c. 98, carry the privilege of selling alcoholic beverages in original containers for off-premises consumption." Bank v. Bridgewater, Bulletin 842, Item 3, citing Boody v. Gloucester, Bulletin 300, Item 11, wherein it was held that appellant's contention, that the transfer should be granted because people prefer to buy bottled goods at a "package store", is without merit. To the same effect, see Colonna v. Montclair, Bulletin 39, Item 8.

The burden of establishing that the action of the respondent was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. I find that appellant has failed to sustain that burden. The respondent's action is, therefore, affirmed.

Accordingly, it is, on this 15th day of September, 1953,

ORDERED that the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

2. APPELLATE DECISIONS - COVINGTON v. LAWNSIDE.

SARAH J. COVINGTON, Administratrix)
of the Estate of Lillie B. Carter,
t/a LaBelle Inn,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH
OF LAWNSIDE,)

Respondent.)

Joseph William Cowgill, Esq., and C. Zachary Seltzer, Esq.,
Attorneys for Appellant.
Clifford R. Moore, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial, by a 4 to 2 vote, of the application of appellant-administratrix for 1953-1954 plenary retail consumption license renewal for premises on Gloucester Avenue, Borough of Lawnside.

In its Answer respondent alleges that the application for renewal was denied because (1) appellant is not a resident of the State of New Jersey; (2) there is no right to renewal upon expiration of the extension granted appellant; (3) the application must be considered as an application for a new license and respondent has exceeded its authorized quota of plenary retail consumption licenses; (4) the application falsely alleged that appellant is the owner of the premises.

There is no serious dispute about the facts of this case. The license for the premises in question for the 1952-53 licensing year was issued to Lillie B. Carter by respondent. On March 29, 1953, Lillie B. Carter died and Sarah J. Covington, her sister, was appointed administratrix of her estate. On April 1, 1953, respondent extended said license to Sarah J. Covington as Administratrix of the Estate of Lillie B. Carter. An application for renewal of the license for the 1953-54 licensing year, filed by Sarah J. Covington as Administratrix of the Estate of Lillie B. Carter for the premises in question, was denied by respondent. Hence this appeal.

Upon the filing of this appeal the license held by appellant for the 1952-53 licensing year was extended until the entry of a further order herein. R. S. 33:1-22.

As to ground (1) of the Answer: Appellant testified that she formerly lived in Philadelphia; that after Lillie B. Carter suffered a stroke in September of 1952 she went to her sister's home, on the licensed premises, to take care of her; that when her sister's condition did not improve she moved permanently from Philadelphia to the licensed premises in November of 1952 and remained there until the sister died in March of 1953; and that she has lived there ever since. One Doris Mae Scott testified that she took care of Lillie B. Carter from September 25th until December 29th, 1952, and that while appellant came to visit occasionally she did not reside in Lawnside during that period. On cross-examination of Miss Scott, however, came the following: Question: "She [Mrs. Covington] put you out, didn't she?" Answer: "Well, in a way I guess you could say that. Why, I couldn't say." I believe, from the evidence, that appellant was a resident of New Jersey when the renewal application was filed (R. S. 33:1-25, Paragraph 1). But, in any event, a license may be extended (R. S. 33:1-26, Paragraph 2) to an executor or administrator who is a non-resident (Re Best, Bulletin 137, Item 8); and, after extension, a

license may be renewed in the name of the executor or administrator (Re Deighan, Bulletin 355, Item 9). It is my finding that ground (1) is not meritorious.

As to ground (2): "It is well established that there is no inherent right to a renewal of a license. Zicherman v. Driscoll, 133 N J. L. 586 (Sup. Ct. 1946). However, it is equally well established that an application for renewal of a license may not be denied capriciously or merely to reduce the number of licenses. Such denial must be based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; McGuire v. Paulsboro, Bulletin 392, Item 10." (Kleinberg v. Harrison, Bulletin 984, Item 2).

As to ground (3): As hereinabove indicated the application was not for a new license but for a renewal and, as such, its granting is not prohibited by law (R. S. 33:1-96 and P. L. 1947, c. 94, §§ 1 and 4 -- R. S. 33:1-12.13 and R. S. 33:1-12.16); nor is issuance of this fifth plenary retail consumption license in Lawnside prohibited by the Borough's numerical limitation ordinance (Section 7 of an ordinance adopted April 1, 1952, as amended by an ordinance adopted May 22, 1946). I find ground (3) to be without merit.

As to ground (4): The pertinent questions and answers in the renewal application read as follows:

"8. Does applicant own premises to be licensed?" Answer: "No."

(a) If not, from whom are the premises leased or rented?" Answer: "Estate of Lillie B. Carter, deceased."

I find that ground (4) is without merit.

At the Hearing, testimony concerning alleged misconduct and failure to cooperate with a councilman was adduced. Neither the minutes of the meeting at which the application was denied nor the Answer herein sets forth either of these grounds as reason for denial of the application. At the Hearing the Answer was amended to include as a ground for denial "that the applicant for renewal of the license failed and refused to cooperate with officials of the Borough in the enforcement of applicable criminal laws." There is some evidence of alleged misconduct outside of the licensed premises, but admittedly neither the licensee nor anyone connected with the licensed establishment was notified that this alleged misconduct occurred. No disciplinary proceedings were ever instituted against appellant. The alleged failure to cooperate with a councilman (the ground added by amendment of the Answer) is based upon a disturbance which occurred on the licensed premises in May, 1953. The patron who caused the disturbance was ejected from the licensed premises by the bartender. When the patron continued to act in an unruly manner on the street, he was placed under arrest on a complaint filed by a member of the Council who happened to be in the vicinity at that time. The patron was subsequently fined as a disorderly person. Admittedly the councilman requested Mrs. Covington to make the complaint before he did so, but she had not seen the disturbance, which occurred mostly on the street, and she refused. I do not believe that under these circumstances it can reasonably be said that she was derelict or that she failed to cooperate with the councilman. Incidentally, this councilman introduced the motion for renewal and voted to grant the application therefor.

Prior to respondent's denial of the application identical petitions were filed, in objection to the renewal, by the Mount Zion Methodist Church (28 signatures) and by the Grace Temple Baptist Church (33 signatures). The petitions' statements, while unquestionably sincere, indicate objection to issuance of alcoholic beverage licenses in general and appear to evince no substantive cause for denial of the particular application.

After considering all the evidence I conclude that appellant has sustained the burden of proof in showing that the action of respondent was erroneous and, hence, the action of respondent will be reversed. See Freeland v. Roselle, Bulletin 352, Item 5; Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Rudberg v. Bridgeton, Bulletin 858, Item 4.

Accordingly, it is, on this 24th day of September, 1953,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to issue a renewal of appellant's license, and covering only the licensed building, for the current licensing year.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING OF ROOMS FOR IMMORAL PURPOSES) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against)
)
GEORGE FAVAREILLE)
T/a VILLA RIDGEFIELD) CONCLUSIONS
540 Studio Road) AND ORDER
Ridgefield, N. J.,)
)
Holder of Plenary Retail Consumption License C-15 for the 1952-53 and 1953-54 licensing years, issued by the Borough Council of the Borough of Ridgefield.)

Leo J. Berg, Esq. and Harold S. Okin, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On April 4, 7 and 15, 1953, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

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

Agent C's testimony may be summarized as follows: At approximately 8:00 p.m., on April 4, 1953, he and Agent B arrived at defendant's licensed premises to investigate a specific complaint that defendant was renting rooms to be used for immoral purposes. They entered the barroom on the first floor of the building, which was described as a very large converted dwelling. (The license application shows that the entire building constitutes the licensed premises.)

Upon entering the barroom the agents met the licensee and a bartender, later identified as Battista Tagliabue. While consuming drinks of beer served to them by Tagliabue, the agents talked with him and the licensee who was then at the cash register four or five feet away. Agent C told the bartender that he and his companion were on their way to pick up two "girl friends" to take out for a

"lay" and that one of the girls was married but her husband was away. The bartender replied, "Those are the best type to go out with. You don't get into trouble, and they are clean." When the agent asked what sort of place was being operated there, the bartender pointed out the licensee as the owner of the "hotel" and that he had a hotel license and rented rooms for five dollars a couple. The bartender then inquired where the agent came from, and the agent told him that he came from Jersey City and passes the licensed premises on his way to pick up his girl friend to take out for a "lay" and that he formerly went to another place but no longer does so because the police were "picking up fellows." He added "This looks like a nice place" and the bartender said there was a "lot of privacy" there. After the bartender had spoken to the licensee, the latter asked Agent C how he learned of his place. The agent told him that he had heard men in the shop where he worked who do "cheating" speak of the licensed premises as "the place for privacy." The licensee remarked "Yes, one thing we have is privacy." The agent also told the licensee that his girl was married to a man who was away and that she was "putting out" for him. The licensee repeated that the place was safe and that there was privacy in the rooms. When the agents were leaving the premises, at 9:30 p.m., Agent C told the licensee that he might be back the next day with a girl and that he would like to have a room. The licensee told the agent to see him, adding, "I will take care of it."

The same two agents returned to the licensed premises at approximately 7:00 p.m. on April 7, 1953, at which time a man called "Freddie" was tending bar. As they entered, the licensee asked them if they had "company" with them. Agent C replied in the negative but told the licensee that they expected the "girl friends" to meet them at the licensed premises; that they would then want to "rent a couple of rooms and take them up for a "lay" and that they would eat while they were waiting. While in the barroom they saw the licensee leave the barroom to admit some people through the front door. Agent C asked Freddie what the licensee was doing -- "letting people upstairs to the rooms?" -- to which Freddie replied "I guess so." Shortly thereafter the licensee answered the telephone in the kitchen and asked whether a Mr. A--- was present. Agent C told the licensee that he was Mr. A--- and proceeded to the kitchen, where he talked on the telephone to a female. When he concluded this telephone conversation he returned to the barroom where the licensee said to him "This girl called me by my first name. She knows me." The agent told the licensee that the girl had been to the licensed premises before and liked the licensee because, when she goes there with different men, the licensee keeps quiet. The licensee said "That is our policy. That is how we conduct ourselves -- don't tell anybody about our business." The agent told both the licensee and Tagliabue (who had relieved Freddie as bartender) that the girl had telephoned to cancel their date but that she might make it the next day. The licensee then said "Whenever you want the room come and see us; we will take care of you." As they were leaving, at 9:15 p.m., Agent C told the licensee that he might be back later or the next day with a girl to rent a room and asked if he needed baggage. The licensee told him that he did not need baggage but would have to register as "Mr. and Mrs."

The same two agents returned to the licensed premises at approximately 8:50 p.m. on April 15, 1953. Agent C had with him a five-dollar bill and five one-dollar bills, the serial numbers of which had been noted for purposes of identification. As the agents entered the barroom they found it crowded, as was the dining room. The licensee's wife and an unidentified man were tending bar and the licensee and Tagliabue were busy preparing and serving food. After the other patrons went into the dining room where a banquet was in progress, Agent C told the licensee that he and his companion had their two "girl friends" outside and that Tagliabue had just promised

to take care of them after they had spoken to him about renting rooms. The licensee said "all right" but admonished the agent not to stay in the room too long because the place was pretty well crowded and he might have a chance to rent the room again. Shortly thereafter the agents again spoke to Tagliabue, who directed them to follow him upstairs. Once upstairs, Tagliabue showed the agents Rooms 6 and 7 and requested and received five dollars for each room, payment being made by Agent C using the aforementioned marked money. Tagliabue then requested the agents to follow him downstairs to sign the register but agreed to let Agent C sign for both himself and Agent B while the latter remained in the room to wait for Agent C to bring the "girl friends" upstairs. Agent C went downstairs, signed the register "Mr. & Mrs. A---, N Y. C." and "Mr. & Mrs. B---, N. Y. C." and inserted room numbers 6 and 7. (The hotel register was introduced in evidence and was found to contain many entries "Mr. & Mrs." with a surname but no given name. Two entries on different dates and under different names state the place of residence as Suracuse, presumably Syracuse.) Tagliabue handed the money to the licensee's wife. (This money was later found by other agents and officers in a cigar box in the top of a cooler. The licensee's attorney admitted that the money was paid by the agents and retained by the licensee.) Agent C then telephoned for the other agents and representatives of the Bergen County Prosecutor's Office and, when they arrived and went to the second floor of the licensed premises, both Agents C and B were in their respective rooms. When the other agents and officers knocked on their doors the agents opened them. Agent C was asked what he was doing and he replied that he was waiting for his "girl friend to get laid." The licensee, who was present, admitted that he had rented the rooms but insisted that there were no women there.

On cross-examination Agent C testified that the licensed premises appeared to be conducted as a barroom, hotel and restaurant open to the general public and that he did not know whether or not the people admitted by the licensee on his second visit were married to each other. He further admitted that he did not see anyone on the licensed premises engage in any improper conduct. Defendant's attorney cross-examined him with respect to alleged discrepancies between his testimony at the criminal court hearing and in the instant proceedings. I am convinced that, while the exact testimony given at the two hearings may have varied somewhat, so far as appears, the discrepancies, if any, are inconsequential.

It was stipulated that the testimony of Agent B would be substantially the same as that of Agent C but defendant's attorney was permitted to cross-examine him fully. On such cross-examination Agent B corroborated the testimony of Agent C with respect to the conversations with the licensee and Tagliabue concerning the renting of rooms for the purpose of bringing in their "girl friends" to get "laid" and with respect to the actual renting of the rooms on April 15, 1953 and the other events which took place at the licensed premises. He admitted that he had not seen anyone engaging in improper conduct at the licensed premises.

Agent F testified that he and other agents and representatives of the Prosecutor's Office went to the licensed premises at approximately 9:50 p.m. on April 15, 1953; that they proceeded to the second floor with the licensee where they found Agents B and C, each alone in a bedroom, and that, when Agent C stated that he had rented the room to take his "girl" there for a "lay," the licensee admitted renting the rooms but said that there were no girls there. He also testified that the hotel register and the money were seized. On cross-examination he admitted that, so far as he knew, no other rooms were occupied that night and that he saw nothing of a disorderly, lewd or indecent nature in the licensed premises.

Defendant, although present at the hearing herein with his wife and Tagliabue, did not testify. Nor did anyone else testify in his

behalf. His attorney stated that, "in view of the fact that there are criminal proceedings pending in Bergen County, I have advised my clients against testifying. I assume their failure to testify will not create any presumption either way but, obviously, the criminal proceedings are uppermost in my mind, and I would appreciate your (the Hearer's) comments on that."

The Hearer expressed the view (in which I concur) that the attorney must assume whatever risk may be involved in advising his client not to testify. The Hearer referred to the rule in criminal cases with respect to a defendant's failure to testify in his own behalf. This rule, briefly stated, is that when facts have been testified to by witnesses for the prosecution, which, if true, establish defendant's guilt, which facts concern the actions of defendant, and if not true, may be disproved by him, his failure to offer himself as a witness may be considered and commented upon. Parker v. State, 61 N. J. L. 308 (Sup. Ct. 1898), affirmed 62 N. J. L. 801 (E. & A. 1899). Clearly, in a disciplinary proceeding such as this, the fact that defendant and his witnesses, present at the hearing, failed to take the witness stand to deny the accusations made against them by prosecution witnesses may be taken into consideration in determining the question of the licensee's guilt or innocence. Cf. Re Tulipano, Bulletin 978, Item 1.

In any event, I am satisfied from the testimony of the ABC agents that the conversations and arrangements and the renting of the rooms for illicit sexual intercourse actually took place on the dates in question. This, standing alone, is sufficient to establish the guilt of defendant-licensee.

Defendant has no prior adjudicated record. These proceedings originated prior to my "Increased Penalties" warning, issued June 30, 1953 (Bulletin 976, Item 2). Under the circumstances, I shall suspend defendant's license for a period of 180 days. In re Schneider, 12 N. J. Super. 449 (App. Div. 1951); In re Larsen, 17 N. J. Super. 564 (App. Div. 1952); Re Hartman, Bulletin 904, Item 2; Re Molenaro, Bulletin 910, Item 1; Re McCarty, Bulletin 919, Item 3; Re Bertown Realty Corp., Bulletin 934, Item 6; Re Mazza, Bulletin 972, Item 1; Re Belair Inn, Inc., Bulletin 981, Item 1.

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

Accordingly, it is, on this 22nd day of September, 1953,

ORDERED that Plenary Retail Consumption License C-15, issued for the 1953-54 licensing year by the Borough Council of the Borough of Ridgefield to George Favareille, t/a Villa Ridgefield, 540 Studio Road, Ridgefield, be and the same is hereby suspended for a period of one hundred eighty (180) days, commencing at 3:00 a.m. September 30, 1953, and terminating at 3:00 a.m. March 29, 1954.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE - SALE TO INTOXICATED PERSON - SALE DURING PROHIBITED HOURS - AGGRAVATED CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

ALEXANDER TOBIAS
T/a EAST FOURTH STREET BAR
147 East Fourth Street
Lakewood, N. J.,

Holder of Plenary Retail Consumption License C-12 for the 1952-53 and 1953-54 licensing years, issued by the Township Committee of the Township of Lakewood; and transferred during the pendency of these proceedings to

ALBERT WETTERLING
T/a EAST FOURTH STREET BAR

for the same premises.

CONCLUSIONS AND ORDER

Alexander Tobias, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant, Alexander Tobias, has pleaded non vult to the following charges:

"1. On Friday, June 5, 1953, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"2. On Friday, June 5, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"3. On Friday, June 5, 1953 at about 11:15 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12 ounce cans of beer, at retail in their original containers 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."

The file herein discloses that two ABC agents entered defendant's tavern at about 10:00 p.m., Friday, June 5, 1953 and seated themselves at the center of the bar. Of the ten patrons already at the bar, the attention of the agents was immediately drawn to a group consisting of a woman and five men seated at the rear. This group was engaging in a loud and filthy discussion, supposedly humorous, about various types of sexual relations with the woman, who showed signs of intoxication. It is needless here to repeat the sordid discussion. At one time one of the men in the group danced about the floor of the barroom shouting in vulgar terms that they were going to engage in sexual relations that night.

The bartender, making no effort to stop the filthy discussion, laughed at the various remarks and the above mentioned dance and

continued to serve drinks to the woman. The agents observed that on occasion she almost toppled from her bar stool, that her speech bordered on the incoherent and that her laughter was hysterical in character. At one time she went to the ladies' room and made the trip there and back to the bar only with difficulty. Notwithstanding her increasingly evident condition of intoxication, the agents saw the bartender serve her additional drinks until, about half an hour after the agents had entered, the woman slumped forward unconscious. One of the patrons remarked, "That last shot did it." The bartender expostulated, "Get her the hell out of here", and a man in the group lifted her off the stool and literally dragged her out of the premises with the bartender joining the general laughter and remarking, "C------, was she loaded."

About half an hour later, the man who had dragged the woman out re-entered the barroom with a pair of women's panties in his hand. He twirled this undergarment over his head and then threw it on the floor of the adjoining service room. Again, all present, including the bartender, laughed "good and loud". The man then stated that the woman was in his car naked, and the bartender laughingly remarked, "Keep her the hell out of here, then." The man also indicated that he may have had sexual intercourse with the woman in his car, and the patrons resumed their filthy discussion about sexual relations.

Shortly thereafter, at about 11:05 p.m., the agents observed a man purchase six cans of beer from the bartender for off-premises consumption. The bartender placed the cans of beer in a bag and accepted $1.00 payment therefor. The man put the bag containing the cans of beer under his coat and left the licensed premises. At 11:15 p.m., one of the agents purchased from the bartender six cans of beer which were placed in a bag by the bartender and given to the agent. Payment of $1.00 was made for the beer. The bartender said to the agent, "You better put it down below. I don't want to get in trouble." The agents then left the defendant's licensed premises. The two agents returned shortly and thereafter identified themselves.

From the above recital of facts, it amply appears that the violations involved in charges 1 and 2 were of a singularly ugly character. They present the sordid spectacle of a woman patron, in evident stages of progressive drunkenness, openly being made the butt of loud and filthy talk about sexual relations, with the bartender standing idly by and serving her drinks until she totally lapsed into a helpless drunken stupor and then callously leaving her at the mercy of the patron who dragged her out.

Even as an isolated incident, such an offense is plainly an aggravated one and such a spectacle warrants a stiff penalty. On the licensee's behalf, it may be pointed out that he was not present at the time. However, he is necessarily answerable in disciplinary proceedings for the way in which his licensed business is operated. In accepting the privileges and in exercising and enjoying the benefits of his license, he cannot escape the accompanying burdens and responsibilities. See Re Tulipano, Bulletin 978, Item 1, and cases there cited; Rule 31 of State Regulations No. 20.

Defendant has a prior adjudicated record. Effective January 4, 1953, his license for the Lakewood premises in question was suspended by the local issuing authority for 15 days for permitting a brawl on the licensed premises. Moreover, effective June 5, 1950, his license for a tavern being operated by him in Dover Township was suspended by the local issuing authority for sale of alcoholic beverages to a minor, and was thereafter again suspended by the local issuing authority for 15 days, effective December 1, 1952, for the same type of violation. His record at both places is pertinent in determining proper penalty in the present case. Re Csintala, Bulletin 964, Item 4.

Considering all factors, including the entry of the non vult plea, I shall suspend the license of the Lakewood tavern for ninety days.

These present proceedings were instituted at the end of the 1952-53 term. Thereafter, during pendency of this case, the license in question was renewed for the current 1953-54 term and was later transferred, effective August 14, 1953, to Albert Wetterling, t/a East Fourth Street Bar, for the same premises. The renewal and transfer were fully subject to the outcome of the instant proceedings. See Rule 3 of State Regulations No. 16.

Accordingly, it is, on this 14th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Lakewood to Alexander Tobias, t/a East Fourth Street Bar, 147 East Fourth Street, Lakewood, and transferred during the pendency of these proceedings to Albert Wetterling, t/a East Fourth Street Bar, for the same premises, be and the same is hereby suspended for a period of ninety (90) days, commencing at 2:00 a.m. September 18, 1953, and terminating at 2:00 a.m. December 17, 1953.

DOMINIC A. CAVICCHIA
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL IN DWELLING - TENANTS WHO AIDED AND ABETTED ILLICIT STILL OPERATION DENIED RETURN OF MOTOR VEHICLES SEIZED ON PREMISES - STILL, MOTOR VEHICLES AND OTHER ARTICLES ORDERED FORFEITED - CLAIMS OF INNOCENT LIENORS RECOGNIZED - BUILDING ORDERED PADLOCKED WITH LEAVE TO OWNER TO APPLY FOR RELIEF UPON OBTAINING POSSESSION OF PREMISES.

In the Matter of the Seizure on April 16, 1953, of a still and two motor vehicles at premises occupied by Samuel A. Guidetti located at the intersection of Port-au-Peck and Myrtle Avenues, in the Borough of Oceanport, County of Monmouth and State of New Jersey.	Case No. 8311 ON HEARING CONCLUSIONS AND ORDER

Richard E. Seley, Esq., Attorney for Sara H. Levine.
Thomas J. Baldino, Esq., Attorney for Samuel A. Guidetti, Sr., Samuel Guidetti, Jr., and Frances Guidetti.
Philip Barbash, Esq., Attorney for Lincoln National Bank.
Green and Yanoff, Esqs., by Leo Yanoff, Esq., Attorneys for Universal C. I. T. Credit Corporation.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On April 16, 1953, ABC agents seized a large illicit still in operation, including a considerable quantity of mash and about twenty-five gallons of alcohol, in a dwelling occupied in part by Samuel A. Guidetti, Sr., Samuel Guidetti, Jr., and Frances Guidetti, located at the intersection of Port-au-Peck and Myrtle Avenues, Oceanport, New Jersey. The seized articles included a Mercury sedan registered in the name of Samuel A. Guidetti, Sr., and a Frazer sedan registered in the names of Samuel Guidetti, Jr., and Frances Guidetti.

When the matter came on for hearing pursuant to R. S. 33:2-4 to determine whether the seized property should be forfeited and the buildings on the premises padlocked, counsel entered an appearance

for Samuel A. Guidetti, Sr., who sought return of the Mercury sedan; for Samuel Guidetti, Jr., and Frances Guidetti, who sought return of the Frazer sedan; for Lincoln National Bank, which sought recognition of its alleged lien on the Mercury sedan; for Universal C.I.T. Credit Corporation, which sought recognition of its alleged lien on the Frazer sedan; and for Sara H. Levine, who sought to avoid padlocking. Forfeiture of the balance of the seized property was not opposed by any person.

The aforementioned claimants did not deny that in the thirteen-room dwelling there was a still not registered with the Director of the Division of Alcoholic Beverage Control as required by R. S. 33:2-1; nor that the two motor vehicles were on the premises when seized.

The illicit still, two motor vehicles, and all other personal property seized on the premises constitute unlawful property and are subject to forfeiture, and the dwelling is subject to padlocking. R. S. 33:2-2, R.S. 33:2-5. Persons who acted in good faith, and unknowingly violated the law, may, in the Director's discretion, be relieved of those penalties. R. S. 33:2-7.

The component parts of the still utilized the entire rear of the dwelling, from the basement to the upper floors, separated by partitions or doors from six rooms occupied by the Guidettis. One Carmen Adelitto, who has a criminal record for violating the liquor laws, had rented the entire building from Sara Levine; in turn he solicited Samuel A. Guidetti, Sr., to rent, and on March 1, 1953, actually rented six of the rooms to him and his son, Samuel Guidetti, Jr. Adelitto used a seventh room, a bedroom, and had his meals with the Guidetti family.

According to ABC agents, they detected the odor of alcohol when they entered the Guidettis' living quarters. The magnitude of the still with the attendant manifold activities involved in its operation and the resulting odor of alcohol throughout the dwelling renders it inconceivable that the Guidettis, if not participating in its operation, were not at least fully aware of the presence of the still. Indeed the father in his signed statement claims that he detected the odor of alcohol in his home daily about a month after he lived in the house and discussed the matter with his wife. Likewise, the son in his signed statement claims that he detected the odor of alcohol about the same time as his father and discussed the matter with his wife, Frances Guidetti. The son further states that he now feels that he and his father were being used as a front to conceal the illicit activity.

At the seizure hearing both father and son stressed that they identified the odor as that of wine and that Adelitto told the father that it came from old wine barrels in the cellar. I am not impressed with this explanation. It is obvious that the Guidettis, if previously unaware of the still, certainly, after they detected the odor of alcohol, lent themselves to Adelitto's plan to have them serve as ostensible, normal tenants of the dwelling and thus attempt to divert attention from the illicit still activities being carried on there.

The Mercury sedan will not be returned to Samuel A. Guidetti, Sr., nor will the Frazer sedan be returned to Samuel Guidetti, Jr., and Frances Guidetti. They have only themselves to blame if they became enmeshed in a situation from which they could not escape. Like persons who operate illicit stills, persons who aid and abet such unlawful activities must take the consequences that thereby they can not be characterized as having acted in good faith and unknowingly incurred a forfeiture penalty. See Seizure Case No. 7924.

Lincoln National Bank claims a lien on the Mercury sedan. It has presented documents which establish that the vehicle was purchased by Samuel A. Guidetti, Sr., on August 22, 1952, on conditional sales contract now held by the bank, for the sum of $1,495.00 on which there is a present balance due of $897.07 after the allowance for rebate for prepayment; that, before it extended credit to Guidetti, it received information concerning his background and employment by an industrial concern and that it investigated this information, found it to be correct and did not ascertain anything detrimental concerning his background or character. I am satisfied that the bank acted in good faith, as a reasonably prudent person, and hence will recognize its claim. Attorneys' collection fees provided for by the contract are not allowed in these proceedings. Seizure Case No. 8318, Bulletin 982, Item 3.

Universal C. I. T. Credit Corporation claims a lien upon the Frazer sedan. It has presented documents which establish that the vehicle was purchased by Samuel Guidetti, Jr., and Frances Guidetti on September 24, 1952, on conditional sales contract now held by the Credit Corporation, for the sum of $1,493.00 on which there is a present balance due of $746.52; that, before it extended credit to them, it investigated Samuel Guidetti, Jr.'s character and background and ascertained that he was employed by an industrial concern; that he appeared to be financially responsible, and that there appeared to be nothing detrimental in his background. I am satisfied that the finance company acted in good faith, as a reasonably prudent person, and hence will recognize its claim.

I am advised that it is not desirable to retain either motor vehicle for the use of the State conditioned upon the payment of the respective liens and that the value of each vehicle does not exceed the amount of the lien thereon and the costs of the seizure and storage of each vehicle. The Mercury sedan will, therefore, be returned to Lincoln National Bank and the Frazer sedan will be returned to Universal C. I. T. Credit Corporation, upon payment by each such lienor of the costs of seizure and storage of the vehicle upon which it holds a lien.

Morris H. Levine, husband of Sara H. Levine, the owner of the property, requests on her behalf that padlocking of the premises be waived. It appears that the property was leased to the U. S. Government until about August 1952; that the dwelling was used as quarters for the families of servicemen and that the rooms were converted into five apartments. The premises remained vacant from August 1952 until February 1953. At that time another tenant of the Levines introduced and recommended Adelitto as a prospective tenant for the premises in question. Levine was informed by Adelitto that he resided in Eatontown and was a trucker. Sara Levine then entered into a written lease with Adelitto for the premises at the rental of $100.00 per month for a three-year period from February 15, 1953, with a deposit of $400.00 as security. The Levines understood that Adelitto intended to rent the apartments to other persons. Levine was on the premises thereafter on only one or two occasions and did not enter the dwelling. He testified that when he was there he did not observe anything which would lead him to suspect that there was a still there.

I am satisfied that the owner of the premises acted in good faith. However, to avoid padlocking it must be established that such penalty will inflict financial or other hardship on the applicant. In the present instance, on May 11th, the date of the hearing, the rent had been paid to April 15th; the landlord had four months' security and Adelitto had expressed an intention to repair the building and remain as a tenant. Under such circumstances it does not appear that padlocking of the dwelling would inflict any loss, financial or otherwise, upon Sara Levine. If and when she regains outright possession of the premises, she may apply for lifting of any padlocking imposed.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 29th day of September, 1953, Lincoln National Bank pays the costs of the seizure and storage of the Mercury sedan more fully described in Schedule "A" attached hereto, such motor vehicle will be returned to the bank; and it is further

DETERMINED and ORDERED that, if on or before the 29th day of September, 1953, Universal C. I. T. Credit Corporation pays the costs of the seizure and storage of the Frazer sedan described in the aforesaid Schedule "A", such motor vehicle will be returned to that finance company; and it is further

DETERMINED and ORDERED that the balance of the seized property described in the aforesaid Schedule "A" constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5 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; and it is further

DETERMINED and ORDERED that the dwelling on the premises occupied by Samuel A. Guidetti, Sr., and Samuel Guidetti, Jr., located at the intersection of Port-au-Peck and Myrtle Avenues, in the Borough of Oceanport, County of Monmouth and State of New Jersey, being the building in which the still was seized, shall not be used or occupied for any purposes whatsoever for a period of six months, commencing the 20th day of October, 1953.

DOMINIC A. CAVICCHIA
Dated: September 17, 1953. Director.

SCHEDULE "A"

1 - cooler and coil
1 - dephlegmator
2 - copper columns
1 - cooler
1 - steam boiler
6 - wooden vats with about 5500 gallons of mash
2 - 100 lb. bags of sugar
1 - oil burner
2 - electric pumps
1 - tri box
5 - 5-gallon cans of alcohol
2 - tanks
569 - 5-gallon empty cans
Miscellaneous pipes and fittings
1 - 1949 Mercury sedan, Serial No. 9CM50857, 1953 N. J Registration MH23Y
1 - 1949 Frazer sedan, Serial No. F495015259, 1953 N. J. Registration MK78M

6. STATE LICENSES - NEW APPLICATIONS FILED.

Kingsway Transports Limited
Pier 73, North River, New York City, New York.
Application filed September 28, 1953 for Transportation License.

New York Terminal Warehouse Co.
7814-20 Tonnelle Ave., North Bergen, New Jersey
Application filed October 2, 1953 for Public Warehouse License.

DOMINIC A. CAVICCHIA
Director.

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATE OF SUSPENSION POSTPONED.

In the Matter of Disciplinary Proceedings against

ALEXANDER TOBIAS
T/a EAST FOURTH STREET BAR
147 East Fourth Street
Lakewood, N. J.,

Holder of Plenary Retail Consumption License C-12 for the 1952-53 and 1953-54 licensing years, issued by the Township Committee of the Township of Lakewood, and transferred during the pendency of these proceedings to

ALBERT WETTERLING
T/a EAST FOURTH STREET BAR,

for the same premises.

ON PETITION
O R D E R

Sidney Simandl, Esq., Attorney for Petitioner, Albert Wetterling.

BY THE DIRECTOR:

On September 14, 1953, the license herein was suspended for a period of ninety (90) days, commencing at 2:00 a.m. September 18, 1953, and terminating at 2:00 a.m. December 17, 1953; and

It appearing from the petition filed herein that good cause appears for the temporary postponement of the effective date of said suspension,

It is, on this 17th day of September, 1953,

ORDERED that the suspension of ninety days imposed in this proceeding, instead of commencing at 2:00 a.m. September 18, 1953, shall, in lieu thereof, commence at 2:00 a.m. September 21, 1953, and terminate at 2:00 a.m. December 20, 1953.

Dominic A. Cavicchia
Director.