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

BULLETIN 1378

March 1, 1961

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ITEM

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

BULLETIN 1378 March 1, 1961

1. COURT DECISIONS - TOZZI'S TAVERN, INC., v. COMMON COUNCIL OF THE CITY OF PLAINFIELD, MADISON LIQUORS, INC., AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-860-59.

TOZZI'S TAVERN, INC., A New Jersey Corporation and FRANK R. TOZZI, et al.,

Appellants,

v.

COMMON COUNCIL OF THE CITY OF PLAINFIELD, MADISON LIQUORS, INC., etc., et al.,

Respondents.

Argued January 16, 1961 -- Decided January 27, 1961

Before Judges Price, Gaulkin and Sullivan.

Mr. Charles S. Joelson argued the cause for the appellants (Messrs. Joelson & Freundlich, attorneys).

Mr. H. Kermit Green argued the cause for the respondent, Madison Liquors, Inc. (Messrs. Green & Yanoff, attorneys).

Mr. Edward Sachar argued the cause for the respondent, Common Council of the City of Plainfield (Messrs. Sachar, Sachar & Bernstein, attorneys).

The opinion of the court was delivered by GAULKIN, J. A. D.

Appellants (hereafter collectively called Tozzi) appeal from a decision of the Division of Alcoholic Beverage Control (ABC) which upheld the action of the Common Council of Plainfield granting the application of Madison Liquors, Inc. to transfer its package store liquor license to a new location.

The essential factual basis for the appeal is that on December 7, 1959 an identical application by madison was objected to by Tozzi and was denied after a hearing, by an 8 to 2 vote of the 11 member council, one member abstaining. On January 1, 1960 there was inducted "the new Common Council of Plainfield", consisting of 5 newly elected members and 6 members of the previous council. On January 18, 1960 the new council granted the second application, by a vote of 6 to 4, the same one member abstaining. Among those voting to grant was Councilman, Shallow, who had voted to deny the first application. At the time he voted "aye", Mr. Shallow said:

"Since the time I voted against this transfer, I have done considerable research with the limited time at my disposal. I think my time was limited. I have here--and this is for publication information; this is nothing I have been able to pick up on my own--reversals on the part of the Alcoholic Beverage Commission in cases similar to the one that we have; and for reasons given which were reasonable, it appeared to me that my position was rather untenable before.

In addition to that, and this can be public information if required, I have received within 10 per cent as many letters as I get on Board of Education matters. I have received telephone calls, as Mr. Starr has, until it was impossible to come home. One was from quarter past 11:00 until quarter to 12:00, a very persuasive argument on the part of a man who has interests. I have received telephone calls from lawyers in town who want to persuade me on this matter but did not come down here to the public hearing. If they had, their positions and the pressures they were putting on me might have persuaded me. Those who are here know who they are.

I think I have given it about as much thought as anything so far that I have deliberated on in the Council, and I feel also that there were new evidences offered tonight that were not offered prior to this time. That is the qualification of my vote. Thank you."

Tozzi admits that the denial of the transfer in December did not, standing alone, bar its approval in January. Lubliner v. Board of Alcoholic Beverage Control of Paterson, 59 N. J. Super. 419 (App. Div. 1960), aff'd, 33 N. J. 428 (1960). The arguments advanced by Tozzi, before the ABC and before us, for the reversal of the transfer may be summarized as follows--the law is, or should be, that there is no "right in a public official to change a prior vote...without good cause for such change being shown"; that Shallow failed to show good cause; and even if the burden is not upon the public official to show good cause for a change of vote, the reasons given by Shallow for his change of vote showed that he had been influenced to do so by "improper...outside pressure" which "infected" not only his vote but that of the entire council.

The statute entrusts the licensing authority to the discretion of the common council, an elective body. As we have seen, the "new" council was at liberty to vote differently than the previous one, and the legislature has not required the members of the governing body to state their reasons for their votes. Fanwood v. Rocco, 59 N. J. Super. 306, 320 (App. Div. 1960), aff'd, 33 N.J. 404 (1960); Lubliner, supra, 59 N. J. Super. at 429-430. We know of no authority to support the proposition that a member of the governing body who changes his vote must show good cause for doing so.

The burden of proving bad faith, improper motives, illegal interest or other facts which affect the validity of a councilman's vote, is upon the challenger. The mere fact that he conversed with people whose identity, interest and message are not disclosed does not spell out "improper influence", as it would in the case of a judge. Cf. Fanwood v. Rocco, supra, 33 N. J. at pp. 409-410.

The major part of the testimony presented by Tozzi in support of its appeal before the ABC was directed to the issue that

Shallow's vote was tainted, and, through it, the entire council's. The ABC hearer's report, adopted by the director, said:

> "There was an exhaustive direct and cross examination of the member of the Council who changed his vote, designed to establish that he did so arbitrarily and without good reason. Such evidence discloses that he was equally not clear on both occasions concerning the reason which impelled him to vote as he did, but I see no need to make any specific detailed analysis thereof or make definitive findings on that score, since for the reasons above stated the resolution to grant the transfer was legally adopted by a majority of the quorum of the Council who were present, even disregarding such member's vote."

In short, the ABC held that even if Shallow's vote was tainted, (which the ABC did not find), it did not affect the votes of the other members of the council, and consequently the transfer had been approved by a vote of 5 to 4. Even though the successive applications were but a month apart, the ABC held that "[e]ach application is a separate one and must be decided in the sound discretion of the local issuing authority as constituted at the time the application is considered." The ABC then said:

> "This leads to a consideration of the reasons which impelled the respective Councils in the instant case to come to different conclusions. The primary factor on this appeal, irrespective of such conflict, is whether the present Council, in the exercise of its discretion, could reasonably conclude that a transfer of the license would be in the public interest despite the contrary opinion of the predecessor Council."

After reviewing the facts, the ABC concluded:

> "Considerations of undue concentration of licensed liquor premises in the area, possible traffic hazard, and proximity to churches, when acting upon an application to transfer a license, are matters entrusted to the sound discretion of the issuing authority. Miles et als. v. Paterson and Stefonich, Bulletin 1306, Item 2; Geltzeiler v. Newark, Bulletin 1171, Item 1.
>
> The burden of proof to establish that the action of respondent Council was erroneous rests with appellants. Rule 6 of State Regulation No. 15. The evidence presented does not indicate any improper motivation on the part of the members of the Council and their grant of the transfer appears to be a reasonable exercise of their discretion. In my opinion, appellants have failed to sustain the burden of proof resting upon them...."

Our own study of the evidence, within the scope of our review (Fanwood v. Rocco, supra, 59 N. J. Super. 306), reveals to us no basis upon which we may overturn the judgment of the ABC. We find that the evidence fell short of sustaining the appellants' burden of proving that Shallow was "improperly" influenced; and we agree with the ABC that the proof did not justify a conclusion that he "infected" the other members of the council in any way. Whether

the council's approval of the transfer was proper under all of the circumstances, and the effect to be given its denial of the identical application a month earlier, are questions upon which we give great weight to the judgment of the ABC. Fanwood, supra; Lubliner, supra.

The judgment is affirmed.

2. APPELLATE DECISIONS - BAYSHORE TAVERN OWNERS ASSOCIATION AND ZURICH v. SEA BRIGHT AND 201 BELL AVENUE CORP.

BAYSHORE TAVERN OWNERS ASSOCIATION, AND ANDREW ZURICH,

Appellants,

v.

MAYOR AND COUNCIL OF THE BOROUGH OF SEA BRIGHT, AND 201 BELL AVENUE CORPORATION,

Respondents.

ON APPEAL
CONCLUSIONS
AND ORDER

James F. McGovern, Jr., Esq., Attorney for Appellants.
A. Henry Giordano, Esq., Attorney for Respondent Borough of Sea Bright.
Robert K. Hartmann, Esq., Attorney for Respondent 201 Bell Avenue Corporation.
Grover C. Richman, Jr., Esq., Of Counsel.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Mayor and Council whereby it granted a plenary retail consumption license to respondent 201 Bell Avenue Corporation for the 1959-1960 licensing period for premises 344 Ocean Avenue, Sea Bright.

"Four of the six members of the respondent Council attended the meeting, three of whom voted for approval of the application and one to disapprove.

"The petition of appeal contends that the action of respondent Council was erroneous for the following reasons:

(a) A zoning variance was granted on the pretext that this was a private Club and this represents an attempt to enlarge the variance heretofore granted.

(b) An examination of the premises in question and the application herein clearly indicates that this application seeks the granting of a new license as an exception to the Limitation Law in favor of Hotels containing more than 50 Sleeping Rooms; that the applicant herein endeavors to evade the pertinent statute and ordinance by the attempted conversion of certain individual sleeping rooms into two rooms by the addition of plastic sliding room dividers so that actually 42 existing rooms are sought to be converted into 50 sleeping rooms by the interposition of the plastic room dividers, so that there is no other exit or entrance to the

room so created. There is no door or other means of entrance or exit to these so-called rooms.

(c) There is no enlarged facility for bewerage purposes or modification of cesspool requirements in the premises.

"Respondent 201 Bell Avenue Corporation (hereinafter referred to as the Corporation) questioned the status of appellants to prosecute this appeal on the ground that no proof existed that the appellants were aggrieved by the granting of the license. This contention is without merit. Clearly, Andrew Zurich, a liquor licensee, is an aggrieved person and a proper party appellant, as is also the trade association. Hudson-Bergen &c. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

"It appears from the evidence presented herein that premises known as 344 Ocean Avenue, Sea Bright, are located in a residential zone. On March 12, 1956 the local Board of Adjustment, after hearing the application for variance of the zoning ordinance to erect buildings to be used as a club, advised the governing body that because the vote of the members of the Board resulted in a 'split decision', no recommendation could be made with reference to the matter. On March 13, 1956 the Mayor and Council heard the matter and adopted a resolution whereby it approved the variance of the zoning ordinance to permit the construction and operation of the type of premises sought by the applicant.

"John Chimento, called as a witness by respondent Corporation, testified that he was president of the corporation which formerly owned the premises in question and which had applied for the variance aforementioned; that the club was not to be used as a private club, but for the accommodation of transients; that beginning on the first day that the place opened, everyone who 'measured up to our standard' was accepted; that the place was not described in the application for variance as a 'motel' because such description would have created a stigma; that previous to the completion of the buildings and before the place opened for business, a sign 'Shore Hill Garden Motel' had been erected outside of the premises; that when questioned as to the reason for the change in attitude, he stated: 'When you are asking for an application is one thing, when you are in operation is another.'

"In the instant appeal, it is not the prerogative of the Director to pass upon the bona fides of the proceeding for a variance of the zoning ordinance held before the Board of Adjustment and the governing body, respectively. Therefore, in this appeal, it shall be assumed that the former owner operated the premises in question in compliance with the variance of the zoning ordinance theretofore granted. However, it will be necessary to decide herein whether the issuance of a liquor license and the operation of a licensed premises constitutes an extension of said non-conforming use.

"There is no dispute that the municipal governing body in 1956 had granted a variance to the former owner of the premises in question to operate a motel or club although located in a residential zone. Thus, when the respondent Corporation purchased the property it obtained the privileges to operate the premises in the same manner as its predecessor. However, respondent Corporation contends that by reason of the non-conforming use granted to its predecessor to operate a club or motel the fact that the premises are in a residential zone according to the zoning ordinance with reference thereto, has no application whatsoever. Such contention is erroneous. Although respondent Corporation may continue to be used as a motel by reason

of the variance granted for that purpose, notwithstanding the existing zoning ordinance, it is equally clear that such non-conforming use may not be extended. DeVito v. Pearsall, 115 N.J.L. 323 (Sup. Ct. 1935); Kensington Realty etc., Corp. v. Jersey City, 118 N.J.L. 114 (Sup. Ct. 1937), affd. 119 N.J.L. 338 (E. & A. 1938); Dubin v. Wich, 120 N.J.L. 469 (Sup. Ct. 1938); Vogel v. Bridgewater, 121 N.J.L. 236 (Sup. Ct. 1938); Simone v. Peters, 135 N.J.L. 495 (Sup. Ct. 1947); Scerbo v. Jersey City, 4 N.J. Super. 409 (App. Div. 1949); Struyk v. Samuel Braen's Sons, 17 N.J. Super. 1 (App. Div. 1951), affd. 9 N.J. 294 (Sup. Ct. 1952); Gerkin v. Ridgewood, 17 N.J. Super. 472 (App. Div. 1952).

"The sale of liquor would constitute a new use in the zoned area and would not be permissible under the non-conforming use which existed at the time when the liquor license was granted to respondent Corporation. Talbot v. Keppler and Mendham, Bulletin 117, Item 1 and cases cited therein; Marrinaccio v. Ocean, Bulletin 264, Item 11; Nasso v. Bridgewater, Bulletin 744, Item 10; Cornelius et al. v. Elizabeth et al., Bulletin 997, Item 4.

"Inasmuch as the action of the respondent issuing authority must be reversed because the grant of the liquor license to the Corporation constituted an extension of a non-conforming use, it will be unnecessary at this time to determine any other reasons raised in the petition of appeal filed by the appellants herein. Under the circumstances, I recommend that the action of the respondent issuing authority in granting the liquor license in question be reversed."

Pursuant to Rule 14, State Regulation No. 15, exceptions to the Hearer's Report were filed, and oral argument was heard before me on October 10, 1960.

On November 1, 1960 (with the prior consent of all of the attorneys), inspection of the premises was made by an agent of this Division; and by that date two new sleeping rooms had been added, and beds had been placed in five rooms theretofore called (at the hearing) "cabana" rooms.

I am unable to agree with the Hearer's findings and conclusions.

The cases cited in the Hearer's Report have to do with pre-existing, non-conforming use but here no such use, or extension thereof, is involved. Instead, questions have been raised with respect to procedures followed in granting a variance from the zoning ordinance, subsequent to which granting the new plenary retail consumption license was granted. I consider it beyond my jurisdiction to pass upon those questions. As stated by the late Commissioner Burnett in M. O'Neil Supply Co. et al. v. Township of Ocean et al., Bulletin 278, Item 1:

> "...As regards substantive or procedural questions before the Board of Adjustment or the Township Committee, that is none of my business...The review and determination of these and similar questions is confided exclusively to the...Court."

The State Limitation Law does not define the words "sleeping rooms". I find that each of the fully equipped and sizeable bedrooms established by erection of room-dividers is a sleeping room within the meaning and intendment of R.S. 33:1-12.20. I find that each of the formerly-styled "cabana" rooms, though somewhat minimal in furnishing and accommodation, is sufficiently equipped to constitute a sleeping room within the meaning and intendment of R.S. 33:1-12.20. I find that the premises in question contain at least fifty sleeping rooms under

the cited section. That section does not define the word "hotel"; and while the question and issue were not raised in this appeal I may here state, in passing and without impropriety, that I interpret R.S. 33:1-12.20 as contemplating and including an exception in favor of "motels" as well as "hotels". (Cf. Schermer v. Fremar Corporation, 36 N.J. Super. 46 (1955).)

I find no legal merit in the appellants' reason (c).

Accordingly, it is, on this 24th day of January, 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS PERMITTED ON PREMISES) - SALES TO INTOXICATED PERSONS - PERMITTING OBSCENE LANGUAGE ON LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 155 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
EDNA HAFNER t/a EDNA'S RENDEZVOUS 45 West Broadway Paterson 1, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-250, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	)	

James F. Dougherty, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On July 2, 19, 20, 29 and 30, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered thereon persons who appeared to be homosexuals, viz., females impersonating males, and you allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On the above mentioned dates, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually and apparently intoxicated and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"3. On July 2, 29 and 30, 1960, you allowed, permitted and suffered in and upon your licensed premises foul, filthy and obscene language; in violation of Rule 5 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on the dates set forth in the charges herein. On the first visit, early Saturday morning, July 2, 1960, the agents observed that three of the six females in the licensed premises appeared to be lesbians in that they wore male attire, had no make-up, had short cropped hair and spoke and acted in a masculine manner. The agents observed a female called Betty with disheveled hair, red and glassy eyes, whose speech was slurred and incoherent, enter the premises and while endeavoring to walk to the bar, staggered and had difficulty maintaining her balance. Despite her apparent condition, the bartender called Sal (Salvatore Sampogna) served her several mixed drinks which contained whiskey. Betty and Sal used foul and filthy language during an argument which resulted from her contention that he failed to put whiskey in her drinks. Sal turned to the agents and said, "She's so loaded she don't know she's got a shot in her drink and I gave her a double."

Agents again visited defendant's premises late Tuesday evening, July 19th, and remained there until 12:45 a.m. the following morning. The agents observed five apparent lesbians on the premises who were dressed in a similar manner to those seen by the agents in defendant's premises on their previous visit. While the agents were there an apparent lesbian entered, followed by a female wearing feminine attire, and, after an exchange of words between them, the one conventionally attired left the premises. The apparent lesbian said to Sal, "I had a date with her tonight and stood her up. I think she's a little burned", to which Sal remarked, "Ain't love grand." The agents observed a woman whose appearance indicated that she was intoxicated take a seat at the bar and Sal served her a glass of beer. When she left the establishment, one of the agents commented on the woman's condition and Sal stated, "I haven't seen her sober yet, she's always loaded."

On the agents' third visit late Friday evening, July 29, 1960, Sal and defendant were tending bar. Nine apparent lesbians, who were dressed and deported themselves in the same manner as those described by the agents on their prior visits, were in the premises. Four of these patrons were referred to as "Betty", "Pat", "Sis" and "Rusty". During the evening, Sal frequently used foul and filthy language. A male, who was observed staggering when entering the premises, came to the bar where Sal served him two glasses of beer. The male then went to the men's room where one of the agents found him asleep on the floor. The agent told Sal about the man's condition and Sal said, "Let him sleep. He gets that way from beer only, doesn't touch whiskey. Every so often he goes on these binges, but a hell of a nice guy when he's sober." Sometime thereafter, Sal instructed a patron to notify the man in question that it was closing time and, when the patron awoke him, the latter staggered to a table immediately next to the men's room. Sal walked over and after inquiring how he felt, served him a glass of beer.

After the man consumed a portion of the beer, one of the agents seized the glass and the agents identified themselves to Sal and to the defendant. When questioned Sal said that the man had been sleeping for the past hour and that he (Sal) questioned him before serving the glass of beer. When asked about the lesbians in the premises, Sal said that they never bother anybody. Furthermore, he stated that he is not a specialist in determing who is and who is not a lesbian. When reminded about the filthy language he had used, Sal said, "Oh well, that's the way you have to talk to some of these people,

they'd never listen otherwise."

In conclusions dated February 2, 1959 in which an order was entered suspending defendant's license (Bulletin 1267, Item 3), the defendant, through her attorney, submitted an affidavit in attempted mitigation of penalty wherein, among other things, she stated because of her age and physical condition, she intended to dispose of her business. I said at that time that: "Defendant's suggestion to dispose of the licensed business seems to be well taken. For her to continue the operation of the establishment without her presence there in a supervisory capacity, in all probability would lead to future violations." Sometime thereafter, her license was again suspended for thirty-five days for another violation. Bulletin 1340, Item 7. Now the defendant has submitted another affidavit in attempted mitigation of penalty wherein she states: "I have been attempting to sell my license and place of business for the past 19 months, having advertised the same for sale in the public press. It is necessary that I dispose of my license by sale as I have been under the doctor's care for a considerable time." By the manner in which her licensed premises is conducted, it is advisable that the defendant make every effort possible to disassociate herself from the liquor business.

The prior record of defendant includes a suspension of her license by the Director for twenty-five days, effective October 15, 1956, for selling alcoholic beverages to minors when she held a license in Ringwood Borough. Bulletin 1139, Item 10. Effective February 9, 1959 her license for the premises where she now conducts her business was suspended by the Director for the balance of its term for selling alcoholic beverages to a minor and permitting immoral activities (arrangements for prostitution) and the congregation of lesbians on the premises. Bulletin 1267, Item 3, supra. Effective May 2, 1960 her license was again suspended by the Director for thirty-five days for sale of alcoholic beverages to minors, one of whom was 17 years of age. Bulletin 1340, Item 7, supra.

The minimum penalty for allowing a licensed place of business to be conducted so as to become a nuisance by permitting homosexuals (females impersonating males) to congregate on the premises (Charge 1) is sixty days. Re The Paddock Bar, Inc., Bulletin 1159, Item 2; affirmed sub. nom. Paddock Bar, Inc. v. Division of ABC, 46 N.J. Super. 405 (App. Div. 1957). Where a prior similar violation has occurred within five years, a one hundred-twenty day penalty is warranted. Re Paddock Bar, Inc., Bulletin 1202, Item 5. As to Charge 2, I shall suspend defendant's license for twenty days (Re Mele, Bulletin 1354, Item 8) and with reference to Charge 3, for another ten days (Re Spillane, Bulletin 1259, Item 7). Because of two dissimilar violations occurring within five years (Re Richman, Bulletin 1186, Item 10), I shall add another five days, making a total suspension of defendant's license of one hundred-fifty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of one hundred-fifty days.

Accordingly, it is, on this 16th day of January 1961,

ORDERED that Plenary Retail Consumption License C-250, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Edna Hafner, t/a Edna's Rendezvous, for premises 45 West Broadway, Paterson, be and the same is hereby suspended for one hundred-fifty (150) days, commencing at 3:00 a.m., Monday, January 23, 1961, and terminating at 3:00 a.m., Thursday, June 22, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on September 18, 1960, of a quantity of alcoholic beverages and a Ford "Galaxie" on the New Jersey Turnpike, 39 Mile Post, in the Township of Mount Laurel, County of Burlington and State of New Jersey.	Case No. 10,403 ON HEARING CONCLUSIONS AND ORDER

Mozelle Alston, Pro se.
Milton S. Kramer, Esq., Attorney for Associates Discount Corp.
I. Edward Amadav, Esq., Appearing for 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 13 two-quart "Mason" jars of alcohol and a Ford sedan, described in schedule attached hereto, seized on September 18, 1960, on the New Jersey Turnpike, at the 39 Mile Post, in Mount Laurel, N. J., constitute unlawful property and should be forfeited.

At the hearing herein Mozelle Alston appeared and sought return of the motor vehicle. An appearance was entered on behalf of Associates Discount Corporation, which sought recognition of its alleged lien on the motor vehicle. No one opposed forfeiture of the alcohol.

The Hearer who presided at the hearing herein recently retired before he had an opportunity to prepare a Hearer's Report, and the claimant and the attorney for Associates Discount Corporation constented to waive the filing of a Hearer's Report as required by Rule 4 of State Regulation No. 28.

Reports of ABC agents and other documents in the file, presented in evidence by consent, disclose the following facts:

A New Jersey State Trooper halted the motor vehicle on the above date and at the above place. The trooper ascertained that Amos Alston was operating the vehicle and found 13 jars of alcohol in the car. None of the jars had affixed any stamp indicating payment of tax. Therefore the trooper seized the car and alcohol and arrested Amos Alston. Later the car and alcohol were turned over to ABC agents.

As a result of analysis of a sample of the contents of one of the jars, the Division chemist reported that the jar contained alcohol and water with an alcoholic content by volume of 47.3 per cent.

Shortly after the seizure Amos Alston stated that he had driven the car to Warrington, North Carolina, to attend the funeral of an aunt; that, while there, he had purchased the 13 jars of alcohol; that he placed the jars in the car and was returning to his home in Brooklyn when he was stopped by the State Trooper.

The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. Such alcohol and the vehicle in which it was transported constitute unlawful property and subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

Mozelle Alston testified that she resides in Brooklyn with her husband Arthur Alston; that she is regularly employed as a domestic worker and that her husband is regularly employed by a wrecking company. She further testified that she purchased the car in September 1959; that she and her husband have an income of more than $135.00 per week from their employment, and that there is still an unpaid balance due on the the purchase price of the car. She further testified that on September 16, 1960, her husband loaned the car to his brother Amos and that she had no knowledge that Amos purchased the alcohol in North Carolina. Arthur Alston testified that he loaned the car to his brother Amos and rode with him to attend the funeral of their aunt but that he had no knowledge that Amos purchased any alcohol in North Carolina or that there was any alcohol in the car at the time of the seizure. It does not appear that the claimant or her husband or her brother-in-law has any record for violation of any liquor law.

Evidence was presented on behalf of Associates Discount Corporation that it is now the holder of a conditional sales contract on the vehicle in question and that there is a substantial balance due on the contract. Their investigation of Mozelle Alston and her husband disclosed substantially the same information testified to by Mozelle Alston and Arthur Alston as to their financial standing.

I am satisfied from all the evidence that Mozelle Alston acted in good faith and did not know, or have any reason to suspect, that the car would be used by Amos Alston for the transportation of illicit alcoholic beverages. Hence the car will be returned to her upon payment of the costs of it seizure and storage.

It is, therefore, unnecessary at this time to make any determination respecting the alleged lien of Associates Discount Corporation.

Accordingly, it is, DETERMINED and ORDERED that, if on or before the 27th day of January, 1961, Mozelle Alston pays the costs of the seizure and storage of her Ford sedan, more fully described in Schedule "A" attached hereto, it will be returned to her; and it is further

DETERMINED and ORDERED that the alcoholic beverages, as listed in Schedule "A", constitute unlawful property and that the same be and hereby are forfeited, in accordance with the provisions of R.S. 33:1-66, and that they 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: January 17, 1961

SCHEDULE "A"

13 - two-quart "Mason" jars of alcohol
1 - Ford sedan, Serial No. H9ES-173658,
New York Registration 7K-8155

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR ILLICIT SEXUAL INTERCOURSE - PERMITTING OBSCENE LANGUAGE AND CONDUCT ON LICENSED PREMISES) - PRIOR RECORD - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against CLUB WINDSOR, INC. 56 Mulberry Street Newark 2, N. J. Holder of Plenary Retail Consumption License C-117, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Joseph A. D'Alessio, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. On May 25 and 27, 1960, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of overtures and arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

'2. On May 25, 26 and 27, 1960, 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 Regulation No. 20.'

"ABC Agent S testified that on May 25, 1960 at approximately 11:50 a.m., he and Agent A entered defendant's licensed premises and that the bartender on duty, named Joseph Decker (hereafter referred to as Joe), recognized Agent A as a person who some years before worked with him in an industrial plant; that at 1:30 p.m., Joe pointed to Sol Lefkowitz (president of defendant corporate-licensee and hereinafter referred to as Sol) as he came into the premises and introduced the agents to him; that Agent A asked Joe, 'How are the girls around here? Is there any chance in getting laid?', to which Joe answered, 'There's plenty of girls around here. The all lay and the place is loaded with girls at night'; that at approximately 1:45 p.m. a girl called 'Ann' invited him (Agent S) to dance with her; that during one of several dances Ann made a date to meet Agent S the following Friday at defendant's licensed premises and also agreed to accept ten dollars to engage in illicit sexual relations with him; that during the times she sat between Agent A and himself, Ann used filthy language, a repetition of which would serve no useful purpose; that although Joe was very near to Ann and the agents when she used this indecent language, he made no attempt to stop her from doing so; that when Agent A called Joe's attention to Ann's indecent conduct toward Agent S, Joe described her in an offensive manner; that at 2:20 p.m., as he and Agent A left the premises, they informed Joe that they would return on Friday, May 27th.

"Agent D testified that at 12:05 p.m. on May 26th, he entered defendant's licensed premises and that Joe and Sol were tending bar; that he observed a female called 'Tex' seated at the bar conversing with a patron referred to as George; that as 'Tex' lifted her skirt and displayed a pair of pink panties, Sol directed her to stop such conduct and when he (Agent D) remarked to 'Tex' that Sol treated her like a daughter, Sol stated, 'Don't worry about this. I got enough trouble around here. Just stop that'; that although he (Agent D) and 'Tex' spoke about engaging in sexual relations while Joe stood directly in front of them, he did not participate in the conversation; that he (Agent D) entered defendant's premises about 7:05 p.m. on May 27th and Sol and Milton (Milton Eig) were tending bar; that after Agents S and A entered he observed a heavy-set female (Ann) who had come into the place join the said agents at the bar; that later he observed Ann and Agent S dancing during which 'they were very, very close together and she, in particular, was rotating the middle portion of her body against his and I observed her with her mouth around his ear and his neck and this so-called bumping which is done to the rhythm of the music was done quite slowly and in a gliding manner.'

"Agent S testified that on May 27th, Agent D entered defendant's tavern prior to the time he and Agent A entered; that about 7:45 p.m. Ann came into the tavern and walked to where he and Agent A were seated and immediately stated that she was available to engage in sexual intercourse when it became dark; that when Ann left to go to the ladies' room, Agent A told Sol about Agent S's plan to have sexual relations with Ann, to which Sol stated, 'Don't tell me nothing. I don't want to know nothing. I don't say nothing. I'm here to serve beer', putting his hands over his ears at the time; that he then told Milton about the amount he agreed to pay Ann for engaging in illicit relations with him and, when Milton commented concerning the proposed relations, Ann made an indecent remark with respect thereto; that he gave Ann two five-dollar bills (the serial numbers of which had previously been recorded) and thereupon he and Ann left the premises; that when outside they were stopped by two other agents and Ann produced the two five-dollar bills in question that the agents and Ann returned to defendant's premises and identified themselves as ABC agents to Sol and Milton, and the latter admitted that he did make a remark concerning Ann.

"Agent A, who accompanied Agent S on May 25th and 27th, testified in substantial corroboration of the testimony given by Agent S as to the occurrences at the times in question.

"Ann testified that on the first occasion after Agent S had seen her dancing with a friend, he complimented her on her dancing and stated that he would like to dance with her; that the first dance she danced with him 'was sort of a slow jitterbug, then it was a slow dance and then I danced the fish'; that the latter consisted of standing 'close together and you're really tight and slowly moving back and forth'; that Agent S asked her to go out with him on Friday night and suggested that she get a girl friend for his buddy for a good time; that it was her understanding of 'good time' to drink and dance; that he said, 'Do you think ten dollars would be enough?' and that she replied, 'It depends on how much you drink. I don't know what you drink'; that she had no intention to make any arrangements with Agent S for illicit sexual intercourse; that on Friday when she entered defendant's premises, she went over to Agent S and he asked her if she wanted to leave but she said that she would rather leave when it got dark; that while seated between the agents at the bar she did not recall any time when Milton and the agents conversed; that she did not recall anything being said about her indulging in certain sexual practices; that she never used any indecent language in conversation

with or directed toward Agent S; that he handed her money to hold for him and, inasmuch as she had no pockets or pocketbook, 'I stuck it in my dress'; that after they left the premises and were walking toward the corner, two men jumped from behind a car and Agent S 'said jokingly that he was going to get laid'; that no conversation took place at any time between the agents, Joe and Sol regarding sexual intercourse and there never was any arrangements made for that purpose.

"Joe testified that on the afternoon of May 25th, a friend of his who had worked at the same place he was employed about nine years ago, and another fellow came into the tavern and that they engaged in a lengthy conversation 'about the factory'; that Ann was in the premises and he observed her and the agents dancing at various times; that he never spoke to the agents about girls coming into the place for the purpose of making arrangements for sexual intercourse; that he did not hear any alleged conversation regarding illicit activities; that the agents before leaving never told him that they had a date to meet Ann the following night at the licensed premises.

"Sol testified that Joe introduced Agent A to him; that thereafter he saw Ann and Agent S dancing; that he never spoke to either agent regarding Ann; that he remembers 'Tex' being in the place and admonishing her for her conduct; that on Friday night he saw the agents in the premises talking to Ann but did not hear any of the conversation and never had any knowledge that she had solicited men; that he remembered Agent A, who was about six feet away from him, asking if the customers are clean and answered, 'All my customers are clean'.

"Milton Eig testified that on May 27th he was tending bar for the defendant and recalled the agents and Ann being in the premises and being asked by Agent S, 'Is it worth two dollars?'; that he did not have any idea that any arrangements had been made by Agent S and Ann to engage in illicit intercourse; that he first became aware of this after Agent S had told him that such arrangements had been made which later prompted him to state to the local police that he thought that to be so.

"I have set forth quite fully the pertinent testimony with reference to the occurrences on the occasions in question. The evidence in the instant case discloses that for a number of years Ann was a frequent patron of the licensed premises. In view of all the evidence, it strains credulity to believe that the true character of Ann, especially when considering her actions and demeanor while on the licensed premises, was unknown to Sol Lefkowitz, president of the corporate-licensee, or its agents or employees. Licensees may not avoid their responsibility for the conduct of the licensed premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Bilowith v. Passaic, Bulletin 527, Item 3. I am satisfied that in the present case Lefkowitz and the bartenders knew, or should have known, about the improper activities taking place. Therefore, I recommend after full consideration of the evidence in this case, that defendant be found guilty of the charges preferred herein.

"Defendant has a prior adjudicated record. Effective March 3, 1958, its license was suspended by the local issuing authority for thirty days for sale of alcoholic beverages to an intoxicated person; effective April 2, 1958, its license was suspended by the Director for ten days for mislabeled beer taps (Bulletin 1223, Item 7) and effective February 23, 1959 for seventy-five days for permitting immoral activities to take place upon the licensed premises and for allowing an indecent article thereon (Bulletin 1269, Item 1). In view of the defendant's unsavory record during the past two years, it is difficult to make a recommendation as to the penalty to be imposed

without proper explanation. In the first place, I am satisfied that Ann was neither introduced to the agents by either Lefkowitz nor either bartender. Moreover, the testimony of Agent D discloses that when 'Tex' displayed her undergarment, Lefkowitz made an effort to conduct the licensed premises in a proper manner when he admonished her for so doing and directed that she cease such conduct.

"Under all of the circumstances appearing herein, and considering both defendant's past record together with such mitigating circumstances of the violation in the case, I recommend that defendant's license be suspended for one hundred twenty days."

Written exceptions to the Hearer's Report and argument with reference thereto were filed with me by the attorney appearing for the Division within the time limited by Rule 6 of State Regulation No. 16. Written answering argument was filed by the defendant's attorney.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's Report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations. Hence, I find defendant guilty as charged. I shall suspend defendant's license for a period of one hundred twenty days.

Accordingly, it is, on this 17th day of January, 1961,

ORDERED that Plenary Retail Consumption License C-117, issued for the 1960-61 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club Windsor, Inc., for premises 56 Mulberry Street, Newark, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 2:00 a.m., Wednesday, January 25, 1961, and terminating at 2:00 a.m., Thursday, May 25, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOHNSON & HANNON, INC. 709-711 Communipaw Avenue Jersey City 4, N. J. Holder of Plenary Retail Consumption License C-30, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On November 9, 1960, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests

by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of six of said bottles when compared with the contents of genuine bottles of the same brand, varied substantially either in solids, acids, color or a combination of them.

By way of mitigation, the licensee, by its attorney, places the blame for the violation on a bartender who, he states, was unfamiliar with the rules and regulations of the Division. The file discloses that Anthony Maita, President of defendant corporation, admitted to the agent that he had refilled some of the bottles, but, in any event, defendant is responsible for the actions of its servants and agents.

Defendant has a prior adjudicated record. Effective May 12, 1958 its license was suspended by the Director for ten days for an "hours" violation. Bulletin 1229, Item 6. I shall suspend defendant's license for the minimum period of twenty-five days imposed in cases involving six bottles (Re Silberberg, Bulletin 1277, Item 5), to which will be added five days because of the dissimilar violation which occurred within the past five years (Re Sussman, Bulletin 1328, Item 7), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 23rd day of January 1961,

ORDERED that Plenary Retail Consumption License C-30 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Johnson & Hannon, Inc., for premises 709-711 Communipaw Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, January 30, 1961 and terminating at 2:00 a.m., Friday, February 24, 1961.

William Howe Davis
Director