Mr. Ambrose

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

BULLETIN 1421

NOVEMBER 16, 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 1421 November 16, 1961

1. APPELLATE DECISIONS - BLOOMINGDALE LIQUORS, INC. v. BLOOMINGDALE.

Bloomingdale Liquors, Inc., Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
Borough Council of the Borough of Bloomingdale, Respondent.	)	AND ORDER

Slingland, Houman & Bernstein, Esqs., by Nathan Bernstein, Esq., Attorneys for Appellant.
Joseph V. Fumagalli, Esq., by Hofstra & Hofstra, Esqs., Howard Stern, Esq., of counsel, Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on May 11, 1961, whereby it denied appellant's application for a transfer of its Plenary Retail Consumption License C-2 from 4 Paterson-Hamburg Turnpike (also known as Main Street) to 44 Main Street, Bloomingdale.

"Appellant's petition of appeal sets forth the following grounds for reversal of the action of the respondent:

"The action of the Council was (a) arbitrary, (b) unreasonable, (c) capricious, (d) it violated the appellant's right to transfer its license to said new location, (e) it violated the appellant's constitutional rights under the Constitution of the United States of America and the Constitution of New Jersey and (f) the action of the Council constituted the taking of property without due process.

"Respondent, in its answer, denies these allegations and alleges its action was based upon the fact that there are sufficient liquor outlets in the area of the proposed site to satisfy the needs of the citizens in the area.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. An examination of the exhibits placed in evidence discloses that the proposed site is located at 44 Main Street on the northeast corner of Main and Union Streets; that it is about 2200 feet east of the appellant's present site; that a D and C license are located on the south side of Main Street, diagonally across from the proposed site; that the D license is about 260 feet southeast of the proposed site and the C license is about 170 feet southwest of the same, and that there is another D license on the northerly side of Main Street about 700 feet west of the proposed site. The exhibits further disclose that the premises presently licensed are located on the northerly side of Main Street on a bend in the road where Main Street intersects the Paterson-Hamburg Turnpike; that there is a D license on the south side of Main Street about 260 feet from appellant's present site; that there is a C license on the south side of Main Street about 400 feet southeast of the presently licensed premises and another C

license about 500 feet west of the presently licensed premises.

"Samuel D. Babcock, clerk of the Borough, called on behalf of appellant, testified that the Borough is about nine miles square; that it has a population of 5,294, according to the 1960 census; that its principal business area is located along the Paterson-Hamburg Turnpike (the southern border of the Borough); that the Council has issued twelve licenses (nine plenary retail consumption licenses and three retail distribution licenses); that on May 4, 1961 a public hearing was held on the appellant's application; that it was opposed by five or six individuals who appeared in person; that a petition signed by 45 objectors and two letters were filed with the Council; that on May 11, 1961, the Council, by a vote of five-to-one, adopted a resolution denying the appellant's application for the reason that 'there are now sufficient taverns and distribution stores in the neighborhood of No. 44 Main Street to satisfy the needs of the citizens in that area'.

"Mr. Babcock further testified that appellant's premises is presently located within a radius of 300 feet of a grammar school, a gasoline service station and the combined municipal building and firehouse.

"Gerald J. LaSala, an officer of appellant, testified that about three years ago he and his wife purchased the licensed premises in question, at a time when it was in a run-down condition; that subsequently the business was placed in its present corporate name; that he had purchased the premises with the thought of transferring it to 54 Main Street; that prior to purchasing the same, he had visited the six members of the Council and the Mayor at their homes; that the Mayor and five of the Councilmen informed him that they 'were glad to rid the town of a bad place'; that the Mayor and three Councilmen told him they were in favor of the transfer; that he had made two applications to transfer the licensed premises to 54 Main Street; that his first application (made in 1958) was denied by a vote of four-to-three, with the Mayor casting the deciding vote; that in 1960 his application was again denied by a unanimous vote (six-to-zero).

"Mr. LaSala further testified that he has spent a considerable sum of money in renovating his presently licensed premises; that the parking facilities in the area are poor; that parking is prohibited in front of the premises; that the premises are located on an incline of the road at a dangerous intersection; that he has neither observed nor heard of any accidents in the area and that some of his customers have refused to continue to patronize the present premises because of the poor parking conditions in the area. Mr. LaSala further testified that the proposed site will provide for off-street parking of twenty cars; that he is prepared to spend over $10,000 in converting the building at the proposed site into a high-class establishment and that he has submitted tentative plans to that effect to the Mayor and Councilmen.

"Forest R. Honeywell, Jr., a member of the Council called on behalf of the appellant, testified that on May 11, 1961 he voted in favor of granting appellant's application; that he was not present at the hearing held on May 4, 1961; that he was familiar with the pertinent facts of the application; that prior to the meeting of the Council on May 11, 1961, he had informed two members of the Council and the Mayor that he would vote favorably on the application and that he is unable to say that there is greater concentration of C licenses at appellant's present site than there is at the proposed site.

"On cross-examination, Mr. Honeywell testified that the usual procedure was followed in adopting the aforesaid resolution at the meeting held on May 11, 1961.

"Appellant contends that the action of the respondent should be reversed because he had purchased the licensed premises in reliance upon representations by the Mayor and three councilmen that they would act favorably on an application to transfer the licensed premises to 54 Main Street. However, the testimony on this point is not clear. In any event, a license issuing authority is not bound by any informal remarks made by its members. Stein v. West New York, Bulletin 101, Item 7; Hobbs v. Lower Penns Neck, Bulletin 372, Item 6; Longyear v. Jefferson, Bulletin 972, Item 4.

"Appellant also contends that the action of the respondent should be reversed because it is presently located at a dangerous intersection; because it has been suffering a loss of business due to the inadequate parking facilities for its patrons; because its present location inhibits the expansion of its premises; because it would better be able to accommodate its patrons at the proposed site and because the transfer would reduce the alleged density of liquor outlets in its present area.

"A transfer of a liquor license to other premises 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; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Biscamp & Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N.J. Super 172 (App. Div. 1949) where, as in the instant case, the issuing authority denied a transfer of a liquor license because it was of the opinion that there was no need or necessity for a liquor outlet in a particular location of a community. The Director's function on appeal is merely to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action irrespective of his personal views on the subject. Kafalowski v. Trenton, Bulletin 155, Item 8; Krogh's Restaurant, Inc. et als. v. Sparta et al., Bulletin 1258, Item 1; Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1.

"After reviewing the testimony, the exhibits herein and the briefs presented, I find that there is sufficient evidence to support respondent's findings that the area to which appellant seeks to transfer his license has sufficient liquor establishments to meet the needs and serve the convenience of the persons residing in that section of the municipality. I further find that respondent's action was neither arbitrary nor unreasonable. I conclude that appellant has failed to establish that respondent's action was erroneous, and I recommend that an order be entered affirming respondent's action and dismissing the appeal herein."

Exceptions to the Hearer's Report and argument thereto were filed with me, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the briefs of counsel, the Hearer's Report and exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of October 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (ARRANGING FOR ILLICIT SEXUAL INTERCOURSE) - OBSCENE LANGUAGE AND CONDUCT - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against Catherine Cooney 141 Garden Street Hoboken, New Jersey Holder of Plenary Retail Consumption License C-46 (for the 1960-61 licensing year) and C-47 (for the 1961-62 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.	CONCLUSIONS AND ORDER

Albert J. Hordes, 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 Wednesday night, February 1 and early Thursday morning, February 2, 1961, 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 and/or other illicit and unnatural sexual acts, practices and relations; in violation of Rule 5 of State Regulation No. 20.

'2. On Wednesday night, February 1 and early Thursday morning, February 2, 1961, 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.'

"At the hearing held herein, Agent R testified that pursuant to an assignment to investigate a specific complaint that solicitation for prostitution was occurring at the defendant's licensed premises, he and other agents visited the same on January 24, January 28 and February 1, 1961; that on his last visit he, accompanied by Agents G and S, entered the licensed premises at about 10:50 p.m.; that he had five 'marked' one-dollar bills in his possession; that immediately upon entering the premises, he addressed Thomas Cooney, the bartender, as follows: 'Here he is, Tom' (pointing to Agent G). 'He wants to get fixed with something'; to which the bartender replied, 'There it is' (pointing to Mrs. T who was seated at the bar); that at his (R) request, Cooney served Mrs. T a drink, following which, at about 10:55 p.m., he and the other agents took seats at the bar on either side of Mrs. T.

"Agent R further testified that Mrs. T opened a conversation with him by ordering a drink with the use of the vernacular word connoting sexual intercourse; that Mrs. T continued the use of this and other obscene language each time she ordered a drink (whiskey and a beer chaser), of which she had consumed many at the expense of the agents; that similar obscene language was used by a male and another female patron seated at the bar; that Cooney made only one feeble attempt to stop Mrs. T from the use of obscene language; that at about 11:00 p.m. he observed a male sitting on some steps (leading to an

exit) with his penis exposed and showing signs of recent urinating and that when he called Cooney's attention to this patron's condition, Cooney stated, 'He has to grow up with that'.

"Agent R further testified that shortly after he and Agents G and S joined Mrs. T as aforesaid, she, unsolicited, stated to him, in the presence of Cooney, that the only sex relations in which she engages is the act of sodomy; that Cooney made a filthy remark with respect thereto, which baited Mrs. T in the further use of foul language; that some time thereafter, Mrs. T, in his presence and in the presence of Agents G and S, stated to Cooney in filthy language that she intended to engage in the act of sodomy with him (Agent R); that Cooney in turn made a teasing filthy comment and that Mrs. T vulgarly reasserted her aforesaid intentions.

"Agent R further testified that at about 12:35 a.m., Agents G and S left the premises; that immediately upon their departure, Mrs. T stated to him that 'she did not want to go out with five guys'; that she was only interested in him; that at about 12:40 a.m. Agent B entered the premises and took a position at the bar along side of Mrs. T; that at about this time, he asked Mrs. T what her price was and that she replied 'two fifty'; that he summoned Cooney and informed him of the price fixed by Mrs. T; that he gave Cooney one of the aforesaid 'marked' one-dollar bills, in exchange thereof Cooney gave him two fifty-cent pieces; that he then gave Mrs. T two of the 'marked' one-dollar bills and one of the fifty-cent pieces; that about 1:00 a.m. he again summoned Cooney and, in the presence of Agent B, said to him, 'Hey, Tom, she got my money and now she doesn't want to go'; that Cooney replied, 'Don't worry. She will have to go in another hour. I am closing'; and continued to say, 'I am holding two fifty here for her room rent. She doesn't want to use that if she doesn't have to', and that, 'She will go. She goes every time with whoever is here at closing'.

"Agent R further testified that at about 1:40 a.m., Agent B left the premises; that at about 1:55 a.m. he, accompanied by Mrs. T, departed from the premises; that when they reached the street, they were stopped by Agents G, S and B, and two local police officers; that in response to questioning by Agent S, he stated that, 'I was going to get laid' and that he had given Mrs. T $2.50 for that purpose; that one of the police officers retrieved the two 'marked' one-dollar bills from the right hand coat pocket of Mrs. T, following which the police officers, the three agents, Mrs. T and he entered the defendant's licensed premises and identified themselves to Cooney; that he recalled to Cooney the aforesaid illicit arrangements he had made with Mrs. T, the aforesaid obscene language used in connection therewith, and the aforesaid exposed condition of the male patron seated on the steps; that Cooney denied any knowledge of the illicit arrangements between him and Mrs. T and that Cooney admitted he was aware of the obscene language used by Mrs. T and the aforesaid condition of the male patron seated on the steps.

"On cross-examination, Agent R reiterated the pertinent parts of his direct testimony and further testified that on his first two visits to the licensed premises, he observed no violations in the licensed premises; that on each occasion, he had remained in the same for two hours; that he had no 'marked' money with him on these visits; that on his second visit he observed Mrs. T in the licensed premises; that she did not solicit him on this visit; that on his third visit to the premises, Mrs. T had consumed fifteen to twenty shots of Imperial Whiskey with beer 'chasers' between 11:00 p.m. and 1:55 a.m. the following morning; that at one time Mrs. T momentarily placed the $2.50 on the bar and exclaimed, 'the hell with it. I am not going to go'; that he then spoke to Cooney who assured him that Mrs. T would accompany him when he left the premises and that Mrs. T did not inform him she needed the $2.50 for room rent.

"Agent S was called to testify and it was stipulated by counsel that if examined, his testimony on direct examination would corroborate the testimony of Agent R as to the events which took place in the licensed premises on February 1, 1961 from 10:50 p.m. to 12:35 a.m. the following morning.

"On cross-examination, Agent S testified that at about 1:55 a.m., he observed Mrs. T and Agent R leave the licensed premises and walk arm in arm on Garden Street; that he, the two police officers and the other agents stopped them; that, in response to his questions, Agent R stated, 'I am going to get laid. I gave her two and a half dollars'; that Mrs. T stated, 'I am not going with him any place', and that he observed one of the police officers remove the two 'marked' one-dollar bills from Mrs. T's right hand coat pocket.

"Agent G was called to testify and it was stipulated by counsel that his direct testimony would be corroborative of Agent R's and S's with respect to the events which took place in the licensed premises on February 1, 1961 from 10:50 p.m. to 12:35 the following morning.

"On cross-examination, Agent G testified that from about 12:35 to about 2:00 a.m., he kept the licensed premises under surveillance from an automobile parked in the vicinity of the licensed premises; that at about 12:40 a.m. he observed Agent B enter the licensed premises and leave the same about 1:40 a.m., following which he and Agent S proceeded to the Hoboken Police Department and that he observed the police officer remove the two 'marked' one-dollar bills from Mrs. T's right hand coat pocket.

"Agent B testified that he entered the licensed premises on February 2, 1961, at about 12:40 a.m. and left the same about 1:40 a.m. and that during said period of time, he sat at the bar alongside of Mrs. T. Thereafter, Agent B substantially corroborated the testimony of Agent R as to the incidents which occurred in the licensed premises during said hour and the conversations that transpired between Mrs. T and Agent R and between Cooney and Agent R.

"On cross-examination, Agent B corroborated the testimony of Agent S as to the aforesaid events which occurred on Garden Street in the vicinity of the licensed premises between about 1:55 and 2:00 a.m. aforesaid.

"At the end of the Division's case, the attorney for the defendant moved to dismiss Charge 1 herein on the grounds that the licensee had no personal knowledge of the acts alleged in the charge; that the bartender was unaware of the alleged illicit arrangement made between Agent R and Mrs. T and 'that the proof fails to show that there was any actual solicitation by this patron (Mrs. T) of any illicit acts in the tavern'.

"I find no merit to these contentions. A licensee is under a duty to exercise close supervision over her licensed premises, and violations occurring there cannot be excused because the licensee had no personal knowledge of them. Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 138 N.J.L. 28. In addition, a licensee cannot escape the consequences of the aforementioned acts of her agent. Re Dressler, Bulletin 1189, Item 3. I recommend that the motion be denied.

"On behalf of defendant, William Cooney, husband of the licensee, testified that for the past five years, he has been tending bar at the licensed premises; that prior to February 1st aforesaid, he knew Mrs. T as a patron for about three or four weeks;

that during said period she had visited the licensed premises about three or four times a week and that she never asked for Imperial Whiskey.

"Jean Hutchinson, a patron, testified that at about 10:30 p.m. on February 1st aforesaid, she entered the licensed premises and sat at the bar for about one hour; that she happened to glance towards the aforementioned steps for a couple of seconds and observed a male sitting there; that she did not observe any evidence of urination in the area and that she did not observe this male to be exposed as hereinabove testified by the agents.

"Ruth Wilkinson testified that she is a frequent visitor of the licensed premises and that the bartender, Thomas Cooney, never requested her to join any patron in the premises for drinks.

"Muriel Sullivan testified that she entered the licensed premises at about 11:40 p.m. on February 1st aforesaid, and left the same at about 2:00 o'clock the following morning; that she sat at the bar about eight feet from Mrs. T; that she did not observe what alcoholic beverages Mrs. T was consuming; that she heard Mrs. T use obscene language on three different occasions; that she had observed the bartender request Mrs. T to refrain from using the same; that she heard Mrs. T ask Agent R for $2.50; that she observed Cooney change a one-dollar bill for Agent R; that at about 1:00 a.m. she saw Agent R give Mrs. T the $2.50; that about 1:20 a.m. she heard Agent R state to Cooney, 'Tom, I just gave her $2.50 and she won't go'; that Cooney requested Mrs. T to return the money and that she saw Mrs. T return the money to Agent R, following which Mrs. T fell asleep at the bar.

"On cross-examination, Mrs. Sullivan testified that she has been friendly with the Cooney family for fifteen years and that she did not actually see the $2.50 when Mrs. T extended her hand towards Agent R; that she does not know whether the agent handed the money to Mrs. T or placed it on the bar and that Mrs. T left the premises unescorted.

"Nicholas Doran testified he entered the licensed premises at about 1:30 a.m. on February 2nd aforesaid, and remained there after the premises were closed; that the raiding party forced their entrance into the licensed premises shortly after 2:00 a.m. and that he was ejected by them from the premises.

"Catherine Cooney, the licensee, testified that she arrived at the licensed premises at about 2:25 a.m. on the morning in question; that she made no inspection of the aforementioned steps; that on prior occasions she had witnessed her brother-in-law, Thomas Cooney, the bartender, forcibly eject male patrons who used obscene language and that to her knowledge Cooney never permitted any solicitation for prostitution in the licensed premises.

"Thomas J. Cooney, the bartender, testified that for the past year he has been tending bar at the licensed premises; that on the night and morning in question, he was the only bartender on duty; that the length of the bar is about twenty-eight feet; that he knew Mrs. T as a patron for about three or four weeks prior to February 1st aforesaid; that Mrs. T never ordered and he never served her Imperial Whiskey; that on the night in question, Mrs. T entered the premises at about 8:00 o'clock; that between 8:00 and 10:00 p.m., Mrs. T consumed two glasses of Fleischmann's Whiskey and four or five glasses of beer; that Agents R, G and S entered the premises at about 10:00 p.m. on February 1st aforesaid; that between 11:00 p.m. and about 1:00 a.m., Mrs. T consumed four shots

of whiskey and eight or ten glasses of beer at the expense of Agent R; that Agent R, upon entering the premises, stated to him that Agent G wanted to engage in abnormal sexual intercourse, to whish he replied that he was in the 'wrong place'; that he did not point to Mrs. T as alleged by Agent R and state, 'There it is'; that he did not arrange for the agents to join Mrs. T; that he did not hear any of the alleged conversation between Agent R and Mrs. T wherein they allegedly agreed to engage in an act to sodomy, and that he did not see Agent R give Mrs. T $2.50.

"Mr. Cooney further testified that about 1:00 a.m., Agent R informed him that he had given Mrs. T $2.50; that Mrs. T, at his directions, returned the money to Agent R, following which Agent R, preceded by Agents G and S, left the premises; that Agent R alone returned to the tavern at about 1:40 a.m.; that in the interim, Mrs. T fell asleep at the bar and that at about 2:00 a.m. Mrs. T, followed by Agent R, left the premises.

"Mr. Cooney also testified that prior to 1:00 a.m., he did not hear Mrs. T use any obscene language; that subsequent thereto, she was boisterous, used vile language on three occasions at twenty-minute intervals; that he attempted to calm her; that he served her drinks thereafter and denied the statement attributed to him by Agent R with respect to the male patron seated on the steps in the licensed premises.

"Mrs. T, testifying on behalf of the defendant, denied that she had solicited Agent R to engage in any form of sexual intercourse with her; denied she left the licensed premises in Agent R's company; denied she intended to engage in any act of sexual relations with Agent R; denied she drank Imperial Whiskey, and further testified that on February 1st aforesaid, she entered the licensed premises at about 6:00 p.m.; that she does not know what time she left the same; that 'it was maybe 1:00 o'clock, 12:00 o'clock, something--I don't know'; that she believed it was closing time; that she does not remember being stopped by anyone after she had left the licensed premises; that she twice used obscene language on the night in question; that on each occasion Cooney stated to her, 'Take it easy, Ronnie'; and that she had complied with his request. Mrs. T further testified she borrowed $2.50 from Agent R for the purpose of paying her room rent; that Cooney had stated to her, 'You don't have to have that, Ronnie, you got money behind the bar'; that she then returned the money to Agent R and that Agent R retained the money.

"On cross-examination, Mrs. T testified that Agent R joined her at the bar after Cooney had told her that he knew him; that she did not use obscene language when she ordered a drink; that she does not remember how long Agent R was in her company; that at no time did any other agents join her and Agent R; that she did not observe when Agent R left the premises; that he remained in her company up to the time she left the premises; that she has no recollection of what occurred in the licensed premises on the night and morning in question; that she does not remember anything from the time Agent R joined her at the bar and the time she had left the premises.

"Joseph Lewis, on behalf of the defendant, testified that from 4:00 p.m. on February 1st to 2:00 o'clock the following morning he was tending bar at the Rumford Tavern, 200 Garden Street, Hoboken; that during said period of time, Agents S and B were in the aforesaid licensed premises for at least one hour and that the last service he had made to them was after midnight (February 2nd).

"Agent S was recalled to the witness stand and testified that the Rumford Tavern is located diagonally across from Cooney's licensed premises; that he and the other agents were conducting an

investigation of both of aforesaid taverns; that on February 2nd, at about 12:35 a.m., he entered the Rumford Tavern where he met Agent B and other agents; that immediately thereafter, he and Agent B departed from the premises and that Agent B proceeded to Cooney's tavern.

"Agent B was recalled and corroborated the testimony of Agent S.

"I have carefully considered the testimony adduced herein, together with the exhibits and arguments of counsel, and find that the agents gave an accurate and truthful account of what transpired in the case and am unable to find any inconsistencies or defects in their testimony and cannot conceive that they would conspire against the licensee as suggested by defendant's attorney in his argument. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence and it is recommended, therefore, that defendant be found guilty as charged.

"However, I find that the history of the licensed premises does not reflect that prostitutes used the same as a haven or a place where they were permitted to ply their trade. Mrs. T's offer to engage in abnormal sexual relations with the agent, her refusal (two hours later, accompanied with the return of the money) to go through with her arrangement and her final decision to carry out her arrangement with Agent R, do not bespeak the actions of a prostitute. What impelled her actions is difficult to say. It seems to me that this case does not fall in the category of those in which penalties of one hundred eighty days heretofore were imposed on licensees for permitting and suffering solicitation for prostitution.

"Defendant has a prior adjudicated record. Effective September 15, 1959, her license was suspended by the local issuing authority for ten days for an 'hours' violation. Considering defendant's prior record and all the facts and circumstances in this case, it is further recommended that an order be entered suspending the defendant's license for sixty days. Cf. Re Wieliczka and Hanchar, Bulletin 1194, Item 2."

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

After carefully considering the evidence, exhibits and the arguments of counsel, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. Hence, I find the defendant guilty as charged.

Accordingly, it is, on this 2nd day of October, 1961,

ORDERED that Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Catherine Cooney, for premises 141 Garden Street, Hoboken, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m., Monday, October 9, 1961, and terminating at 2:00 a.m., Friday, December 8, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF STOLEN TAXPAID ALCOHOLIC BEVERAGES - CLAIM OF OWNER OF MOTOR VEHICLE (ALLEGED PARTICIPANT IN THEFT) REJECTED FOR FAILURE TO ESTABLISH GOOD FAITH - MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on June 15, 1961 of an Oldsmobile sedan at Katzner's Delicatessen, 343-a Avon Avenue, in the City of Newark, County of Essex and State of New Jersey.	Case No. 10,608 On Hearing CONCLUSIONS AND ORDER

L. C. Jackson, Pro Se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether an Oldsmobile sedan, described in an inventory hereinafter referred to, seized on June 15, 1961, at 343-a Avon Avenue, in the City of Newark, County of Essex and State of New Jersey constitutes unlawful property and should be forfeited.

"When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of the registered owner of the said motor vehicle, who sought its return.

"The facts as they appear from the reports of ABC agents, and other documents in the file, presented in evidence with the consent of the claimant herein, reflect the following: On June 14, 1961 at approximately 12:18 A.M. a door leading to the basement of a liquor store was forced open, and a certain quantity of taxpaid alcoholic beverages was stolen from the said basement, which was part of a liquor establishment of Mrs. Esther Aranowitz at the place aforesaid. Mr. Philip Aranowitz, the manager of the said licensed premises, informed local police that there were five cases of beer and eight cases of wine missing. The local police apprehended Calvin Rouse and James Schackleford who implicated others, including the claimant, in the theft of the said alcoholic beverages. The police recovered and have in their possession a case of quart bottles of Schenley Beer, 19 bottles of Vincove Muscatel Wine, and 12 pints of Zig Zag Wine, which were seized at the scene of the crime and from the home of Calvin Rouse.

"It further appears, from statements given to the local police by Schackleford and Rouse, that the claimant knew about the intended breaking and entering of these premises, loaned his participants a lug wrench to be used for that purpose and thereafter transported certain cases of stolen alcoholic beverages to the home of Calvin Rouse in the 1954 Oldsmobile registered in his name. When the agents of this Division were notified of the theft and of the statement that the alcoholic beverages had been transported in claimant's car, and acting upon the probability that the said alcoholic beverages were stolen with the intent to sell the same, they seized the motor vehicle, which is the subject of this hearing.

"On June 20, 1961, the claimant was arrested, arraigned in the Municipal Court of the City of Newark on a charge of breaking, entering and larceny and held in bail for action by the Essex County Grand Jury. It should be noted, de hors the record, that claimant

was indicted by the Essex County Grand Jury on July 26, 1961, on charges of entering, larceny and receiving, with reference to this incident.

"This Oldsmobile sedan, owned by the claimant, was not licensed to transport alcoholic beverages, and was transporting this whiskey for probable illegal sale. Since these alcoholic beverages were intended for unlawful sale, they were therefore illegally transported in a vehicle not licensed to transport alcoholic beverages. Hence, the alcoholic beverages constitute illicit alcoholic beverages, and the motor vehicle in which such alcoholic beverages were being transported constitutes unlawful property, and is subject to forfeiture. Seizure Case No. 10,157, Bulletin 1336, Item 6; R.S. 33:1-2; R.S. 33:1-66.

"L. C. Jackson, the claimant, seeking recognition of his claim for the return of the said motor vehicle, testified that he is the owner of this automobile for which he paid $150.00; and that he owes about $40.00 to his uncle, who advanced the money for the payment thereof. He states that shortly before the time of the alleged breaking and entering, Schackleford came to his house and requested the loan of a lug wrench for the purpose of removing a tire from his (Schackleford's) Chevrolet automobile. Jackson directed Schackleford to the front seat of the car under which this lug wrench had been placed, and thereafter returned to his apartment.

"He further states that about 15 minutes later Schackleford returned, stated that he could not get his car started, and that Schackleford and Rouse prevailed upon him to take two cases to Rouse's home, which is located about two miles from the claimant's residence. He drove Rouse, Schackleford and two other minors to the home of Rouse, and the two cases were removed from his motor vehicle. He denies that he knew that these crates were 'packages' which contained beer or alcoholic beverages. He was asked, upon cross-examination, whether he had noticed any of the legends or labels on the boxes. He denied seeing them and stated that 'I saw the boxes when Cal took them out of the trunk of the car after we got to his place and he was taking them upstairs.' He was asked further, 'Did you ask where he had gotten the two cases?' Answer - 'I didn't ask him because I didn't think it was my business.'

"The claimant admits transportation of these boxes or cases, and the sole issue is whether he acted in good faith, i.e. that he knew or should have known that these were illicit alcoholic beverages and were therefore illegally transported. It stretches credulity to believe that of the six boys in the car, he was the only one who was unaware of the purpose of the trip from his home to the home of his friend, Calvin Rouse, and was the only one who was ignorant of the fact that alcoholic beverages were then being transported. This is particularly incredible in the setting in which these incidents took place with such rapidity. First, there was the crowbar incident; secondly, the group of boys crowding into his car at this time of night, and thirdly, his assertedly innocent position as mere carrier of two 'boxes'.

"We are not concerned with the criminal aspects of this case as they will be disposed of in the criminal court. I shall refer to certain statements only for the purpose of affecting his credibility as a witness.

"Shortly after the theft Calvin Rouse signed a voluntary statement, in which he said, 'It was Schackleford's idea to break into the place so we was around on 10th Street, me, Duke, L.C., (indicating the claimant) and another boy, John -- oh, L.C. was not there yet -- we all said O.K. The last thing I know Schackleford had

a crowbar (admittedly the crowbar belonged to claimant) and somebody broke the cellar door lock and we all went down. Me, Schack and Duke and June was around the corner with L. C. We brought up the bar and me and Schack took it across the street and that is when the cops came.'

"In the statement he was further asked, 'Who was present when you decided to break in?' Answer - 'Me and Schack and Duke and then we told Cyclone or Jones, June and John and L.C.'

"According to the statement of Schackleford (referred to as 'Schack'), several of the participants went to the house of the claimant, borrowed the lug wrench and apparently indicated to him what they intended to do with the wrench. It was clearly indicated to claimant that his car would be needed for transporting these boxes or crates to Rouse's home. Nothing in either of these statements indicates that the lug wrench was borrowed for the purpose of removing a tire, as the claimant testified.

"I do not believe that, under all the facts and circumstances as adduced herein, the claimant transported these alcoholic beverages in good faith and unknowing violation of the law. I cannot believe, particularly in view of the lateness of the hour, the number of the participants involved, and the legends which are clearly manifest on crates of alcoholic beverages, that he did not know of the true nature of this trip, and was merely an unwitting carrier. His actions not only manifested an absence of good faith but at the very least, a careless indifference to what use his car was put. In the absence of these essential elements, the Director has no authority to relieve him of forfeiture. R.S. 33:1-66(e); Seizure Case No. 9921, Bulletin 1297, Item 7; and Seizure Case No. 9965, Bulletin 1297, Item 4. I therefore recommend that the claim of L. C. Jackson for the return of his car be rejected and that an Order be entered directing forfeiture of the Oldsmobile sedan."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of September, 1961,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the state in accordance with State Regulation No. 29 or 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

SCHEDULE "A"

1 - Oldsmobile sedan, Serial No. 22339,
New Jersey Registration FAR327.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (INCLUDING CARD GAME) - LOTTERY - CONTRACEPTIVES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against 284 Club, A Corp. 284 Halladay Street Jersey City, New Jersey, Holder of Plenary Retail Consumption License C-253, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Defendant-licensee, by Marion Dawyhida, President.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On August 22 and August 23, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On August 22 and August 23, 1961, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises, and you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.

"3. On August 22, 1961, you allowed, permitted and suffered gambling, viz., the playing of a card game, commonly known as 'Rummy' for stakes of money, in and upon your licensed premises, in violation of Rule 7 of State Regulation No. 20.

"4. On August 23, 1961, you possessed prophylactics against venereal disease and contraceptives and contraceptive devices in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20."

On Tuesday, August 22, 1961, between 9:35 p.m. and 11:10 p.m., three ABC agents who were in defendant's licensed premises observed four patrons playing a number of games of "7 card rummy" for stakes of 25¢ to 75¢. At the end of each game the agents observed money being passed between the players. In the interim Kenneth W. Cole (another patron) accepted "numbers" bets from each of the agents. Walter Chyzak (the bartender) was alerted to these gambling activities and ignored the same.

On Wednesday, August 23, 1961, the same three agents returned to the licensed premises and Cole (seated at the center of the bar) accepted "numbers" bets, with the knowledge of Chyzak, from the agents. Shortly thereafter, as pre-arranged, two local police officers entered and found $11, including four one-dollar bills (which had been marked by the agents) in Cole's possession. A pad used by Cole to record the

"numbers" played by the agents was found on the bar in front of Cole, and listed 191 "numbers" played for a total of $31.85.

Chyzak orally admitted that he was aware of the aforesaid gambling activities on the alleged dates.

In a signed, sworn statement dated August 23, 1961, Cole stated that for the past months he had been accepting "numbers" bets at the licensed premises; that he had accepted "numbers" bets from Chyzak, and that he had also accepted the "numbers" from the agents.

During the course of the inspection of the premises one of the agents found seven contraceptives in a cigar box in the kitchen. At about 11:30 p.m. the husband of one of the officers of the corporate-licensee arrived at the premises and stated that he was the owner of the contraceptives.

By way of mitigation, the president of the corporate-licensee has advised by letter dated September 12, 1961, that the licensee had no knowledge that the aforesaid gambling activities were taking placed on the licensed premises. A licensee, however, is under a duty to exercise close supervision over his licensed premises, and violations occurring therein cannot be excused because he had no personal knowledge of them. Re Beerman, Bulletin 1352, Item 8. Moreover, a licensee cannot escape the consequences of the acts of his agents. Rule 33 of State Regulation No. 20.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of thirty days on Charges 1, 2 and 3 (cf. Re Mattern, Bulletin 1403, Item 4) and for the minimum period of ten days on Charge 4 (Re Rosenkrantz, Bulletin 1356, Item 7), making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 2nd day of October 1961,

ORDERED that plenary retail consumption license C-253, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to 284 Club, A Corp., for premises 284 Halladay Street, Jersey City, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Monday, October 9, 1961, and terminating at 2 a.m. Monday, November 13, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	
Cristina Rubino and Val M. Rubino t/a Rubino's Tavern 388 Wayne Street Jersey City, New Jersey	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-446, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	

Joseph W. Tumulty, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants entered a plea of non vult to the following charges:

"1. On August 12, 1961, you engaged in and allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On the occasion aforesaid, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises and possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On August 12, 1961 at 12:30 p.m., Agents Sc, S and J entered defendants' licensed premises in furtherance of a continuing investigation of alleged gambling activities. At 2:35 p.m., Andrew Carrano, also known as "Bonso", entered the premises and Agent Sc placed a horse race bet with him. Carrano then accepted a bet from another patron and from Agent S. Agent S then placed two "numbers" bets with a man, later identified as John Yurchak, who had been present on the premises during this entire period. At 2:40 p.m., other agents, accompanied by local police officers, entered the said premises and, upon searching Yurchak, Carrano and Val M. Rubino, one of the licensees, gambling slips and money were found on them, including ten single dollar bills used by the agents, the serial numbers of which had been previously recorded. The local police officers arrested Yurchak, Carrano and Rubino.

Yurchak and Carrano made written confessions to the effect that they accepted "numbers" bets from patrons on these premises on this date. Rubino admitted verbally to local police, in the presence of Agent S, that he knew that gambling activities were taking place on the premises.

Defendants have a prior adjudicated record. Effective July 20, 1959, their license was suspended by this Division for ten days for an "hours" violation and failure to provide a clear view of the premises, in violation of a local ordinance. Re Rubino, Bulletin 1293, Item 9. I shall suspend their license for twenty-five days, the minimum suspension imposed in commercialized gambling cases when a licensee or employee is involved, (Re Johnson, Bulletin 1407, Item 7), to which will be added five days for a dissimilar violation occurring within the past five years, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, making a net suspension of twenty-five days.

Accordingly, it is, on this 4th day of October 1961,

ORDERED that Plenary Retail Consumption License C-446, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Cristina Rubino and Val M. Rubino, t/a Rubino's Tavern, for premises 388 Wayne Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, October 16, 1961 and terminating at 2:00 a.m., Friday, November 10, 1961.

William Howe Davis
Director