26 Rose Avenue,
Madison,
Morris County, New Jersey

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

BULLETIN 1012 APRIL 27, 1954

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ITEM

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

BULLETIN 1012 APRIL 27, 1954

1. APPELLATE DECISIONS - PASQUALE v. TENAFLY.

PETER J. PASQUALE, JR.
TRADING AS THE WELL)

Appellant)

v.) ON APPEAL
) CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE
BOROUGH OF TENAFLY)

Respondent)

Albert S. Gross, Esq., Attorney for Appellant.
Morrison, Lloyd & Griggs, Esqs., by George A. Brown, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for a place-to-place transfer of his current plenary retail consumption license from 268 County Road to 37 River Edge Road, Borough of Tenafly.

Appellant contends in his petition of appeal that the action of respondent was erroneous for the following reasons:

1. There is no valid or legal objection to such transfer appearing in the statutes or the regulations of the Division of Alcoholic Beverage Control pertaining thereto;

2. No objection to the transfer was raised at the hearing;

3. No proofs or testimony were offered or taken at the hearing justifying the denial of said application for transfer;

4. The action of the respondent was arbitrary and capricious and involved a denial of due process of law as well as the confiscation of property of the appellant;

5. Continuance of the license by appellant at No. 268 County Road, Tenafly, New Jersey, involves undue hardship on appellant for the reasons that

   (a) the lease which appellant holds for said premises expires on April 1, 1954, and can be renewed only at a greatly increased rental;

   (b) the premises at 37 River Edge Road, Tenafly, New Jersey, to which transfer is proposed are owned by appellant's mother and have been altered and prepared and are ideally suited for the purpose;

   (c) such transfer is to the best interests not merely of the appellant but of the municipality at large.

A resolution dated November 24, 1953 sets forth the various reasons by the respondent for the denial of the application for transfer of appellant's license. These reasons have been adopted by reference in the answer filed by the respondent herein, and may be summarized as follows: The operation of a licensed premises at the proposed location 37 River Edge Road would be contrary to the public welfare and best interests of the community for the following reasons:

(a) The place was formerly operated as a restaurant, ice cream and soda business which was frequented by large numbers of children of high school and grade school age;

(b) The proposed location is located on the northeasterly corner of the intersection of River Edge Road and Tenafly Road, and on the southeasterly corner of said intersection is a tract of land of approximately twenty-nine acres owned by the Board of Education of Tenafly and known as Roosevelt Common.

1. Part thereof has been set apart and maintained as an athletic field for the public schools of the municipality, on which site the physical education and athletic programs of the schools are held and, in addition thereto, there are numerous recreational programs, including many children's events and activities;

2. During many months of the year large numbers of students attending the high school, when en route to Roosevelt Common, pass the proposed location;

3. The section is heavily traveled, and the traffic problems are further complicated by the pedestrian travel aforementioned;

4. That within twelve to fifteen feet of the proposed entrance to the proposed premises is a manually operated control box to regulate traffic lights which the students operate when traveling from the high school to Roosevelt Common;

5. The Board of Education is engaged in making test borings in various parts of Roosevelt Common in contemplation of the erection of a new school building.

The members of respondent Council voted unanimously to deny the transfer in question.

The testimony of appellant described the proposed building as of "cinder block construction with stucco outside", situated on a plot of ground "59 feet frontage by 135 feet deep"; that the restaurant and soda bar formerly operated at the said premises has been closed because the building is undergoing alterations; that parking space is available in connection with the premises; that approximately three hundred feet from the proposed premises there is a supermarket which has a license to sell unchilled beer, but that there are no plenary retail consumption or distribution licenses within the immediate area; that there are sundry businesses in the vicinity--a gasoline station is located on the opposite corner to the proposed location; and that adjacent to the proposed premises is a furniture repair shop.

On behalf of respondent, Elmer A. E. Blackwell, Borough Engineer, testified that the area wherein the appellant's proposed premises are located "* * * is partly in the business district and partly in our school--what we call the school zone. It is a very heavily-trafficked intersection. Tenafly Road is the main artery between Cresskill and Englewood. River Edge Road is the main artery from County Road across over to Kinderkamack Road in River Edge. The Surrey House (appellant's proposed premises) is on the northeasterly corner; a gas station is on the southeast corner; school property, with its various activities, on the northwesterly corner; on the southwesterly corner there is a parking lot which is used for school teachers, pupils, and commuters." Although on direct examination the witness described Tenafly Road as "the main artery between Cresskill and Englewood", he agreed, on cross-examination, that it might be described as a suburban street in Tenafly.

Chester B. Campbell, Chief of Police of respondent municipality, testified that the established route traveled by students from the high school to the athletic field, known as Roosevelt Common, is as follows: "They travel on the east side of Tenafly Road, they cross the intersection of River Edge Road, pass this Surrey House, cross Tenafly Road, and on up to the athletic field. There are about five hundred children a day that go from the high school to Roosevelt Common for outdoor classes, games and so forth." He further testified that the athletic field is used on occasions by various youth and civic organizations.

Burt Johnson, Superintendent of Schools in Tenafly, testified that Roosevelt Common "is used for a number of activities, both for the school's physical education--high school physical education purposes and for community recreational purposes." Furthermore, "the Board of Education has had a company make borings for possible building at that area."

Eight persons voiced objections to the transfer of the business in question, and two persons stated that they were in favor thereof.

The present licensed premises on County Road, according to the testimony of the appellant, is about a mile distant from the proposed location.

Appellant contends, as a ground for reversal, that the denial of the transfer by respondent was improper because there were no objections thereto and that no hearing was held in the matter. Rule 10 of State Regulations No. 6 provides that:

> "No hearing need be held if no such objections shall be lodged (but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to grant the transfer applied for."

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

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

Appellant contends that he would suffer undue hardship because of increased rental for the premises which he now occupies and furthermore because the proposed premises have been altered and prepared for his purpose. In a conflict, however, between private interests and the interests of the community at large, the latter must prevail. Moraitis v. Lower Penns Neck, Bulletin 839, Item 11.

In the instant case, after careful consideration of all of the evidence, including the objections to the proposed transfer, the proximity of the proposed premises to the athletic field, and considering also the fact that the transfer would move the license a considerable distance from its present location to an entirely different section of the Borough, I cannot find the action of respondent in denying the application for transfer was arbitrary, capricious or unreasonable, constituting an abuse of discretion which warrants a reversal of its action.

Accordingly, it is, on this 13th day of April 1954,

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

WILLIAM HOWE DAVIS
Director

2. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING THAT LICENSEE PERMITTED PROSTITUTES ON LICENSED PREMISES DISMISSED - LICENSEE FOUND GUILTY OF PERMITTING LEWDNESS AND IMMORAL ACTIVITIES (SOLICITATION FOR PROSTITUTION) AND OBSCENE LANGUAGE ON LICENSED PREMISES - SALES TO INTOXICATED PERSON - BRAWL - SALE OF ALCOHOLIC BEVERAGES BELOW MINIMUM RESALE PRICE LIST - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

JOHN SEVAK
T/a THE BASIN INN
274 Front St.
Perth Amboy, N. J.

Holder of Plenary Retail Consumption License C-25, issued by the Board of Commissioners of the City of Perth Amboy.

CONCLUSIONS AND ORDER

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Wilentz, Goldman, Spitzer & Sills, Esqs., by Warren W. Wilentz, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On June 27 and July 2, 3 and 4, 1953, and on divers days prior thereto, you allowed, permitted and suffered [illegible] prostitutes in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"2. On June 27 and July 2, 3 and 4, 1953, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"3. On June 27 and July 2, 3 and 4, 1953, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"4. On June 27 and July 2, 3 and 4, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"5. On Friday night, July 3 and early Saturday, July 4, 1953, you allowed, permitted and suffered a brawl, act of violence and disturbance in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"7. On Saturday morning, July 4, 1953 at about 12:30 A.M., you sold at retail a pint bottle of Calvert Reserve Blended Whiskey, an alcoholic beverage, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

Defendant pleaded guilty to the following charge:

"6. On Friday morning, July 3, 1953 at about 1:00 A.M., and again on Saturday morning, July 4, 1953 at about 12:30 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises, viz., six 12 ounce cans of Hensler beer on the former occasion and a pint bottle of Calvert Reserve Blended Whiskey on the latter occasion; in violation of Rule 1 of State Regulations No. 38, which prohibits any such sale and delivery before 9:00 A.M. or after 10:00 P.M. on any weekday."

At the hearing herein, three ABC agents who participated in the investigation testified on behalf of the Division. In the testimony and comment hereinafter set forth, each agent will be referred to as "investigator" and the full name will not be used but, instead, only the initial letter of the last name: "C," "W," and "K."

The testimony of these agents is substantially as follows: Three visits were made to defendant's licensed premises to investigate a specific complaint alleging general misconduct and immoral activity. The first visit was on June 27, 1953 at which time Investigator "C" entered the barroom at approximately 8 p.m. His companion on that occasion (Investigator "R") remained outside.

The front of the building which houses the licensed premises is on Front Street and the rear of the building opens upon a dock on the Perth Amboy waterfront. The licensed premises consists of the first floor of the building and the dock in the rear thereof.

When Investigator "C" entered on June 27, there were approximately 20 patrons in the barroom, including several females, and the licensee and bartender John Kowtowsky (hereinafter referred to by his nickname "Yaunch") were tending bar. At approximately 8:20 p.m., a female named "Peggy" went behind the bar and served drinks. She wore a white transparent blouse, completely unbuttoned and, under it, only a strapless brassiere. Being "very buxom," as she leaned across the bar she was "half exposed." Another female named "Ruth," who was seated next to Investigator "C," asked a male patron to buy her a drink, but instead he picked up his drink and walked away. Ruth then delivered a tirade in the most revoltingly foul and filthy language, charging the male patron with degrading abnormal sexual behavior with her "girl friend." Peggy, standing behind the bar directly in front of Ruth, remarked that the imprecations were probably true. At this point Investigator "C" observed a man, whose clothes were filthy and rumpled and whose hair was disheveled, "half hanging and half leaning" on the bar. This man "incoherently" asked bartender Yaunch for a glass of beer. After Yaunch served him the beer the man consumed part of it and staggered unsteadily toward the rear room.

Ruth, who had remained on the stool next to Investigator "C," kept pushing against him and he moved to the next stool. Undaunted, Ruth struck up a conversation with him during which she offered to "take care of" him, explaining that she could get him "laid" for five dollars. Agent "C" said to Peggy, who had been standing behind the bar opposite them, "Peggy, this girl is going to take me out to get laid. She wants me to buy her a drink. O.K.?" Peggy replied, "Sure. She drinks double shots of gin" and served the drink to Ruth. After consuming the drink Ruth asked the agent to go next door with her and, when he said that he was waiting for his "buddy," Ruth said, "I'll take care of both of you." Investigator "C" left the licensed premises at 9 p.m.

At approximately 9:45 p.m., Investigator "C" reentered the barroom and sat near Investigator "R" who had entered several minutes earlier. There were a dozen patrons in the barroom, mostly males, and John Markoff, who was tending bar, was engaged in an argument with a male patron. Markoff kept repeating foul, filthy and disgusting words and names, easily heard by Investigator "C" who was then at least twelve feet from him. During the entire evening various patrons indulged in similar language and no attempt was made by the licensee or any of his employees to stop or curb them. Before the agents left at 11 p.m., Ruth reappeared in the barroom and went out through the front door. As she did so a male patron approached Investigator "C" and said "Ruth wants you to follow her." Investigator "C" indicated that he was waiting for his buddy and did not follow her.

On his second visit Investigator "C" entered defendant's barroom with Investigator "W" at approximately 10 p.m. on July 2, 1953. Yaunch was tending bar. Ruth entered with a man, remained there with him for forty-five minutes and left with him. Investigator "C" told Yaunch that he had not kept a date with Ruth the preceding Saturday night to get "laid" and that he thought that Ruth looked "sore." Yaunch replied, "You didn't miss much, that's old stuff around here." Another male seated nearby joined the conversation and, in a slang expression, asked the agent whether he and his companion were looking for colored females with whom they could have sexual intercourse. Then directing his conversation to Yaunch this male said that he thought that the agents would "really go for Frannie and her girl friend." Yaunch replied "This Frannie and her girl friend are high yellows, high class stuff, know their business, come over here from New York." When Investigator "C" asked Yaunch whether he knew Frannie and how much she would charge, Yaunch said

that he had had intercourse with these girls and that they charged five dollars apiece, adding, "They'll probably ask you for more money but you can chisel them down." Asked where they could take the girls if they "got fixed up" Yaunch said that the girls would probably want to go to Smith Street, or that they could take them out in an automobile or they could use his boat which was tied up at the dock. Before the agents left that evening Investigator "C" told him that they would be back the next night and Yaunch said, "I'll fix you up with colored whores so you can get laid." During the entire time the agents were upon the licensed premises they heard the same kind of foul, filthy and obscene language as on the first visit. Neither the licensee nor any of his employees did anything to correct the situation.

During the course of the evening, while seated at the bar, Investigator "W" purchased from Yaunch six cans of beer "to take home." This beer was placed in a paper bag, put in the refrigerator and ultimately delivered to Investigator "W" at 1 a.m., on July 3, 1953 when he left the premises. As to this after-hours sale, defendant has pleaded guilty to Charge (6).

The next evening, July 3, 1953, Investigators "C" and "W" returned to the licensed premises accompanied by Investigator "K." The first two agents entered the barroom at approximately 9:30 p.m. while Investigator "K" remained outside. There were 35 to 40 patrons in the place and the licensee and Frank Wojkiewicz (hereinafter referred to by his nickname "Hershey") were tending bar. Yaunch entered an hour later carrying some clams for steaming. Almost immediately he became involved in a loud and prolonged argument with the licensee, during which each used foul, filthy and obscene language and epithets. Ultimately Yaunch either quit or was fired and left the premises.

An argument broke out in the barroom between two females who shouted foul, filthy and obscene names at each other. One of the females broke a glass and approached the other as though to attack her but she was intercepted by a male patron. The licensee, although playing shuffleboard with Investigator "C" only a few feet away, did nothing and, when the agent spoke to him concerning the incident, the licensee merely said "They'll calm down." The two females remained there glaring at each other.

The agents went into the rear room which is between the barroom and the dock and contains tables and chairs. Although there were then between 15 and 20 patrons in that rear room, neither the licensee nor any of his employees paid any attention to it. Patrons obtained their drinks by going to the barroom and carrying them back themselves. At one table in the rear room two couples were seated. One male, whose eyes were half closed and who slipped and fell and generally appeared to be intoxicated, was endeavoring to embrace one of the women, later said to be his wife, and repeatedly ran his hand up under her dress. This couple went into the barroom, the woman holding the man up, and returned to the rear room with short highball glasses from which they continued to drink. Another male, called "Carolina," who walked in an erratic manner and also appeared to be intoxicated, tried to hold aloft two chairs at the same time. When one of them fell on his head, he lay on the floor laughing and mumbling until he finally went to the bar where he was served a glass of wine which he consumed in the rear room.

After Yaunch had left the licensed premises following his argument with the licensee, Investigator "C" told Hershey that Yaunch had agreed to get them "laid by two colored whores from New York." Hershey replied, "Don't worry about that, there's a lot of that stuff around, they'll probably be in, so stick around." Later

that night the agents observed a young colored female, later identified as Frances West from New York City, enter the rear room. She was well-dressed and stood out from the other females present. Meanwhile an elderly man called "Slim" had started to steam the clams which Yaunch had brought in and, from time to time, took plates of clams into the back room to be eaten by the patrons, without charge. While the agents were discussing Frances, Slim approached them and told them that, if they were interested in having sexual relations with Frances, he would introduce them to her. Accordingly he brought Frances to the agents' table and introduced her. The agents bought her a drink (she expressed a preference for Calvert Reserve Whiskey) and, after some preliminary conversation, she offered to give them a "good lay" for $5 each plus $2 for the room. The agents and Frances went to the barroom where they sat directly in front of the beer taps. The licensee was behind the bar directly in front of the beer taps and Hershey was also working behind the bar. Ruth, with whom Investigator "C" had made the date on June 27 was seated at the bar next to Investigator "W". She looked at the agents and said in a reasonably loud voice "What you messing around that out of town stuff for. I told you I'd lay for $5," adding "You ought to stick to local stuff." (It may be noted that Ruth is also colored.) Frances finished her drink and walked over to talk to some other males saying, "I'm going over here, if you want me." Meanwhile Ruth continued to talk with Investigator "W," who said to her, "Let me get this straight--$5 for both?" Ruth became angry, cursed, and said "$5 each." Investigator "W" asked Ruth what the $5 was for and she again became angry raising her voice and indicated that she would engage only in normal intercourse. The licensee was drawing beer from the taps immediately in front of the investigators and smiled at this exchange. Other patrons at the bar also turned around and smiled.

Investigator "C" talked with Hershey and told him to watch his beer because he was going to go out to the car to see if he could find some rubbers (contraceptive devices) adding, "Ruth wants to give us a lay for $5--." Hershey replied "Nobody will steal it, you're beer will be all right." Investigator "C" left the premises, talked with Investigator "K" and two detectives from the Perth Amboy Police Department and returned to the licensed premises 15 minutes later. Upon re-entering he noticed that Ruth had left and that Frances was wandering around in and out of the back room. Investigator "C" spoke to Hershey and said "This is a fine thing. We get two colored girls, each wants to s--- (have intercourse with) us for $5 and now we haven't got any." Hershey merely shrugged his shoulders and smiled. Investigator "C" repeated the same words to the licensee a few minutes later but the licensee was noncommittal. Investigator "W" made the same complaint to Hershey who said "Don't worry about it. There is plenty around, stick around." Meanwhile Ruth, who had been asking Investigator "W" why they were "stalling," left with another male. Thereafter Investigator "W" talked with Frances and Investigator "C" went to the bar and told Hershey that they had finally "got fixed up with this Frances" and that she was going to take them to Smith Street and lay them for $5 adding, "We want to get some rubbers." Hershey said that he did not have any. Investigator "C" asked the licensee if he would try to find some for him. The licensee walked to the other end of the bar looking at the different patrons but returned to the agent and said, "There's nobody in here. It is too late to get any rubbers." Investigator "C" then told Hershey that Frances likes Calvert Reserve Whiskey and that he would like to get a bottle of that brand of whiskey. Hershey said that he would have to talk to the licensee, which he did. The licensee then approached Investigator "C" who said "I'm going to take Frances out and get laid for $5. I want to get her a pint of Calvert Reserve." The licensee told the agent to wait a minute and went to the back bar,

picked up a pint of whiskey and placed it underneath the bar. He handed the bottle to the agent under the bar through the service entrance and told him to put it under his shirt. The agent handed the licensee a $5 bill (one of a number of bills the serial numbers of which had been previously marked so as to be readily identified). The licensee placed the $5 bill in the cash register and returned $2.25 to the agent, thus charging $2.75 for the pint of whiskey. The minimum resale price of a pint of that brand of whiskey on that date was $2.83. (The licensee has admitted this after hours sale by pleading guilty to charge (6), but has denied that the sale was for less than the minimum resale price.)

The agents left the premises at approximately 1:20 A.M., July 4, 1953, with Timothy Kennedy who was to show them the way to his apartment on Smith Street. Frances had left a few minutes earlier with Mrs. Kennedy. When the agents arrived at 2 Smith Street they went to a basement apartment where they found Frances and Mrs. Kennedy. Each agent handed Frances a $5 bill and Investigator "C" handed her 2 one-dollar bills. Frances handed Timothy Kennedy $5 receiving $1 in change. Frances placed the money inside her dress and went into a bedroom with Investigator "W." The serial numbers of all of the money used by the agents had previously been recorded. Investigator "K" and two detectives of the Perth Amboy Police Department entered and found Frances and Investigator "W" in the bedroom. Investigator "W" was fully clothed, while Frances was lying on the bed in an exposed position. A marked $5 bill was recovered from Timothy Kennedy and, at police headquarters, a marked $5 bill and a marked $1 bill were found inside Frances' brassiere.

Several of the agents and Police Captain Zanzalari went to the licensed premises where the marked $5 bill, which had been used to pay for the pint bottle of whiskey, was found in the cash register.

On cross-examination Investigator "C" admitted that he had heard no females making "propositions" to any persons other than himself or Investigator "W", that he had not previously seen the man whom he believed to be intoxicated on the night of June 27, 1953; that, after the agents had been introduced to Frances, no one else helped them make the arrangements with her and that he did not see the licensee talk with Frances at any time.

Investigator "W" admitted on cross-examination that he had not seen "Carolina" prior to the night of July 3, 1953. He further admitted that the licensee was performing duties behind the bar while he (Investigator "W") was talking with Ruth and that he saw no solicitation of males by any females other than himself and Investigator "C." He further said that he did not know whether "Slim" was employed by the licensee.

Detective Sergeant Peter Catelli of the Perth Amboy Police Department testified that he had participated in the investigation and generally corroborated the agents' testimony concerning the events which took place inside the apartment at No. 2 Smith Street. He further testified that he was present at Police Headquarters when Frances was questioned; that a $5 bill and a $1 bill were found in the left side of her brassiere and that each was a marked bill.

The licensee, who was the only witness in his own behalf, testified on direct examination substantially as follows. He denied all of the charges except Charge (6), to which a plea of guilty had been entered. He admitted that an argument had occurred between two girls as testified by the agents, but claimed that he had told one of them to keep quiet and that her husband had taken

her into the rear room. He further testified that Carolina was a shell-shocked veteran of World War I who walks in a peculiar manner. He admitted that he sold the pint bottle of whiskey to Investigator "C," but claimed that the investigator handed him a $10 bill and that he (the licensee) returned $7.15 in change, thereby charging $2.85 for the whiskey. He admitted that the agents had visited his licensed premises, but claimed that his only conversation with Investigator "C," who was supposed to be a fisherman, was in connection with striped bass and that he did not have any conversation with respect to "rubbers" or sexual intercourse. He admitted the argument with Yaunch but denied that there had been any swearing. He testified that the rear room was open to all patrons; that he sometimes served drinks in the rear room, that he served one drink in that room on the night of July 3, 1953 but that no one was in charge of that room on that night.

The licensee further testified that Slim was not an "employee"; that Ruth had been a mental patient but was quiet and was not known to him as a prostitute; that he had seen Frances in the licensed premises three or four times in a period of six or eight weeks but that she was not known to him as a prostitute. He further testified that the Kennedys were married to each other and that he had no knowledge of their connection with any illicit sexual activities. He further testified that the music from the juke box is usually loud but that he checks swearing, stops all brawls and had had no trouble with prostitutes on the licensed premises.

On cross-examination he admitted that Yaunch had been one of his employees; that Hershey and Markoff are presently employed by him; that Peggy, while a customer, gives him "a hand" when he is busy, washing glasses and taking drinks into the back room; that, if the bartender is busy, he can get someone to help him; that he left Yaunch in charge of the premises after 6 p.m. on June 27, 1953 and was not personally upon the licensed premises that evening. He admitted that, during the argument with Yaunch, he became excited and that Yaunch may have sworn at him. He further admitted that, during the argument between the two girls which lasted three or four minutes, he might have said "It will take care of itself" and that he "wouldn't know" whether Carolina was drunk or sober. In describing his patrons he admitted that they swore but added, "It's not as much as the officers are saying here." In this connection he testified that if he hears anyone use "really bad language" he checks them. When asked to describe what he meant by "really bad language" he illustrated by the use of words too foul, filthy and obscene to be repeated here and, when asked whether that language was prevalent in his licensed premises, he answered "No, not necessarily."

Neither Slim, nor Peggy, nor Yaunch, nor Hershey, nor Markoff testified at the hearing. However, a signed statement, obtained from Hershey by the Perth Amboy Police Department, was admitted in evidence over the objection of defendant's counsel who claimed that it was not evidential because the Division could have subpoenaed Hershey as a witness. In the statement Hershey admitted that he was a night bartender at defendant's licensed premises; that "mostly colored people" frequent the premises; that Frances was in the premises on the night of July 3, 1953; that Investigator "C" had asked him if Frances "could be had" and that he had said "Yes"; that, later, Investigator "C" told him that Frances "wanted $10.00"; that he had told the agent not to be a fool, saying, "If you have to pay, don't give her more than $5.00"; that the agents had asked him for "rubbers"; that he had told them that he had none and that he had told Investigator "C" that Frances was supposed to be clean."

With respect to the admissibility of this statement, acts and conversations of a licensee's employees are admissible in disciplinary proceedings. Rule 31 of State Regulations No. 20 provides:

"In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

Judge McGeehan, speaking for the Superior Court of New Jersey, Appellate Division, in Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951) stated: "This rule (Rule 31 of State Regulations No. 20) contains no prohibition and is merely declaratory of certain applicable court decisions. Cf. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408 (Sup. Ct. 1943), affirmed 130 N.J.L. 554 (E. & A. 1943), cert. denied 320 U.S. 801, 88 L. Ed. 484 (1944); Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Galsworthy, Inc. v. Hock, 3 N.J. Super. 127 (App. Div. 1949)...."

This matter was explained in Re Belair Inn, Inc., Bulletin 981, Item 1, as follows:

"Manifestly, the Rule and its upholding are essential to proper and effective enforcement in protection of the public welfare. Without it the State would be rendered impotent and licensees would enjoy an immunity through the simple expediency of making sure that individual licensees (and members of licensee corporations) absent themselves from the licensed premises. And the exclusion of testimony with respect to declarations, acts and transactions of employees would render the Rule nugatory. That testimony of this nature has heretofore been admitted in evidence in similar disciplinary proceedings, see Re Hartman, Bulletin 904, Item 2; Re Mazza, Bulletin 972, Item 1. See also Re Guittari, Bulletin 974, Item 4 and cases there cited.

"As our courts have long held, the liquor traffic is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied. Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Essex Holding Corp. v. Hock, supra; Hudson Bergen, &c., Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Crowley v. Christensen, 137 U.S. 86, 34 L. Ed. 620."

Most certainly the same reasoning applies to a statement made by an employee where, as here, it contains the employee's recitation of events which took place upon his employer's licensed premises, within said employee's personal knowledge and in which he participated. Cf. Re Gutman, Bulletin 936, Item 4, affirmed In Re Gutman, 21 N.J. Super. 579 (App. Div. 1952).

There is no question but that Yaunch, Hershey and Markoff were employees of defendant. As to Slim and Peggy, while they may not have been on defendant's payroll, their services were utilized in furtherance of defendant's licensed business. That such fact constitutes them "employees" within the meaning of the statute and

regulations, see Re William Street Bar & Grill, Inc., Bulletin 466, Item 8; In Re Gutman, supra.

It is clear, therefore, that the matters and things which constitute the bases of the charges in this case occurred in the presence of the licensee, or his employees, or both.

At the conclusion of the hearing herein counsel for the defendant requested an opportunity to file a brief, which request was granted. Counsel contends therein that the notice of hearing served upon defendant was not adequate because the accompanying charges, addressed to defendant, were in the second person (you) and contained no reference to agents, servants or employees. Counsel then states, "From a perusal of the transcript, it can be observed that almost the entire charges against the licensee were charges made against his servants, agents and employees." This statement is incorrect, since it clearly appears from the foregoing recital of the facts that the licensee personally participated to a large degree in the violations.

It is interesting to note that defendant did not complain with respect to the adequacy of the notice either before or at the hearing; nor was there any request for an adjournment or continuance to afford the defendant an opportunity to produce his servants, agents or employees as witnesses. At the conclusion of defendant's testimony his counsel rested. In any event, the contention is without merit. Only the licensee may exercise the privileges of the license and anyone else who seeks to do so is guilty of a misdemeanor. R. S. 33:1-26. The privileges of the license may be exercised personally or through servants, agents or employees. A corporation, of necessity, must conduct its licensed business through servants, agents or employees. The licensee's responsibility is the same, whether he conducts the licensed business personally or through others. The matter of the licensee's responsibility for the conduct of his licensed premises has been fully dealt with in Re Paton, Bulletin 898, Item 3, wherein former Director Hock said:

> "...even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises'. Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140.'"

Defendant cannot escape the responsibility for the acts and conduct of any of the five persons hereinabove mentioned, namely, Yaunch, Hershey, Markoff, Slim, and Peggy. All were upon his

licensed premises with his authority. "When a privilege to enter (licensed premises) is given, whether general, conditional or restricted, the licensee has the duty of taking such measures as the circumstances of the particular case require to prevent prohibited conduct on the licensed premises arising out of the grant of the privilege." Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951).

Moreover, as Judge Francis, speaking for the Superior Court of New Jersey, Appellate Division, in Mazza v. Cavicchia, 28 N.J. Super. 280, 284 (App. Div. 1953) said: "The responsibility of the licensee is not dependent upon the doctrine of respondeat superior, nor upon his personal knowledge or intent or participation. Indeed, he is not relieved even if the violations were contrary to his express instructions."

Since, the responsibility is solely on the licensee, and since the violations committed are chargeable to him, he, as licensee, must answer for them and, thus, the notice and charges addressed to the licensee were in proper form and wholly adequate. Furthermore, as hereinabove pointed out, defendant personally participated in the violations which occurred on July 2, 3, and 4, 1953 and, as to June 27, 1953, he himself testified that he had left Yaunch in charge. Certainly, if defendant had wanted Yaunch or anyone else to testify he had ample time for the purpose. Defendant has had his full day in court.

Counsel attempts to distinguish the instant case from Greenbrier, Inc. v. Hock, supra, by contending that the charges in that case were in the disjunctive (allow, permit or suffer) while the charges in the instant case are in the conjunctive (allow, permit and suffer). He was probably misled by a statement contained in the reported case (Greenbrier v. Hock, supra). However, the fact is that the charges in the Greenbrier case were, as here, in the conjunctive. See Re Greenbrier, Inc., Bulletin 887, Item 3.

Counsel further contends that, where the conjunctive is used, "It is necessary to prove that he allowed, that he permitted, and that he suffered" the acts to take place and that, "in order to allow someone to do something, one must have knowledge of what is done."

The first of these contentions was disposed of in Re Arlington Inn, Bulletin 982, Item 1, as follows:

> "Under the regulations, it is sufficient that the licensee either allowed, or permitted, or suffered the violations to occur and the courts have held that if any of a series of acts, charged in the conjunctive, is proved, a finding of guilt will be sustained. State v. Hill, 73 N. J. L. 77 (Sup. Ct. 1905), affirmed 74 N. J. L. 689 (E. & A. 1906), Essex Holding Corp. v. Hock, supra. See also Murphy v. Zink, 136 N. J. L. 235 (Sup. Ct. 1947), affirmed 136 N. J. L. 635 (E. & A. 1948) and State v. Jusiak, 16 N. J. Super. 177 (App. Div. 1951)."

The contention with respect to "knowledge" has been dealt with fully earlier in this decision.

As to Charge (1): While the evidence raises a strong suspicion with respect to the allegations set forth in the charge, suspicion, no matter how reasonably inferable, is not a substitute for the quantum of proof necessary for a finding of guilt. Re Arlington Inn, supra. See also Re Doyle, Bulletin 469, Item 2, and cases therein cited. Consequently, I find defendant not guilty as to Charge (1).

Defendant has pleaded guilty to Charge (6).

As to all of the remaining charges I am satisfied, from a careful consideration of all of the evidence, that the acts and conversations recited in the testimony of the Division's witnesses did, in fact, take place and that, standing alone, without Hershey's statement, they are sufficient to establish defendant's guilt.

Consequently, I find defendant guilty as to Charges (2), (3), (4), (5) and (7).

It has long been held that solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse cannot and will not be tolerated upon licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2; affirmed In Re 17 Club, Inc., 26 N. J. Super. 43 (App. Div. 1953). These violations, considering their nature and number, disclose a most deplorable condition--one which cannot be permitted to continue. From the full record before me it is obvious that this licensee has not only shown a callous disregard for regulations adopted in the public interest, but has demonstrated a shocking lack of appreciation for and understanding of fundamental decency and propriety in the operation of his licensed business and, thus, is not a proper person to hold a liquor license. Re Pecorino, Bulletin 889, Item 4. Hence the only appropriate penalty is outright revocation.

Accordingly, it is, on this 12th day of April, 1954,

ORDERED that Plenary Retail Consumption License C-25, issued by the Board of Commissioners of the City of Perth Amboy, to John Sevak, t/a The Basin Inn, 274 Front St., Perth Amboy, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
Director

3. RULE 7a OF STATE REGULATIONS NO. 34 - CHANGE IN INTERPRETATION WITH RESPECT TO TREATMENT OF ITEMS OR BRANDS BOTTLED IN VARIOUS STYLED CONTAINERS AS AFFECTED BY PRICE REDUCTIONS.

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES (OTHER THAN MALT ALCOHOLIC BEVERAGES):

Since the promulgation of amended State Regulations No. 34 on April 30, 1952, the Division has construed, with respect to the provisions of Rule 7a, that when schedules of price reductions are filed by manufacturers or wholesalers for any item or brand, the reductions are intended to apply uniformly to the designated size of container irrespective of style of container such as "round", "square" or "decanter".

It has been represented to me that manufacturers bottling their products in both "round" or "square" and "decanter" type of containers traditionally treat the different styles of containers as distinctly separate items. It is understandable, therefore, that perhaps undue hardship has been imposed by the Division on manufacturers and wholesalers in the present interpretation of Rule 7a of State Regulations No. 34 that reductions when filed for a specific size of container shall apply to all types of containers of that size and brand.

Accordingly, effective with filings of price reductions on April 23rd to become effective for the month of May, manufacturers and wholesalers handling brands bottled in "round" or "square" and "decanter" type of containers may treat containers of different styles in the same size as separate items and file separate price reductions for each type of container. Where the manufacturer or wholesaler chooses to file separate price reductions for different styles of containers, the reductions must be effected for the same calendar month in the same quarterly period.

However, the Division will continue to stand firmly by its interpretation of Rule 7a of State Regulations No. 34, whereby only <u>one brand</u> may be reduced in price for one <u>prescribed calendar month</u> in any quarterly period.

Dated: April 22, 1954.

WILLIAM HOWE DAVIS
Director

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

In the Matter of Disciplinary Proceedings against

JACOB LEE
n/s N. J. Highway #130
Mansfield Township
P.O. RFD #1, Bordentown, N. J.

Holder of Limited Winery Licenses VL-3 and VL-16, issued by the Director of Alcoholic Beverage Control

CONCLUSIONS AND ORDER

Jacob Lee, Defendant-licensee, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at his licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on March 9, 1954, an ABC agent interviewed Frank ---, age 17, and three other minors, and received from them signed sworn statements relating that at about 8:30 p.m. February 27, 1954, they drove to the above licensed premises, which Frank --- entered, returning to his companions, parked nearby, with a half-gallon bottle of wine, which he stated he had purchased on the premises from an elderly man who made no inquiry as to his age.

The four youths directed the agent and the Police Chief of Florence Township to the above licensed premises, which they identified as the place where the wine was obtained, and Frank --- then identified therein as the man who sold him the beverage Jacob Lee, the licensee, who verbally admitted having recently seen the youth in his winery but could not remember having sold him any wine at the time.

Defendant has no prior adjudicated record. Since the minor was only seventeen years of age, I shall suspend the licenses for fifteen days (Re Jacobs, Bulletin 995, Item 7). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of April, 1954,

ORDERED that Limited Winery Licenses VL-3 and VL-16, issued by the Director of Alcoholic Beverage Control to Jacob Lee, for premises on n/s N. J. Highway #130, Mansfield Township, be and the same is hereby suspended for ten (10) days, commencing at 7 a.m. April 19, 1954, and terminating at 7 a.m. April 29, 1954.

WILLIAM HOWE DAVIS
Director