

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2204

November 12, 1975

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2204

November 12, 1975

1. APPELLATE DECISIONS - BLUE RIDGE BAR & GRILL, INC. v. FRANKFORD.

Blue Ridge Bar & Grill, Inc., )

Appellant, )

v. )

Township Committee of the )  
Township of Frankford, )

Respondent.

On Appeal

CONCLUSIONS  
and  
ORDER

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Joseph M. Keegan, Esq., Attorney for Appellant  
Albert G. Silverman, Esq., Attorney for Respondent  
Trapasso, Dolan & Hollander, Esqs., by Paul L. Abramo, Esq.,  
Attorneys for Frank Kymen, President of  
Appellant Corporation

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Township Committee of the Township of Frankford (hereinafter Committee) which, on March 8, 1975, denied appellant's application for a place-to-place transfer of its Plenary Retail Consumption License C-5, from Route 206, Culver Lake, to Lot 6A, Block 11, Plains Road, in Frankford Township.

Appellant contends that the Committee's action was erroneous because its determination was against the weight of the evidence before it, and was an abuse of its discretion. The Committee denied these contentions and offered a copy of its resolution denying the application, which contained the reasons for its determination.

An appeal de novo was heard in this Division, pursuant to Rule 6 of State Regulation No. 15, at which the parties were permitted to introduce evidence and cross-examine witnesses. At the outset of the hearing varied exhibits were admitted into evidence, consisting of a zoning map, tax maps, copies of the local zoning ordinance, a location survey, copy of the Master Plan and an enlarged aerial photograph encompassing a large area of the municipality, including lands containing the proposed site. During the course of the hearing, a sketch of the floor plan of the proposed premises was presented by appellant and a copy of a petition, with accompanying letters in opposition to the transfer was presented by respondent.

Frank Kymen, president of the corporate appellant, testified that the subject license was located in the private residence of his associate since 1963, and that no business had been conducted under the license since that time. The annual fees for the license have been paid annually since that time. An offer for the purchase of the corporate stock of the licensee corporation has now been received from Hugo Caramagna, which offer is subject to approval of a transfer of the license to Caramagna's property, for which the transfer application had been made.

The contract purchaser of appellant's corporate stock, Hugo Caramagna, testified that if the transfer of the license is approved, he would transform a one-story office building presently on the premises into a restaurant, which would contain a small bar. The consumption of alcoholic beverages would be confined to the service of beer and wines to the patrons of his restaurant.

Although originally contemplated to be small, if business subsequently warranted, he would enlarge the building to accommodate added patrons. He admitted that, apart from an informal sketch of the existing floor plan of the building, no detailed elevation drawings or proposed floor plan had been furnished to the Committee.

Nearby to the proposed site, lies recently acquired lands belonging to the Sussex County Farm and Horse Show, a non-profit corporation. One of its trustees, Jules W. Marron, Sr., testified respecting his qualifications as a Planner. He had been Deputy Director of the State Department of Economic Development, Chairman for Planning and Conservation for Sussex County, and Chairman of the Tri-State Regional Council for the Tocks Island Recreational Council.

He detailed the plans of the Sussex County Farm and Horse Show which was moving from its present location in nearby Branchville to its new 102 acre site hereinabove referred to. An annual Horse Show, held in August, presently attracts up to 75,000 visitors. At the new location for this affair, there is an anticipated patronage in 1976 of more than 125,000; and with other agricultural exhibits, including various animal shows, it is expected that more than 400,000 people will visit their lands during an eight-month season. New roads and certain permanent buildings will have to be constructed before full use of the lands is effected. He emphasized that no alcoholic beverages of any kind are now sold, nor will they be sold on those premises.

Testifying in his capacity as a Planner, Marron opined that the proposed license transfer for a new eating and drinking establishment near to the Horse Show grounds could be a useful addition to the area.

Albert Ayers, the Township Clerk, testified that he had presented the Committee a petition in opposition to the transfer as well as several letters from nearby residents voicing objections. On an aerial photograph accepted into evidence, he indicated he had marked the homes of the nearby objectors in red. The proposed location is 4,300 feet from a nearby licensed premises and 4,600 feet from another.

The township presently issues nine consumption licenses, one distribution license, one club license and one seasonal license. Its population is approximately three thousand.

Councilmen Donald Haggerty and Cornelius Leenheer each testified that the proposed area is sparsely populated and that the present licensed facilities adequately serve the area. In their judgement, there is no public need and necessity for additional licenses there. Although both admitted that they were unaware of the huge crowds anticipated by the Horse Show, another licensed premises nearby would compound the problem, not solve it. Further, both admitted that although the appellant's license could not be used where presently located, its use in the more populated areas of the municipality would better serve the interests of the residents.

Mayor George A. Fetzer, the remaining member of the Committee, testified that the adopted resolution accurately sets forth the determination of the Committee, and that the area to which transfer was sought is extremely rural. The benefit to the public of a license at the location of this license would not exist. He corroborated the opinion of his colleagues that the appellant's license should be moved to an area more heavily populated than the proposed location.

The resolution adopted by the Committee concluded with the determination that "The general area which is rural and to which the proposed transfer is requested to be made already contains a sufficient number of Plenary Retail Consumption licenses, and there is no evidence before the Township Committee of the need or necessity for another such license in the general area where said license is proposed to be relocated and said proposed transfer would not, in the opinion of this Committee, serve a public need or necessity. The Committee distinguishes this area from the summer resort area of Culver Lake and Lake Owassa located to the North of Route 206 where said license is now located."

A restatement of the legal principles applicable affirms that in the absence of a pure abuse of discretion, the action of the municipal issuing authority will not be set aside. Blanck v. Magnolia, 38 N.J. 484 (1962).

The factual context herein parallels those contained in Fanwood v. Rocco, 33 N.J. 404 (1960) in which the court held:

"...The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations of the record before him...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable." at p. 414.

As the Court emphasized in Lubliner v. Paterson, 33 N.J. 428, 446, (1960). "in matters involving a transfer of liquor licenses the responsibility of the municipal issuing authority is 'high', its discretion 'wide' and its guide 'the public interest'." Where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J...502 (1947).

Absent improper motivation, and with the expressed intent as indicated in the resolution, to weigh the merits of the application for transfer against the public interest, I find that the Committee has discharged its responsibility in a proper manner. I find that its determination that the public would not be well-served by the proposed transfer was sound exercise of its judgment that should not be set aside.

However, it is to be noted that appellant's plenary retail consumption license has been dormant for twelve years, during which time the Committee accepted the annual renewal fees and renewed the license without question. The appellant complains that the zoning restrictions of the municipality prevented any easy transfer, and that the present proposal is the first that has developed during that extended period. Certainly neither the Committee nor the appellant has been free of responsibility for the situation complained of.

Testimony of each member of the Committee indicated prospective approval of a transfer of the subject license to a more populated area of the municipality; to that end cooperation should be extended to the appellant toward its vigorous efforts to secure such location, without further delay.

I find that the appellant has not sustained its burden of establishing that the action of the Committee was erroneous and should be reversed, pursuant to Rule 6 of State Regulation No. 15. Accordingly, it is recommended that the action of the Committee be affirmed, and the appeal herein be dismissed.

#### Conclusions and Order

Written exceptions to the Hearer's report were filed on behalf of the appellant pursuant to Rule 14 of State Regulation No. 15. No answer was filed thereto by the respondent.

The exceptions essentially take issue with the Hearer's recommended finding that the Committee acted in the sound and proper exercise of its discretion when it unanimously denied the subject application for a place-to-place transfer of the said license.

The Hearer aptly cited Lubliner v. Paterson, *supra*, to the effect that, in matters involving a transfer of liquor licenses, the discretion of the local issuing authority is "wide",

and its guide is the "public interest".

Appellant disagrees with the Committee's determination that: (a) the general area to which the proposed transfer is requested is rural; (b) the area already contains a sufficient number of plenary retail consumption licenses; and (c) there was no evidence presented to establish that there is a need or necessity for another such license in this area.

These are matters properly confided to the sound discretion of the Committee, and, absent improper motivation (not shown or even suggested herein) or manifest abuse of its discretion, the action of the Committee should be affirmed. See Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

Finally, as the resolution recites, "almost every property owner and resident in the immediate vicinity" to the said transfer objected thereto, the Committee properly took into consideration such community sentiment in arriving at its determination.

As the court recently stated in Lyons Farms Tavern, Inc. v. Newark, (Sup. Ct. A-83 - decided July 10, 1975), (which involved an appeal from the grant of a person-to-person transfer):

"Community interest is best served by an attentive and sympathetic attitude toward the sentiments of substantial numbers of persons in the locality." Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 at p.306-07 (1970).

And, further, "we conclude that community sentiment may properly be heard and should be given thoughtful consideration in [person-to-person] transfers." It is, of course, apparent that this rule has always been applicable to place-to-place transfers of liquor licenses.

I have evaluated the exceptions herein, and find that they have either been correctly resolved in the Hearer's report, or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the exceptions filed thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of August 1975,

ORDERED that the action of the Committee be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed.

Leonard D. Ronco  
Director

## 2. APPELLATE DECISIONS - ROBERT LYNN, LTD. V. ORANGE.

Robert Lynn, Ltd. )  
 Appellant, )  
 v. )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City )  
 of Orange, )  
 Respondent. )

CONCLUSIONS  
 and  
 ORDER

-----  
 Mellinger & Rudenstein, Esqs., by Seymour Rudenstein, Esq.,  
 Attorneys for Appellant  
 Beninati & LaMorte, Esqs., by Frank A. LaMorte, Esq.,  
 Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the denial of an application for a person-to-person transfer of Plenary Retail Consumption License C-7, held by Louis Ripa for premises 350 Henry Street, Orange to Robert Lynn, Ltd. by resolution of the Municipal Board of Alcoholic Beverage Control of the City of Orange (hereinafter Board) adopted May 9, 1975.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. However, by stipulation of counsel, in lieu thereof, the matter was submitted on transcripts of proceedings held by the Board, entered into evidence in accordance with Rule 8 of State Regulation No. 15.

Appellant's principal contention on this appeal was directed to Conclusions and Order entered by the Director of this Division in the matter of Ripa v. Orange, Bulletin 2171, Item 2, which concerned an appeal by the transferor herein, Louis Ripa, against the Board which had denied renewal of the subject license. In that matter, the Director ordered renewal of Ripa's license subject to the "special condition that appellant (Ripa) consummate a transfer of his license to a bona fide transferee as may be approved by the respondent Board within three months from the effective date of this order or within such further time as the Board may extend..." The Order was entered by the Director on November 8, 1974.

Appellant contends that a timely application for transfer was made by it and such delays as were occasioned were not the result of its dereliction. The Board maintained that as the order carried with it a requisite "approval of the Board" and such approval was not forthcoming; hence, appellant was without standing to press its appeal.

From the transcripts of the proceedings held before the Board and the proffers of proofs entered at the hearing in this Division, which were uncontroverted, it appears that, following the Director's order of November 8, 1974, aforesaid, a contract of sale of the premises was developed between Ripa and appellant on November 30, 1974. An application for the person-to-person transfer, a denial of which is the subject of this appeal, was timely filed with the Board. As part of the application procedure, fingerprints of the applicant were required to be taken and submitted to the New Jersey State Police. A report on that submission was delayed in processing so that, by the time that appellant's application could be fully processed, the three months' period specified by the Director in the aforesaid order had expired.

It is further noted that of the three members of the Board, only two attended the hearing on the application. The absence of the third member was waived by appellant. One of the two members hearing the matter voted in the affirmative, basing his vote on the opinion expressed by the Director in the Ripa, supra matter. The remaining member voted in the negative and based his action upon identical grounds, asserted initially at the hearing, which resulted in the denial of renewal of Ripa's license.

It must be noted that, at the hearing in this Division there were, literally, a busload of objectors present. As the licensed premises had been closed since the Director's order in the Ripa matter, it was apparent that their objections would relate to the conduct of the licensed premises by Ripa, and not to the character of the applicant, as no testimony relating to his character, reputation or ability to manage the premises was introduced. Significantly, although the appellant is a corporation, its president and holder of all of its capital stock is Bernard M. Page; and testimony before the Board revealed his intention to direct the activities of the licensed premises as sole manager.

That the Board's action was arbitrary and unreasonable could not be seriously contradicted. In view of the fact that the appellant's application was timely made and the Board did not determine that appellant corporation or its sole stockholder had any infirmity in holding a license. I find that the Board, through the action of a single member, capriciously disregarded the mandate of the Director's order.

Accordingly, I recommend that the action of the Board be reversed, and that it be directed to approve the application for person-to-person transfer by appellant, in accordance with the application filed therefor.

#### Conclusions and Order

Written Exceptions to the Hearer's report were submitted on behalf of the respondent pursuant to Rule 14 of State Regulation No. 15. No Answer thereto was submitted by appellant.

I have analyzed and evaluated the said Exceptions, and find that they have either been correctly resolved in the Hearer's report or are lacking in merit.

Thus, having carefully considered the entire matter herein, including the transcript of testimony, the exhibits, the Hearer's report, and the Exceptions filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of August, 1975

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Orange be and the same is hereby reversed; and it is further

ORDERED that the said Board be and is hereby directed to approve the person-to-person transfer of the plenary retail consumption license from Louis Ripa to appellant, in accordance with the application filed therefor.

Leonard D. Ronco  
Director

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY - PROSTITUTION - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against )

Milrob Corp. t/a Smitty's Bar & Package Goods) 708 Main Street Asbury Park, N.J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-40, (for the 1974-75 license period), issued by the City Council of the City of Asbury Park. )

Silverman & Silverman, Esqs., by Ruben D. Silverman, Esq., Attorneys for Licensee Carl A. Wyhopen, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to the following charge:

"On November 22 and 23, 1974, 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 Regulation No. 20."

ABC Agent Mc testified that he entered the licensed premises, a typical tavern containing a bar and a package goods section, on November 22, 1974 at 11:30 p.m. and sat at the bar. Tending bar was a male identified as Donnish Jenkins. Also present in the barroom was Mildred Beideman, a principal stockholder and officer of the corporate licensee.

A male seated to his left asked him if he was looking for a woman. Mc responded that it depended "on money situation and everything else." The male explained that "he had a nice girl he would let me talk to, and I could talk money to her".

The male introduced a female, Jackie, to Agent Mc, who then seated herself to the left of Agent Mc.

Jackie asked Agent Mc what he "would like to do". Mc asked how much it would cost. She responded "...fifteen dollars for a blow job and twenty dollars for regular sex."

Upon questioning Jackie concerning the availability of a room, she replied that they "could use Moe's place for five dollars".

At this point no arrangements were made with the female. Mc explained to Jackie that he would have to think about it; that he was short of funds. Mc and Jackie spoke in normal conversational tone at the bar. During the time of his conversation with Jackie he did not know exactly where Jenkins was stationed except that he knew he was somewhere behind the bar.

Agent Mc proceeded into the men's room. ABC Agent M, who had preceded Mc into the tavern and who had been positioned at another location of the bar, followed Mc in the men's room. After conferring therein, Agent Mc returned to his former position. Agent M picked up his drink and positioned himself one or two stools distant from Agent Mc.

Agent Mc asked Donnish who was then positioned behind the bar between him (Mc) and M whether Jackie was clean and explained that he did not want to spend twenty dollars for sexual intercourse and "...get a dose to go with it". The bartender responded "Don't worry about it. She is clean."

Agent Mc informed Jackie that he would leave with her and would settle for a "blow job". Jackie indicated approval and suggested that they leave separately in order not to create suspicion. Mc departed from the tavern first and entered his motor vehicle. Within seconds, Jackie got into the passenger side. Mc drove into a lot across the street from the tavern and handed Jackie money, which had been marked prior to entering the tavern. Jackie placed the money in her sock.

ABC agents B and S, accompanied by a local police officer approached the car and identified themselves, after which Agent Mc identified himself to the female. The "marked" money was retrieved from Jackie's sock by Agent S. All law enforcement officers then proceeded to the licensed premises. Mc informed Donnish of the alleged violation. He asked Donnish whether he recalled being asked whether Jackie was clean. Donnish replied affirmatively. Mc then asked Donnish whether he realized that Jackie was hustling. Donnish again replied affirmatively.

Mc identified himself to Beideman and informed her of what had transpired. She denied having any knowledge of it.

Agent M testified that he entered the licensed premises several minutes prior to Agent Mc's entering therein. He observed a male approach Agent Mc, take a seat next to Mc and converse with him. The male got up and permitted the female known as Jackie sit next to Mc and converse with him. Agent M, thereupon, moved to approximately a bar stool distant from M in order that he could overhear the conversation. His testimony

concerning the arrangements made for the illicit sexual intercourse between M and Jackie was substantially similar to the testimony of Agent Mc.

After conferring with Mc in the men's room, he overheard Mc question Donnish as to whether Jackie was clean. Mc said that he didn't want to spend \$20.00 for sex and catch a dose (venereal disease) with it. Donnish replied "Don't worry about it. She was clean."

ABC Agent B testified that he prepared the "marked" money used by Agent Mc on the night of November 22. He and Agent S sat in a car surveilling the premises. He observed Agents M and Mc enter therein. He then observed Agent Mc exit therefrom, followed by the female, identified as Jackie, and proceed in a car to a parking lot.

Accompanied by Agent S and a local police Officer, Agent B confronted Agent M and Jackie in the car. He recovered the "marked" money from a sock worn by Jackie. Agent B entered the tavern with Mc and two local police officers. He heard Mc question Donnish as to whether he recalled that he (Mc) mentioned being hustled by Jackie. Donnish replied "Yeah".

In defense of the charge, Mildred Beideman testified that Donnish Jenkins had been employed as a part time bartender and that, at the time of the alleged occurrence, both she and Donnish were tending bar. Jackie usually patronized the licensed premises three or four times a week. She had no knowledge that Jackie was a prostitute.

The witness recalled seeing Agent Mc in the tavern on the night of November 22; however, she did not have any conversation with Mc concerning Jackie at all. She did serve Mc a drink and, at his request, served Jackie a drink for which he made payment. At no time did she overhear Mc and Donnish engage in conversation with each other which, in anywise, related to Jackie. She was not near the ABC agents when they confronted Donnish relative to Jackie's alleged hustling of Mc and she did not overhear any such conversation.

Donnish denied to her that he had any conversation with Agent Mc which, in anywise, related to Jackie. He is no longer employed by the licensee.

The bartender, Donnish Jenkins, was not produced as a witness.

The charge herein is based on Rule 5 of State Regulation No. 20, the pertinent part of which provides:

"No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity...."

The specific charge herein alleges that the licensee had violated this rule by allowing, permitting and suffering the solicitation for prostitution and the making of arrangements for acts of illicit sexual intercourse. Our courts have consistently held that "the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is in itself an immoral activity comprehended by the scope of the regulatory rule." In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). The court stated in Schneider, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity...."

See In re Olympic, Inc., 49 N.J. Super. 299 (App. Div. 1958).

Unquestionably, an arrangement was made on the date charged between a female (Jackie) and the agent in the licensed premises for acts of illicit sexual intercourse.

Therefore, the sole remaining dispositive issue is, whether the licensee did "allow, permit or suffer" the act of lewdness and immoral activity in and upon the licensed premises.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Applying this principle, I am convinced that agent Mc's uncontroverted testimony of his conversation with Donnish, the bartender, concerning the arrangements made with Jackie (amply corroborated by the testimony of Agent M) was not a fabrication and preconceived in order to falsely and maliciously inculcate an otherwise innocent licensee. Although the Division witnesses were subjected to intensive cross examination by counsel for the licensee, their testimony remained unshaken.

From the evidence presented it is manifest that the licensee permitted and suffered the solicitation for prostitution to take place on the licensed premises as charged.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947), 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."

It has long been held that the solicitation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953).

Licensee argues an unawareness of the conduct and activity of the barmaid. The licensee is clearly inculcated by the misconduct of its employee. Such conduct constitutes a grave threat to the public welfare and morals and, unless eliminated, tends towards the abuse and abasement. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, supra. Furthermore, it is a basic principle that, in disciplinary proceedings, the licensee is fully accountable for all violations committed, or permitted and suffered by his servants, agents or employees. Knowledge on the part of the licensee is not a prerequisite to a finding of guilt where the employee participates in the misdeed. Cf. Essex Holding Corp. v. Hock, supra; In re Schneider, supra; Rule 33 of State Regulation No. 20.

I have also noted that the licensee failed to produce its bartender as a witness herein and that there was no explanation offered concerning his failure to appear.

The principle of law applicable hereto is that, where a party has a witness or witnesses available and where they possess peculiar knowledge concerning the facts essential to a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to said party, i.e., he could not truthfully contradict the testimony of the Division's witnesses. Re Lesniewski, Bulletin 1581, Item 5; Hickman v. Pace, 82 N.J. Super. 483 (App. Div. 1964); Re Soto Pruna, Bulletin 1713, Item 1.

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty as charged.

The licensee has no prior record of suspension of license. I, further, recommend that the license be suspended for sixty days.

#### Conclusions and Order

Written Exceptions to the Hearer's report with supportive argument were submitted by the licensee pursuant to

Rule 6 of State Regulation No. 16. An Answer to the Exceptions, with supportive argument, were filed by the attorney for the Division.

In its Exceptions, the licensee argues that the conversations between the ABC Agent and the female with whom arrangements for illicit sexual activity were made, and with the bartender were inadmissible as hearsay because they were not made in the presence of the licensee.

Aside from the fact that the licensee is a corporation which can only act through its agents and employees, these conversations are not hearsay under Rule of Evidence 63. This Rule defines hearsay as "Evidence of a statement offered to prove the truth of the matter stated which is made other than by a witness while testifying at a hearing."

Obviously, these statements were not hearsay, for they are "verbal facts" which constituted the basis of the charge, i.e.; (1) the conversation with the female constituted the conduct which the licensee is charged with allowing, permitting and suffering the solicitation for prostitution, and the making of arrangements for illicit sexual intercourse; and (2) the conversation between the agent and the bartender constituted the denounced conduct on the part of the licensee's employee, and thus, was evidential of his knowledge as to what transpired. The licensee's contentions are palpably frivolous and are rejected.

I have considered the other matters raised in the licensee's Exceptions and find that they have been either considered and correctly resolved in the Hearer's report or are lacking in merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the Exceptions filed with respect thereto, and the Answer to the said Exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of August 1975,

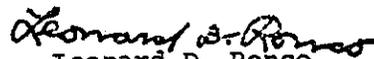
ORDERED that Plenary Retail Consumption License C-40, issued by the City Council of the City of Asbury Park to Milrob Corp., t/a Smitty's Bar & Package Goods for premises 708 Main Street, Asbury Park, be and the same is hereby suspended for sixty (60) days commencing 3:00 a.m. on Thursday, September 4, 1975 and terminating 3:00 a.m. on Monday, November 3, 1975.

Leonard D. Ronco  
Director

4. STATE LICENSES - NEW APPLICATION FILED.

Sicilian Wines Import Co., Inc.  
107 Farnham Avenue  
Garfield, New Jersey

Application filed November 6, 1975 for  
place-to-place transfer of Limited  
Wholesale License WL-53 to include a  
warehouse at 203 Grand Avenue, Garfield,  
New Jersey.

  
Leonard D. Ronco  
Director