

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

JAKE'S NEW TYME SALOON, INC. DBA JAKES FLINT STATION
1183 PLEASANT ST.
FALL RIVER, MA 02723
LICENSE#: 038800086
HEARD: 9/7/11 & 10/5/11

This is an appeal of the action of the Fall River Licensing Board (the "Local Board") for revoking the M.G.L. c. 138, §12 license of Jake's New Tyme Saloon, Inc. dba Jake Flint Station (the "Licensee" or "Jake's") located at 1183 Pleasant Street, Fall River, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "ABCC") and a hearing was held on September 7, 2011 and October 5, 2011.

The following documents are in evidence:

Licensee Exhibits

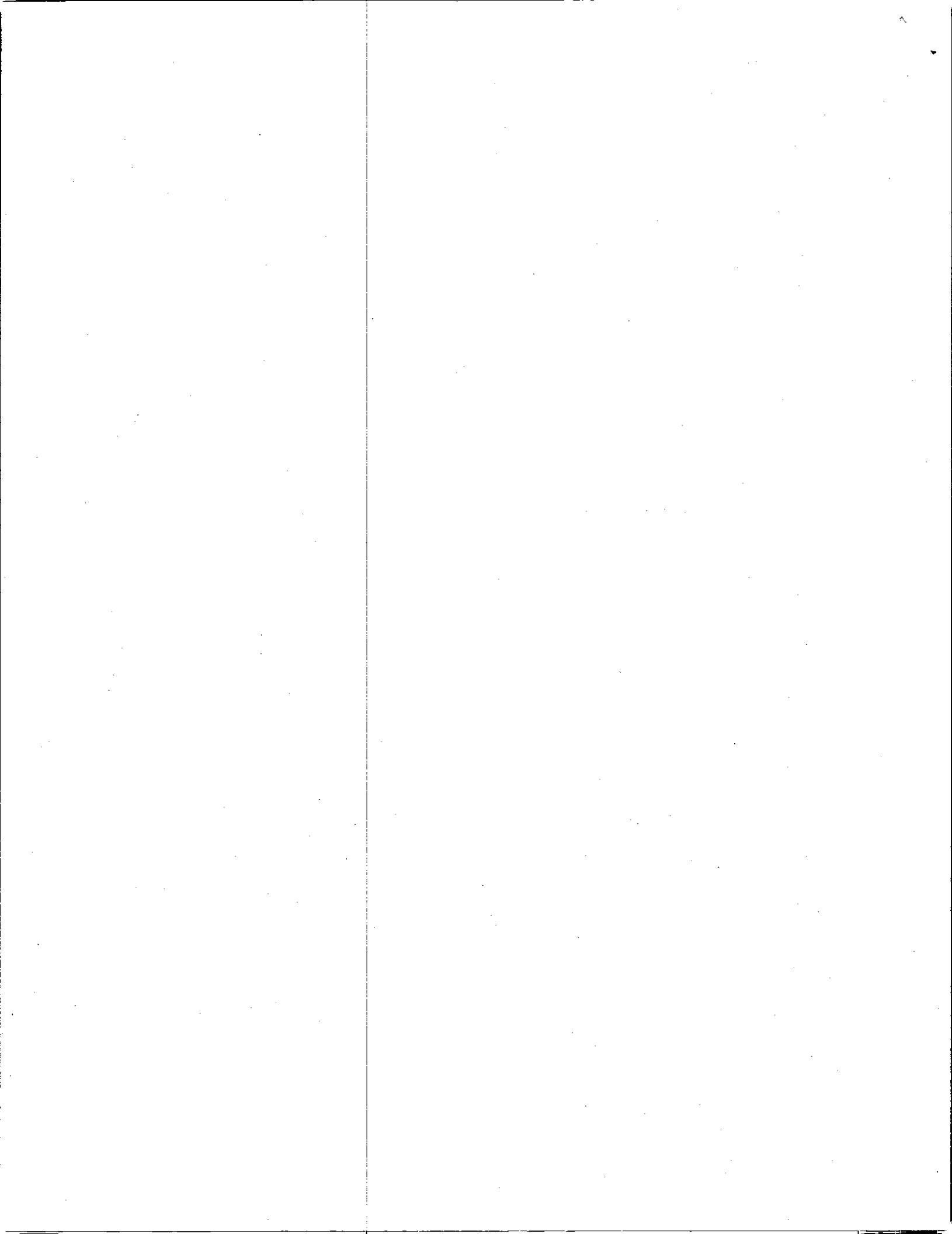
1. Photograph of Marked Currency;
2. Photograph of Gun and MA ID;
3. Photograph of Gun in Briefcase;
4. Photograph of Plastic Bag with Residue;
5. Photograph of Plastic Bag;
6. Photograph of Coke and Crack Pipe;
7. Photograph of Marijuana;
8. Photograph of Gun in Car;
9. Indictments;
10. C.I. Grand Jury Testimony;
11. Search Warrants;
12. Arrest Reports;
13. Report of Interview dated 3/27/2011;
14. Copy of Liquor License;
15. Local Board Rules and Regulations; and
16. Transcript of Show Cause Hearing.

Local Board Exhibits

- A. Herald News Articles;
- B. CJIS Reports; and
- C. Notice from the Fall River Police dated November 6, 1990.

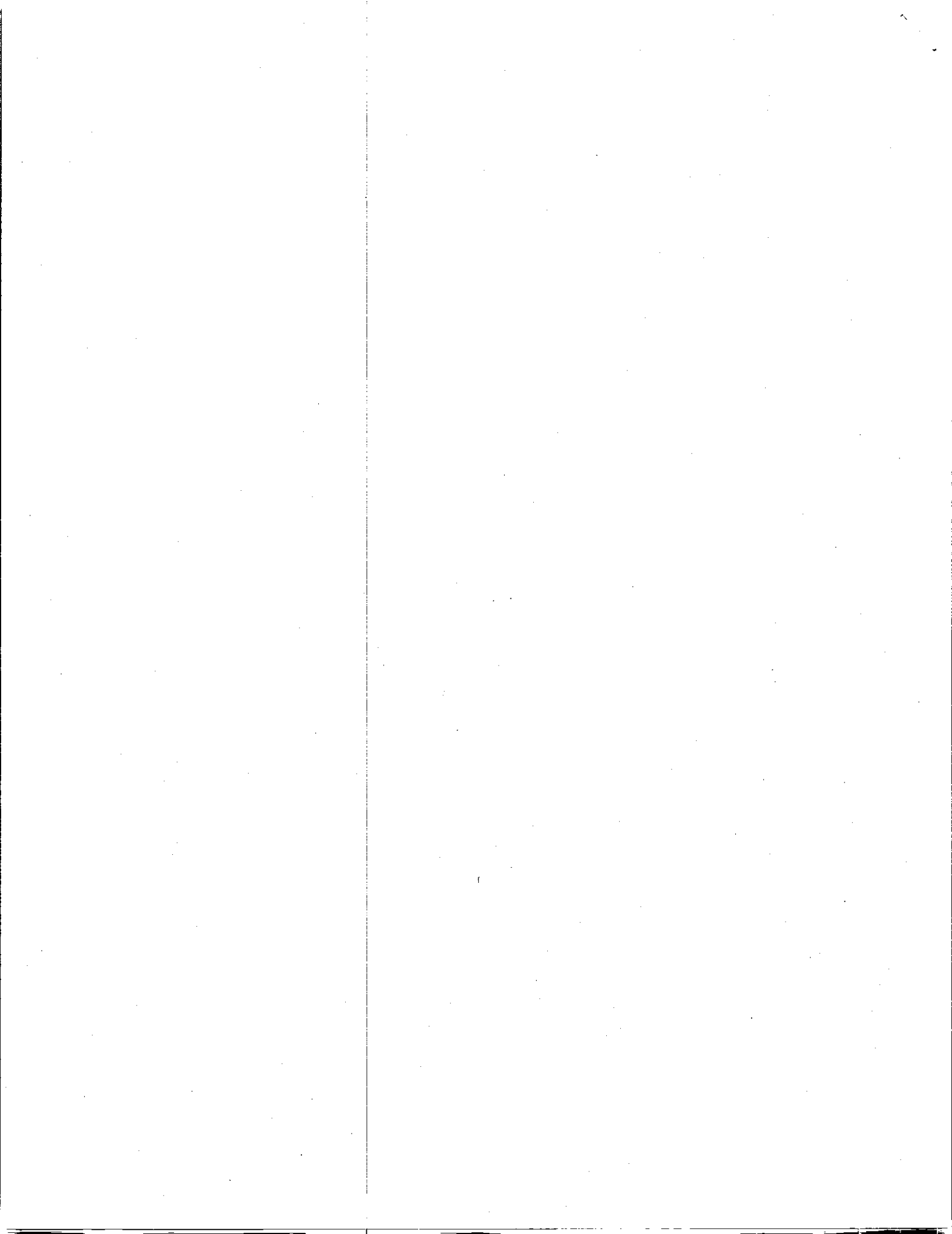
There are two (2) audio recordings of this hearing.

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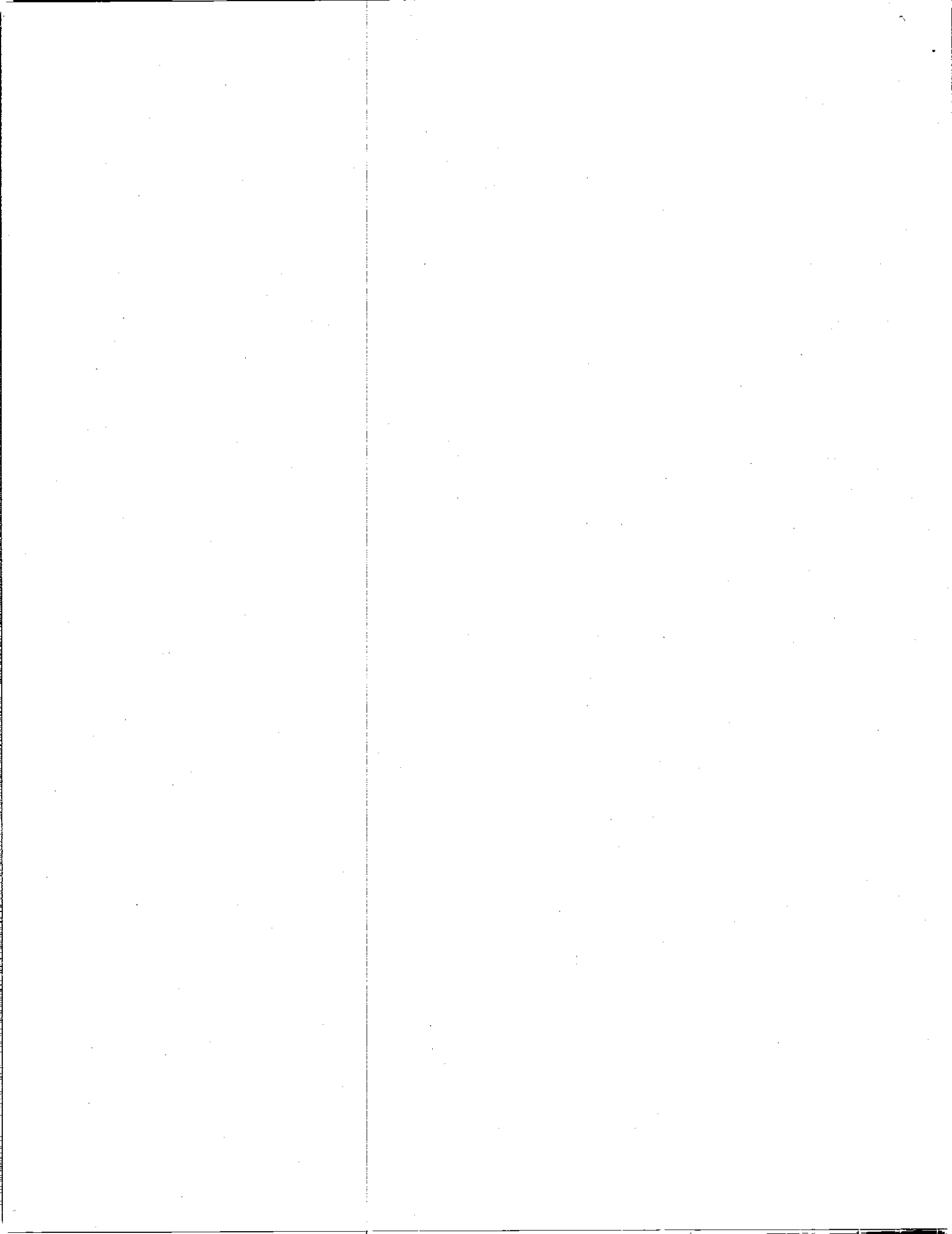


FACTS

1. Jake's New Tyme Saloon, is an establishment in Fall River that has been in existence since 1976.
2. Shaker Reality Inc. owns the property, while Jeffrey Shaker holds the common victuallers license issued by the City of Fall River.
3. The property consists of sixteen (16) apartments in addition to Jake's.
4. Jake's is a restaurant/lounge that is open both day and night, serving a light menu of pizza and sandwiches.
5. Jake's employed its own door and security staff.
6. After a hearing on February 28, 1995, the ABCC suspended Jake's liquor license for fifty-eight (58) days.
7. After a hearing on June 27, 1995, the ABCC suspended Jake's license for nine (9) days.
8. After a hearing on January 23, 1996, the ABCC suspended Jake's license for three (3) days.
9. After a hearing on December 3, 1996, the ABCC suspended Jake's license for twenty (20) days, specifically warning the licensee that if further violations were supported by evidence, the Commission would consider revocation.
10. This suspension was rescinded upon Jake's payment of a one thousand six hundred and twenty-one dollars and twenty cents (\$1,621.20) fine.
11. On June 4, 1997, Jake's stipulated to a violation of M.G.L. c.138 §34, Sale of Alcohol to a Minor.
12. On June 27, 1997, as a result of a Stipulation and Consent Order signed by the licensee, the ABCC suspended the liquor license for six (6) days to commence on August 19, 1997.
13. On July 21, 1997, the ABCC accepted payment of a four hundred and eighty-six dollars and thirty-six cents (\$486.36) fine in lieu of a six (6) day suspension.
14. Jake's has not been charged with any license-related infractions from 1997 until the present.
15. On or about December 2010, the Fall River Police Department initiated an investigation into narcotics transactions allegedly occurring at Jake's.
16. Following this investigation, officers obtained a search warrant for the licensed premises.
17. On March 10, 2011, upon execution of the search warrant, officers discovered the following items:
 - a) glassine baggie on a table in a room off the main bar area;
 - b) crack pipe on the floor between two (2) couches;
 - c) bag with marijuana behind an item of furniture;
 - d) Berretta nine-millimeter (9mm) firearm in a Nissan Maxima parked *outside* of Jake's; and
 - e) licensed firearm carried by the bartender's boyfriend.
18. Gary and Jeffrey Shaker were not present during the initial execution of the warrant, although Gary arrived a short time later.
19. In late 2010 and early 2011, four (4) other bars in Fall River were closed for various reasons.
20. In addition to its own door and security staff, Jake's paid a Fall River police officer to provide extra security on Friday nights.
21. In January 2011, Gary Shaker contracted pneumonia.
22. He was battling this illness in January, February, and March 2011.
23. A confidential informant allegedly told police that on March 3, 2011, he bought drugs from Bethany Shaker's boyfriend, who allegedly obtained the drugs from Ms. Shaker herself. (Ms. Shaker is Gary Shaker's daughter.)
24. Neither Ms. Shaker nor her boyfriend has been convicted of any crime.
25. On November 21, 1995, the Local Board held a hearing to determine whether a public need existed to reduce the hours of operation.
26. The statistics showed that in 1994 the police were called to the establishment a total of one hundred and fifty-three (153) times, and sixty-eight (68) of those calls occurred between the hours of midnight and 3:00 a. m.



27. In 1995, police were called to the establishment one hundred and fourteen (114) times and eighty (80) of those calls were between the hours of midnight and 3:00 a. m.
28. The local board found that the present hours of operation had a severe negative impact on the neighborhood.
29. The board unanimously voted to reduce the hours of operation to 11:00 a. m. until 12:30 a. m. effective December 7, 1995.
30. The Fall River Police acted on information regarding illegal drug and firearm activities taking place at Jake's and that such activity was being allowed by Gary Shaker.
31. Police received information from a Confidential Reliable Witness ("hereinafter referred to as CW") that it has been inside of Jake's and has seen several males known to the CW selling illegal narcotics inside Jake's.
32. The CW stated that the owners of Jake's allow these males to sell various illegal drugs inside the bar.
33. The CW has seen drug transactions take place within the establishment.
34. The CW, on a series of dates, made undercover purchases of narcotics from patrons at Jake's.
35. These undercover purchases of narcotics were closely monitored by Fall River Police.
36. As a result of the numerous controlled purchases of narcotics by the CW, Fall River Police obtained a search warrant.
37. On March 10, 2011, the CW informed detectives that Peter Pearson, a frequent patron of Jake's and one of the targets of the investigation, had a firearm and wanted to sell the firearm.
38. On the above date, with the close supervision of detectives, and members of the Alcohol, Tobacco, Firearms and Explosives [bureau], CW entered Jake's.
39. Upon entering, Pearson and Jerron Butler, another frequent patron of Jake's, directed the CW to the men's room, where the CW was held at gun point and robbed.
40. After the assault, Butler left Jake's and walked over to a Nissan Maxima. He appeared to place something inside the vehicle.
41. A subsequent search of the vehicle revealed a Beretta nine-millimeter (9mm) [handgun]; the firearm had fifteen (15) rounds in the feeding device.
42. The Search Warrant was executed.
43. The marked currency stolen from the CW was located on Butler, Pearson, and another patron, Michael Knott.
44. Various drug paraphernalia items were located throughout the nightclub.
45. The bartender, Tara Deyong, stated that she was aware of the illegal activity.
46. All involved individuals were arrested and charged with various offenses.
47. On March 27, 2011, detectives interviewed an employee of Jake's, John Warner.
48. Mr. Warner was responsible for security at the bar and his responsibilities and duties included:
 - o monitoring the front door,
 - o using the metal detector to search for weapons;
 - o checking identifications of individuals entering the establishment; and
 - o monitoring the smoking room.
49. Mr. Warner was advised by Gary Shaker during his initial meeting for his position that the "street punks" that frequent the bar are good customers and that he needed to get accustomed to these individuals.
50. Mr. Warner stated that when Gary Shaker referred to "street punks," he was referring to the above mentioned individuals involved in this investigation.
51. Mr. Warner stated he was informed by Gary Shaker not to use the metal detectors on the above mentioned individuals involved in this investigation because they were regulars.
52. Mr. Warner stated he suspected illegal activity as he observed the abovementioned individuals enter the restrooms for a short period of time with individuals who came in off of the street.
53. Mr. Warner stated that he felt that Gary and Bethany shaker were aware of this activity.



54. Mr. Warner stated that the above mentioned individuals and other patrons would use the smoking room to smoke marijuana. This was brought to Gary Shaker's attention and it was not addressed.
55. Between the time period of July 19, 2010 and March 26, 2011, there have been one hundred (100) calls for service to Jake's.
56. The reasons for the calls vary, although there were numerous calls relating to fights, fights with weapons, and noise complaints.

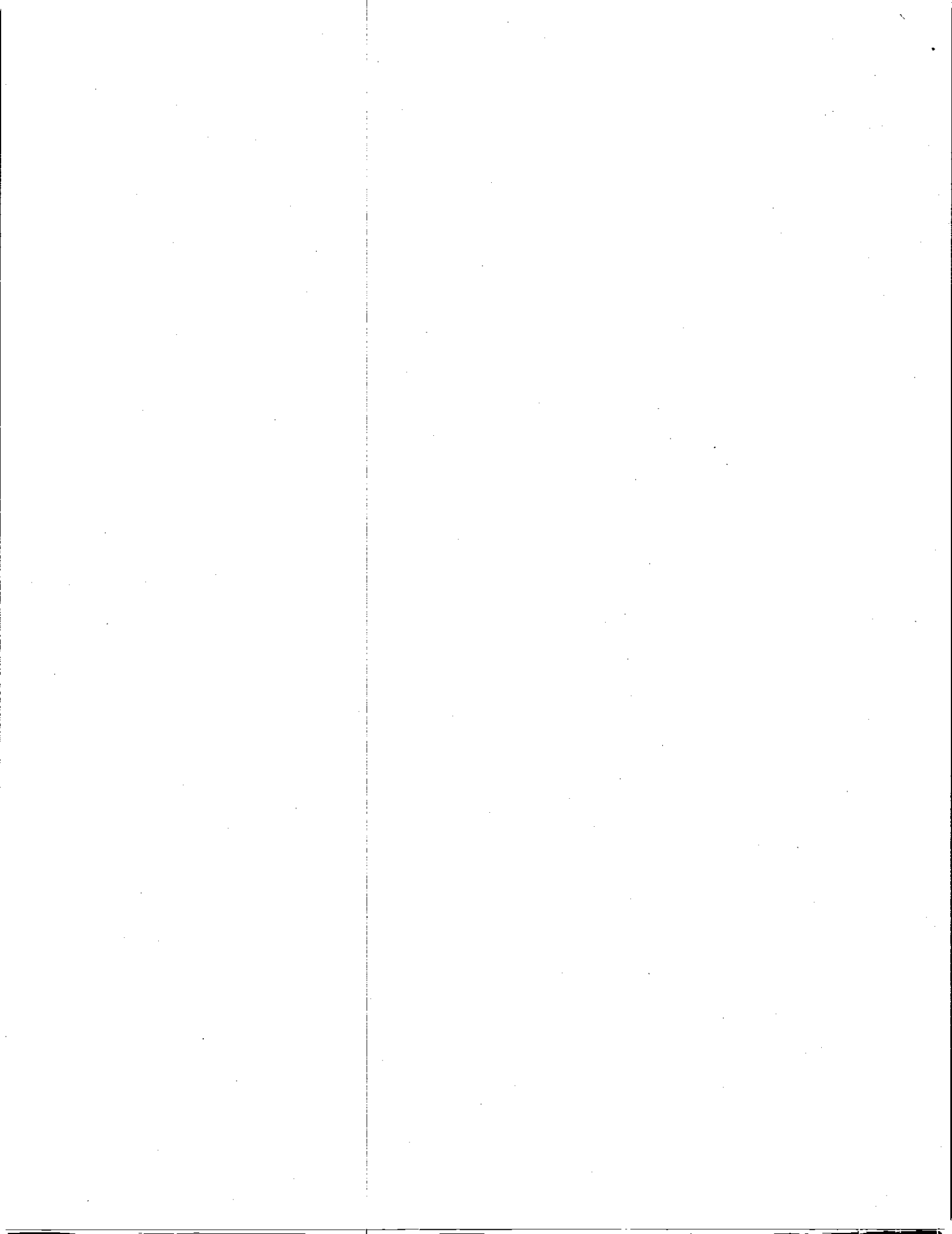
DISCUSSION

The licensee disputed the fact that they had knowledge of any type of crime(s) going on in their establishment. They testified that at no time in their presence did any exchange of drugs take place, nor did any type of problems occur at their establishment. However, the police had been called to the establishment on a number of occasions back in 1994 and 1995 causing the local licensing board to reduce the establishments' hours. Most of the evidence presented before the Local Board is based on the confidential informant's testimony and information gathered from his activities in the establishment on numerous occasions. The informant was able to provide to law enforcement not only that he observed drug transactions take place but that he himself had purchased drugs from the daughter of one of the licensee's. He testified that this was commonplace at the establishment and that one of the licensee's, Gary Shaker, had full knowledge that this was taking place.

The informant also testified that there were going to be a purchase of a firearm on a particular date and that he was going to meet a certain person at the establishment to purchase said firearm. On that night in question, he entered the establishment and was sent to the men's room and was held at gunpoint. As stated aforesaid, a subsequent search of a motor vehicle yielded a Beretta nine-millimeter (9mm) handgun with fifteen (15) rounds in it.

On the night in question when the informant was to purchase the firearm, police also found drug paraphernalia in the establishment. Currency that was stolen from the informant was found on the patrons who were in the establishment who had held him at gunpoint in the men's room. The security employee stated that he was advised not to use metal detectors on certain individuals who entered the establishment. He was informed by Gary Shaker that the specific individuals who were involved in the crimes involved in the men's room were never to be "wanded" by the metal detector. Both the security employee and the bartender testified that they believed that Gary Shaker was fully aware of the illegal drug activity that was taking place in his establishment. In fact, the security guard testified on one occasion that he informed Shaker of this activity and nothing was done about it.

Under the ABCC regulation promulgated at 204 CMR. 2.05 (2), ' the responsibility of a licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is 'bound at his own peril to keep within the conditions of his license.' [citations omitted] It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter." *Id.* Both the local board and the ABCC may attribute to the licensee the knowledge of its bartender who was in charge of the business on the days in issue. Rum Runners, Inc. v. ABCC, 43 Mass. App. Ct 248, 251 (1997). As in Moonshine Pub Inc. dba Fogland Bar & Grill (ABCC February 2, 2005 Decision), both the local board and the ABCC may infer from the drug paraphernalia found in plain view in and around the seating area inside the licensed premises, as well as the drugs themselves, that a manager and licensee "who wanted to see would have seen." Rico's of the Berkshires, Inc. v. ABCC, 19 Mass App Ct 1026, 1027 (1985) (rescript). Although, the licensee vehemently denies there were any drugs present, because there were remnants of drugs, and that they were not in plain view, the argument lacks merit due to the fact that the article found was residue of drugs and was found around a seating area of the bar in the back room. As in Rum Runners, Id. at 250, the ABCC similarly finds that "the licensee knew, or should have known, of illegal drug activity taking place in the premises." "[t]he inferences permissible from the



facts presented appear to be sufficient for the Local Board to conclude there was substantial evidence that the licensee's employee was aware of the drug transaction. Id.

Mr. Shaker testified that he was not aware at any time that any of these drug transactions were taking place in his establishment. He also denied, before the board, that he was told of the transactions taking place by his security. He, not his brother, his (partner and co-licensee) was the person who was in the establishment most of the time. He should have been paying attention to his surroundings and to the "goings-on" in his establishment at all times. Testimony came in that his daughter had been arrested for selling drugs out of the establishment, albeit, she was never charged for this crime. It seems incredulous for the Commission to believe that Mr. Gary Shaker had no inkling as to what was transpiring in his establishment at any point in time. To quote from Moonshine Pub. Inc. dba Fogland Bar & Grill (ABCC February 2005) "the illegality committed by the licensee was not in allowing in persons who may have drugs in their possession because only a lawful body search can uncover the same. Rather, the liability is in not paying attention to the bar business and making necessary observations about patrons who may use or dispense drugs once inside the licensed premises." The licensee "must not only be present or have a qualified manager present but must also keep her (his) eyes open while present."

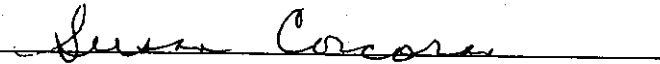
The Commission finds that the licensee did not monitor the activities of his establishment, nor did he employ any personnel to do so. His actions were negligent and this allowed illegal activity to take place in the bar.

CONCLUSION

Based on the evidence and testimony at the hearing, the Commission APPROVES the action of the Local Board in finding that Jake's New Tyme Saloon, Inc. dba Jake's Flint Station violated the provisions of M.G.L. c. 138 and 204 CMR 2.05, §2. The Commission also APPROVES the action of the Local Board in revoking the license, as the revocation is a reasonable exercise of the Local Board's lawful discretion.


ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner



Dated: March 6, 2012

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Matthew J. Fogelman, Esq. via Facsimile
Administration

