

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

BULLETIN 2159

October 3, 1974

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STATE OF NEW JERSEY
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25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2159

October 3, 1974

1. APPELLATE DECISIONS - TWIN A. CORPORATION v. ELIZABETH.

Twin A. Corporation)	
t/a Double "A" Bar,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
City Council of the City)	and
of Elizabeth,)	ORDER
Respondent.)	

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant
Frank P. Trocino, Esq., by Daniel J. O'Hara, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent City Council of the City of Elizabeth (hereinafter Council) which, on June 14, 1973, denied appellant's application for renewal of its plenary retail consumption license for 1973-74 for premises 1051 Bond Street, corner of Catherine Street, Elizabeth.

The resolution adopted by the Council recited that, having completed a proper investigation and having conducted a hearing, on the said application, it was the judgment of the Council that it would be contrary to the best interests of the public health, safety, welfare and morals to renew appellant's license.

Appellant, in its petition of appeal, alleges that the action of the Council was erroneous, in that it was arbitrary, capricious and an unreasonable exercise of its discretion.

The Council, in its answer, denied the substantive allegations contained in the petition of appeal.

Upon the filing of the appeal, an order dated June 29, 1973, was entered by the Director extending the term of appellant's 1972-73 license pending the determination of this appeal, and until the entry of a further order herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing

below was submitted into evidence, in accordance with Rule 8 of State Regulation No. 15, supplemented by additional testimony at this plenary hearing.

Detective Michael Sinnott, a member of the local police department's confidential squad, testified at the hearing held by the Council that the police reports relating to the subject premises revealed that several incidents were reflected in the police files from June 20, 1971 through October 6, 1972. The files disclosed the following: on June 20, 1971, a female complained that her husband and his brother assaulted her; on October 19, 1971, an individual threatened patrons with a pistol and that the individual went outside and fired a round of shots in the air; on December 21, 1971, an assault and battery occurred resulting in two males being treated at a hospital; on February 19, 1972, a male complained that he was assaulted while in the barroom; on April 29, 1972, police responding to a call, found an individual lying on the floor with a stab wound; on July 29, 1972, a patron asserted that a negro male entered the tavern, struck him on the face with a brick covered in a bag and fled; and, on October 26, 1972, a search warrant was executed on a male who was then arrested on a lottery charge.

Upon being questioned relative to his personal observations of appellant's premises as a member of the confidential squad, Detective Sinnott replied:

"Well, we have talked to the manager over there, Mr. Thomas, and he tried his best to help us in these different matters, sir. He is not responsible for what, in my estimation, these customers do. He does call the police at times when there are fights and when there are stabbings. He tries to cooperate as much as he can. But, his clientele over there, in my opinion, is not the best when they are drinking and they are responsible for these police reports."

The witness had no opinion concerning whether the premises was conducive to the best interests of the neighborhood in which was located. He could not characterize the premises as being a trouble spot, and asserted that "...it has its problems" and "It is a thorn, but it is not a steady thorn."

At the de novo hearing, the resolution had attached thereto a petition signed by one hundred-eighteen persons filed by the Keighryhead Neighborhood Improvement Association protesting the renewal of the license, and the records of the local police department. These were received in evidence.

Thomas J. Garvey, the Council's secretary, testified that the Council called in the licensee on one occasion during each of the years 1967 and 1968 in order to warn it to "clean up the premises." The licensee had not been summoned since 1968.

Elijah Bouknight, who resides five or six houses distant from the subject premises, testified that he opposes the renewal of the license because of the foul language emanating from the tavern, the loitering in front thereof, and the bottles and glasses being strewn in the area.

On cross examination, the witness conceded that he observed loitering in front of a grocery store located on an opposite corner and "cans of beer on that corner."

Estell Wright, who resides across the street from the tavern testified that she observed "fighting going on." The establishment is a hang-out, "ugly" language is used. Glass is littered in the streets.

Fannie Hooker, who resides four doors distant from the tavern testified as follows:

"Q What can you tell us about your observations in connection with this tavern?

A Well, it is horrible to live with, I will tell you. The last 4 or 5 years we had a petition, and 235 people were down city hall trying to close the thing. We had the same trouble we are having now.

Q What is the problem?

A The problem, cursing, fighting out there, some out there with their clothes off, alcoholics messing around. You think sometimes they are dead they are so drunk.

BY THE HEARER:

Q Where is this? Inside the tavern or outside?

A That is outside. They come on the outside. They stand outside the tavern, and the inspector come to clean up whatever they do. Like people throw up in front on the sidewalk and everything. It is terrible. Most of the children that come, the small ones, you have to take them across the street, and when we go to the stores. I think as a taxpayer, we wouldn't mind if they--it isn't decent. At times it is hard to lay down and even sleep at nights on week ends."

This witness further testified that she has observed patrons leave the tavern in an intoxicated condition, enter their cars and speed away.

The attorney for respondent represented that the testimony of five additional area residents (who were in the hearing room) and gave their names and addresses would be corroborative if permitted to testify.

Also, at the hearing held by the Council to consider the renewal of the subject license, five area residents voiced their objections to the renewal of the license.

Roger Whitted objected to patrons urinating along the side of the building and to the loitering outside the premises at various hours of the day.

Tom Reeves, Sr. voiced similar objections and asserted, additionally, that glass is strewn about the area, people loiter in front of the tavern and he observed a fight erupt in front of the tavern.

Lee Hubbard complained of the loitering, the drinking in cars on the side of the building, patrons speeding off in their cars after exiting from the tavern, and the urinating "...up and down the street, day or night."

William K. Stansbury, who resides two doors distant from the tavern emphasized that he objected to the loitering and the foul language used by patrons outside the subject premises.

Ada Belle Moore asserted that, on the Sunday prior to attending the hearing, she saw two women depart from the tavern and then heard them engage in obscene language.

In behalf of appellant, John C. Harvard, who resides approximately four blocks distant from the tavern, and who appeared and testified both at the hearing held by the Council and at the de novo hearing herein, asserted that the tavern is located in an area populated by minority groups of lower than average education; that he has seen wine bottles on the street; the tavern does not sell wine; sudden flare-ups are prevalent in the area; he frequented the tavern daily for the past two years; that he served as a volunteer bartender, without pay, for a period of three weeks; he has heard abusive language used in the area by high school students. It was his opinion the tavern is well-managed.

William Thomas who is employed as bartender and manager of the tavern and who appeared at both hearings, testified that the bar caters mainly to the area residents. Whenever he has seen loitering outside the tavern, he has requested the loiterers to come into the tavern. Air-conditioning was installed in order to induce the loiterers to come inside. He is not aware of women or children being abused by anyone outside the premises. There has been considerably less loitering during the past year.

Albert Kaplan, president and fifty percent stockholder of the corporate appellant testified at the hearing held by the

Council, in essence, that the loitering problem is indigenous to the entire neighborhood and to other taverns; that he has pleaded with the loiterers to disperse and to be careful of their language; that, on occasions, he has called for radio cars, but has never made formal complaints; that he would be willing to have cooperated with the neighborhood associations but no representatives thereof ever consulted with him relative to their complaints.

At the de novo hearing, Kaplan presented a petition containing slightly more than one hundred-fifty signatures urging the renewal of the license. The signatures were obtained in the main, by Thomas and Harvard. He asserted that the problems of the neighborhood would not be solved by closing the subject tavern.

Lieutenant Joseph Hennings, commander of the confidential squad of the Elizabeth Police Department, which is charged with the responsibility of investigating and enforcing the Alcoholic Beverage Control Laws, testified that he did not deem it necessary to recommend the institution of disciplinary proceedings against appellant as the result of the several police calls during the licensing year 1971-72 and the two police calls during the licensing year 1972-73. He asserted that if it were not for the complaints received from the Keighryhead Neighborhood Improvement Association (which complaints the lieutenant admitted he did not investigate in order to determine their validity) he would probably not have recommended to the Council that the license not be renewed.

Lily Billock, who has resided approximately one block distant from the tavern for the past seven years, testified that she has occasion to walk past the tavern almost every day. The "loitering" was occasioned by people waiting on the corner to obtain a ride to go to work. She, too, waits on the corner to obtain a ride to go to work daily at approximately 10:45 p.m. Thomas does not allow drunks to loiter on the corner. She has never seen children molested on the corner. She has sent her son into the tavern to purchase soda and potato chips. She characterized the establishment as a "neighborhood tavern". She has not witnessed any disorderly conduct on the corner.

Thomas J. Garvey was recalled and testified that during the licensing year 1971-72 there were five incidents recorded in the police records whereas during the licensing year 1972-73 only two incidents were recorded, one of which involved the execution of a search warrant upon a patron. The other incident involved an individual who ran into the tavern, struck a patron with a brick and ran out again.

Preliminarily, I observe that it is well established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Council in the first instance; in order to prevail on this appeal, the appellant must show that the Council acted unreasonably and that such action constitutes a clear abuse of its discretion. Rajah Liquors v. Div. of Alcoholic Beverage

Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962). Upon such showing, the Director is authorized to reverse the Council's action. The Florence Methodist Church v. Florence Township, 38 N.J. Super. 85 (App. Div. 1955); Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958).

No one has the inherent right to the renewal of a liquor license. On the other hand, "a licensee who has complied with the law and the regulations of this Division ought, in fairness, to have first consideration when renewals are determined." William J. Malone v. Township Committee of Bordentown Township, Bulletin 129, Item 8. As was stated in Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955):

"An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection..."

The case under consideration discloses the evidence to be somewhat similar to that in Freeland v. Roselle, Bulletin 352, Item 5; Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Monesson v. Lakewood, Bulletin 657, Item 1; Salmanowitz v. Hightstown, Bulletin 807, Item 2; Seidel v. Upper Freehold, Bulletin 1246, Item 1; Galasso v. Bloomfield, Bulletin 1387, Item 1. Also cf. Leedie v. Trenton et al., Bulletin 863, Item 4, in all of which the denial was reversed.

Additionally, in the case of B & L Tavern, Inc. v. Bayonne, Bulletin 1459, Item 1, conditions similar to those complained about by objectors apparently existed outside the licensed premises. The then-Director, considering the entire situation, was of the opinion that the alleged events should not cause a denial of renewal of the license in question. An appeal from the Director's determination was taken to the Superior Court and the Director was affirmed by the court. Bayonne v. B & L Tavern, Inc. and Division of Alcoholic Beverage Control (App. Div. 1963), not officially reported, reprinted in Bulletin 1509, Item 1.

It might be well to repeat here what was said by Judge Kilkenney in that case:

"We do not condone the manner in which this tavern was conducted... If the tavern was as bad as the City now says it is, it should have instituted disciplinary proceedings long ago. Had it done so, or had it even warned tavern owners generally, or the B & L Tavern specifically, that the policy of benevolent blindness was a thing of the past, we are certain that the Director would have sustained the refusal to renew. That is not to say that prior warning is necessary in every case. There may be conduct so indisputably bad that a single instance would warrant revocation or the refusal to renew, but this is not such a case."

Upon appeal taken by the municipality to the Supreme Court of New Jersey, the decision of the Appellate Division was affirmed. Bayonne v. B & L Tavern, Inc. and Division of Alcoholic Beverage Control, 42 N.J. 131 (1964).

In the instant case, I am mindful that there was evidence adduced both as to the worthiness and the unworthiness of the licensee to hold the license. There were petitions produced for and against the renewal of the license. I have also considered and evaluated the testimony offered by the two members of the police confidential squad (a detective and a lieutenant) and that of the Council's secretary. My consideration of the totality of the testimony leads me to infer that, if it were not for the complaints of the residents, the license would have been renewed.

The evidence herein discloses that the complaints advanced with reference to appellant's license are based on happenings outside the licensed premises. It might be reiterated that a licensee, or anyone in charge of licensed premises must keep the premises and the patronage under strict control because of the licensee's responsibility for conditions both inside and outside the licensed premises. Galasso v. Bloomfield, Bulletin 1387, Item 1.

Undoubtedly, some of the loitering and disturbances of which the area residents complained of were created by appellant's patrons. However, there was also testimony which indicated that some of the loitering was caused by persons waiting for transportation. Furthermore, it is also apparent that the loitering in the area was not solely confined to liquor licensed premises, including appellant's.

While these conditions on the outside of the tavern are not to be condoned, it seems plain that this tavern was not much different from the other taverns in the area, and that it was permitted to function in this fashion without a warning for the past five years. If the tavern was as bad as the Council now says it is, the Council should have instituted disciplinary proceedings long before the time for renewal. See Monesson v. Lakewood, Bulletin 657, Item 1; Salmanowitz v. Hightstown, Bulletin 807, Item 2; see also Bayonne v. B & L Tavern, Inc., and Division of Alcoholic Beverage Control, supra.

I am persuaded upon the examination of the entire record herein that the appellant should be given one more opportunity to prove its worthiness to have the license. If undesirable conditions develop in the future, the Council always has the authority, which they should promptly exercise, to institute disciplinary proceedings even before the renewed licensing period has expired.

I conclude that the appellant has met its burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Thus, it is recommended that the action of the Council be reversed, and that the Council be directed to grant the license to appellant for the 1973-74 licensing period, in accordance with the application filed therefor.

Conclusions and Order

No exceptions to the Hearer's report were filed by the parties hereto within the time limited by Rule 14 of State Regulation No. 15. However, in accordance with the provisions of the said rule, I decided to hear further oral argument.

From my review and evaluation of the testimony herein, I find that the primary problem relates to the conditions outside of the premises. Although there is testimony by some witnesses that intoxicated persons were seen leaving the premises and creating disturbances, the main thrust of the complaints appears to be that the appellant has failed to maintain order or prevent littering outside the premises.

This condition has existed for many years although there is some evidence that during the licensing period involved herein there has been a slight improvement. But appellant has not really made any heroic effort to eliminate the complaints of conditions. There is some testimony which would indicate that some of the loitering in front of the premises was caused by persons waiting for transportation.

The Hearer observes that although these conditions outside of this tavern are "not to be condoned, it seems plain that this tavern was not much different from the other taverns in the area, and that it was permitted to function in this fashion without a warning for the past five years."

I do not agree with that reasoning. It is not relevant in the consideration of this matter to determine whether or not other licensed premises are conducted as a nuisance, and whether, therefore, the operation of these premises should be condoned for being similarly conducted.

I do agree, however, with the Hearer that the Council should have instituted disciplinary proceedings long before this if, indeed, the conditions complained of were as testified to by the witnesses.

As was stated in R.B. & W. Corporation v. North Caldwell, Bulletin 1921, Item 1:

"Appellant alleges that it did not violate any State regulation governing the conduct of licensees and use of licensed premises and that no disciplinary proceedings were instituted by the Council against it. It would have been a more satisfactory procedure for the

Council to initiate such proceedings, upon specific charges, and to base its refusal to renew on an adjudicated record. However, it is understandable that local issuing authorities, at times, withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the business. This would appear to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint and consider that the failure of the issuing authority to take specific action as license for continued profligacy."

See Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957).

The Hearer cites Tp. Committee of Lakewood v. Brandt, 28 N.J. Super. 462, 466 (App. Div. 1955) to the effect that an owner of a license or privilege acquires through his investment therein an interest which is entitled to some measure of protection. By this, the Hearer seems to suggest that there is some kind of estoppel invoked in favor of the licensee and against the public interest affected by the operation in question.

Such rationale misses the point in two important particulars. First, there is no vested right in a liquor license. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 381 (1956). It is held by grace of the State, under conditions of strict compliance with statutory and administrative regulations. This does not mean that the length of undisturbed operation under a license or the value of the franchise are never proper factors for consideration in a review of licensing action. But, such considerations can never create a conclusive estoppel against the licensing authority. They are at most elements of variable weight in appraising the exercise of discretion by the responsible authorities.

Second, in the area of licensing, as distinguished from disciplinary violation proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide", and its guide "the public interest". Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960).

Although the matter of whether a license should be renewed rests in the sound discretion of the issuing authority, Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946), it has been a long-established policy of this Division to equate a refusal to renew a license with revocation proceedings, and to require timely action by the local issuing authority. Common fairness to licensees has been the basis for this policy. If undesirable conditions develop ...the issuing authority always has the power to institute disciplinary proceedings even before the license period has expired.

Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2;
Moon Star, Inc. v. Jersey City, Bulletin 2130, Item 3.

Thus, having fully considered and evaluated all of the facts and circumstances herein, I concur in the findings and recommendations of the Hearer to the extent that this license be renewed for the 1973-74 licensing period in order to afford to the appellant one more opportunity to prove its worthiness to continue as a licensee. However, such renewal shall be made expressly subject to the special conditions that: (a) appellant shall be required to procure the services of a special police officer or uniformed guard during certain hours to patrol the exterior of the area, and keep the same free of loiterers or litterers. I shall direct that such special police officers be employed from the local police department if the same are available, if not, then a uniformed guard of a reputable private agency offering such service be retained. However, no regular police officer may so be employed. Such special police officer or uniformed guard must be employed by and be on duty in the licensed premises every day from 6:00 p.m. to closing. Further (b) during all other hours when the said licensed premises are open and in active operation, the appellant shall be required to keep the outside of its premises free of loiterers and litterers and shall be held strictly accountable therefor.

Accordingly, it is, on this 15th day of July 1974,

ORDERED that the action of the respondent Council be and the same is hereby reversed; and it is further

ORDERED that the respondent City Council of the City of Elizabeth is hereby directed to renew the subject license for the 1973-74 license period nunc pro tunc, expressly subject to the following special conditions:

- a. that appellant forthwith employ a special police officer or uniformed guard (not a regular police officer) who shall be on duty during the hours of 6:00 p.m. to closing seven nights a week, to aid in the orderly conduct of the premises, and specifically directed to keep the outside of the premises free of loiterers or litterers; and
- b. the appellant is directed to conduct its premises in an orderly manner and to keep the exterior of the premises free of loiterers and litterers during all hours when the said premises are open and in active operation; and it is further

ORDERED that the said special conditions shall be continuing conditions which the respondent is directed to impose upon any renewals of the said license which may be granted.

Joseph H. Lerner
Acting Director

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary)
 Proceedings against)

Gabriel's Hotel, Inc.)
 t/a Gabriel's Hotel)
 95 Boonton Road)
 Wayne, New Jersey)

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail)
 Consumption License C-11, issued)
 by the Municipal Council of the)
 Township of Wayne.)

 Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Licensee
 David S. Piltzer, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to a charge alleging that on June 30, 1974, it sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

The Division presented its case thru the testimony of ABC agents V and S, with supportive testimony of the minor Daniel---. It appeared that the ABC agents witnessed the sale of alcoholic beverages to the minor on the date charged herein, ascertained his age, identified themselves and apprised the owner of the corporate stock of the licensee of the violation.

ABC agent V testified that he and ABC agent S entered the licensed premises on June 30, 1973 at about a quarter to eleven p.m.. The bar area is adjoined by a package goods section, to which there is an independent rear entrance. While at the bar, the agent observed a patron at the package goods counter who appeared under age. Seeing that patron depart through a rear door, the agents followed via the front door and accosted the patron who was then in his vehicle. Upon ascertaining that he was under age, they retrieved a brown paper bag which contained a bottle of beer, returned to the licensed premises where the owner was apprised of the violation, and the seller of the beer was identified by the minor.

ABC agent S substantially corroborated the testimony of ABC agent V. The minor, Daniel---, testified that he arrived at the premises about eight or eight-thirty p.m., entered the licensed premises, went to a refrigerator, removed a bottle of beer, and placed it on the counter. He waited until the clerk placed the bottle in a bag, paid the clerk sixty cents for it and departed.

When he returned, in the company of the agents, he was not at all sure who, among the clerks or bartenders of the establishment, had actually made the sale to him. He denied that anyone had asked his age, which at that time was seventeen, nor had anyone asked him to produce identification.

The licensee introduced the testimony of Albert, James Richard and James Gabriel, all of whom had participated in serving customers on the date in question. Additionally, the testimony of Ernest Greenall and William Williams, Jr., both bartenders, was also introduced. From all of their testimony it appeared that none of them sold alcoholic beverages to the minor, and there were no others who could have.

The sharp factual conflict presented by the evidence herein makes the issue of credibility of critical importance. Actions of this kind, which are civil in nature, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super 242 (App. Div. 1960). Testimony to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Re Roszkowski, Bulletin 2108, Item 3.

I have had the opportunity to observe the demeanor of the witnesses as they testified at this plenary hearing, and to evaluate and assess such testimony. I am persuaded that the testimony of the agents is both credible and forthright and stands in a much more favorable light than that of the licensee's witnesses. I have taken particular note that the Division witnesses were extensively cross-examined by the attorney for the licensee, who requested that such witnesses be sequestered throughout the hearing. Such sequestration did not result in any substantial variance in the testimony presented.

From the minor's testimony, it appears that although his recollection is dimmed by the passage of time since the incident, the purchase of alcoholic beverages immediately prior to the intervention by the agents is most clear. His visit to the licensed premises was in haste. His girlfriend was awaiting in the car. He was obviously intent on completing the illegal purchase as quickly as possible, hence little time was taken in making observation.

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.

The agents saw an apparent minor make a purchase; they immediately accosted him and obtained the bag containing the beer. They re-entered the licensed premises immediately. That the person who made the sale to the minor was not successfully identified does not negate the charge of an illegal sale. Additionally, from the testimony of the witnesses for the licensee, it was apparent that the clerk at the package goods counter had, from time to time, the assistance of one or more bartenders when such assistance was needed. In short, although

the proof was absent as to who within the licensed premises made the sale to the minor, in the absence of any contention that the minor stole the beverage, someone did make the sale, and such sale was in violation of the regulation.

After carefully considering all of the evidence produced herein, I am satisfied, and find as a fact that the Division has established the guilt of the licensee by a fair preponderance of the credible evidence, indeed by clear and convincing evidence. I, therefore, recommend that the licensee be found guilty of the charge.

Absent prior record, it is further recommended that the license be suspended for twenty-five days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of July 1974,

ORDERED that Plenary Retail Consumption License C-11, issued by the Municipal Council of the Township of Wayne to Gabriel's Hotel, Inc. t/a Gabriel's Hotel for premises 95 Boonton Road, Wayne, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, July 22, 1974 and terminating at 3:00 a.m. Friday, August 16, 1974.

Joseph H. Lerner
Acting Director

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary)
 Proceedings against)

Gabriel's Hotel, Inc.)
 t/a Gabriel's Hotel)
 95 Boonton Road)
 Wayne, New Jersey)

SUPPLEMENTAL
 ORDER

Holder of Plenary Retail Consump-)
 tion License C-11, issued by the)
 Municipal Council of the Township)
 of Wayne.)

-----)

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Licensee
 David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

In accordance with the provisions of Chapter 9 of the
 Laws of 1971 application has been made by the above named licensee
 for the imposition of a fine in lieu of suspension of license for
 twenty-five days, effective July 22, 1974, imposed by my Conclusions
 and Order dated July 9, 1974.

I have favorably considered the said application and have
 given the licensee until July 26, 1974 within which to decide
 whether to pay the fine assessed, as set forth in my letter to the
 said licensee, or to have the said suspension reimposed. I shall,
 therefore, stay the said order of suspension pending such action
 by the licensee.

Accordingly, it is, on this 18th day of July 1974,

ORDERED that the suspension heretofore imposed by my
 order dated July 9, 1974, effective Monday, July 22, 1974, be and
 the same is hereby temporarily stayed pending the payment of a
 fine by the licensee herein, as assessed in lieu of suspension,
 and until the entry of a further order herein.

Leonard D. Ronco
 Director

4. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary)
Proceedings against)

Gabriel's Hotel, Inc.)
t/a Gabriel's Hotel)
95 Boonton Road)
Wayne, New Jersey)

O R D E R

Holder of Plenary Retail Consumption)
License C-11, issued by the Municipal)
Council of the Township of Wayne.)

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq.,
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

On July 18, 1974 a Supplemental Order was entered herein, temporarily staying the imposition of suspension of license for twenty-five days, effective July 22, 1974 imposed by Conclusions and Order dated July 9, 1974.

The said Supplemental Order favorably considered the application of the licensee to pay a fine in lieu of the said suspension imposed and permitted the licensee to pay such fine on or before July 26, 1974. The licensee having paid a fine of \$5,325.00 in accordance with its application, I shall accept the said fine in lieu of the suspension heretofore imposed.

Accordingly, it is, on this 22nd day of July, 1974

ORDERED that the payment of a fine of \$5,325.00 by the licensee be and is hereby accepted in lieu of suspension of license for twenty-five (25) days.

LEONARD D. RONCO
Director

5. STATE LICENSES - NEW APPLICATIONS FILED.

Fleming & McCaig, Inc.

5 York Avenue

West Caldwell, New Jersey

Application filed October 1, 1974

for place-to-place transfer of

Plenary Wholesale License W-36

from 312 Frelinghuysen Avenue,

Newark, New Jersey.

Galsworthy, Inc.

12 Patton Drive

West Caldwell, New Jersey

Application filed October 1, 1974

for place-to-place transfer of

Plenary Wholesale License W-1

from 312 Frelinghuysen Avenue,

Newark, New Jersey.

Garden State Liquor Wholesalers, Inc.

14 Patton Drive

West Caldwell, New Jersey

Application filed October 1, 1974

for place-to-place transfer of

Plenary Wholesale License W-78

from 312 Frelinghuysen Avenue,

Newark, New Jersey.

Progress, Inc.

9 York Avenue

West Caldwell, New Jersey

Application filed October 1, 1974

for place-to-place transfer of

Wine Wholesale License WW-5 from

312 Frelinghuysen Avenue, Newark,

New Jersey.

Reitman Industries

10 Patton Drive

West Caldwell, New Jersey

Application filed October 1, 1974

for place-to-place transfer of

Plenary Wholesale License W-42

from 300 Frelinghuysen Avenue,

Newark, New Jersey.

Leonard D. Ronco

Leonard D. Ronco
Director