STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

June 19, 1979

BULLETIN 2323

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ITEM

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BULLETIN 2323 June 19, 1979

1. APPELLATE DECISIONS - LA PUSSYCAT, INC. v. GLOUCESTER.

#4230
La Pussycat, Inc.,
t/a The Zodiac,

Appellant,

v.

Mayor and Council of
the City of Gloucester,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

Charles, Sturm & Master, Esqs., by Igor Sturm, Esq., Attorneys for Appellant.
John W. Dailey, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the City of Gloucester (hereafter Council) which, on June 1, 1978, suspended appellant's Plenary Retail Consumption License, 0414-33-027-001, for premises 425 Nicholson Road for ninety days, following a guilty finding of a charge alleging the violation of Rule 5 of State Regulation No. 20 (now N.J.A.C. 13:2-23.6), to wit, permitting the licensed premises to become a nuisance.

In its Petition of Appeal, appellant contends that the finding by the Council was capricious and arbitrary, in that the evidence produced before it did not support its conclusions. The Council in its Answer, denies these contentions and avers that the record was replete with numerous acts of violence so as to support a finding that the premises are conducted as a nuisance.

Upon the filing of the Appeal, the Director of this Division, by Order dated June 6, 1978, stayed the effective dates of the suspension pending the determination of the appeal.

A de novo hearing was held in this Division pursuant to N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. Other than the introduction of supplementary testimony of a local police officer, the parties stipulated to the introduction of the transcripts of the testimony taken before the Council, in accordance with N.J.A.C. 13:2-17.8.

From the transcripts of the testimony, the following factual situation, upon which the Council's findings were predicated, emerges.

Elsie McLeester, Clerk of the local Municipal Court testified in support of the charges. The court file contained complaints filed respecting fights and assaults which occurred on the grounds of the licensed premises on February 4, 11, 12, 17, and 22, 1978. Some were of such serious degree that they await action of the Grand Jury. Others were disposed of by fines or dismissal in the Municipal Court. The February 11, 1978 incident involved a stabbing which resulted in a death. The defendant therein awaits criminal trial.

Detective Stephen Farrell of the local Police Department next testified in corroboration and explanation of the above incidents. In response to a question concerning neighbors complaints, he added the following:

> We have had untold complaints. The neighbors have come into the chief and myself from time to time. They generally complain about things that are occuring outside the Zodiac, such as when the place--in other words, this club, I guess, I'm just going to estimate, maybe two or three hundred people go in there on the weekend at times, and go in at one time, two at a time, three at a time and then when the thing breaks at two o'clock, they all come out, and, of course, they are talking, half of them--some of them have been drinking, they get a little louder than they should be, use words they shouldn't use, and, of course, this upsets the neighbors. We have also had complaints where the patrons will come out and on the way to their cars, they either urinate on the side of the wall or urinate in the person's yard. They complain about that. They had a fight--of course the normal thing now is when there is a fight of course no one breaks it up, everyone becomes a spectator, and, of course, this urks the neighbors when they start this. There have been occasions when people have been involved in fights and ran up

> to the neighbor's door, banging on the door calling for police. The Franchie incident is one where someone was beaten up, and they went to a neighbor's door, and the fellow came to the door, and the guy who had just been hit with a tire iron was there and they called us They just complain about the noise and just the general demeanor and attitude about the customers on their way to the cars.

Testifying on behalf of appellant, Joseph Dario, supervisor of external secutiry at the appellant's premises, explained the circumstances cited by the Council's witness. As to each incident, he asserted that the situations which resulted in complaints came about because of measures taken to control an unruly patron or to quell a potential disorder.

David Chambers, the manager of appellant's premises, testified for appellant. He emphasized that none of the police calls resulted from any disorder within the premises; and that all the incidents occurred on the outside. The fatality, which resulted from the stabbing, actually took place in the street. He maintained that the five hundred patrons who attend the appellant's premises on the weekends are generally orderly, and the incidents related resulted from a few exceptional circumstances.

The owner of all of the corporate stock of appellant corporation, Taylor Mills, testified that most of the difficulties that occur relate to the departure of two to three hundred young persons, between eighteen and thirty years of age, at the closing hour. He contended that his security arrangements are adequate, and indicated that every effort has been made to eliminate any neighborhood problems.

Testifying at the hearing in this Division, Patrolman Theodore Howarth described the efforts management had made to assist the police. He opined that, with the three or four hundred young people present, attracted by "rock bands", incidents would occur, but could be controlled.

The burden of establishing that the action of the Council was erroneous and should be reversed rests entirely upon appellant. N.J.A.C. 13:2-17.6.

Apparently, the Council was faced with the resolution of two questions: (a) was appellant guilty of the charge violations and worthy to continue this operation and (b) under the circumstances,

if guilty, what would be a proper penalty consonant with the best interest of the public.

A liquor license is a mere privilege. No person is entitled as a matter of law to a liquor license. Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Bumball v. Brunett, 115 N.J.L. 254 (Sup. Ct. 1935). The common interest of the general public should be the guidepost on the issuance or operation of such licenses. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in In re 17 Club, Inc. 26 N.J. Super. 43, 52 (App. Div. 1943):

> The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support.

In the exercise of that power, the Legislature invested the local issuing authority (the Council) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violations of the law or of State or local regulations. N.J.S.A. 33:1-31.

The adjudicated cases are legion which hold that the penalty to be imposed in disciplinary proceedings instituted by the local issuing authority rests within the sound discretion in the first instance, and the power of the Director to reduce or modify it on appeal should be exercised sparingly, and only where such penalty is manifestly unreasonable and clearly excessive. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Kosinski v. Wallington, Blleetin 1744, Item 2; Gach v. Irvington, Bulletin 2058, Item 1, and the cases cited therein.

The Director's function on appeal is not to substitue his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion; and if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4; Central Jersey Package Stores Asso., et als. v. Township of Pohatcong, et al., Bulletin 1768, Item 2. As the court has stated in Lyons Farms Tavern, Inc. v. Newark 55 N.J. 292, 303 (1970);

> Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that

> he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonalbe support for it can be found in the record.

The well established principle is that a licensee is responsible for conditions both inside and outside the licensed premises. Gueche, Inc. v. Union City, Bulletin 2072, Item 5; Perkins v. Newark, Bulletin 2083, Item 2. In the instant matter, Detective Farrell pointed out that the police were summoned in about one year to no less than thirty-four incidents stemming from occurances in the parking area of the licensed premises. Of the five incidents recounted which took place in the month of February, two involved attrocious assault and one resulted in a homocide.

The evidence clearly shows and supports the Council's finding that appellant has, on the dates charged, clearly operated the licensed premises as a nuisance.

The remaining issue relates to the extent of the penalty imposed. The Council determined that ninety days suspension would be appropriate in the matter. Appellant has urged that such penalty is extremely severe and has requested that, if any penalty be imposed, it be nominal in light of the constant efforts which the appellant has made to avoid repetition of tee incidents related.

Such request by appellant would be more appropriate had the Council declined to renew or revoked the subject license. It has been generally held by this Division that a suspension or revocation imposed in a local disciplinary proceeding rests, in the first instance within the sound discretion of the municipal issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest of caution. Harrison Wine and Liquor Company, Inc. v Harrison, supra. The exercise of the power of the Director to reduce the penalty on a appeal is most often applied when the penalty imposed is manifestly unreasonable. Sventy and Wilson, Inc. v. Pt. Pleasant Beach, Bulletin 1930, Item 1; Pom Bon, Inc. v. Cliffside Park, Bulletin 1897, Item 1.

In some similar matters, penalties of outright revocation have been affirmed by the Director of this Division. Julie's Inn, Inc. v. Hoboken, Bulletin 1634, Item 1; Feldman v. Irvington, Bulletin 2143, Item 2. In other matters of like nature, a penalty of one hundred and eighty days and one hundred and fifty days have been successfully assessed. Causeway Inn, Inc. v. South River, Bulletin 2116, Item 1; Azcuy v. Union City, Bulletin 2274, Item 3. Although

lesser penalties have, from time to time been imposed, the penalty herein is not unreasonable as would require reversal by the Director of this Division.

It is, therefore, concluded that the appellant has failed to sustain its burden of establishing that the action of the Council was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6. It is accordingly, recommended that the action of the Council be affirmed, and the appeal herein be dismissed, and the suspension be reimposed.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the appellant pursuant to N.J.A.C. 13:2-17.14.

Appellant advances two general arguments in its Exceptions, to wit, any incidents of violence were brought to the attention of the police by appellant who aided in alleviating any disturbances, and, in conjunction therewith, the Hearer failed to consider the authority and applicability of the determination in Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (1971).

I am satisfied that the Hearer fully considered and correctly resolved the issues presented in this appeal. From the quantity of calls generated for assistance at or near appellant's premises, whether initiated by appellant or not, and in light of the gravity of some of the incidents, I find reasonable support in the record to affirm the action of the Council.

The appellant's inability to conduct a licensed liquor operation without violation of Division regulations was established in the record herein. Can a licensee who repeatedly fails to control its patrons be exonerated because it may have called the police on some occasions? The disruption of the public peace and demands upon the municipal services are the same. Cf Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

The decision in Ishmal recognized the location of the licensed premises as the source of the problem, not the manner of operation or actions of the licensee. The proofs in this case do not support a finding, as in Ishmal, that the location was the source of difficulties, nor am I satisfied that the appellant's actions equate with the eradication efforts and police cooperation in Ishmal.

Therefore, I reject the Exceptions of the appellant as without merit.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the legal memorandum of appellant, the Hearer's Report and the written Exceptions filed thereto by the appellant, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of February, 1979,

ORDERED that the action of the Mayor and Council of the City of Gloucester be and the same is hereby affirmed, and the appeal be and is hereby dismissed; and it is further

ORDERED that my Order of June 6, 1978 staying the suspension pending determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption Lic. 0414-33-027-001, issued to La Pussycat, Inc., t/a The Zodiac, for premises 425 Nicholson Road, Gloucester, be and the same is hereby suspended for ninety (90) days commencing 2:00 A.M. Wednesday, February 21, 1979 and terminating 2:00 A.M. Tuesday, May 22, 1979.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - SORACE AND PFEUFER v. FAIRVIEW.

#4244
Edward Sorace and
Paul Pfeufer,

Appellants,

vs.

Mayor and Council of the
Borough of Fairview,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

David Hoffman, Esq., Attorney for Appellants.
James J. Deer, Esq., Attorney for Respondents.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the Borough of Fairview (hereafter Council) which, by letter dated June 16, 1978, denied appellants' application to renew Plenary Retail Consumption License No. 0218-33-004-002 for premises 11 Anderson Avenue, Fairview. Appellants contend, in their Petition of Appeal, that the Council's action was arbitrary and unreasonable. The Council, in its Answer, denies the substantive allegations of appellants' Petition.

Upon the filing of the within appeal, an Order to Show Cause was entered by the Director on June 28, 1978, why the appellants' license should not be extended pending determination of the appeal. In addition thereto, an ad interim extension of license was granted to appellant pending further order of the Director.

A de novo hearing was held in this Division, pursuant to N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

Additionally, a transcript of supplemental proceedings held by the Council on September 22, 1978 was admitted into evidence pursuant to N.J.A.C. 13:2-17.8.

At the outset of the hearing, counsel indicated that reliance would be placed upon the transcript of the proceedings

held by Council augmented by oral argument only. This was supplemented by copies of police reports relating to appellants' premises which were received into evidence.

Sgt. Donald Maxwell, testified at the Council hearing that, as a Detective Sergeant, he has had to work closely with the records of the several licensed premises in the borough. The major complaint in connection with appellants' establishment was noise. He had made several visits to the premises and indicated that, despite closed doors, the sounds were audible on the exterior of the building. He described the music as loud amplified sounds. The management of the premises were repeatedly told to reduce the sound, and they did so.

Of the fifteen "Tavern Complaint Reports" pertaining to appellants' premises, none made reference to anything other than loud noise or amplification of music. Nine resulted from the complaints of one woman who lived nearby. These reports covered a period from January 14, 1978 to April 22, 1978. Some complaints originated at 10:30 o'clock in the evening and others were reported as late as 2:00 o'clock in the morning.

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; and, in order to prevail on this appeal, the appellant must show unreasonable action on the part of the Council constituting a clear abuse of such discretion. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

However, an owner of a license or privilege acquires through his investment an interest which is entitled to some measure of protection. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super 462 (App. Div. 1955). The holder of such license must be treated with essential fairness, the application of which has long been a hallmark in the activities of this Division.

> As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into one regulation. The law must be applied rationally and with a fair recognition of the fact that justice to the litigant is always the polestar.

Samuel Berelman, Inc. v. Camden, Bulletin 1940, Item 1. See

also Barbire v. Wry, 75 N.J. Super. 327 (App. Div. 1962); Martindell v. Martindell, 21 N.J. 341, 349 (1956).

In the instant matter, it appears that appellants received their license by transfer about six months prior to their application for renewal. During that peirod, loud music and loud noises were permitted to escape from the building of appellants' premises which annoyed the neighbors. Although the police frequently called attention to the noise complaints and immediate steps to alleviate that momentary condition were taken, there is no evidence whatever to show what steps the Council took prior to denial of renewal to evidence its displeasure of the noise condition, and similarly, what steps the appellants took to eliminate the problem. In view of the absence of evidence it must be assumed that no steps were taken in either direction.

It is further apparent that the Council determined to eliminate the complaints over the noise by the termination of appellants' license privilege without consideration of the overall use of the license by appellant. No prior notice had been given appellants of the Council's intention to terminate the license privilege. Additionally, the Council appears unmindful of its power to condition the license, as is frequently done, to require certain steps to be taken by a licensee to eliminate noise problems.

In a similar matter, heard in this Division this year, the Director modified an absolute ban against electronic amplification of entertainment to the following special condition:

> No electronic amplification equipment shall be used in the licensed premises during those times that any door or window remains open for any reason whatsoever, other than for the normal ingress and egress of patrons.

Surf Villa, Inc. v. Surf City, Bulletin 2289, Item 3.

I find, as a fact that the appellants have met the burden of establishing that the Council acted erroneously, pursuant to N.J.A.C. 13:2-17.6, and recommend that the of the Council be reversed. In recognition of the problem of excess sound emanating from the licensed establishment, I f further recommend that the license renewal be made expressly to the following special condition:

> The appellant shall monitor interior sound levels to insure that no loud or amplified music shall be audible at the exterior of the building of the licensed premises emanating from within.

In the event appellants fail to maintain such adequate control of the noise level as to be in conformity with this express condition, it is expected that the Council will institute disciplinary proceedings in accordance with the provisions of N.J.S.A. 33:1-31 and N.J.S.A. 33:1-32.

Appellants should not consider that the recommendation to reverse the action of the Council constitutes a commendation to them for the manner in which the premises have been operated. The frequent visits by police requesting that the music sounds be lowered should have alerted them to the probabilities of increasing municipal wrath, and permanent steps should have been quickly taken to prevent reoccurances.

In conclusion, it is recommended that the action of the Council be reversed and it be directed to renew appellants' plenary retail consumption license for premises 11 Anderson Ave., Fairview for the 1978-79 licensing year, expressly subject to the special condition attached as heretofore set forth.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

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 recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of February, 1979,

ORDERED that the action of the Mayor and Council of the Borough of Fairview be and the same is hereby reversed; and the Council be and is hereby directed to renew appellant's license for the 1978-79 license term in accordance with the application filed therefor, expressly subject to the following special conditions:

The licensee shall monitor interior sound levels to insure that no loud or amplified music will

be audible at the exterior of the building of the licensed premises emanating from within;

And it is further

ORDERED that my Order to Show Cause, dated June 28, 1978 extending the subject license pending determination of the appeal, be and the same is hereby vacated.

JOSEPH H. LERNER
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF DISQUALIFIED PERSON ON LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against:	:	
Prenderfar, Inc. t/a Hudson Tavern 12 Hudson Street Camden, N.J. 08103	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption Lic. 0408-33-020-002, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	:	

Veronica & Meloni, Esqs., by Louis R. Meloni, Esq., Attorneys for Licensee.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded "not guilty" to the following charge:

> From on or about March 1, 1978 to date, you employed or had connected with your licensed premises in a business capacity a person who had been convicted of a crime involving moral turpitude, viz., Joseph Fargnoli, without said person having his statutory disqualification resulting from said conviction removed by order of the Director of the Division of Alcoholic Beverage Control, nor did said person first obtain a Rehabilitation Employment Permit from the Director; in violation of N.J.A.C. 13:2-14.1.

There is no dispute concerning the facts herein. The corporate licensee, in March, 1978, acquired by person-to-person transfer, the subject plenary retail consumption license. Soon thereafter, as mentioned in the charge, Joseph Fargnoli was hired by the licensee as a custodian. On June 5, 1973, Fargnoli had pleaded guilty to charges of receiving stolen goods, in violation of N.J.S.A. 2A 139-1. A fine of $250.00 was imposed and a jail sentence of one year was suspended. Unquestionably, the crime of which Fargnoli was convicted involved the element of moral turpitude and he was, therefore, disqualified from engaging in the said employment. At the time of Fargnoli's employment, the principal officer of the corporate licensee was aware of the aforementioned criminal conviction. The E-141 form dated April 19, 1978, and filed by the licensee with this Division, disclosed that Fargnoli was employed by it in a capacity where he would not handle alcoholic beverages and further disclosed that he was convicted of a crime.

Licensee argued that a person convicted of a crime is not a disqualified person under Title 33 of the New Jersey Statutes and is entitled to the substantive and procedural protections of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168-1, et seq. The licensee asserts that it was exculpated by reason of the recently decided case of Matter of C. Schmidt & Sons, Inc., 158 N.J. Super. 595 (App. Div. 1978), and that the quoted Rehabilitated Convicted Offenders Act would take precedence over N.J.S.A. 33:1-26 which, in essence, provides that:

> No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee.

Licensee concluded that Fargnoli was not a disqualified person within the meaning of N.J.S.A. 33:1-26.

Licensee's argument is not a valid defense to the charge.

Neither the Schmidt decision nor the Rehabilitated Convicted Offenders Act cloak the licensee with innocence of the subject charge. Neither eliminate the requirement that the disqualification must be removed prior to employement in the Alcoholic Beverage Industry.

The licensee has been charged with violating N.J.A.C. 13:2-14.1 which provides:

> No licensee shall employ or have connected in any business capacity with the licensee any person who has been convicted of a crime involving moral turpitude unless the statutory disqualification resulting from such conviction has been

removed by order of the Director, or such person has first obtained the appropriate rehabilitation employment permit from the Director.

The facts are not in dispute. I conclude that the licensee's denial of culpability is devoid of legal substance and recommend that the licensee be found guilty as charged.

Considering that prior to the hearing held herein, Fargnoli applied for and received a required Rehabilitation Work Permit from this Division, I further recommend that the license be suspended for ten (10) days.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-19.6.

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 recommendations of the Hearer and adopt them as my conclusions herein. I find the licensee guilty of the charge and shall impose a ten (10) days suspension of license.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that Plenary Retail Consumption License 0408-33-020-002 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Prenderfar, Inc., t/a Hudson Tavern, for premises 12 Hudson Street, Camden be and the same is hereby suspended for ten (10) days commencing 3:00 a.m. Tuesday, February 13, 1979 and terminating 3:00 a.m. Friday, February 23, 1979.

JOSEPH H. LERNER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SECOND SUPPLEMENTAL ORDER - PRIOR ORDERS TO BE VACATED - MATTER TO PROCEED BY HEARER'S REPORT

In the Matter of Disciplinary Proceedings against

Fizer Corporation
t/a Your Susie's Place
Highway No. 35 &
Lawrence Parkway
Old Bridge, New Jersey

Holder of Plenary Retail Consumption License 1209-33-015-001 issued by the Township Council of the Township of Old Bridge.

SECOND

SUPPLEMENTAL

ORDER

Thomas Farino, Esq., Attorney for Licensee.
Mart Vaarsi, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

On January 19, 1979 a Supplemental Conclusions and Order was entered herein establishing the effective dates of a seventy-two day suspension of license, commencing Wednesday, January 31, 1979, upon licensee's plea of non vult, set forth in the original Conclusions and Order of October 31, 1978, to charges alleging, in essence, that it permitted and suffered lewd activity on its licensed premises on February 3, 1977, and that on specified dates in February 1977, it allowed, permitted and suffered unlawful activity pertaining to controlled dangerous substances, in violation of N.J.A.C. 13:-2-23.6 and 23.5 respectively.

In consequence of subsequent circumstances brought to the attention of this Division by new counsel for the licensee, and with the concurrence of the Deputy-Attorney General representing this Division, I have determined to grant the licensee's request to withdraw its non vult plea, restore its "not guilty" plea and conclude the matter by submission of a Hearer's Report, and publication of Conclusions and Order.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that my Orders of October 31, 1978 and January 19, 1979 be and the same are hereby vacated; and it is further

ORDERED that, since the hearing in this Division has been concluded, the matter shall proceed to a Hearer's Report, and ultimately to Conclusions and Order, with no representation, promise or estoppel as to penalty to be imposed in the event of a finding of guilt.

JOSEPH H. LERNER
DIRECTOR