



STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
P.O. BOX 087
TRENTON, NJ 08625-0087
PHONE: (609) 984-2830 FAX: (609) 633-6078
WWW.NJ.GOV/OAG/ABC

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JOHN J. HOFFMAN
Acting Attorney General

MICHAEL I. HALFACRE
Director

A.B.C. BULLETIN 2486

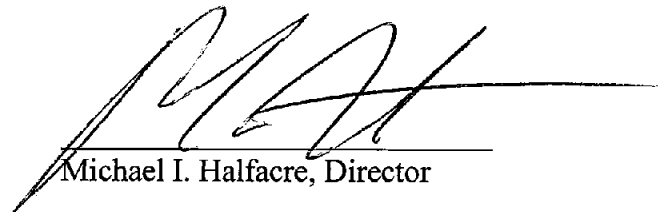
June 30, 2015

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This Bulletin is hereby published and disseminated to the alcohol
beverage industry, pursuant to N.J.S.A. 33:1-39



Michael I. Halfacre, Director

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE)
CONDITIONAL DETERMINATION)
OF QUALIFICATION OF TETERBORO)
LANDING AS A DEVELOPMENT)
PROJECT UNDER N.J.S.A. 33:1-12.50)

ORDER GRANTING
CONDITIONAL DETERMINATION
OF QUALIFICATION UNDER
N.J.S.A. 33: 1-12.50

CATELLUS TETERBORO)
DEVELOPMENT URBAN RENEWAL,)
LLC and PROLOGIS, LLC)

Julie R. Tattoni, Esq., Attorney for Petitioner

BY THE DIRECTOR:

This matter has been opened to Michael I. Halfacre, Director of the New Jersey Division of Alcoholic Beverage Control, by Catellus Teterboro Development Urban Renewal, LLC and Prologis, LLC (hereinafter collectively "Developers"), for a conditional determination that Teterboro Landing Project (hereinafter "Project") qualifies as a development project under N.J.S.A. 33:1-12.50.

Under N.J.S.A. 33:1-12.50(g), a "qualifying development project" means a real estate development project that: 1) Is located in a municipality which has a population of fewer than 1,000 residents; and 2) Is in an area subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to N.J.S.A. 13:17-21.

Petitioner Developers have supplied documentation showing that the population of Teterboro Borough is 67 according to the 2010 U.S. Census Profile. In addition, Petitioner supplied a copy of the New Jersey Meadowlands Commission Teterboro/Industrial Avenue Redevelopment Plan (Resolution No. 09-49, May 2009) (hereinafter "Plan"). The Plan indicates that Block 202, Lot 4 is within the redevelopment area. The Overall Site Layout Plan for Teterboro Landing indicates that the Project is sited within the Plan. The Developers further included a copy of Commission Conditional Zoning Certificate issued August 6, 2013 for construction of the project, which concluded that the Project complies with the Plan. The

timetable for the Project's build-out and the opening schedule were also provided, along with a letter from licensed engineer, Alexander J. Lapatka, PE, PP which sets forth the square footage for the retail and office/light industrial buildings assuming full project build-out.

Under N.J.S.A. 33:1-12.50, a maximum of three retail consumption licenses and two retail distribution licenses may be issued for a qualifying development project which satisfies minimum square footage requirements. The requirements are as follows: for every 50,000 square feet of improvements in the qualifying development project, one (1) consumption license may be issued and for every 100,000 square feet of improvements in the qualifying development project, one (1) distribution license may be issued.

Based upon the Overall Site Plan provided by Petitioner Developers, at full build-out the Project will have 160,000 square feet of light industrial/office space and 442,000 square feet of retail space, which is enough to support issuance of the maximum number of licenses under N.J.S.A. 33:1-12.50(a) and (b). The maximum number of licenses which may be considered for issuance are three consumption licenses and two distribution licenses.

For the foregoing reasons, I have determined that the Project is a qualifying development project, conditioned upon the build-out of the necessary square footage to support the respective licenses and issuance of a certificate of occupancy associated with that space. Tenants are authorized to begin the process of applying for the appropriate retail consumption or distribution licenses. Each tenant will be required to submit to the Division of Alcoholic Beverage Control a fully executed lease, as well as a letter of consent signed by the Developers as part of the approval process. Licenses cannot be issued until a fee schedule is established pursuant to N.J.S.A. 33:1-12.50(e). Each retail licensee will fall under the direct authority of the N.J. Division of Alcoholic Beverage Control and be subject to all rules and regulations contained in Title 33 and Chapter 13 of the administrative regulations, and specifically N.J.S.A. 33:1-12.50 [P.L. 2013, c. 63].

Accordingly, it is on this 21 day of January, 2014,

ORDERED, that the Teterboro Landing Project is conditionally determined to be a qualifying Development Project within the scope of N.J.S.A. 33:1-12.50.



MICHAEL I. HALFACRE
DIRECTOR

MIH/DPL



CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

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JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL

MICHAEL I. HALFACRE
DIRECTOR

NOTICE TO THE INDUSTRY REGARDING PAIRING DINNERS

The Division of Alcoholic Beverage Control ("ABC") has become aware of a problematic practice that is becoming increasingly popular between licensed retail establishments and unlicensed restaurants throughout the State of New Jersey. Recently, events known as "Pairing Dinners" have become very common. Generally, "Pairing Dinners" are events for which an unlicensed restaurant develops a menu for the evening and a licensed retail establishment supplies wine, beer, or spirits for the event that compliments the food to be served. The event is held at an unlicensed premise or a "B.Y.O.B." Tickets are sold prior to the event with food and drink included as part of the fee for admission. As explained below, these "Pairing Dinners" raise issues regarding potential violations of the rules and regulations of the Division of Alcoholic Beverage Control.

When tickets for a "Pairing Dinner" have been sold at the unlicensed premises and the tickets include payment for the alcohol portion of the "Pairing Dinner," the act of selling alcohol at an unlicensed establishment violates of the Alcoholic Beverage Control Act (the "ABC Act"). Pursuant to N.J.S.A. 33:1-2(a), it is unlawful to sell alcoholic beverages in the State of New Jersey, except pursuant to and within the terms of a license. Specifically, N.J.S.A. 33:1-26 provides in part that, "A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises." Moreover, "Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee, shall be guilty of a misdemeanor." Ibid. In the above scenario, due to the fact the unlicensed entity sold tickets, the price of which included the sale/purchase of alcohol, the unlicensed entity has sold alcohol in clear violation of N.J.S.A. 33:1-2(a) and N.J.S.A. 33:1-26.



Furthermore, by participating in the "Pairing Dinner" in violation of the ABC Act, the licensed partner aids and abets the unauthorized sale of alcohol on its behalf, a violation of N.J.S.A. 33:1-25, -26, and -31(a).

In order for a licensee and an unlicensed restaurant to host a "Pairing Dinner" without violating the ABC Act, the food portion and alcohol portion of the ticket should be sold separately. For example, the alcohol portion should be purchased directly from the licensee at its premises prior to the event and include delivery to the licensed premises. Prior to the event, the patron could then bring a voucher to the restaurant indicating that the alcohol has been purchased and subsequently pay the remaining balance of the ticket for food to the restaurant, if any. By implementing this system or a similar system that separates alcohol and food purchases, the licensee can be assured that it will not be in violation of the rules and regulations of the ABC Act. Please be advised that if a "Pairing Dinner" is not held in accordance herewith, the ABC may take appropriate actions.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF
APPLICATION FOR
FESTIVAL EVENT PERMITS

)
) FIRST AMENDED
) SPECIAL RULING AUTHORIZING
) THE TEMPORARY ISSUANCE OF
) CERTAIN FESTIVAL EVENT PERMITS
)
)

BY THE DIRECTOR:

The Division of Alcoholic Beverage Control ("ABC" or "Division") has received requests for opinion letters, permits, waivers and other authorizations to permit various types of Alcoholic Beverage Festivals. The ABC has also reviewed advertisements for and investigated "events" that may not have been in compliance with statutory and regulatory requirements.

These Festivals have become very popular with the growing awareness of New Jersey wines and with the growth of small craft breweries and distilleries. Requests seeking authorization to conduct Festivals have come from various entities, some of which have not held a license or permit.

Also troubling is licensee and permittee sponsorship or participation in these events when the operation may violate New Jersey statutes, regulations or other legal obligations of a licensee. Some examples of potential violations include, but are not limited to the following:

1. The use of third party promoters who share in proceeds from the sale of alcohol and are neither licensed nor controlled by the licensee, and;
2. The practice of allowing unlimited samples, potentially in violation of N.J.S.A. 33:1-12(d), and;
3. The practice of allowing an unlimited availability of alcohol for a set price in violation of N.J.A.C. 13:2-23.16, and;
4. The sale, service or delivery to, or consumption by, persons who are underage and/or actually or apparently intoxicated in violation of N.J.A.C. 13:2-23.1.

Conversely, many of these events have been conducted responsibly and in conjunction with legitimate educational and entertainment components. After further consideration by this Division, it has been determined that conditions can be imposed on

these events that will address the statutory and regulatory concerns. Absent authorization and imposition of conditions, these events would otherwise be prohibited.

Therefore, in order to establish a uniform criteria and to insure compliance with states and regulations, I will authorize the issuance of Festival Event Permits under the requirements set forth in Schedule "A" permitting unique and *bona fide* Festival Events that might otherwise be prohibited. Further, this Special Ruling will allow the Division to collect data and information as the basis for the development of regulations.

Moreover, failure to receive a permit for a festival event may subject organizers to prosecution for regulatory or statutory violations.

Accordingly, it is on this 22 day of August, 2014,

ORDERED, pursuant to N.J.S.A. 33:1-39 and N.J.S.A. 33:1-74, that the Division does hereby establish an Alcoholic Beverage Festival Event Permit and; it is further,

ORDERED, applicants for an Alcoholic Beverage Festival Event Permit shall comply with the terms and conditions in the attached Schedule "A," as may be amended from time to time and; it is further,

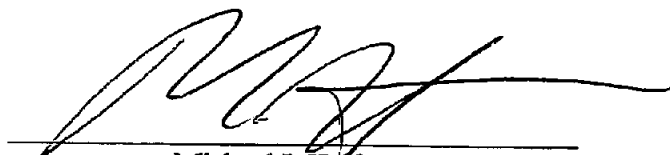
ORDERED, that this ruling shall be effective for 18 months unless extended by my further Order and; it is further,

ORDERED, that the fee for such Festival Event Permit shall be \$1,000.00 for each consecutive day or part of day of the event, subject to a maximum of \$2,000.00 and; it is further,

ORDERED, that all licensees, permittees and promoters shall be liable for any violations of the Alcoholic Beverage Control Act and/or the regulations promulgated pursuant thereto, and it is further

ORDERED, that nothing herein shall be construed to allow the use of promoters in circumstances other than authorized by a festival permit issued pursuant to this Order and Schedule A attached hereto, and it is further,

ORDERED, this ruling and the attached Schedule "A" may be withdrawn or modified by the Director at his discretion.



Michael I. Halfacre
Director

SCHEDULE "A"

Consumer alcoholic beverage festivals

(a) Definitions:

1. "Festival" means an indoor or outdoor scheduled gathering, function, occasion or event that shall be sponsored or hosted by either a retail consumption licensee, concessionaire permittee, or a social affairs permittee wherein small samples of an alcoholic beverage are available from multiple offerings from multiple suppliers, served for a single admission price or "per sample" price, and/or where the Tasting and Sampling statute (N.J.S.A. 33:1-12d) and Regulation (N.J.A.C. 13:2-37.1) are not adhered to.

A "festival" may or may not have a third party *promoter* involved for the purpose of organizing or serving, in any capacity, to create the event, but *if* a third party *promoter* is involved in such manner the event shall be deemed a "festival."

Nothing herein shall prevent a social affairs permittee from making application for a social affairs permit where the event does not meet the definition above.

2. "Third party promoter" means a person or entity engaged to assist in operating and/or organizing the festival for a fee.

(b) Consumer alcoholic beverage festivals may only be hosted by a consumption licensee, concessionaire permittee or social affairs permittee. (hereafter, "festival permittee") under the following conditions:

1. The Festival Permittee shall hold an actively operated license or a valid permit authorizing sales of alcohol for immediate on-premises consumption. Further, Festival Permittees, as Licensees or Permittees, shall at all times be in control of the event and the premises and responsible for same;
2. All festival attendees consuming alcoholic beverages must be at least twenty-one (21) years of age;
3. The festival must provide an educational component relating to the type of alcohol being served or promoted at the event;
4. All alcoholic beverages used or consumed at a festival shall be brand-registered, stored securely with all transportation permits intact and purchased in accordance with all the Division laws and rules;
5. For an initial festival application, the Division must receive the completed application sixty (60) days in advance of the festival date; thereafter,

future applications made by the same host shall be made thirty (30) days in advance of the festival date;

6. A festival session shall not be longer than four (4) hours in duration, but multiple sessions separated by at least a one hour break are permitted provided attendees are not permitted to attend more than one (1) four hour session per day. The Director may extend a session for up to one hour upon a showing of good cause;
7. Title to all alcohol to be available at the festival must pass from the licensed supplier or wholesaler to the Festival Permittee prior to service to the festival attendees. No alcohol, neither an open sample nor sealed container, may be removed from the site of the festival unless the seller has the privilege to sell to the public at such an event, as in the case of a New Jersey Winery;
8. Festivals shall last no longer than three (3) consecutive days;
9. A consumption licensee, concessionaire licensee or social affairs permittee, as the "host" or "sponsor" of the festival, shall only be allowed to conduct up to two (2) festivals within a calendar year per licensee or permittee and only four (4) festivals per year per licensed premises; and
10. The categories for festivals are: malt alcoholic beverage, wine, distilled spirits, or some combination thereof.

(c) Sample sizes for use at a festival are as follows:

1. Two ounce samples for malt alcoholic beverages
2. One ounce samples for wine
3. One-half ounce samples for distilled spirits

(d) All pourers/servers shall be supervised by an employee who is TIPS/TAMS certified or the equivalent. All pourers shall be an employee or agent of a licensee or permittee. Agents or employees of a brewer, distiller, winery or wholesaler may also pour. However, if the brewer, distiller, or wine-maker is not a New Jersey licensee/permittee, the pourer shall be considered an employee or agent of the licensee/permittee to whom the festival permit is issued.

(e) By definition a festival involves multiple suppliers (distillers, breweries, wineries, etc.). A minimum of fifteen (15) participating suppliers shall be necessary to conduct a festival.

- (f) A festival shall have sufficient food and non-alcoholic beverages available, whether complimentary or for purchase.
- (g) At least sixty (60) days in advance of an initial festival, festival applicants must submit a completed application, together with the non-refundable filing fee, which application shall include, but not be limited to the following:
1. The consent of the Municipal Clerk and Police Chief of the municipality where the festival is taking place. In addition, if the festival is taking place in or on publicly owned or controlled property, the consent of the political subdivision in control of the property and the Chief Law Enforcement Officer of the law enforcement entity with jurisdiction over the property must be obtained.
 2. A detailed security plan to assure general safety, as well as emergency medical assistance. The plan must provide for the following: age verification; "pass-off" control; prevention of intoxication; compliance with regulatory requirements on sample sizes; identification of security personnel, duties, numbers and experience; confirmation that all servers shall be employees of the applicant and that each serving station will be directly supervised by an identified TIPS/TAMS or similar certified person acceptable to the Director.
 3. A map or detailed sketch of the area where the festival is to take place shall be provided.
 4. A comprehensive event plan for the festival, including, but not limited to:
 - a) Complete information regarding any involvement of a third party promoter;
 - b) Explanation of the *required* educational component of the festival event;
 - c) Explanation and information relating to any entertainment and/or recreational activities included at the festival;
 - d) Dates, times, ticket and other pricing;
 - e) Identification of participating manufacturers or wholesalers of the featured products that will be serve; and
 - f) Description of food, non-alcoholic beverages, entertainment or other recreational activities that will be offered at the event, whether for sale or included in the admission price.

Be advised that the Director's evaluation will focus on regulatory compliance and policy concerns relating to public safety and preventing under-age consumption and over-consumption of alcohol. The primary purpose of the event should be educational and entertainment and not for the consumption of alcohol.

- (h) In order for a third party promoter to participate in the festival said promoter shall first meet the qualifications of a licensee, permittee or employee of such, under N.J.S.A. 33:1-26 prior to the festival event.
- (i) If a promoter will be involved in a festival, it shall be mandatory that a complete copy of the promoter's contract be provided to the Division prior to the festival event. Generally, third parties such as promoters or other entities **may not receive a percentage of profits or exert control over the festival permittee's activities or employees.** Exceptions for unique events and extraordinary circumstances may be considered by the Director on an extraordinarily limited basis.
- (j) Please be advised that the Division will require a post-event accounting documenting all alcohol purchases, other payments, purchases and costs as well as the allocation of any proceeds within fifteen (15) days of the event. The post-event accounting will also include a summary of any incidents requiring security or police intervention, such as fights, theft or incidents of alleged intoxication or underage service or consumption, whether or not security or law enforcement was involved.

Failure to comply fully with these disclosure requirements and explain said incidents will result in denial of future permit applications, or in the case of a promoter, disapproval of participation in future events.

- (k) Upon receipt of a completed application and fee, and after initial review, the Division will schedule an in-person conference with the applicant and interested parties prior to issuance or denial of the festival permit. In the case of subsequent applications for the identical event, this requirement may be waived in the discretion of the Director.
- (l) A social affair permittee operating without the assistance of a promoter may seek a waiver or reduction of the application fee upon good cause shown.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE
APPLICATION FOR A LIMITED
BREWERY LICENSE BY
FORGOTTEN BOARDWALK
BREWING, LLC

) SPECIAL RULING
) DENYING ISSUANCE OF LIMITED
) BREWERY LICENSE WITHOUT
) PREJUDICE AS PREMATURE, DENYING
) TEMPORARY PERMIT
) PENDING DECISION ON
) APPLICATION FOR LICENSE, AND
) DENYING REQUEST TO
) MAINTAIN ILLEGALLY BREWED
) MALT ALCOHOLIC BEVERAGES
)

John F. Vassallo, Jr., Esquire, Attorney for Applicant, Forgotten Boardwalk Brewing, LLC

BY THE DIRECTOR:

Before me are two petitions related to a Limited Brewery License application filed by Forgotten Boardwalk, LLC ("Forgotten Boardwalk"). The first petition is a request that the Division should expeditiously issue a Limited Brewery License, or at the very least, a temporary permit. The second request is a Petition Seeking Special Ruling to Permit Maintaining Malt Alcoholic Beverages in Anticipation of Issuance of Limited Brewery License. Because both matters stem from the same application, I will issue one Special Ruling addressing both petitions.

PRELIMINARY STATEMENT

The Legislature has long recognized that "The retail alcoholic beverage industry is one of the most highly regulated industries of the State." N.J.S.A. 33:1-12.40(a). "It is the public policy of this State . . . to strictly regulate alcoholic beverages to protect the health, safety and welfare of its citizens." N.J.S.A. 33:1-12.40(b).

Given this public policy, the Alcoholic Beverage Control Act ("ABC Act") grants to the Director of the Division the duty to "supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose of this act." N.J.S.A. 33:1-3. The ABC Act also "vests the Director or other license-issuing authority with extensive regulatory and investigative power over the liquor industry." Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10(2009) (quoting In re C. Schmidt & Sons, Inc., 79 N.J. 344, 353).

Further, in implementing the ABC Act, one of the Director's duties is to "protect against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations." N.J.S.A. 33:1-3.1(b)(5).

With the foregoing in mind, the Division of Alcoholic Beverage Control (the "Division" or "ABC") is in the process of reviewing an application for a Limited Brewery License ("License") submitted by Forgotten Boardwalk. If granted, this License would allow Forgotten Boardwalk, among other things, to brew any malt alcoholic beverages in a quantity not to exceed 300,000 barrels of 31 fluid gallons per year, and to sell and distribute this product to wholesalers and retailers licensed under the ABC Act. See N.J.S.A. 33:1-10(1)(b). As set forth below, those who wish to obtain a license to participate in this industry have the burden of demonstrating that they are qualified. See Sturchio v. Harrison, 9 N.J.A.R. 78 (1978); Lyons Farm Tavern v. Mun.

Bd. of ABC, 68 N.J. 44 (1975).

A. Forgotten Boardwalk's Application.

On or about February 4, 2014, the Division's Licensing Bureau ("Licensing Bureau") received an application for a new Limited Brewery License filed by Forgotten Boardwalk.¹ The principals of the company are Jamie Queli, 51 percent owner, and Seth Dolled, 49 percent owner. The application submission consisted of the Division's standard 12-page application; Forgotten Boardwalk's Business Plan; bank statements from the Credit Union of New Jersey from June 1, 2013 through October 31, 2013²; a Bank of America bank statement from Forgotten Boardwalk's business account for December 1, 2013 through December 31, 2013³; a March 1, 2013 letter from the Credit Union of New Jersey approving a \$600,000.00 commercial Small Business Administration ("SBA") loan; and the 2011 and 2012 tax returns of Jamie Queli and Seth Dolled. (ABC 1-100). In filing this application, both Ms. Queli and Mr. Dolled signed Affidavits of Qualification, in which they each swore under oath that they are qualified to hold a liquor license in New Jersey. (ABC 69-72). At approximately the same time as the application was submitted, the Licensing Bureau was contacted by the Waterfront Commission of New York Harbor ("Waterfront Commission") regarding their ongoing investigation of Seth Dolled. The application contained no information about this investigation.

On February 6, 2014, the Licensing Bureau acknowledged receipt of Forgotten

¹ Attachments to this Special Ruling are found in Appendices 1-7. The attachments will be referred to herein as ABC followed by a number. For purposes of this Special Ruling, I will take administrative notice that Forgotten Boardwalk submitted an application to the Licensing Bureau. The file contains the standard 12-page application, including supporting documents that have been submitted by the applicants in response to information requests by the Licensing Bureau.

² Forgotten Boardwalk's Credit Union of New Jersey's business account ends in 6650.

³ Forgotten Boardwalk's Bank of America business account ends in 3606.

Boardwalk's application for a Limited Brewery License. The Licensing Bureau specifically advised the applicants that a background investigation into their qualifications would be conducted and that the review process may take several months to complete. (ABC 101).

The Licensing Bureau immediately began its review of Forgotten Boardwalk's application, and on February 12, 2014, sent Jamie Queli a letter requesting additional, detailed information. The Licensing Bureau was specifically interested in learning more about the proposed business and its operations; the applicants' experience in the industry; the \$600,000.00 SBA loan; the current employment of the applicants; and an itemization of the expenses of the business to date, with information on the origin of the funds used for such expenditures. Perhaps, most importantly, the Licensing Bureau requested documentation on the source of all funds that were used, directly or indirectly, to finance the proposed business, which was especially significant because the only source of funds explained in the initial application was from the SBA loan. The applicants were also requested to complete State and federal fingerprint checks as part of the qualifying investigation. The Licensing Bureau asked for this information in order to determine whether Ms. Queli and Mr. Dolled were qualified to participate in the alcohol industry. It should be noted that such requests by the Licensing Bureau are routine, and fulfill the various statutory and regulatory mandates imposed upon the Division. (ABC 102-104).

On or about March 5, 2014, Jamie Queli responded to the Licensing Bureau with an undated affidavit. Ms. Queli provided banking information from Forgotten Boardwalk's Bank of America business account and the Credit Union of New Jersey business account. Registers from these accounts, from January 1, 2013 through March 3, 2014, showed significant expenditures related to Forgotten Boardwalk's start-up and operational expenses. Significantly, the largest

expenditures during this time related to construction of the facility and purchase of brew house equipment, which were made prior to the License application being submitted to the Division. Ms. Queli also submitted, with no accompanying explanation, a single bank statement of Lonny M. Dolled and Sharon E. Dolled, Seth Dolled's parents, for January 24 through February 23, 2014, which showed a debit of \$165,000.00.⁴ Also included in Ms. Queli's response were several Bank of America bank statements from her personal checking accounts for February 16, 2013 through April 18, 2013. Of particular note, and again without any explanation, there was an April 8, 2013 withdrawal of \$284,545.00 from Ms. Queli's personal checking account and an apparent deposit into Forgotten Boardwalk's Bank of America business account.⁵ The financial information provided was devoid of explanations, and included deposits from undocumented sources. In addition, as for the current employment of the applicants, Ms. Queli stated that Seth Dolled is employed as a checker at Maher Terminals, in Elizabeth, New Jersey. However, she again neglected to divulge that an administrative proceeding by the Waterfront Commission was pending against him due, in part, to his alleged association with a member of organized crime, who happens to be Jamie Queli's father, Joseph M. Queli. (ABC 105-180).

After reviewing Ms. Queli's affidavit and supporting documents, the Licensing Bureau was left with many unanswered questions. On March 19, 2014, it sent a follow up letter to Jamie Queli requesting clarification and additional information. Specifically, the Licensing Bureau

⁴ There was a corresponding deposit of \$165,000.00 into Forgotten Boardwalk's business account ending in 3606 on February 4, 2014.

⁵ Ms. Queli's Combined Statement for March 20, 2013 through April 18, 2013 shows an April 8, 2013 withdrawal of \$284,545.00 from her checking account ending in 6244 and a transfer to Forgotten Boardwalk's business checking account ending in 3606. However, there does not appear to be a corresponding transaction in the Register provided by Ms. Queli for the business account ending in 3606 on or about April 8, 2013. This deposit is, however, reflected in Forgotten Boardwalk's business account statement ending in 3606 for April 8, 2013 through April 30, 2013. Although there may be an explanation for this discrepancy, Ms. Queli fails to provide one.

asked for, among other things, a copy of the SBA loan guarantee provided by Jamie Queli and Seth Dolled; bank statements for Jamie Queli's personal checking account that reflected the source of the \$284,545.00 that was transferred to Forgotten Boardwalk's business account; an explanation of the source of funds for a May 30, 2013 wire transfer of \$155,000.00 into Forgotten Boardwalk's Credit Union business account; a notarized gift or loan document pertaining to \$300,000.00 provided by Sharon and Lonny Dolled; and an explanation of the source of other deposits made into Forgotten Boardwalk's Credit Union account. (ABC 181-182).

On or about March 31, 2014, Forgotten Boardwalk provided a response. Sharon and Lonny Dolled provided an affidavit, dated March 25, 2014 stating that the \$300,000.00 deposited into Forgotten Boardwalk's accounts was a loan to their son, Seth Dolled. Jamie Queli provided an affidavit, also dated March 25, 2014, explaining that the \$284,545.00 deposited into Forgotten Boardwalk's account came from Jamie Queli's personal savings account.⁶ There was no explanation provided about where or how Jamie Queli, a business analyst making between \$60,000 and \$70,000 per year, acquired \$284,545.00 to invest in her new business. Finally, Ms. Queli provided the unconditional guarantees signed individually by her and by Seth Dolled, in which they each personally guaranteed the \$600,000.00 loan provided by the SBA. (ABC 183-250).

The answers provided by Jamie Queli continued to be unsatisfactory, and on April 23, 2014, the Division sent another letter requesting information. Of specific concern was Ms. Queli's continued failure to document the source of the \$284,545.00 that was transferred from

⁶ The account from which this money came was actually a "Regular Checking Platinum Privileges Relationship Account." (ABC 206-228).

her personal checking account to Forgotten Boardwalk's business account. According to the Licensing Bureau's letter, Ms. Queli stated in a telephone conversation to Licensing Bureau staff that the source of this money was from her mother's home equity loan or line of credit ("HELOC"), yet no documentation was ever supplied to support that assertion. In addition, the Licensing Bureau also requested a notarized statement pertaining to the source of the \$164,398.00 that Lonny and Sharon Dolled loaned to Seth Dolled, which were claimed to be from the cashing in of United States savings bonds. (ABC 251-252).

In response to the Licensing Bureau's April 23, 2014 letter, Ms. Queli produced a May 1, 2014 affidavit signed by Joseph Queli (her father), Regina Queli (her mother) and Jamie Queli. According to this sworn statement, Regina Queli received and transferred a portion of a HELOC in the amount of \$117,000.00 in August 2010 and \$250,000.00 in March 2011 into Jamie Queli's personal savings account.⁷ The Licensing Bureau reasonably had questions about the representations contained in this affidavit since the HELOC was obtained on a joint asset held by both Joseph and Regina Queli, and both parents signed the affidavit. Thus, the representation that the proceeds of the HELOC came only from Regina Queli was suspect, and the Licensing Bureau continued to have concerns about the source of this money. The Dolleds also submitted an affidavit (undated) stating that the source of the \$164,398.00 loaned to Seth Dolled was from cashing in of savings bonds. (ABC 253-280; 737-787).

On June 17, 2014, Seth Dolled provided the Licensing Bureau with a Promissory Note, in which he agreed to pay his parents, Lonny Dolled and Sharon Dolled, the \$300,000.00 principal over the course of ten years. On this same date, Jamie Queli provided the Licensing Bureau with

⁷ Again, the deposits were made into Jamie Queli's personal checking account, not her personal savings account.

a Promissory Note, in which she agreed to pay her parents, Regina Queli and Joseph Queli, the \$284,545.00 principal in yearly installments of five percent until the balance is paid off. (ABC 290-291).

Given the ongoing investigation by the Waterfront Commission into Seth Dolled's alleged association with Jamie Queli's father, Joseph M. Queli, an alleged member of the Genovese crime family, and given the unresolved questions about the source of Jamie Queli's money, the Licensing Bureau sought the assistance of the Division's Enforcement Bureau in continuing the investigation into the qualifications of Jamie Queli and Seth Dolled to hold a Limited Brewery License and into the source of money used to finance the Forgotten Boardwalk business. Such an investigation is clearly allowed by N.J.S.A. 33:1-35, which provides the Director of the ABC with the authority to make such investigations as he deems proper in the administration of Title 33, and which requires every applicant for a license to fully cooperate in any investigation.

B. The ABC Enforcement Bureau's Investigation.

On June 12, 2014, while Forgotten Boardwalk's application before the Licensing Bureau was pending, the Investigations Bureau received a complaint through its on-line portal, ABCWebinfo. The complaint alleged that Forgotten Boardwalk was manufacturing beer prior to its receipt of a license. (ABC 292).

In response to this complaint, on June 13, 2014, two ABC investigators were sent to inspect the Forgotten Boardwalk brewery in Cherry Hill, New Jersey. Contrary to the suggestions of Forgotten Boardwalk's counsel, these investigators were not sent out to do a site inspection in anticipation of the ABC issuing a Limited Brewery license to Forgotten Boardwalk. (ABC 400, 407). Rather, the investigators were responding to a complaint duly filed with the

ABC, and during their investigation, they found three vats at the premises filled with fermenting beer. (ABC 293-312). An investigation report was written on June 17, 2014. Ibid.

As will be further discussed below, the ABC Act makes it unlawful, among other things, to manufacture, sell, possess with intent to sell, any alcoholic beverages in this State except pursuant to the ABC Act. A violation of the statutory provision is a crime of the 4th degree. As a result of this apparent violation of the ABC Act, and at the request of the Licensing Bureau for assistance in evaluating the qualifications of the applicant and its principals, the Enforcement Bureau began an examination of the qualifications of the applicants.

C. Joseph M. Queli's Criminal Past and Associations.

On April 13, 1998, Joseph M. Queli was named in a federal indictment. (United States of America v. Queli, Crim. No. 98-193 (NHP). (ABC 316-346).⁸ He pled guilty to Count 2 in the indictment, namely, that continuously from the mid-1970s through November 1996, he associated with the Queli Faction of the Genovese Crime Family, which was "engaged in, and the activities of which affected, interstate commerce, did knowingly and willfully conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity ..." Ibid. On April 16, 1999, Mr. Queli was sentenced to 30 months of imprisonment, and required to pay a \$5,000 fine. (ABC 347-351).

Mr. Queli was again indicted by a State Grand Jury in an indictment that was unsealed on January 10, 2011. (State of New Jersey v. Joseph Queli, Nicholas Bergamotto and Regina Queli, Dkt. No. 10-10-00147-S). (ABC 352-362). Mr. Queli pled guilty to 2nd degree conspiracy to engage in criminal usury (commonly known as loan sharking) and money laundering, and both

⁸ The documents pertaining to the criminal background of Mr. and Mrs. Queli were introduced into the record by way of a Certification of Deputy Attorney General Andrew R. Sapolnick, dated July 24, 2014. (ABC 313-315).

he and his wife, Regina Queli, pled guilty to a 3rd degree crime of filing a false or fraudulent tax return. (ABC 363-366). Mr. Queli was sentenced to five years in prison, was fined \$57,780.00, and was forced to forfeit \$24,260.00 that was seized in the investigation. Ibid. Mrs. Queli was accepted into a pretrial intervention program, and upon successful completion, the charges against her were dismissed. (ABC 371).

DAG Sapolnick attached the original State Judgment of Conviction and Order for Commitment, filed February 27, 2012, which stated that an aggravating factor that was used to consider the five-year sentence of Mr. Queli was the "substantial likelihood that [Mr. Queli] was involved in organized crime activity." (ABC 363-366). However, in Forgotten Boardwalk's July 31, 2014 reply, Mr. Vassallo attached a corrected, Amended Judgment of Conviction and Order for Commitment, filed May 14, 2012, in which the sentencing judge deleted reference to Mr. Queli's alleged involvement with organized crime. (ABC 384-386).

Although I accept the representation by Mr. Vassallo that Mr. Queli's alleged association with organized crime was removed from the State sentencing document, I do take notice of the fact that Mr. Queli did plead guilty in the State prosecution to criminal usury and money laundering and to filing a false or fraudulent tax return. Moreover, Mr. Queli also pled guilty to criminal racketeering in a federal prosecution against him.

As will be further discussed below, I am extremely troubled that an individual who has been convicted of money laundering, criminal usury and tax evasion approximately two years ago may be the source of funds that are being used to finance the Forgotten Boardwalk venture. See N.J.S.A. 33:1-3.1(b)(5) (public policy of the State is to protect against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations); N.J.S.A. 33:1-26 (No persons who would fail to qualify as a licensee under this chapter shall be

knowingly ... connected in any business capacity whatsoever with a licensee).

D. Disciplinary Case Against Seth Dolled Before Waterfront Commission of New York Harbor.

Seth Dolled is the subject of a disciplinary matter currently pending before the Waterfront Commission. Mr. Dolled is employed as a checker at Maher Terminals in Elizabeth, New Jersey. (ABC 105). A checker is a "longshoreman who is employed to engage in direct and immediate checking of waterborne freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores." Part I of Waterfront Commission Act, Article II, §5-a, codified at N.J.S.A. 32:23-85.

The charges pending against Mr. Dolled include associating with a person who is a member of an organized crime group (e.g., Joseph Queli), a career offender (e.g., Joseph Queli), and an individual who was convicted of racketeering (e.g., Joseph Queli), where such associations would be inimical to the policies of the Waterfront Commission Act ("Waterfront Act"), Part II, § 5-i(6), codified at N.J.S.A. 32:23-93. (Counts 1-3 of Amended Notice of Hearing, ABC 387-388). Also pending against Mr. Dolled are charges: (1) that he misappropriated money from Maher Terminals by creating or reinforcing a false impression that he was working when he was not in fact working (Counts 4-12 of Amended Notice of Hearing, ABC 388-389); (2) that he does not possess good character and integrity (Counts 13-26 of Amended Notice of Hearing, ABC 389-390); and (3) that he committed fraud, deceit or misrepresentation in response to questions by the Waterfront Commission (Counts 27 and 28) of Amended Notice of Hearing, ABC 390-391). If Mr. Dolled is found guilty of these charges, the Waterfront Commission could revoke, cancel or suspend Mr. Dolled's registration as a checker

(Count 29 of Amended Notice of Hearing, ABC 391). This case was heard before an administrative law judge, and a decision is currently pending. (ABC 372).

E. June 30, 2014 and July 18, 2014 Petitions By Forgotten Boardwalk.

On June 30, 2014, Forgotten Boardwalk's newly retained counsel filed a "Verified Petition" with me seeking a "Special Ruling To Permit Maintaining Malt Alcoholic Beverages" which were brewed at the Forgotten Boardwalk's unlicensed premises. (ABC 392-405). While styled as a "Verified Petition," this application consisted of a recitation of facts by Forgotten Boardwalk's counsel with no law cited as to why I should permit the applicants to keep their illegally manufactured product.

On July 18, 2014, Forgotten Boardwalk's counsel filed a letter in lieu of a formal petition requesting that the Limited Brewery License, or at least a temporary permit, be expeditiously issued to Forgotten Boardwalk so that it can "commence operating and stop the financial bleeding ..." Again, this letter cited no law, but provided only conclusory statements that all information pertaining to the applicants, the facility and sources of funding that the Licensing Bureau requested was promptly provided. Counsel concluded that there is "absolutely nothing to show or even suggest a disqualification or an undisclosed interest, either in the application and supporting documents, or in the three days of sworn statements⁹ ..." (ABC 406-409).

In response to the Enforcement Bureau's July 21, 2014 request to provide comments on the June 30, 2014 and July 18, 2014 Vassallo petitions, Counsel for Forgotten Boardwalk responded by letter, dated July 22, 2014. (ABC 411-413). In this letter, Mr. Vassallo asked for

⁹ To assist the Licensing Bureau's investigation into the qualifications of Jamie Queli and Seth Dolled, I am aware that the ABC's Enforcement Bureau took the sworn statements of Jamie Queli, Seth Dolled, Sharon Dolled, Lonny Dolled, Regina Queli and Joseph M. Queli. (ABC 415-416). However, since the Enforcement Bureau's investigation into the qualifications of Jamie Queli and Seth Dolled is ongoing, and since no transcripts from the statements taken were provided to me by either party, I cannot consider the statements taken to be part of the record before me.

an immediate response to his client's petitions. Ibid. In response to this letter, I ordered the Enforcement Bureau to respond to the petitions by July 25, 2014. (ABC 414).

On July 24, 2014, the Enforcement Bureau provided its response to the two petitions filed by Forgotten Boardwalk. Given the open questions on the source of funds used to finance the Forgotten Boardwalk business and the pending Waterfront Commission proceeding against Seth Dolled, the Enforcement Bureau strongly argued that it is premature to grant Forgotten Boardwalk a license or temporary permit to brew, store and/or sell malt beverages. Specifically, the Enforcement Bureau is concerned that: (1) the source of the \$284,545.00 contributed by Jamie Queli to Forgotten Boardwalk may have come from a disqualified source (e.g., Joseph M. Queli, Regina Queli and/or organized crime); and (2) Seth Dolled is the subject of an ongoing disciplinary action before the Waterfront Commission, the findings of which, could have direct consequences on his qualifications to hold a Limited Brewery License. In light of these two issues, the Enforcement Bureau recommended that I not make a decision on Forgotten Boardwalk's application until such time as the Waterfront Commission rules and the application evaluation process continues. (ABC 367-383).

On July 31, 2014, Counsel for Forgotten Boardwalk submitted an extensive reply to the Enforcement Bureau's papers, which included, among other things, attachments related to Jamie Queli's source of funds. Information was provided, for the first time, that Joseph M. and Regina Queli took a HELOC (referenced above) in order to loan their son, Joseph L. Queli, \$417,000.00 for "real estate purposes." According to Forgotten Boardwalk's counsel, Joseph L. Queli paid his parents back \$117,000.00 on July 20, 2010, and this money was then given to Jamie Queli in August 2010 for a previous business venture that did not come to fruition. Forgotten Boardwalk's counsel also represented that, on November 14, 2010, Joseph L. Queli paid his

parents back an additional \$250,000.00, which was also given to Jamie Queli for her Forgotten Boardwalk business on or about March 2011. (ABC 435-436). As an aside, I note that the \$250,000.00 loan to Jamie Queli was made at or around the same time that Regina and Joseph M. Queli were both indicted by the State of New Jersey for on charges of conspiracy, money laundering, filing false and fraudulent tax returns, and failure to pay gross income taxes. (ABC 352-362).

As for the pending matter before the Waterfront Commission, counsel for Forgotten Boardwalk minimized the importance of that action on Seth Dolled's qualifications to hold a liquor license in New Jersey. (ABC 427-432).

LEGAL DISCUSSION

A. The Qualifications of the Applicants to Hold a Limited Brewery License.

N.J.S.A. 33:1-25 sets forth the statutory qualifications for obtaining a liquor license in New Jersey. This section provides, in pertinent part, that

No license of any class shall be issued to any person under the age of 18 or to any person who has been convicted of a crime involving moral turpitude.

Former Director John F. Vassallo interpreted this authority to mean that being 18 and not having been convicted of a crime “merely indicat[e] that the Applicant is not *statutorily disqualified* from being licensed.” In the Matter of the Application of George W. “Chip” Dunn, 10 N.J.A.R. 1, 10 (1984) (Emphasis in original).¹⁰ He concluded that the burden is on the Applicant to prove by a preponderance of the evidence that he or she is qualified to hold a liquor license. Ibid.; See also Sturchio v. Harrison, 9 N.J.A.R. 78, 82 (1986); See also, Lyons Farm Tavern v. Mun. Bd. of ABC, 68 N.J. 44, 50-51 (1975). The former Director also concluded that, “[i]t is well settled that a license or permit to dispense alcoholic beverages is a mere privilege and that no person is entitled to such license as a matter of law.” Chip Dunn, supra, 10 N.J.A.R. at 8. (citations omitted); N.J.S.A. 33:1-12.40(c).

In Chip Dunn, former Director Vassallo described the historical role of the Director in assessing the qualifications of an applicant for a liquor license. He noted that:

In the first place, it is important to realize that the history of New Jersey’s liquor control activities is founded on the fundamental premise that a license to sell intoxicating liquor at a particular location is essentially a permit to pursue there an otherwise illegal occupation. In light of this foundation of our laws and implementing regulations, the Legislature has conferred the

¹⁰ For the convenience of the reader, the administrative law decisions cited in this Special Ruling can be found at ABC 447-458; 788-797).

discretionary power to grant such privilege upon designated licensing agencies. Beyond this, the Director has been given extensive authority regarding the sale of intoxicating liquors and has powers of supervision and control. In determining whether or not a license should be issued in such a case, it is necessary to decide whether the public good requires it. [Citations omitted.] [Emphasis added.] [Chip Dunn, *supra*, 10 N.J.A.R. at 9.]

The former Director went on to say that it "has long been held that 'it is competent for ... issuing authorities to confine their selection to those who are clearly worthy.' It matters not that an applicant has no convictions against it. It has further been held that there is no 'must' in the Alcoholic Beverage Law. Each case must be considered on its own merits, based among other factors, upon the worthiness of the applicant." *Id.* at 10. The former Director also acknowledged that the Division is charged with eliminating racketeers from the industry. *Id.* at 12. Against these standards, policies, and the State's concerns about keeping organized crime out of the alcohol industry, the former Director analyzed Chip Dunn's application, and concluded that he did not prove his fitness for licensure. Notably, in denying this application, the former Director expressed his concerns about "the evils of freely flowing cash without traceability." *Chip Dunn, supra*, 10 N.J.A.R. at 12-13.

Former Director Joseph Lerner's analysis in *Narducci v. Board of Commissioners of the City of Atlantic City*, NJABC Bulletin 2305, Item 3, p. 7 (October 4, 1978) is also instructive in helping to define the scope of inquiry that can be made into the qualifications of a person applying for a liquor license. (ABC 788-797). In that case, the applicants (or appellants) were denied a person-to-person transfer of a plenary retail consumption license in Atlantic City because the Director found that such a transfer would not be in the public interest. This decision was made at the time when legalized gambling had recently been approved in Atlantic City, and the State was concerned that organized crime groups would try to seek to control of, among other

things, taverns, restaurants, food, liquor and supply companies. (ABC 791). In Narducci, the applicants themselves were not convicted of acts involving organized crime, but their parents and other family members had criminal records and the loans obtained to finance the business were from a questionable source. (ABC 790).

The appellants in Narducci challenged the denial of the person-to-person transfer. Specifically, they attacked the Special Atlantic City Task Force's

inquiry into and reliance upon the youthful partners' business experience, lack of expertise in the liquor industry, almost total dependence upon their parents for support, shelter and cars, the source of financing and close criminal associations of appellants as beyond the scope of proper inquiry into an applicant's qualifications to hold an alcoholic beverage license. [Emphasis added.]

The Appellants argued instead that the inquiry into their qualifications should be limited to the statutory requirements of: (1) attaining the age of 18; and (2) not being found guilty of a crime involving moral turpitude. Former Director Lerner outrightly rejected these arguments, and upheld the denial. He stated that the "cases are legion holding that inquiry into other aspects of an applicant's background and character is proper, and in fact, mandated in order to properly evaluate his/their qualifications." Narducci, supra, NJABC Bulletin 2305, at p. 12 (ABC 793), citing Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Boller Beverages, Inc. v. Davis, 38 N.J. 138 (1962). Moreover, the former Director acknowledged that

An applicant's associations ha[ve] traditionally always been an appropriate avenue of inquiry in a licensing proceeding under the Alcoholic Beverage Law. Association with criminal elements has never been an automatic bar to licensure but a discretionary factor to weigh in the context of each unique set of circumstances in relation to a particular applicant. [Emphasis added.]
[Narducci, supra, NJABC Bulletin at p. 15. (ABC 796).]

I find that the factors to be used in determining the qualifications of potential licensees, as

discussed in Narducci and Chip Dunn, continue to be applicable today.

Finally, although the Limited Brewery License being sought by Jamie Queli and Seth Dolled is a State-issued license, I believe that the standards set forth at N.J.A.C. 13:2-2.9(b)(2) and (b)(3), which apply to municipally issued licenses, should apply equally here.¹¹ Specifically, before a municipally issued license can be approved, a municipal issuing authority must affirmatively find that: (1) an applicant is qualified according to the standards established by the ABC Act and implementing regulations; and (2) an applicant has disclosed, and the authority has reviewed, the source of all funds used in the purchase of the license and licensed business. In this case, a full investigation into the source of funds used to finance Forgotten Boardwalk is necessary to ensure that this business is in the public interest, and will not operate as a "front" for a less than legitimate business venture.

Further, N.J.A.C. 13:2-23.5(a) states that "No licensee shall allow, permit or suffer in or upon the licensed premises the habitual presence of any known prostitute, gangster, racketeer, notorious criminal or other person of ill repute." It goes without saying that this provision should equally apply to the ownership of and the source of funds for, a license.

In light of the ABC Act, regulations, and case law discussed above, there can be no dispute that the ABC has a clear statutory mandate to review the qualifications of liquor license applicants, including a thorough and transparent review of the source of funds used to purchase a liquor license. Only after such a review is complete can the ABC make a determination about whether the issuance of the license would be in the public interest.

¹¹ The Director is authorized to administer the issuance of manufacturers', wholesalers', plenary retail transit, transportation and public warehouse licenses, or special permits (e.g., State licenses or permits). N.J.S.A. 33:1-18; N.J.S.A. 33:1-74. Other licenses, such as retail plenary consumption or retail plenary distribution licenses are generally issued by the governing body of each municipality, which are known as municipal issuing authorities. N.J.S.A. 33:1-19.

In the instant matter, the investigation into the qualifications of Jamie Queli and Seth Dolled is not complete, in that they have not proven to the Licensing Bureau's satisfaction that the source of Jamie Queli's funds is not from a disqualified source and Seth Dolled appears to have known criminal associations in violation of the statute, regulations and case law, not the least of which are the serious charges pending against him before the Waterfront Commission.

Accordingly, at this point in the application review process, I am unable to determine, based on the record before me, whether Jamie Queli and Seth Dolled are qualified to hold a Limited Brewery License. My concerns about this particular application are based on the following:

1. The ABC's Mandate to Keep Organized Crime Out of the Alcohol Beverage Industry.

The ABC Act was enacted in 1933 in the aftermath of the repeal of Prohibition. See N.J.S.A. 33:1-3. During Prohibition, organized crime prospered, so with the repeal of Prohibition, strict State laws were passed to make it clear that racketeers, bootleggers and others of ill repute were not welcome in the alcohol industry. (Okrent, Last Call, The Rise and Fall of Prohibition (Scribner, 2010).)

The ABC Act created what was then called the Department of Alcoholic Beverage Control (now known as the Division of Alcoholic Beverage Control or ABC), and gave this agency the authority to supervise the "manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger." Duff v. Trenton Beverage Company, 4 N.J. 595, 602 (1950). (Emphasis added.) The focus of this newly created agency was to prevent organized crime from infiltrating the recently legalized alcoholic beverage industry.

In 1985, the Legislature amended the ABC Act. Notably, the Legislature restated the

1933 policy and the ABC's duty to:

[P]rotect against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations ...
[N.J.S.A. 33:1-3.1(b)(5).]

In order to prevent the criminal element from entering the alcohol industry, the Legislature recognized that participation within this industry is "a revocable privilege conditioned upon the proper and continued qualification of the licensee." Ibid.

In October 1992, the State Commission on Investigation (the "Commission" or "SCI") issued a report entitled, "Organized Crime in Bars." (ABC 458-535). In this report, SCI noted that several bars and restaurants in New Jersey were either owned by or were associated with organized crime. It recognized that these licensed establishments were often used as vehicles through which to launder money from illegal activities such as gambling, loan sharking or narcotics trafficking, and are often used as meeting places or headquarters for organized crime groups. (ABC 462). The SCI found that, since a liquor license is a privilege which requires a threshold of integrity and freedom from criminal associations, government has an "affirmative obligation not to grant liquor licenses to persons who do not meet the statutory criteria." (ABC 463).

In a somewhat stinging critique of the Division, the SCI concluded:

It seems self-evident that regulatory officials should by now be sensitized to the issue of organized crime. They should be vigilant while maintaining a sense of perspective and fairness. However, because the Division does not distinguish cases involving organized crime from other cases, the Commission believes that the Division does not take as seriously as it should its mandate to keep organized crime at bay. It sometimes deals with mobsters the same way it deals with minor regulatory violations ... [Emphasis added.] [ABC 517.]

In June 1995, SCI issued a follow up report to the October 1992 Report. This report,

entitled, "Organized Crime in Bars, Part II," detailed the involvement of organized crime at licensed premises, and concluded, in pertinent part:

The infiltration by organized crime into New Jersey's liquor industry, first reported by the Commission three years ago, continues to pose a threat to the integrity of the State's licensing system and contribute to the underground economy that undermines the State's economic growth and stability. In order to detect and thwart the spread of organized crime in the State's million-dollar industry, both the State and the municipalities must vigorously enforce the laws and regulations that are available, as well as undertake those measures necessary to strengthen the system of licensure and enforcement. [Emphasis added.] [ABC 645.]

The concerns expressed by the SCI remain valid today.

As a result of the SCI reports, the Division adopted a Standard Operating Policy and Procedure ("SOP"). Of note, the SOP describes, in detail, the background investigation that must be done before a new liquor license is issued or an existing license is transferred. In addition, the Division gives extensive training to municipal issuing authorities, in order to assist local police departments in conducting such investigations. The purpose of this training is to ensure that only qualified individuals are allowed to purchase liquor licenses and that the funds used for such licenses are disclosed and come from legitimate and fully documented sources. (ABC 647); See also, N.J.A.C. 13:2-2.9(b) . In reviewing an application for a State-issued Limited Brewery License, such as the one in the instant matter, the Division applies the same standards as in the SOP.

2. The Source of Jamie Queli's Money.

Contrary to the representations made by Forgotten Boardwalk's Counsel, Jamie Queli has not been completely forthcoming with information related to her approximate \$284,545.00 investment in Forgotten Boardwalk. (ABC 392, 407, 417). It is true that Ms. Queli responded to

the Licensing Bureau's requests for information regarding the source of this money, however, her answers were frequently incomplete and devoid of explanation. In particular, three months into the application review process, Ms. Queli represented for the first time that \$284,545.00 came from a HELOC from her mother, yet the documentation provided in support of that assertion, showed that the HELOC was obtained by both of her parents on their jointly-owned home. (ABC 253- 289). Moreover, Counsel for Forgotten Boardwalk created additional questions with his representation that the HELOC was originally taken out to loan Mr. and Mrs. Queli's son \$417,000.00 and that the son paid his parents back \$367,000.00 between July 20, 2010 and November 14, 2010. (ABC 435-436). Simply stated, legitimate questions remain about whether Ms. Queli's \$284,545.00 contribution to Forgotten Boardwalk came from her father, who is a disqualified source due to his past criminal convictions and associations.

N.J.S.A. 33:1-26 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 license." (Emphasis added). While I understand that Joseph M. Queli is not the applicant for the Limited Brewery License, the burden is on Ms. Queli to demonstrate that the source of her approximately \$284,545.00 investment into Forgotten Boardwalk is not from her father, a disqualified source. Based on the information in the record before me, I am unable to make that determination. As such, I find that the Licensing Bureau, with the assistance of the Enforcement Bureau, should be allowed to continue its evaluation of the application in order to be sure that a criminal element (e.g., the fruit of Mr. Queli's criminal enterprises) is not allowed to infiltrate the alcohol beverage industry.

3. Seth Dolled's Associations and his Qualification to hold a License.

As for Seth Dolled, I also have significant concerns about whether he is qualified to hold

a Limited Brewery License. The administrative charges pending against him before the Waterfront Commission go to his associations with an individual with known criminal habits (Joseph Queli), as well as his integrity, character and veracity before a government agency. In my view, these inquiries have a direct bearing on his qualifications to hold a liquor license in this State. See Narducci, supra, NJABC Bulletin 2305, at p. 12 (ABC 793), citing Butler Oak, supra, 20 N.J. at 373.

In 1953, the New York State Crime Commission issued a scathing report about the pervasive crime that existed on the waterfront. In response to that report, former New Jersey Governor Alfred Driscoll wrote, "New Jersey and New York 'should mobilize their forces in an unremitting drive against racketeering, organized crime and restrictive practices which have increasingly hamstrung the Port of New York.'" As a result, the Waterfront Commission was created, and was charged with investigating, deterring, combating and remedying criminal activity and influence in the Port of New York-New Jersey (the "Port"). (ABC 657-698).

In March 2012, pursuant to its investigative powers, the Waterfront Commission issued a Special Report to the Governors and Legislatures of the States of New Jersey and New York. The Special Report described the Waterfront Commission's investigation into unfair employment practices within the Port. After several weeks of public hearings, the Waterfront Commission concluded that:

... certain hiring practices, achieved primarily through calculated provisions of collective bargaining agreements, illogical interpretations of other provisions, and claims of 'custom and practice,' have created within the Port no-work and no-show positions generally characterized by outsized salaries. The privileged few that are given those jobs are overwhelmingly connected to organized crime figures or union officials. [Emphasis added.]

In the Special Report's conclusion, the Waterfront Commission listed several individuals involved at the Port who had either been indicted or arrested on charges including racketeering, conspiracy, theft and loan sharking. On this list were Joseph Queli, former longshoreman and Genovese soldier and his wife, Regina Queli. Regina Queli is listed not only as the wife of Joseph M. Queli, (whose convictions disqualified him from working on the waterfront) but also as the cousin of Nunzio LaGrasso, another reputed Genovese family member. (ABC 728). In addition, the Special Report contained an Attachment (ABC 735), which included the Queli family tree, showing members of the Queli family who either worked at or were affiliated with the Port. Jamie Queli and Seth Dolled were both on the family tree. The Quelis and their extended family figure prominently in the Special Report. (ABC 699-736).

I further note that the ties to organized crime do not end with the Waterfront Commission's allegations. For example, in numerous documents attached to the applicant's original application, including the Certificate of Formation, Operating Agreement, and the business bank accounts held by the Credit Union of New Jersey and Bank of America, the applicants used as its place of business the home address of Joseph M. Queli, a disqualified individual. (ABC 45-47, 48-54, 55-65). Additionally, if it is found that Joseph M. Queli, a disqualified source, made a financial contribution to Forgotten Boardwalk, that contribution inures to the benefit of Mr. Dolled as well as to Ms. Queli.

Given the serious issues about the infiltration of organized crime at the Port, and Seth Dolled's alleged improper association with Joseph Queli, a two time convicted felon, which is the subject of a pending matter before the Waterfront Commission, I have significant concerns about Mr. Dolled's qualifications to hold a liquor license. I, therefore, must wait for the Enforcement Bureau to complete its investigation into Mr. Dolled's qualifications, which

investigation may also take into account any Waterfront Commission decision. Simply put, at this time, I am unable to determine whether Mr. Dolled has satisfied his burden to prove that he is qualified under the ABC Act, regulations, and long-standing policies.

Based on the foregoing, I CONCLUDE that the record before me is not complete as to the qualifications of Jamie Queli and Seth Dolled for a Limited Brewery License. Accordingly, I am unable to rule on the application seeking the issuance of a Limited Brewery License until the Enforcement Bureau completes its investigation into the source of Jamie Queli's funds and Seth Dolled's qualifications.

This ruling is consistent with my extensive regulatory and investigative powers and statutory mandate to keep criminal elements out of the alcohol industry, and is designed to ensure that only qualified individuals participate in this heavily regulated industry. See N.J.S.A. 33:1-3.1(b)(5); N.J.S.A. 33:1-35.

B. The Petition for a Temporary Permit.

In its July 18, 2014 letter, counsel for Forgotten Boardwalk requested a Limited Brewery License, or in the alternative, an expeditiously issued temporary permit while review on the license application continued. The basis for this request is to "stop the financial bleeding that has and continues to take place because [Forgotten Boardwalk] cannot operate, yet continues to have substantial overhead expense." (ABC 406). The relief sought (e.g., the issuance of a temporary permit) is akin to a request for temporary relief or a preliminary injunction, therefore, the standards set forth in Crowe v. DiGioia, 90 N.J. 126 (1982) are instructive.

In Crowe, the Supreme Court recognized the "power of the judiciary to 'prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.'" Crowe, supra, 90 N.J. at 132 (citations omitted). This

is a highly discretionary determination, and the Court identified certain fundamental principles to be applied in guiding this discretion.

Briefly stated, the Crowe standards are as follows: (1) a preliminary injunction should not be issued except when necessary to prevent irreparable harm. "Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief;" (2) temporary relief should be withheld when the legal right underlying the requesting party's claim is unsettled; (3) to prevail on an application for temporary relief, the requesting party must make a preliminary showing of a reasonable probability of success on the merits; and (4) the decision maker must consider the relative hardship to the parties in granting or denying relief. Id. at 132-134.

Forgotten Boardwalk's application for temporary or injunctive relief is woefully inadequate. In all of its submissions, Forgotten Boardwalk has failed to demonstrate that it will suffer irreparable harm if a temporary permit is not issued. First, in its June 30, 2014 Petition, Counsel asserts that Forgotten Boardwalk will incur at least \$45,000 in overhead expenses during the time it will take for the Division to finish its investigation and that this delay would probably force Ms. Queli and Mr. Dolled to declare bankruptcy. (ABC 402-403). Second, in a July 22, 2014 letter, counsel for Forgotten Boardwalk stated that the Division's delay in issuing a license or temporary permit has cost the applicants in excess of \$100,000.00. (ABC 412). Later in that same letter, Mr. Vassallo represented that Forgotten Boardwalk has approximately \$65,000 in accounts payable. (ABC 412-413).

Despite these claims, Forgotten Boardwalk has not provided any evidence to support any of the purported expenses. The applicants only provided (as a part of their original application)

check registers from their Credit Union and Bank of America checking accounts that documented their expenses, from January 1, 2013 through March 3, 2014. (ABC 111-112; 127-128). The record is completely devoid of more recent financial information documenting Forgotten Boardwalk's cash on hand or monthly "burn rate". The only documentation provided is Counsel's speculation of Forgotten Boardwalk's expenses, and a completely unsupported prediction of impending bankruptcy if a temporary permit is not issued. This deficiency in documenting Forgotten Boardwalk's current and projected expenses is countered by the latest Forgotten Boardwalk Bank of America business account bank statement (account ending in 3606) in the record, which shows an account balance of \$250,350.82, as of February 28, 2014.¹² The most significant expenses of purchasing the brewing equipment and remodeling of their premise had been paid prior to that statement. No accounting has been provided to show where the \$250,350.82 has gone.

While I can consider "severe personal inconvenience" as a basis to find irreparable harm, there is nothing in the record that allows me to make such a finding. Even if I were to accept counsel's bald-faced assertions that Forgotten Boardwalk is on the verge of financial ruin and that I can consider financial straits to be a basis for irreparable harm, I am troubled by the information in the bank statement, which shows that Forgotten Boardwalk had a substantial balance as of February 28, 2014, with no accompanying explanation documenting where this money was spent in the interim. In short, the applicants have failed to sustain their burden of showing irreparable harm.

The second Crowe standard is that temporary relief sought (e.g., a temporary permit)

¹² The February 1, 2014 to February 28, 2014 statement for Forgotten Boardwalk's Bank of America business account (ending in 3606) was inadvertently left out of the Appendix. It is attached hereto to this Special Ruling.

should be withheld when the legal right underlying the requesting party's claim is unsettled.

N.J.S.A. 33:1-74 provides the Director the authority to issue temporary permits under the following circumstances:

To provide for contingencies where it would be appropriate and consonant with the spirit of the chapter to issue a license but the contingency has not been expressly provided for, the director of the division may for special cause shown, subject to rules and regulations, issue temporary permits. [Emphasis added.]

Here, the Licensing Bureau, with the assistance of the Enforcement Bureau, is still evaluating the qualifications of Seth Dolled and Jamie Queli for a Limited Brewery License in light of the questions surrounding the source of Ms. Queli's \$284,545.00 contribution toward the business and the effect of Mr. Dolled's alleged associations with organized crime. Never before has the Division issued a temporary permit in a situation where the qualifications of the applicants are in issue. Rather, temporary permits are typically issued when the Division does not have any substantive concerns about an application, and only minor issues exist, such as waiting for a municipal inspection, or some other paperwork to be completed. The Division considers the issuance of a temporary permit under the latter situations to be appropriate and consonant with the ABC Act, and would not undermine the purposes of the Act.

The serious issues concerning Ms. Queli and Mr. Dolled's qualifications to hold a liquor license go to the nub of the licensing decision, and arguably the ABC Act itself. See N.J.S.A. 33:1-3.1(b)(5). Since the investigation into their qualifications is ongoing, and the applicants have not met their burden of demonstrating that they are qualified, their legal right to a temporary permit is anything but settled. As such, I find that the second Crowe standard has not been met.

The third standard articulated in Crowe v. DeGioia is that the requesting party must make

a preliminary showing of a reasonable probability of success on the merits in order to prevail on an application for temporary relief. Ms. Queli and Mr. Dolled have not met this standard. At this stage in the application process, it is uncertain whether these applicants will be able to demonstrate that they have the appropriate qualifications to hold a Limited Brewery License. As described above, the evaluation into the source of Jamie Queli's \$284,545.00 investment and the associations of Mr. Dolled is ongoing. Until the Licensing Bureau's evaluation, with the assistance of the Enforcement Bureau, is completed there is no way to predict whether Ms. Queli and Mr. Dolled will prevail in qualifying for a license.

Finally, the fourth Crowe standard requires me to consider the relative hardship to the parties in granting or denying the relief sought. After reviewing in detail the submissions made by Counsel to Forgotten Boardwalk and the financial information provided with the application, I must conclude that Forgotten Boardwalk's current predicament is largely of its own doing, and any hardship that the principals currently suffer has been self-created. In the July 31, 2014 Vassallo Reply, Counsel alleges that his clients "completed the purchase and installation of the equipment and expended several hundreds of thousands of dollars in doing so." (ABC 440). He implies that had the Division broached its concerns in February 2014, when it first received the application, Forgotten Boardwalk would not have made these significant expenditures until the Division's concerns were resolved. Ibid.

The record, however, belies Counsel's assertion. A careful review of Forgotten Boardwalk's business account registers shows that Forgotten Boardwalk made significant expenditures prior to the submission of its application to the Division in or around February 4, 2014. Notably, the principals of Forgotten Boardwalk made the following purchases of brew house equipment:

July 25, 2013 -- \$18,000.00;
September 16, 2013 -- \$90,600.00;
October 31, 2013 -- \$144,800.00

Total: \$253,400.00

In addition, the principals made significant expenditures on architects and contractors prior to their submission of an application to the Division. Specifically, the principals made the following significant expenditures:

July 18, 2013 -- \$2,400.00 (architect retainer)
September 20, 2013 -- \$4,312.00 (architect fees)
November 20, 2013 -- \$6,880.00 (architect fees)
December 16, 2013 -- \$3,976.00 (construction permits)
December 30, 2013 -- \$27,000.00 (construction fees)
December 30, 2013 -- \$53,380.00 (construction fees)
January 24, 2014 -- \$78,000 (construction fees)
January 24, 2014 -- \$33,097.50 (construction fees)

Total: \$209,045.50

In total, Forgotten Boardwalk invested at least \$462,445.50 on this business venture prior to ever filing an application with the Division. (See ABC 111-113; 127-128).

Presumably, the principals knew, or should have known, that they had to apply for and prove to the Division that they had the requisite qualifications to hold a liquor license. Given that it appears that Jamie Queli received approximately \$284,545.00 for the business from her father, a man with federal and State convictions for racketeering, money laundering, loan sharking and tax evasion, and given that Seth Dolled's alleged associations with organized crime have made him the subject of an investigation by the Waterfront Commission, it is beyond comprehension that these individuals spent over \$460,000.00 on this business without hiring an attorney and/or discussing the viability of a license with the Division. The fact that they now have to pay back their lenders for their ill-conceived expenditures is not the Division's fault and

is not the kind of hardship that should result in the issuance of a temporary license.

Forgotten Boardwalk's Counsel also argues that the Division's policy is to require that a "facility [be] built and essentially [be] ready to operate" before the Division will "entertain or act on a license application." (ABC 406). This statement is completely inaccurate. Although the Division typically will not issue a license until Division personnel have inspected a completed facility, there is no statutory or regulatory requirement that a facility must be completely built and operational prior to submission and review of an application. At no point during the review process did the Division ever advise the applicants that they had to spend hundreds of thousands of dollars on brewing equipment and renovations (or even a million dollars, as alleged, without support, in ABC 396 at ¶5). In fact, as the record bears out and as discussed above, the applicants made these significant expenditures before their application was even submitted. Thus, it is disingenuous to suggest that the Division required these expenditures before it would act on the application. I, therefore, conclude that the current financial situation of the applicants is of their own making, and this self-created hardship should not justify issuance of a temporary permit.

In light of the foregoing, I FIND that the applicants have not satisfied the standards for obtaining the emergent relief sought. As such, a temporary permit will not be issued.

C. The Illegally Brewed Beer.

N.J.S.A. 33:1-2(a) provides:

It shall be unlawful to manufacture, sell, possess with intent to sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle or distribute alcoholic beverages in this State, except pursuant to and within the terms of a license ... [Emphasis added.]

Any person who violates this provision "shall be guilty of a misdemeanor,"¹³ and punished by a fine of not less than one hundred dollars and not more than one thousand dollars, or imprisonment for not less than thirty days and not more than three years, or both." N.J.S.A. 33:1-50.

Counsel for Forgotten Boardwalk is concocting an interpretation of N.J.S.A. 33:1-2 that defies the plain language of the statute. Counsel states that N.J.S.A. 33:1-2 requires that a "license be obtained to *commercially* deal with alcoholic beverages." (emphasis added) (ABC 443). He goes on to explain that the basis of the ABC Act and implementing regulations is that "a license is required for any commercial activity concerning alcoholic beverages." Ibid. However, there is nothing in the plain language of the statute, or the Division's long-standing interpretation, that remotely suggests that alcoholic beverages may be manufactured without a license, provided that the alcoholic beverages do not enter the stream of commerce. "When the provisions of a statute are clear and unambiguous, they should be given their literal significance, unless it is clear from the text and purpose of the statute that such meaning was not intended." State v. Butler, 89 N.J. 220, 226 (1982).

Counsel for Forgotten Boardwalk justifies his clients' unlicensed manufacture of beer by stating that his clients only intended to test the new equipment's functioning and safety prior to selling the beer, and that they had no intention of selling any of it without having a license (or permit) in hand. (ABC 443). However, for some reason, they brewed 106 barrels (the equivalent of 212 "kegs" each holding enough beer for 124 16 oz. glasses of beer, or 26,288 16 oz. servings) as part of their testing of the new equipment. (ABC 402). At this point, they are

¹³ In today's grading scale, a "misdemeanor" as referred to in N.J.S.A. 33:1-50 is a crime of the 4th degree, and is an indictable offense. See N.J.S.A. 2C:43-1(b). A criminal violation of N.J.S.A. 33:1-50 is also a predicate offense for the crime of racketeering. See N.J.S.A. 2C:41-1(a).

asking to keep the beer so they can sell it once a Limited Brewery License or temporary permit is issued, and they are also requesting that they be allowed to keep the yeast in order to spare additional expenses. (ABC 443-444).

The licensing requirements in N.J.S.A. 33:1-2 form the backbone of the ABC Act. Without question, the plain, unambiguous language of this statute provides that a duly issued license or permit is required before anyone can participate in the aforementioned activities involving alcohol. In our newly burgeoning State wineries, craft distilleries, and craft breweries, the Division understands the need to test new equipment and manufacture small quantities of product before a license is issued. However, in this case, Forgotten Boardwalk brewed large quantities of beer (106 barrels or 212 kegs) without a license, and is now asking permission to keep this illegally manufactured product to be able to sell it at a later time.

This request is in direct violation of N.J.S.A. 33:1-2, and actually constitutes a crime.¹⁴ In addition, if I were to grant Forgotten Boardwalk's request, my concern is that other applicants for Class A licenses under N.J.S.A. 33:1-10 would try to obtain similar relief. I, therefore, cannot sanction this request. As such, I conclude that the illegally manufactured product must be destroyed, and Forgotten Boardwalk should not be allowed to profit from its unlawful action.

Accordingly, it is on this 22nd day of August, 2014,

ORDERED that Applicant's petition requesting issuance of a Limited Brewery License to Forgotten Boardwalk is hereby DENIED as premature. The Licensing Bureau, with the assistance of the Enforcement Bureau, shall continue its evaluation of the application and shall render a licensing decision after such investigation is concluded; and it is further

¹⁴ On June 13, 2014, two investigators conducted an inspection of the Forgotten Boardwalk premises, and wrote a report which concluded that there were three vats filled with fermenting beer. They also documented the existence of a chalkboard listing three different types of beer fermenting, thus leading to the conclusion that the applicant brewed three separate "test" batches. The system installed is a 30 barrel system, and the existence of 106 barrels of beer also leads to the conclusion that the system was used to capacity in excess of three times. (ABC 293-312). The investigation is ongoing, and it is uncertain at this point whether the Enforcement Bureau will bring charges against Forgotten Boardwalk.

ORDERED that Applicant's petition requesting issuance of a temporary permit to manufacture, sell and distribute malt alcoholic beverages is hereby DENIED; and it is further

ORDERED that Applicant's Petition to maintain the malt alcoholic beverages pending issuance of a Limited Brewery License or temporary permit is hereby DENIED; and it is further

ORDERED that the illegally brewed malt alcoholic beverages that are the subject of this ruling are to be destroyed within 30 days of the date of this Special Ruling and the destruction shall be witnessed by Division personnel; and it is further

ORDERED that the Licensing Bureau and Enforcement Bureau shall complete the investigation into the qualifications of Jamie Queli and Seth Dolled to hold a Limited Brewery License, and shall make a recommendation to me within 45 days of the date of this Special Ruling. Either Bureau may request additional time within which to make this recommendation upon notice to Forgotten Boardwalk's Counsel.



MICHAEL I. HALFACRE
DIRECTOR

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

<hr/>	)	SPECIAL RULING GRANTING
IN THE MATTER OF THE	)	TEMPORARY PERMIT
APPLICATION FOR A LIMITED)	
BREWERY LICENSE BY FORGOTTEN)	
BOARDWALK BREWING, LLC)	
<hr/>)	

John F. Vassallo, Jr., Esquire, Attorney for Applicants, Forgotten Boardwalk Brewing, LLC

BY THE DIRECTOR:

On August 22, 2014, I issued a Special Ruling denying the issuance of a Limited Brewery License ("License") and a Temporary Permit to Forgotten Boardwalk Brewing, LLC ("Forgotten Boardwalk"). The denial was based on my concerns about the qualifications of the principals, Jamie Queli and Seth Dolled, to hold a License in the State of New Jersey. Specifically, my concerns stemmed from: (1) the source of funds used by Ms. Queli to invest in Forgotten Boardwalk; and (2) Mr. Dolled's alleged associations with an individual with known criminal habits, as well as his integrity, character and veracity before a government agency, all of which are the subject of a pending investigation by the Waterfront Commission of New York Harbor ("Waterfront Commission").

On September 4, 2014, the Applicants and their attorney met with me and my staff to discuss the serious issues raised in the Special Ruling, and to see whether the issues could be addressed, such that a License, or at least a Temporary Permit, could be issued. As a result of these discussions, Forgotten Boardwalk's attorney presented a plan, dated September 5, 2014,

which was initially rejected. Subsequently, on September 15, 2014, Forgotten Boardwalk's attorney provided a revised plan. Supporting documentation was submitted to the Division on September 16, 2014, and is in the process of being fully reviewed. I note that, although the Applicants are willing to remove Seth Dolled from the day-to-day operations of Forgotten Boardwalk and to amend the License application and Operating Agreement to reflect the same, the record is still devoid of facts that would allow me to conclude that Seth Dolled possesses the requisite qualifications to hold a License in the State of New Jersey.

Nevertheless, in recognition of the imminent financial issues faced by Forgotten Boardwalk and the Applicants' attempts to satisfy the significant concerns raised in my August 22, 2014 Special Ruling, I have decided to exercise my authority in N.J.S.A. 33:1-74 and issue a Temporary Permit to Forgotten Boardwalk, subject to the following conditions. I emphasize that a violation of any of the conditions set forth below or any other provision of the Alcohol Beverage Control Act ("ABC Act") at N.J.S.A. 33:1-1 et seq. and implementing regulations at N.J.A.C. 13:2-1 et seq. may result in the cancellation of this Temporary Permit, or any other penalty I deem appropriate.


Accordingly, it is on this th19 day of September, 2014, ORDERED:

1. A Temporary Permit shall be issued and shall be in effect for 6 months. If an extension of this term is sought, Forgotten Boardwalk shall make an application for relief, and shall do so with no expectation that said extension shall be granted;
2. Seth Dolled shall be removed as a managing member from the License application and Operating Agreement and shall have no involvement whatsoever in any aspect of the operations of Forgotten Boardwalk. This shall include not partaking in any profits or other distributions until such time as a final determination has been made as to his qualifications to hold a License;
3. The \$284,545.00 loan to Jamie Queli from Joseph and Regina Queli, as

memorialized in a Promissory Note, dated June 17, 2014, shall be repaid within five days of the date this Special Ruling. (See Appendix to August 22, 2014 Special Ruling, ABC 291). According to the Applicant's plan, the monies to be used to repay Joseph Queli and Regina Queli will come from Sharon Dolled and Lonny Dolled;

- ✓ 4. The Applicants shall provide documentation to the Division as to the source of the \$284,545.00 to be provided to Jamie Queli by Sharon Dolled and Lonny Dolled to enable Jamie Queli to repay Joseph Queli and Regina Queli;
5. Within five days of the date of this Special Ruling, a new Promissory Note shall be executed by Jamie Queli to reflect the \$284,545.00 loan from Sharon Dolled and Lonny Dolled to Jamie Queli, and shall be submitted to the Division;
6. Proof of repayment of the \$284,545.00 note to Joseph Queli and Regina Queli, by way of cancelled check or other similar proof, shall be provided to the Division within 30 days of the date of this Special Ruling. In addition, within 30 days of the date of this Special Ruling, Joseph Queli and Regina Queli shall execute a release in favor of Jamie Queli discharging the \$284,545.00 loan and shall submit same to the Division;
7. Seth Dolled shall notify the Division of any decision by the Waterfront Commission in the "Proceeding on the Initiative of the Commission to Determine Whether to Revoke, Cancel, or Suspend the Registration of Seth Dolled (CK-83166) as Checker" within ten days of said decision;
8. Joseph Queli is to have no involvement whatsoever in any way with Forgotten Boardwalk, nor shall he be present on the premises;
9. The unlawfully manufactured malt alcoholic beverages shall be destroyed in accordance with the Division's August 22, 2014 Special Ruling;
10. This Temporary Permit is expressly subject to all limitations and conditions herein set forth or hereafter imposed, and to all rules and regulations promulgated heretofore and hereafter by the Director. This Temporary Permit may be cancelled by the Director in his sound discretion at any time without notice, reason or cause; and
11. If the terms and conditions set forth above are acceptable, Jamie Queli and Seth Dolled shall each execute a certification acknowledging the conditions set forth herein and agreeing to comply with all said conditions. In addition, the certifications shall include a statement that "the \$284,545.00 transaction between Sharon Dolled and Lonny Dolled and Jamie Queli is a bona fide transaction

entered into for legitimate, lawful purposes, and is not intended to circumvent the ABC Act at N.J.S.A. 33:1-1 et seq., its implementing regulations at N.J.A.C. 13:2-1 et seq., or its well-established policies and procedures." Said certifications by Jamie Queli and Seth Dolled shall be submitted to the Division within five days of the date of this Special Ruling.



MICHAEL I. HALFACRE
DIRECTOR

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
PO BOX 087, TRENTON, NJ 08625-0087

SPECIAL PERMIT NO: 15003226
TEMPORARY AUTHORIZATION TO
OPERATE
DATE ISSUED: 09/19/2014
FEE: \$150.00
TR#: 14014133

ISSUED PURSUANT TO R.S. TITLE 33, C.1 TO:

PERMITTEE: FORGOTTEN BOARDWALK BREWING LLC


1940 OLNEY AVE SUITE 100
CHERRY HILL, NJ 08003

SEE ATTACHED SPECIAL RULING GRANTING TEMPORARY PERMIT DATED
SEPTEMBER 19, 2014.

THIS PERMIT SHALL REMAIN IN FORCE AND EFFECT PENDING THE DIRECTOR'S FINAL DETERMINATION ON THE PERMITTEE'S
APPLICATION FOR A LIMITED BREWERY LICENSE, BUT IN NO EVENT BEYOND MARCH 19, 2015
UNLESS EXTENDED FOR GOOD CAUSE.

THIS PERMIT IS EXPRESSLY CONDITIONED THAT THE PERMITTEE SHALL NOT SELL, SERVE, DELIVER OR ALLOW, PERMIT OR
SUFFER THE SALE, SERVICE, OR DELIVERY OF ANY ALCOHOLIC BEVERAGE, DIRECTLY OR INDIRECTLY TO ANY PERSON UNDER
THE LEGAL AGE TO CONSUME ALCOHOLIC BEVERAGES, NOR TO ANY PERSON WHO IS ACTUALLY OR APPARENTLY INTOXICATED.
THE PERMITTEE HEREBY CONFERS UPON THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND HIS
INVESTIGATORS, AUTHORITY TO INSPECT AND SEARCH, WITHOUT WARRANT, AT ANY TIME, THE PREMISES MENTIONED ABOVE.

THIS PERMIT IS EXPRESSLY SUBJECT TO ALL LIMITATIONS AND CONDITIONS HEREIN SET FORTH OR HEREAFTER IMPOSED, AND
TO ALL RULES AND REGULATIONS PROMULGATED HERETOFORE AND HEREAFTER BY THE DIRECTOR OF THE DIVISION OF ALCOHOLIC
BEVERAGE CONTROL. THIS PERMIT MAY BE CANCELED BY THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL
IN HIS SOUND DISCRETION AT ANY TIME WITHOUT NOTICE, REASON OR CAUSE.


MICHAEL T. HALFACRE
DIRECTOR

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE	)	SPECIAL RULING GRANTING SECOND
APPLICATION FOR A LIMITED	)	EXTENSION OF TEMPORARY PERMIT
BREWERY LICENSE BY FORGOTTEN)	
BOARDWALK BREWING, LLC)	
)	

Jamie Queli, Managing Member, for the Applicant, Forgotten Boardwalk Brewing, LLC

BY THE DIRECTOR:

On September 19, 2014, I issued a Special Ruling Granting Temporary Permit ("September 2014 Special Ruling") to Forgotten Boardwalk Brewing, LLC ("Forgotten Boardwalk"). Based on my significant concerns about the source of some of the money used to finance Forgotten Boardwalk and the qualifications of Seth Dolled to hold a liquor license in the State of New Jersey, I placed eleven special conditions on the temporary permit. The temporary permit was in effect for six (6) months, and expired on midnight, March 19, 2015.

On March 19, 2015, I extended the temporary permit for an additional thirty (30) days to allow me the opportunity to review an Intra Agency Memorandum from the Division's Enforcement Bureau ("Enforcement Bureau Report") containing a report and recommendations on the pending Forgotten Boardwalk application. The Enforcement Bureau Report was received by me on March 18, 2015. The extended temporary permit is scheduled to expire on midnight, April 20, 2015.

On February 17, 2015, I received a letter from Jamie Queli, Managing Member of Forgotten Boardwalk, in which she lists each of the eleven special conditions that were set forth in the September 2014 Special Ruling, and states that Forgotten Boardwalk has "satisfied all significant concerns raised" in that Special Ruling." (Emphasis in original). As such, Ms. Queli requests that the Division issue a Limited Brewery License, or in the alternative, an extension of the temporary permit.

In addition, Ms. Queli requests that Condition #2 of the September 2014 Special Ruling be lifted immediately. That condition states:

Seth Dolled shall be removed as a managing member from the License application and Operating Agreement and shall have no involvement whatsoever in any aspect of the operations of Forgotten Boardwalk. This shall include not partaking in any profits or other distributions until such time as a final determination has been made as to his qualifications to hold a License.

She explains that, due to Seth Dolled currently being unemployed, she must return to the workforce, and Mr. Dolled must resume a role in the operations of Forgotten Boardwalk. This relief is being requested on the grounds of "financial hardship."

Having carefully and thoroughly reviewed the Enforcement Bureau Report and Ms. Queli's February 17, 2015 request, as well as the entire record in this matter, I hereby EXTEND the temporary permit to Forgotten Boardwalk until June 30, 2015, subject to the special conditions set forth below. At that time, which coincides with the Division's annual renewal period for other licenses, the Division shall issue a Limited Brewery License to Forgotten Boardwalk, subject to the same special conditions set forth in this Special Ruling Granting Second Extension of Temporary Permit.

A. Background.

This licensing proceeding has had a long and complicated history dating back to February 4, 2014 when Forgotten Boardwalk first filed its application with the Division of Alcoholic Beverage Control (the "Division") for a Limited Brewery License. The history of this application will not be repeated herein, but can be found in my August 22, 2014 Special Ruling Denying Issuance of Limited Brewery License Without Prejudice as Premature, Denying Temporary Permit Pending Decision on Application for License, and Denying Request to Maintain Illegally Brewed Malt Alcoholic Beverages ("August 2014 Special Ruling").

In summary, the denial in the August 2014 Special Ruling was based on my significant concerns about the qualifications of the principals, Jamie Queli and Seth Dolled, to hold a liquor license in the State of New Jersey. Specifically, my concerns stemmed from: (1) the source of funds used by Ms. Queli to invest in Forgotten Boardwalk, having come from her father, Joseph M. Queli, a twice-convicted felon with ties to organized crime; and (2) Mr. Dolled's alleged associations with Mr. Queli, as well as Mr. Dolled's integrity, character and veracity before a government agency.

In response to these concerns, on or about September 15, 2014, Forgotten Boardwalk provided a "plan" that, among other things, removed Joseph and Regina Queli's money from the financing of Forgotten Boardwalk and removed Seth Dolled as a managing member of the limited liability company. In response and subject to its review of Forgotten Boardwalk's documentation effectuating the "plan," the Division issued the September 2014 Special Ruling and six-month temporary permit.

B. Source of Funds Used to Finance Forgotten Boardwalk.

In my September 2014 Special Ruling, I ordered that the \$284,545.00 loan from Joseph and Regina Queli to Jamie Queli to partially finance the Forgotten Boardwalk business be immediately repaid. (Condition # 3 in September 2014 Special Ruling). This condition was imposed to address my concern that a significant source of the funding for Forgotten Boardwalk came from a disqualified source (e.g., the proceeds of a home equity line of credit on property owned by a known organized crime figure). See August 2014 Special Ruling, pp. 21-22.

In response to the concern expressed in Condition #3, counsel to Forgotten Boardwalk submitted documentation showing that Jamie Queli immediately repaid her parents \$284,545.00, and received a loan in the same amount from Sharon and Lonny Dolled. The documentation submitted consisted of: (1) a fully executed Receipt and Release, dated September 17, 2014, by Joseph M. Queli and Regina Queli acknowledging the repayment of \$284,525.00 from Jamie Queli; (2) a fully executed Promissory Note, dated September 17, 2014, from Jamie Queli in favor of Mr. and Mrs. Dolled acknowledging that Jamie Queli promises to repay them the sum of \$284,545.00; and (3) bank statements from two separate Merrill Lynch accounts in the name of Sharon Dolled documenting the source of the \$284,545.00 loan made to Jamie Queli.

On September 23, 2014, counsel to Forgotten Boardwalk provided a copy of the cancelled check for \$284,545.00, which documented that Joseph M. Queli and Regina Queli were, in fact, paid back by Jamie Queli.

The Enforcement Bureau Report raises concerns that Forgotten Boardwalk initially received funding from an undisclosed, disqualified source, that Jamie Queli was not forthcoming during the application process as to the source of her \$284,545.00 investment, and that it took the

Licensing Bureau multiple attempts to uncover the source of the funding. (Enforcement Bureau Report, pp. 42-45). These are very serious concerns because applicants for a liquor license are under an obligation to be truthful and forthcoming with information requested by the Division during the application review process. See N.J.S.A. 33:1-25.

While I do not condone Ms. Queli's reluctance to disclose the source of the funds and her obfuscation of material facts during the application process, I am ultimately satisfied that, by removing Mr. and Mrs. Queli's money from Forgotten Boardwalk, the illegitimate source of funds has been removed from the business, and my fundamental concern has been addressed. However, Ms. Queli should be on notice that Forgotten Boardwalk has an ongoing obligation to be forthcoming and cooperative with the Division in any inspections or investigations conducted by the Division. See N.J.S.A. 33:1-35; N.J.A.C. 13:2-23.30. Moreover, Ms. Queli should further be on notice that Forgotten Boardwalk shall not be used as a "front" for any illegitimate business activities.

C. Seth Dolled's Qualifications to Hold a Liquor License.

On November 25, 2014, after a six-day hearing before the Waterfront Commission of New York Harbor ("Waterfront Commission"), an Administrative Law Judge ("ALJ") recommended that Seth Dolled's registration as a checker be revoked. (EB 967). This recommendation was based on the ALJ's findings that Mr. Dolled lacked good character and integrity within the meaning of the Waterfront Commission Act ("WCA") because of his associations with Joseph M. Queli, a member of the Genovese crime family and convicted racketeer. Ibid. In addition, the ALJ found that Mr. Dolled lacked good character and integrity under the WCA because on nine occasions, Mr. Dolled willfully misappropriated money from his

employer by creating a false impression that he was working when he was not working, yet he was paid during those times. (EB 967-968).

On January 21, 2015, the Waterfront Commission accepted the findings and recommendations of the ALJ and revoked Mr. Dolled's registration as a checker, effective immediately. (EB 969-973).

At the outset, I emphasize that I am not bound by the determination of the Waterfront Commission and I acknowledge that Mr. Dolled has not been convicted of any crimes involving moral turpitude. However, given the Division's mandate to "protect against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations[" I must consider the fact that Mr. Dolled was removed from his position on the piers due to his associations with a twice-convicted felon and member of organized crime. N.J.S.A. 33:1-3.1(b)(5) (Emphasis added). Such associations included: vacationing with Joseph M. Queli, gambling with him, staying at his home in Wall, New Jersey for almost every day of the week, visiting him in prison in 2012, and starting a business in Mr. Queli's home, which was financed, in part, by a Queli home equity line of credit. (EB 967). It is unbelievable to me that, throughout the proceedings before the Waterfront Commission, and even in his post-hearing speech to the Waterfront Commission in January 2015, Mr. Dolled has steadfastly denied Joseph M. Queli's connection to the Genovese crime family and his two convictions for racketeering, loan sharking and tax evasion.

Nevertheless, based on the record before me in this licensing proceeding, I cannot ignore the fact that James M. Queli is a known organized crime figure and that Seth Dolled has had associations with him for approximately ten years.

As stated above and in greater detail in my August 2014 Special Ruling, the Division has a mandate to prevent organized crime from infiltrating the alcoholic beverage industry. (August 2014 Special Ruling, pp. 19-22). This mandate was the subject of two reports entitled, "Organized Crime in Bars" and "Organized Crime in Bars, Part II" by the State Commission on Investigation in 1992 and 1995, respectively. In the past, several licensed bars and restaurants in New Jersey were either owned by or were associated with organized crime, and these establishments "were often used as vehicles through which to launder money from illegal activities such as gambling, loan sharking or narcotics trafficking, and [were] often used as meeting places or headquarters of organized crime groups." (August 2014 Special Ruling, p. 20). In light of the concerns raised in these reports and the Division's duty to keep organized crime out of the alcoholic beverage industry, I must consider Mr. Dolled's association with Joseph M. Queli in determining Mr. Dolled's qualifications to hold a Limited Brewery License.¹

The standards for determining whether to issue a liquor license were set forth in detail in my August 2014 Special Ruling. (August 2014 Special Ruling, pp. 15-19). However, I will briefly summarize the standards the Division uses to determine whether or not an applicant is qualified for a liquor license.

N.J.S.A. 33:1-25 sets forth the statutory qualifications for obtaining a liquor license in

¹ Of course, Ms. Queli has an "association" with Joseph M. Queli by virtue of being his daughter. However, in my view, the familial connection alone is insufficient to disqualify Ms. Queli from participation in the alcoholic beverage industry. As described above, Ms. Queli has repaid her parents the \$284,545.00 that was used to partially finance Forgotten Boardwalk. The source of the funds is no longer from a disqualified source, and Joseph M. Queli will continue to be barred from any involvement or presence at Forgotten Boardwalk. On the other hand, Mr. Dolled made a conscious choice to associate with Joseph M. Queli, and actually intensified this association over the years by increasing the amount of time spent at Mr. Queli's home.

New Jersey. This section provides, in pertinent part:

No license of any class shall be issued to any person under the age of 18 or to any person who has been convicted of a crime involving moral turpitude.

This statute has been interpreted as setting forth the *statutory disqualifications* to holding a liquor license. In the Matter of the Application of George W. "Chip" Dunn, 10 N.J.A.R. 1, 10 (1984).

An applicant has the burden of proving by a preponderance of the evidence that he or she is qualified. Ibid.; See also, Sturchio v. Harrison, 9 N.J.A.R. 78, 82 (1986); Lyons Farm Tavern v. Mun. Bd. of ABC, 68 N.J. 44, 50-51 (1975). Notably, participation in the alcoholic beverage industry as a licensee "is deemed a revocable privilege conditioned upon the proper and continued qualification of the licensee." N.J.S.A. 33:1-12.40(c).

The Director has substantial discretion in determining whether or not an applicant is qualified for a liquor license. For example, even if the technical requirements of N.J.S.A. 33:1-25 are met, the Director retains the discretion to deny an application based on a review of the applicant's background and character. See Narducci v. Board of Commissioners of the City of Atlantic City, NJABC Bulletin 2305, Item 3, page 7 (October 4, 1978). In Narducci, former Director Lerner concluded that the "cases are legion holding that inquiry into other aspects of an applicant's background and character is proper, and in fact, mandated in order to properly evaluate his/their qualifications." Narducci, supra, NJABC Bulletin 2305, at 12, citing, Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Boller Beverages, Inc. v. Davis, 38 N.J. 138 (1962). Former Director Lerner went on to state:

An applicant's associations ha[ve] traditionally always been an appropriate avenue of inquiry in a licensing proceeding under the Alcoholic Beverage Law. Association with criminal elements has

never been an automatic bar to licensure but a discretionary factor to weigh in the context of each unique set of circumstances in relation to a particular applicant. [Narducci, supra, NJABC Bulletin at 15.] [Emphasis added.]

Although the applicants themselves in Narducci were not convicted of any crimes, they were denied a person-to-person transfer of a liquor license based on their “business experience, lack of expertise in the liquor industry, almost total dependence on their parents for support, shelter and cars, the source of financing, and close criminal associations. Id. at 10-13. The former Director concluded that the foregoing were legitimate inquiries to be made in reviewing the qualifications of an applicant.

Based on my review of the record, including the July 2014 statements taken by the Enforcement Bureau, I believe that Ms. Queli’s situation is distinguishable from the applicants disqualified in Narducci, supra. Unlike the applicants in Narducci, Ms. Queli has been intimately involved in the development of Forgotten Boardwalk, has obtained he bank loans, has learned the craft brewing business, and has been involved in the day-to-day operation and management of the business. Although she is the daughter of a criminally disqualified individual, the illegitimate money from her parents has been repaid, and her father will have no role in the ownership or operation of Forgotten Boardwalk. While there is always a possibility that Forgotten Boardwalk may be used as a “front” for illegitimate activity in the future, there is no evidence in the record before me to support disqualification of Ms. Queli based solely on her relationship with her father.

However, my review of the record, including the Enforcement Bureau Report and the Waterfront Commission’s proceedings, with respect to Mr. Dolled leads me to a different

conclusion. I am deeply troubled that Mr. Dolled has been removed as a checker on the waterfront because of his associations with Joseph M. Queli, a convicted felon with ties to organized crime. I am also troubled that Mr. Dolled has never acknowledged that his continued association with Joseph M. Queli over the years violated, or could have been seen as violative of, the law governing his employment at the waterfront, and that he could have done something about it to avoid the harsh result that befell him. Moreover, during his two Article IV hearings in his disciplinary action before the Waterfront Commission in March 2010 and April 2013, he consistently gave evasive and self-serving answers.² In addition, he was removed as a checker at the waterfront based on his willful misappropriation of money from his employer by getting paid for hours that he did not work.

The actions taken and qualities displayed by Seth Dolled raise serious concerns about his character and fitness to operate in the heavily regulated alcoholic beverage industry. As such, I FIND that he is not qualified to hold a liquor license. As a disqualified person, he remains ineligible to be a managing member of the limited liability company and is not to be involved in the day-to-day operations of Forgotten Boardwalk. Moreover, his \$300,000 financial contribution to Forgotten Boardwalk must be returned to him, and he may not partake in any profits or distributions from Forgotten Boardwalk. This finding is consistent with N.J.S.A. 33:1-26, which provides, in pertinent part, 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." (Emphasis added.)

² In the alcoholic beverage industry, an applicant for a license or a licensee is expected to cooperate with the Division in inspections, investigations, and examinations and not to hinder or delay the Division's efforts. See N.J.S.A. 33:1-35. Mr. Dolled's behavior before the Waterfront Commission gives me substantial doubts about whether he will comply with the requirements of N.J.S.A. 33:1-35.

Title 33 does, however, provide a mechanism to allow criminally disqualified individuals to return to the alcoholic beverage industry. Specifically, N.J.S.A. 33:1-26 also states:

A person failing to qualify as to age or by reason of conviction of a crime involving moral turpitude may, with the approval of the director, and subject to rules and regulations, be employed by any licensee.

In addition, a person convicted of a crime involving moral turpitude may apply to the Director for an order removing the statutory disqualification after five years have elapsed from the date of conviction. See N.J.S.A. 33:1-31.2. N.J.A.C. 13:2-14.5 implements the aforementioned statutory provisions, and reads in its entirety:

No licensee shall knowingly employ or have connected with him in any business capacity 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, in accordance with N.J.A.C. 13:2-15, or such person has first obtained the appropriate rehabilitation employment or temporary work letter from the Director.

In the case at bar, Mr. Dolled was not convicted of a crime involving moral turpitude, and there is technically no statutory or regulatory mechanism to allow him to re-enter the alcoholic beverage industry after a defined period of time. In my view, it is unfair to allow someone with a criminal history to be able to re-enter the industry, but to deny a similar process to Mr. Dolled. Therefore, I will exercise my equitable powers under N.J.S.A. 33:1-39 and my "implied authority to deal fairly with parties" to address Mr. Dolled's situation. See Circus Liquors, Inc. v. Governing Body of Middletown Township, 199 N.J. 1, 20-21 (2009) (citations omitted) ("Well-recognized principles of deference to an agency's quasi-judicial determination, coupled with the heightened deference given to the Director's exercise of his discretionary authority in the 'delicate area' of

alcohol regulation, militate against interference with the Director's effectuation of his chosen remedy in this matter, so long as the remedy 'follow[s] the law.'")

In light of the facts of this case and my implied authority recognized in Circus Liquors, I have fashioned the following remedy. After the passage of one year following the date of revocation of Mr. Dolled's checker registration by the Waterfront Commission, I shall allow Mr. Dolled to apply to the Division for permission to be employed by Forgotten Boardwalk. Such permission may be granted if the Director finds that such employment would not be contrary to the public interest and that Mr. Dolled has acknowledged his criminal association and has taken steps to eliminate said association. If permission to be employed at Forgotten Boardwalk is granted, Mr. Dolled shall not be permitted to be an owner of the license issued to the company. The terms and conditions of his employment shall be set forth in the permit based on the Division's review of Mr. Dolled's application.

After the passage of three years following the date of revocation of Mr. Dolled's checker registration by the Waterfront Commission, Mr. Dolled may apply to the Division to have his disqualification vacated. In order for the disqualification to be vacated, Mr. Dolled must demonstrate to the satisfaction of the Division that he has behaved in a law-abiding manner during the period preceding his application, that he has acknowledged and eliminated his criminal association, and that his involvement with the alcoholic beverage industry will not be contrary to the public interest. Should the disqualification be vacated, Mr. Dolled could become a full owner of the license issued to Forgotten Boardwalk.

As for Mr. Dolled's \$300,000 capital contribution to Forgotten Boardwalk, that money should be divested from the company due to his disqualification. See N.J.S.A. 33:1-26.

However, I am abundantly aware that requiring the immediate divestiture of this money would likely cause Forgotten Boardwalk to suffer financial ruin. I am also aware that the source of Mr. Dolled's \$300,000 contribution is from a legitimate source, namely his parent's retirement savings and his Bar Mitzvah bonds. Therefore, I am willing to stay the divestiture until such time as the Division makes a determination on Mr. Dolled's application to vacate his disqualification. If Mr. Dolled's petition to vacate the disqualification is denied, then Forgotten Boardwalk shall develop and submit a plan to the Division outlining the orderly divestiture of Mr. Dolled's financial contribution to Forgotten Boardwalk.

D. Illegally manufactured beer.

In my August 2014 Special Ruling, I ordered the unlawfully manufactured beer to be destroyed within thirty (30) days in the presence of Division personnel. This order was reiterated in my September 2014 Special Ruling.

On September 23, 2014, Forgotten Boardwalk's counsel requested additional time to comply with my order concerning the beer destruction. Specifically, Forgotten Boardwalk was exploring whether to apply for and obtain a industrial discharge permit from the Camden County Municipal Utilities Authority to dump the beer into the sanitary sewer system, or to lawfully haul and dispose of it off-site. In response to Forgotten Boardwalk's request, on October 8, 2014, I issued a First Amended Special Ruling Granting Temporary Permit ("October 2014 Special Ruling"), which granted a ninety (90) day extension.

Curiously, the quantity of beer to be destroyed was originally represented to be approximately 3,000 gallons, but in mid-September 2014, counsel for Forgotten Boardwalk represented that the amount to be destroyed was only approximately 1,500 gallons. The

Enforcement Bureau Report acknowledged this reduction, but besides noting the inconsistency in Forgotten Boardwalk's previous representations, the Enforcement Bureau was unable to provide any evidence of illegal activity regarding the other 1,500 gallons of beer. (Enforcement Bureau Report, p. 50).

On or about December 11, 2014, Forgotten Boardwalk notified the Division that it was about to begin disposing of the unlawfully manufactured beer. Division personnel observed the hauling away of the beer on December 22, 2014. Also on December 22, 2014, Jamie Queli submitted a certification to the Division affirming that the disposal of the unlawfully brewed beer had been completed. Of note, Ms. Queli certified that "[n]one of the beer that was manufactured prior to licensing was sold." On or about January 5, 2015, Forgotten Boardwalk provided documentation from a waste hauler purporting to show that the beer was lawfully hauled away and disposed of at the Gloucester County Utilities Authority.

Based on the foregoing, I am satisfied that Forgotten Boardwalk has complied with the condition in the August 2014 Special Ruling, September 2014 Special Ruling and the October 2014 Special Ruling requiring destruction of the unlawfully manufactured beer.

The Enforcement Bureau Report points out that unlawfully manufacturing of alcoholic beverages without a license is reason enough to deny the pending license application. (Enforcement Bureau Report, p. 51). In my August 2014 Special Ruling, I acknowledged the need for State wineries, craft distilleries, and craft breweries to be able to test new equipment and manufacture small quantities of product before a license is issued.³ (August 2014 Special

³ Such testing is normally done on notice to and with the permission of the Division.

Ruling, p. 33). However, I also expressed the Division's position that producing and selling large quantities of alcoholic beverages without a license would violate N.J.S.A. 33:1-2, and would not be sanctioned. Ibid. Therefore, I concluded that Forgotten Boardwalk would be required to destroy the beer that it manufactured without a license, and that it would not be allowed to profit from its unlawful action. Ibid.

For the reasons set forth above, I am satisfied that Forgotten Boardwalk has satisfied the condition requiring destruction of the unlawfully manufactured beer, as set forth in my aforementioned Special Rulings.

E. Remaining Conditions in September 2014 Special Ruling.

In Ms. Queli's February 17, 2015 letter to the Division, she outlines the eleven special conditions set forth in the September 2014 Special Ruling, and represents that Forgotten Boardwalk has "satisfied all significant concerns raised." Accordingly, she requests that a Limited Brewery License be issued to Forgotten Boardwalk, or in the alternative, that the temporary permit should be extended.

Based on my review of the entire record in this licensing matter, I agree that Conditions ##1, 3 through 11 in the September 2014 Special Ruling have been satisfied. However, for the above-stated reasons, Condition #2 will not be lifted, and will be supplemented by the conditions set forth below:

Accordingly, it is on this ²⁷ day of April, 2015, ORDERED:

1. Temporary Permit Number 15003226 shall be extended through June 30, 2015. On July 1, 2015, the Division shall issue a Limited Brewery License to Forgotten Boardwalk subject to the conditions set forth herein;
2. Seth Dolled shall not be a managing member of Forgotten Boardwalk, and shall

have no involvement whatsoever in any aspect of the operations of Forgotten Boardwalk. This shall include not partaking in any profits or other distributions from Forgotten Boardwalk. The License Application and Operating Agreement shall be amended to reflect same:

3. After the passage of one year following the determination by the Waterfront Commission to revoke his checker's registration, Mr. Dolled may apply to the Division for permission to be employed by Forgotten Boardwalk. If permission to be employed at Forgotten Boardwalk is granted, Mr. Dolled shall not be permitted to be an owner of the license. After the passage of three years following the determination by the Waterfront Commission to revoke his checker's registration, Mr. Dolled may apply to the Division to have his disqualification vacated. Should his disqualification be vacated, Mr. Dolled may assume an ownership role in Forgotten Boardwalk, and the License Application and Operating Agreement shall be amended to reflect same;
4. Forgotten Boardwalk shall divest itself of Seth Dolled's \$300,000 contribution. However, due to the financial hardship to Forgotten Boardwalk if this condition is immediately imposed, this condition shall be stayed until such time as Mr. Dolled applies to the Division to vacate his disqualification and the Director rules on his application. If the request to vacate his disqualification is denied, then Forgotten Boardwalk shall develop a plan for the orderly divestiture of Mr. Dolled's \$300,000 contribution, which plan must be approved by the Division;
5. Joseph M. Queli is to have no involvement whatsoever in any way with Forgotten Boardwalk, nor shall he be present on the premises;
6. Forgotten Boardwalk shall comply with all applicable requirements set forth in N.J.S.A. 33:1-1 et seq. and implementing regulations at N.J.A.C. 13:2-1 et seq., including but not limited to, those related to filing Current Price Lists, filing brand registrations, and obtaining all permits required for the lawful operation of a limited brewery; and
7. Temporary Permit Number 15003226 is expressly subject to all limitations and conditions herein set forth or hereafter imposed, and to all rules and regulations promulgated heretofore and hereafter by the Director. This temporary permit may be cancelled by the Director in his sound discretion at any time without notice, reason or cause.



MICHAEL I. HALFACRE
DIRECTOR

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
PO BOX 087, TRENTON, NJ 08625-0087

SPECIAL PERMIT NO: 15003226
TEMPORARY AUTHORIZATION TO
OPERATE
DATE ISSUED: 09/19/2014
FEE: \$150.00
TR#: 14014133

ISSUED PURSUANT TO R.S. TITLE 33, C.1 TO:

PERMITTEE: FORGOTTEN BOARDWALK BREWING LLC

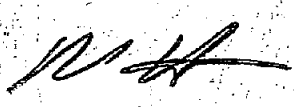
1940 OLNEY AVE SUITE 100
CHERRY HILL, NJ 08003

SEE ATTACHED SPECIAL RULING GRANTING TEMPORARY PERMIT DATED
SEPTEMBER 19, 2014.

THIS PERMIT SHALL REMAIN IN FORCE AND EFFECT PENDING THE DIRECTOR'S FINAL DETERMINATION ON THE PERMITTEE'S
APPLICATION FOR A LIMITED BREWERY LICENSE, BUT IN NO EVENT BEYOND JUNE 30, 2015
UNLESS EXTENDED FOR GOOD CAUSE.

THIS PERMIT IS EXPRESSLY CONDITIONED THAT THE PERMITTEE SHALL NOT SELL, SERVE, DELIVER OR ALLOW, PERMIT OR
SUFFER THE SALE, SERVICE, OR DELIVERY OF ANY ALCOHOLIC BEVERAGE, DIRECTLY OR INDIRECTLY TO ANY PERSON UNDER
THE LEGAL AGE TO CONSUME ALCOHOLIC BEVERAGES, NOR TO ANY PERSON WHO IS ACTUALLY OR APPARENTLY INTOXICATED.
THE PERMITTEE HEREBY CONFERS UPON THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND HIS
INVESTIGATORS, AUTHORITY TO INSPECT AND SEARCH, WITHOUT WARRANT, AT ANY TIME, THE PREMISES MENTIONED ABOVE.

THIS PERMIT IS EXPRESSLY SUBJECT TO ALL LIMITATIONS AND CONDITIONS HEREIN SET FORTH OR HEREAFTER IMPOSED, AND
TO ALL RULES AND REGULATIONS PROMULGATED HERETOFORE AND HEREAFTER BY THE DIRECTOR OF THE DIVISION OF ALCOHOLIC
BEVERAGE CONTROL. THIS PERMIT MAY BE CANCELED BY THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL
IN HIS SOUND DISCRETION AT ANY TIME WITHOUT NOTICE, REASON OR CAUSE.



MICHAEL I. HALFACRE
DIRECTOR

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE APPLICATION)	
FOR AN ALCOHOLIC BEVERAGE LICENSE	)	SPECIAL RULING AUTHORIZING
TO PRODUCE MEAD	)	ISSUANCE OF A PERMIT TO
	)	MANUFACTURE MEAD WITH
MELOVINO, LLC.	)	LIMITED WHOLESALE AND RETAIL
_____	)	PRIVILEGES

Sergio Moutela

BY THE DIRECTOR:

On July 18, 2013, Melovino, LLC submitted an application for a Farm Winery License. Melovino seeks permission to operate a "meadery" which will produce mead or "honey wine." Mead is produced by fermenting a solution of honey and water which can be flavored with various spices and flavors. Unfortunately, Melovino, LLC does not meet the criteria for the issuance of a Farm Winery license, nor does it meet the criteria for any of the other licenses under N.J.S.A. 33:1-10. However, for the reasons set forth below, I find that the application should be accepted, and providing all other qualifications are met, Melovino, LLC shall have privileges similar to those of a Limited Brewery licensee.

Under N.J.S.A. 33:1-10, the various alcohol manufacturing licenses are described. A Farm Winery license is required to "manufacture any fermented wines and fruit juices...located and constructed upon a tract of land...not less than three acres...on which are growing grape vines or fruit to be processed into wine or fruit juice." Mead does not fall into this definition of wine, as it

is not made from fruit or fruit juices. Further, Melovino, LLC fails to satisfy the requirement that there be three acres under cultivation adjacent to the winery premises. Furthermore, it is clear that mead is not a "malt alcoholic beverage" nor a distilled alcoholic beverage, as set forth in the balance of N.J.S.A. 33:1-10. Therefore, there is no clear statutory provision authorizing the manufacture of mead.

However, under the Alcoholic Beverage Tax Statute N.J.S.A. 54:41-2, "mead" would fall under the definition of wine, specifically "any beverage produced by the fermentation of the natural sugar contents of fruit *or other agricultural products containing sugar*," as it is made by fermenting honey. N.J.S.A. 54:41-2 is also consistent with the treatment of mead under Federal law.

Since the production of mead is contemplated in both the Federal regulatory scheme and in the New Jersey tax statute, the absence in Title 33 of the language "other agricultural products" may simply be an oversight.

Pursuant to N.J.S.A. 33:1-74 the Director may issue a temporary permit for special cause when it is in line with the spirit of the chapter to issue a license, but the specific contingency has not been expressly provided for in the statutory scheme. Further, N.J.A.C. 13:2-5.5 provides that "The Director, for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act." It is clear that the issuance of a license to manufacture mead is consistent with the underlying policy requirements of both the statute and the regulation. However, in this case, a Farm Winery license would be inappropriate, given the specific land requirements under the statute. Land is unnecessary in the production of

mead, as no fruit or other agricultural products are grown. In the absence of an agricultural land component, the spirit of the statute would be most effectively furthered by allowing mead to be manufactured in New Jersey under a Temporary Authorization Permit authorized by this Special Ruling with privileges similar to a Limited Brewery License, but tailored to the narrow circumstance presented by the applicant. Therefore, any permit issued to the applicant shall contain the following conditions:

1. The Permittee shall be entitled to produce mead, and to sell and distribute said mead to wholesalers and retailers licensed in New Jersey.
2. The Permittee shall be entitled to produce mead in a quantity not in excess of 50,000 gallons per year.
3. The Permittee shall be entitled to produce mead flavored with fruit where the ratio of fermentable sugars from fruit does not exceed 33% of the total fermentable sugars. By way of example, if 10 lbs. of honey at 80% sugars equals 8 lbs. of sugar, and 20 lbs. of strawberries at 6% sugars equals 1.2 lbs of sugar, the ratio is as follows: 1.2 sugars from fruit divided by 9.2 total sugars equals .1304 or 13.04% of the fermentable sugars are from fruit. This is an acceptable ratio.
4. The Permittee is entitled to sell their products at retail to consumers for the consumption on the licensed premises, but only in connection with a tour of the meadery.
5. No sales rooms or outlets shall be permitted.
6. The Permittee may sell mead at retail in original containers for consumption off premises.

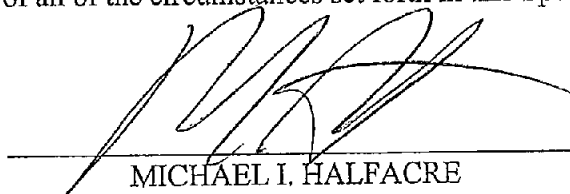
7. The Permittee may offer samples on the premises. Sampling means selling at a nominal charge or the gratuitous offering of an open container not exceeding four ounces of any mead alcoholic beverage.
8. The Permittee may not sell food or operate a restaurant on the licensed premises. All other provisions of the Alcoholic Beverage Control Act and any regulations promulgated thereunder shall also apply.

Since this Temporary Authorization Permit will be issued on an annual basis, and pursuant to N.J.A.C. 13:2-5.5, the fee for this permit shall be \$2,000 annually.

Accordingly, it is on this 18th day of March, 2014,

ORDERED that Melovino, LLC. may operate a meadery pursuant to a permit issued under the terms of this Special Ruling, until such time as the need for this Special Ruling no longer exists; and it is further,

ORDERED that Melovino, LLC must affirmatively apply for and show cause, prior to June 30 of each year, that each annual renewal of the Temporary Authorization Permit continues to be appropriate in light of all of the circumstances set forth in this Special Ruling.



MICHAEL I. HALFACRE
DIRECTOR

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5940-12T4

STOCK ENTERPRISES, INC.,

Petitioner-Appellant,

v.

GOVERNING BODY OF THE
BOROUGH OF SAYREVILLE,

Respondent-Respondent.

Argued December 1, 2014 - Decided January 5, 2015

Before Judges Sabatino and Guadagno.

On appeal from the Department of Law & Public Safety, Division of Alcoholic Beverage Control, Agency No. 7700.

Gregory W. Vella argued the cause for appellant Stock Enterprises, Inc. (Collins, Vella & Casello, L.L.C., attorneys; Mr. Vella, of counsel and on the briefs).

Edward G. Washburne argued the cause for respondent Borough of Sayreville (McKenna, DuPont, Higgins & Stone, attorneys; Mr. Washburne, of counsel and on the brief).

Marita K. Navarro, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (John J. Hoffman, Acting Attorney General, attorney; Donna Pereksta Luhn, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Stock Enterprises, Inc. ("Stock") appeals the final agency decision of the Division of Alcoholic Beverage Control ("the Division" or "the ABC") upholding the Borough of Sayreville's denial of Stock's application to reactivate its liquor license on premises in the Borough where Stock operates an all-nude dancing club. Applying the governing law and our limited scope of review of administrative decisions by the ABC Director, we affirm.

I.

We briefly summarize the pertinent facts and procedural history.

Background Facts

Stock operates Club 35,¹ an all-nude dancing establishment within a two-story building in Sayreville. The club presently has a bring-your-own-bottle ("BYOB") policy allowing patrons to bring their own beer, wine, or champagne to the premises because

¹ Club 35 has been the subject of prior litigation in which it unsuccessfully challenged the constitutionality of N.J.S.A. 2C:34-7(a), a statute that prohibits the operation of a sexually-oriented business within 1000 feet of a public park or within a residential zone. See Borough of Sayreville v. 35 Club, L.L.C., 208 N.J. 491, 512-13 (2012) (upholding the statute under the free expression provisions of the Federal and New Jersey Constitutions, and authorizing courts to consider out-of-state sites when considering whether adequate alternative channels of communication exist within the sexually-oriented business's relevant market area).

New Jersey regulations prohibit the sale of liquor in all-nude establishments. N.J.A.C. 13:2-23.6(a).

Stock has owned the liquor license for the premises since 1995. The license is known as a "broad C" license, which permits not only the sale of liquor but also the sale of packaged goods.²

When it was originally issued in 1995, the license was in use for the entire building, where Stock then owned and operated the Coliseum Nightclub. As described by Stock's counsel in the Borough hearing, Coliseum Nightclub was a strip club during the day and a nightclub at night, with a full liquor license for the entire establishment.

In 2007, Stock was notified by the Borough that its license was subject to suspension due to fights that had occurred on the premises. In response, Stock "pocketed" the license rather than taking the suspension, meaning that the license would be deactivated until it was transferred to a licensed premise, upon approval by the issuing authority.

² A "broad C" license is a plenary retail consumption license with broad package privileges. The relevant statutory provisions are N.J.S.A. 33:1-12 (denoting "plenary retail consumption license" as one type of license classification) and N.J.S.A. 33:1-12.23 (allowing plenary retail consumption license holders to sell and display for sale alcoholic beverages in original containers for off-site consumption under certain conditions). These privileges are commonly referred to as "broad package privileges" by the ABC.

In November 2007, Stock's establishment changed to an all-nude entertainment club, known as Club 35, with a BYOB policy. Stock had pocketed its full liquor license in order to open Club 35, because all-nude clubs are not allowed to serve alcohol. Consequently, patrons of Club 35 are currently allowed to bring beer, wine, and champagne purchased off-site for consumption in the club. A person must be eighteen years old to enter the club.

Stock's Transfer Application and Its Plans to Divide the Premises

In August 2011, Stock filed a place-to-place transfer application with the Borough, seeking to reactivate its liquor license for a portion of the Club 35 premises. Specifically, Stock proposed in its application to use a portion of a Club 35's space, approximately 1200-1500 square feet, for the sale of liquor. This designated space for the licensed sales would include part of Club 35's first floor and the entire second floor.³ Stock planned to operate a bar within this proposed licensed area in order to serve Club 35 patrons. Stock also proposed to operate this licensed area as a separate business from Club 35. The liquor sale portion of the premises would be separated from the nude dancing portion by a door or curtain,

³ We have considered the drawing of Stock's proposed business arrangement admitted into evidence in the proceedings below.

with personnel stationed to guard against customers purchasing liquor from the licensed portion and then bringing that liquor into the nude dancing area on the first floor.

The Borough Hearing

The Borough held a public hearing on April 23, 2012, to hear objections to Stock's application, in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 to -21. Five Council members were in attendance and two were noted as absent. At that hearing, Stock's counsel presented to the Council members a general overview of Stock's plans with regard to its application.

As described by Stock's counsel, the area for which Stock sought to reactivate its liquor license would be located in the rear of the Club 35 building. That area includes the entire second floor, which could only be accessed through the licensed portion of the space that would be located on a portion of the first floor. Stock's counsel described the reactivation of the liquor license as a way for Stock to provide full bar service to its existing customers. He also represented that there have been few problems recently with Club 35 customers, necessitating fewer police calls than in the past when the business was known as the Coliseum Nightclub. Counsel further represented that he did not expect the current Club 35 customer base to change as a

result of the liquor license reactivation. He also clarified that patrons of the proposed licensed business would not be required to stay within the confines of the licensed area; instead they could walk back and forth freely between the licensed area and the unlicensed area.

A few days prior to the Borough hearing, the Borough's Chief of Police conducted a walk-through visit of the premises. Following that on-site inspection, the Police Chief proceeded to oppose Stock's application at the Borough hearing.

The Chief expressed serious concerns about Stock's proposal. His main stated concern was that the proposed use of the license on Club 35's premises would blur the lines between public and private areas, particularly with regard to the consequences that such blurring would have on law enforcement activities. Among other things, the Chief identified concerns about: (1) the police department's ability to conduct inspections effectively in a building that would have licensed and unlicensed spaces located in close proximity; (2) the potential for increased public safety problems due to an "intensification of alcohol" on the premises; and (3) a likelihood that a fully licensed bar area in the building would attract a "less docile" crowd.

In response to questions from Stock's counsel at the Borough hearing, the Chief acknowledged that there would be two doorways, one for each of the businesses. However, the existence of those two interior doorways did not alleviate the Chief's concerns because both doorways would be accessed through a single, common doorway for entering the premises. The Chief recognized that law enforcement officers eventually would become accustomed to the split layout of the premises. Even so, the Chief expressed concerns that the "average person" would not know, at the point of entering the building, whether he or she was entering the all-nude, unlicensed part of the premises, or whether he or she was instead entering the licensed part.

At the conclusion of the public hearing, the Borough Council members voted unanimously to deny Stock's application. As one Council member remarked on the transcribed record, "As the Chief said . . . you can control where the liquor goes, but you can't control where the effects of the liquor go. And I think . . . that's a major incompatibility here."

The Borough subsequently adopted a written Resolution of Denial on May 14, 2012. The resolution essentially recites that: (1) Stock was a liquor license holder; (2) Stock was charged with state liquor law violations in 2007; (3) Stock deactivated and pocketed its license in November 2007; (4) Stock

was now requesting a place-to-place transfer; and (5) a public hearing was held on April 23, 2012, at which time objections to the application were received. The resolution did not, however, detail the specific reasons for the governing body's denial.

The OAL Proceedings

Stock sought review of the Borough's denial by the ABC. Because of the various disputed factual issues, the ABC transferred the matter as a contested case to the Office of Administrative Law ("OAL"). A hearing before an Administrative Law Judge ("the ALJ") was conducted on January 9, 2013. The Borough presented testimony from the Police Chief, who amplified his previous testimony he gave before the Borough Council. In response, Stock presented testimony from its owner, Anthony Acciardi.

In his OAL testimony, the Chief emphasized the public safety issues that would be created if the proposed hybrid licensed/unlicensed arrangement on the premises were approved. For example, the Chief noted that a police officer performing inspections of the licensed premises would have to traverse the unlicensed area in order to access the licensed area. The Chief further expressed concerns that persons in the licensed and unlicensed portions of the establishment would be visible to one another, and that they would use common bathroom facilities.

The Chief predicted that the split layout would inhibit the police department in enforcing ABC restrictions that apply to employees for the licensed business, because such employees would be able to go freely back and forth to the unlicensed area. The Chief also raised the prospect of increased litigation, in which the lawfulness of police activity on site might be more readily challenged.

Acciardi attempted in his OAL testimony to minimize or ameliorate the Chief's public safety concerns. Acciardi proposed to position security guards at each of the two entrances to the unlicensed and the licensed areas, so as to attempt to prevent customers from carrying hard liquor into the unlicensed, nude establishment. The guards would be employees of either Club 35 or the proposed licensed establishment, depending on where they would stand and what particular doors they would guard. However, Acciardi conceded that only a curtain would divide the licensed and the unlicensed area, and that the two areas would share common bathroom facilities.

Acciardi acknowledged that because Club 35 currently operates with a BYOB policy, it was his understanding that a reactivation of Stock's liquor license would provide it with the opportunity for customers to buy beer, wine, or champagne (but not liquor) in the proposed licensed area. Customers could then

bring those purchases to the unlicensed portion of the building, thereby enabling them to consume such alcohol in Club 35.

Responding to the Chief's concerns about employee access, Acciardi testified that because Club 35 and the proposed licensed establishment would be operated as separate businesses, employee lists for each business would be separate as well. In addition, he provided assurances that all employees of both businesses would comply with ABC regulations.

As to his business's anticipated clientele, Acciardi countered the Chief's concerns about the licensed area attracting a more troublesome crowd. Acciardi asserted that the licensed business would cater to male and female customers of all ages, from customers from the age of eighteen to persons in their nineties. He denied that the sale of liquor on the premises would attract riskier patrons.

Acciardi disclaimed that police officers would ever be refused access to the premises in order to conduct inspections of the licensed area. He also asserted that police officers have not been hindered from gaining access to the premises in the past.

The ALJ's Ruling

The ALJ issued a written decision on April 3, 2013 sustaining the Borough's denial of Stock's application. She

concluded that Stock had not met its burden to prove that the Borough's denial was arbitrary or capricious. Her decision cited numerous reasons for that conclusion.

On the whole, the ALJ concluded that the Borough had based its denial of Stock's application on "supporting evidence of safety and regulatory concerns." She found the Chief's testimony at the January 9, 2013 AOL hearing to have established the police department's "credible" concerns about the potential for various safety and regulatory problems that could arise out of an establishment consisting of both licensed and unlicensed businesses. The ALJ was persuaded that these legitimate problems identified by the Chief had "clearly" been raised "in the interest of the public health, safety and welfare."

Given the deference to which the Borough's decision was entitled under the law, the ALJ found that it was reasonable for the Borough to rely on the Chief's many years of experience and his expertise in local law enforcement in determining that the "uniqueness of the proposal could lead to an increase in safety and regulatory problems." The ALJ noted that her standard of review required that she determine "whether there is any reasonable support for the conclusion that has been reached by the local issuing authority." She cited our opinion in Paul v. Bass Rail Liquors, 31 N.J. Super. 211, 214-15 (App. Div. 1954),

holding that this deferential standard requires that, even if there is an honest difference of opinion as to whether the municipality's decision was correct, such differences should be resolved in favor of the municipality's determination. See Ward v. Scott, 16 N.J. 16, 21 (1954).

The Director's Rulings

Stock filed exceptions with the ABC Director to the ALJ's determinations. The Director thereafter issued two successive final agency decisions: an original decision dated July 1, 2013, and an amplified final decision dated October 24, 2014 issued while this appeal was pending.⁴

In his original July 2013 decision, the Director concluded that the Borough had justifiably denied Stock's application "because the proposed placement of the licensed premises is in close, direct proximity to the non-licensed, all-nude dancing facility." The Director agreed with the ALJ's determination that the Borough acted reasonably in denying Stock's application, because its concerns about public safety problems and regulatory issues were based on credible evidence, namely

⁴ Procedurally, the Director's amplified decision was issued with the consent of all parties, after this court had posed certain inquiries to counsel prior to oral argument. The oral argument was adjourned to enable the Director to issue the amplified decision, and Stock and the Borough thereafter submitted supplemental briefs commenting on the amplified decision.

the Chief's testimony. The Director also found that the factual and legal determinations of the ALJ, as well as the Borough's reasons for its opposition to the license, were supported by the record and by "sound legal principles." Additionally, the Director noted that Stock had been given a "full and complete hearing" on its application, both at the Borough's public hearing and later at the OAL hearing.

In his subsequent amplified final agency decision in October 2014, the Director explained more fully why he rejected Stock's argument that the Borough's resolution of denial was insufficiently detailed and procedurally defective. Moreover, the Director identified an additional ground for denial of Stock's application under the pertinent ABC regulations. In particular, the Director determined that the proposed split arrangement for the premises — containing an unlicensed portion where all-nude dancing would take place and a second area for the licensed sale of alcoholic beverages — would violate N.J.A.C. 13:2-23.6, a regulation that prohibits "[a]ny lewdness or immoral activity" occurring "on or about the licensed premises." Ibid. On this point, the Director expressed particular concerns about the close proximity of the nude dancing, a lewd activity, to the licensed portion of the premises where liquor would be sold.

II.

On appeal, Stock argues that the denial of its application should be reversed because (1) the Borough failed to set forth sufficient reasons for the denial in its resolution; (2) the ALJ should not have heard witness testimony ancillary to the Director's de novo review of the Borough's decision; (3) the denial of its application was arbitrary and capricious; and (4) the lewdness analysis set forth in the Director's amplified decision is flawed. Before we address these specific arguments, we first set forth the legal criteria and the appellate standards of review that must guide our analysis.

The New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 to -97 ("the Act"), confers upon the ABC Director the responsibility to "supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose of this act[.]" N.J.S.A. 33:1-3. The Director also has the authority to adopt regulations to carry out the provisions of the Act, N.J.S.A. 33:1-12.38. On the whole, the Act broadly "'vests the Director or other license-issuing authority with extensive regulatory and investigative power over the liquor industry.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009)

(quoting In re C. Schmidt & Sons, Inc., 79 N.J. 344, 353 (1979)).

The Director's extensive regulatory powers stem from the Legislature's recognition that "[t]he retail alcoholic beverage industry is one of the most highly regulated industries of the State[.]" N.J.S.A. 33:1-12.40(a). Indeed, "[i]t is the public policy of this State . . . to strictly regulate alcoholic beverages to protect the health, safety and welfare of its citizens[.]" N.J.S.A. 33:1-12.40(b) (emphasis added).

Municipalities, as the "issuing authorities," also play an important role in the regulatory scheme. "A municipality has 'the original power to pass on an application for a [liquor] license or the transfer thereof,' but that power is 'broadly subject to appeal to the Director.'" Circus Liquors, supra, 199 N.J. at 10 (quoting Blanck v. Mayor of Magnolia, 38 N.J. 484, 492 (1962)). Subject to the ultimate supervisory authority vested in the Director, the Act is designed to allow municipalities to maintain primary control over the retail of alcoholic beverages. N.J.S.A. 33:1-3.1(b)(9). Municipal authorities have the initial duty to issue licenses and to "perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the Act. N.J.S.A. 33:1-24.

When an appeal from a municipal decision is pursued by a licensee or other aggrieved party, such appeals are first presented to the Director. If there are contested factual issues, then the matter is referred to the OAL for a hearing before an ALJ. After such a hearing, the ALJ then issues an Initial Decision. The Director then has the authority to adopt, reject, or modify the ALJ's decision. See In re Kallen, 92 N.J. 14, 20 (1983) (citing N.J.S.A. 52:14B-10(c)); see also N.J.S.A. 33:1-22 (setting forth the procedure to appeal administratively to the ABC from licensure decisions of the issuing authority).

"[T]he Director's review is de novo as to all necessary factual and legal determinations." Circus Liquors, supra, 199 N.J. at 11. See also N.J.A.C. 13:2-17.6: "[a]ll appeals shall be heard de novo and the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with applicant." This "procedural structure saves to the local body the first determination of the grant of the license, while upholding the legislative aim that the Director exercise a broad supervisory power in this delicate area." Circus Liquors, supra, 199 N.J. at 11 (internal quotation marks omitted).

Our scope of judicial review from final agency decisions of the Director is quite narrow. "When evaluating an action of the

Director of Alcoholic Beverage Control, substantial deference is owed to the Director." Id. at 10. On review, "the rulings of the Director encompassing his findings of fact and conclusions must be accepted unless unreasonable or illegally grounded." Great Atl. & Pac. Tea Co. v. Mayor of Point Pleasant Beach, 220 N.J. Super. 119, 130 (App. Div. 1987) (citing Lyons Farms Tavern, Inc. v. Mun. Bd. of Alcoholic Beverage Control of City of Newark, 55 N.J. 292, 303 (1970)).

Thus, as with appeals from other administrative agencies, appellate review of decisions by the Director is limited in scope. Circus Liquors, supra, 199 N.J. at 9 (citing In re Herrmann, 192 N.J. 19, 27 (2007)). "Without a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record, an administrative agency's final quasi-judicial decision should be sustained, regardless of whether a reviewing court would have reached a different conclusion in the first instance." Id. at 9-10 (internal quotation marks omitted); see also 279 Club, Inc. v. Mun. Bd. of Alcoholic Beverage Control of Newark, 73 N.J. Super. 15, 21 (App. Div. 1962) (noting that "[t]he renewal of a liquor license rests in the sound discretion of the licensing authority, and unless the evidence clearly indicates an abuse of that discretion a reviewing court should not interfere").

That said, pure questions of law relating to liquor licensure and procedures are examined by appellate courts de novo. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); see also Circus Liquors, supra, 199 N.J. at 10-11. In examining those legal issues, we do take into account the ABC's expertise in interpreting its own enabling statute, N.J.S.A. 33:1-12.38, and implementing regulations, N.J.A.C. 13:21.1 to -44.1.

A.

The first issue raised by Stock concerns the failure of the Borough's resolution to specify in written form the particular reasons why the governing body rejected Stock's application. In particular, Stock contends that the resolution does not comply with N.J.A.C. 13:2-2.9(c), which reads:

Hearing not required; reasons

(a) If there is no timely written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that: (1) [t]he submitted application form is complete in all respects; (2) [t]he applicant is qualified to be licensed according to all standards established by the New Jersey Alcoholic Beverage Control Act, the

regulations promulgated thereunder
and (3) [t]he applicant has disclosed and
the authority has reviewed the source of all
funds used in the purchase of the
license. . . .

(c) No application shall be disapproved
without the issuing authority first
affording the applicant an opportunity to be
heard, and providing the applicant with at
least five days notice thereof. The hearing
need not be of the evidentiary or trial
type, and the burden of establishing that
the application should be approved shall
rest with the applicant. In every action
adverse to any applicant or objector, the
issuing authority shall state the reasons
therefor.

[N.J.A.C. 13:2-2.9.]

Stock argues that this regulation should be construed to
require a municipal authority, when either (as here) denying a
license application or rejecting an objection to such an
application, to "state the reasons therefor" in writing.
Because the Borough's resolution here fails to specify those
reasons, Stock contends that the ensuing administrative
proceedings in this case, both in the OAL and before the
Director, were flawed, ab initio. Consequently, Stock maintains
that the Director's final agency decisions must be reversed
because of this procedural flaw.

The Borough and the Director contend in opposition that
N.J.A.C. 13:2-2.9(c) does not mandate a writing from the local
issuing authority memorializing its reasons for denying a

licensee's application or rejecting an objection to an application. Instead, they maintain that the regulation should be more flexibly read to make such a writing optional, so long as the reasons for denial or rejection are apparent from the transcribed record of the municipal hearing. In this case, those reasons are allegedly from the Police Chief's testimony at the Borough hearing.

We concur with Stock that the regulation should be construed to require the resolution or other written memorialization of the local authority's decision to express, at least in summary fashion, the reasons for the denial. By analogy, as a general principle of sound administrative practice and judicial review, state agencies must articulate in their final decisions the specific reasons they relied upon in reaching their determinations. "[N]o matter how great a deference the court is obliged to accord the administrative determination which it is being called upon to review, it has no capacity to review at all unless . . . the agency has stated its reasons grounded in [the] record for its action." State v. Atley, 157 N.J. Super. 157, 163 (App. Div. 1978); see also In re Authorization for Freshwater Wetlands Gen. Permits, 372 N.J. Super. 578, 594 (App. Div. 2004) (invoking this principle in remanding a final agency decision by the [Department of

Environmental Protection] for additional analysis and findings). The agency must provide an "expression of [its] reasoning which . . . led to the conclusion below[.]" Lister v. J.B. Eurell Co., 234 N.J. Super. 64, 73 (App. Div. 1989).

In fact, the ABC itself has interpreted N.J.A.C. 13:2-2.9(c) in the past to require the municipality's reasons for a denial to be specified in writing. In ABC Bulletin 2457, issued in May 1991, the Director of the Division advised:

Any action on the application must be reduced to written Resolution and served on the applicant or licensee personally or by certified mail. If the application is denied, the reasons for that action should be contained in the Resolution. All Resolutions should be sent to the Licensing Bureau of the Division on a daily basis.

[ABC Bulletin 2457, Item 3, p. 11 (May 15, 1991) (emphasis added).]

At oral argument, the Deputy Attorney General representing the Director contended that this language in the 1991 Bulletin advising that the reasons for denial "should be" contained in the resolution was merely aspirational and not mandatory. We disagree with this reading of the regulation, regardless of the current Director's position concerning the import of the 1991 Bulletin. To enable meaningful administrative and judicial review of the local body's action, the reasons should be expressed, or at least summarized, within the resolution itself.

The oral testimony of a witness, such as the Police Chief here, cannot suffice. Cf. R. 1:7-4 (by analogy requiring trial courts to express their reasons for granting or denying relief).

That said, we do not endorse the remedy for this deficiency that has been advocated by Stock. The omission of the Borough's reasons from the resolution, while unfortunate, is harmless, given the subsequent full-blown proceedings that occurred in the OAL, in which the ALJ heard testimony from not only the Police Chief but also from Stock's owner. The ALJ then detailed and adopted the reasons for denial of Stock's application. Stock was not prejudiced by this de novo procedure. Thereafter, the Director also made plain why the application was appropriately rejected. We discern no legal or equitable reasons to require the Borough to consider the application again, or to remand the matter for the Borough to memorialize reasons for denial that are clearly apparent from the present record. The defects in the Borough resolution were cured by the subsequent proceedings.

B.

Stock's related argument that the de novo proceedings before the ALJ were improper requires little comment. It has been well-established in case law, even dating before the creation of the OAL in 1978, that the de novo review of municipal decisions on liquor licenses may entail the

presentation of additional testimony and other evidence before an administrative tribunal.⁵ See, e.g., In re Xanadu Project at Meadowlands Complex, 415 N.J. Super. 179, 188 (App. Div.), certif. denied, 205 N.J. 96 (2010) (noting the ABC Director's prerogative to refer disputed licensure issues to the OAL as contested cases for a "trial-like hearing" before an ALJ); Great Atl. & Pac., supra, 220 N.J. Super. at 122 (wherein an ALJ heard testimony from several witnesses in an ABC case, including the city's police chief and several local residents); D'Amico v. Blanck, 85 N.J. Super. 297, 301 (App. Div.), certif. denied, 43 N.J. 448 (1964) (where an ABC hearer conducted a "full hearing" and reversed a local issuing authority's grant of a liquor license); Grant Lunch, supra, 64 N.J. Super. 556-57 (wherein the hearer considered testimony from three ABC investigators after the licensee had been suspended by the local authority).

Apart from this tradition of expansive de novo administrative review in ABC cases, we perceive no prejudice to Stock in the OAL proceedings that took place here. The ALJ gave both sides a fair opportunity to present testimony and exhibits, and she fairly and thoroughly considered those proofs.

⁵ Before the creation of the OAL, the State officers who presided over such ABC cases were known as "hearers." See Grant Lunch Corp. v. Mun. Bd. of Alcoholic Beverage Control of Newark, 64 N.J. Super. 553, 556 (App. Div. 1960).

C.

We also reject Stock's assertion that the denial of its transfer application was arbitrary and unreasonable. To the contrary, there is ample evidence in the record, particularly the compelling testimony of the Police Chief, to support the Borough's denial and the Director's final agency decision ratifying that denial. The mixed-use arrangement within the building proposed by Stock would undoubtedly create law enforcement and regulatory compliance problems. The access of patrons from the licensed portion of the building to the unlicensed nude-dancing portion, the common bathroom, the close proximity of the two operations, and the negative past history of the premises that precipitated the earlier suspension of its license were all legitimate considerations, among many others, to justify the denial. Stock has not sustained its heavy burden to demonstrate that the Division misapplied its expertise and authority in this case.

D.

Although it is unnecessary to reach this independent basis for denial, we briefly express our agreement with the Director that Stock's proposed arrangement would also violate the lewdness prohibition set forth in N.J.A.C. 13:2-23.6. That provision prescribes as follows:

(a) No licensee shall engage in or allow, permit or suffer on or about the licensed premises:

1. Any lewdness or immoral activity or
2. Any brawl, act of violence, disturbance, or unnecessary noise.

(b) Every licensee shall operate its business in an orderly and lawful fashion, so as not to constitute a nuisance. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare.

[N.J.A.C. 13:2-23.6 (emphasis added).]

Without question, all-nude dancing is an activity that constitutes a form of "lewdness." Davis v. New Town Tavern, Inc., 37 N.J. Super. 376 (App. Div. 1955). Such lewd activity has been considered to take place where "the predominant object and natural effect upon the observers-patrons of one portion of the performance was erotic excitation." Id. at 377. This standard has been applied in the context of alcoholic beverage control regulations. See, e.g., In re G. & J.K. Enters., Inc. v. Div. of Alcoholic Beverage Control, 205 N.J. Super. 77 (App. Div. 1985), certif. denied, 102 N.J. 397 (1986) (topless dancers); see also In re Club "D" Lane, Inc., 112 N.J. Super. 577 (App. Div. 1971) (go-go dancers wearing only transparent bibs and pasties). Here, the parties do not contest that Club

35 is an all-nude entertainment establishment, and, in fact, appellant pocketed its full liquor license in order to open Club 35, because of the prohibition against serving alcohol in an all-nude establishment.

We further agree with the Director's conclusion that the proposed split arrangement within the building to house both nude dancing and the licensed sale of liquor would basically comprise activity "on or about the licensed premises" within the meaning of N.J.A.C. 13:2-23.6(a). Stock's crabbed interpretation of the "on or about" phrase is untenable. The premises have a single, shared entrance, and a shared bathroom. Patrons in the licensed area could buy alcoholic beverages and bring it into the unlicensed area where they would be entertained by the nude dancers. See also 37 N.J.R. 2544(a) (July 5, 2005) (explaining why the Division changed the term "in or upon" the premises in N.J.A.C. 13:2-23.6 to "on or about," in order to clarify that "a licensee's responsibility extends to conditions both inside and outside of the licensed premises caused by the licensee, the licensee's employees or patrons thereof").

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE EXTENSION)	
OF ALL 2014-2015 MUNICIPALLY	)	ORDER AUTHORIZING EXTENSION OF
ISSUED PLENARY RETAIL LICENSES	)	2014-2015 LICENSES THROUGH FRIDAY,
AND STATE-ISSUED LICENSES AND	)	SEPTEMBER 18, 2015
PERMITS THROUGH FRIDAY,)	
SEPTEMBER 18, 2015)	

BY THE DIRECTOR:

The Alcoholic Beverage Control Act ("ABC Act") provides the authority to a governing board or body of a municipality ("municipal issuing authority") to issue and renew plenary retail licenses as set forth in N.J.S.A. 33:1-12 within its respective borders. See N.J.S.A. 33:1-19; N.J.S.A. 33:1-24; N.J.S.A. 33:1-12.13. These licenses are in effect for a one-year term, beginning on July 1 of each year. See N.J.S.A. 33:1-26.

The Division of Alcoholic Beverage Control (the "Division") works closely with municipal issuing authorities concerning the annual renewal of plenary retail licenses. Pursuant to N.J.S.A. 33:1-25 and N.J.S.A. 33:1-12.13 and its implementing regulations at N.J.A.C. 13:2-2, licensees currently file renewal applications with a municipal issuing authority on forms prescribed by the Director, and submit to the municipality the full annual license fee and an additional \$200.00 statutory State filing fee payable to the Division. For renewal applications, the Director publishes a general notice of application in the newspapers that are circulated in the counties in which the licensees' premises are located. See N.J.A.C. 13:2-2.6. If there are any objections to the renewal of an application, the municipal issuing authority holds a hearing; if there are no objections, the applications are presented to the municipal issuing authority, and if approved, the approval is reduced to a resolution. See N.J.A.C. 13:2-2.7 through -2.9. The municipal issuing authority then

forwards the approved applications, resolutions and State fees to the Division.

The Division oversees the administration of the annual license renewal process to ensure that it is done in a uniform and efficient manner, and that this process fulfills the declared public policy and legislative purpose of N.J.S.A. 33:1-3.1. At the present time, license renewal applications are processed by both the municipal issuing authority and the Division in paper format. This is an obviously outdated and inefficient process. In order to modernize the Division's processes and to create a more responsive and efficient license renewal procedure, the Division is implementing a "paperless" electronic renewal system, beginning with the 2015-2016 license term that starts on July 1, 2015. This new system, known as POSSE ABC, requires the full participation of the approximately 9,120 plenary retail licensees, the 531 municipal issuing authorities, and the Division.

Likewise, the ABC Act provides the authority to the Division to issue and renew wholesale licenses and all of their associated permits, as well as manufacturing licenses and their associated permits. These "State-issued" licenses include Plenary Wholesale, Limited Wholesale, Wine Wholesale, State Beverage Distributor licenses, as well as Craft Distillery, Plenary Distillery, Restricted Brewery, Wine Blending, Plenary Brewery, Limited Brewery, Rectifer and Blender, Plenary Winery, Farm Winery, Out of State Winery, Transportation, Public Warehouse, Additional Warehouse or Sales Room, Warehouse Receipts, Bonded Warehouse Bottling, Instructional Wine-making Facility, Broker, and Special Permit for a Golf Facility Licenses. Associated Permits include, but are not limited to, Plenary Retail Transit, Annual State Permittees (known as "Concessionaire's Permits"), as well as Omnibus, Gratuitous Gifts and Samples, Product Information, Charitable Donations, Sampling, Consumer Tasting, Charitable and Civic Events, Sacramental Wine, Transportation Insignias, Winery Salesrooms/Retail Outlets, Marketing Agent,

Solicitor and Transit Insignia permits (Collectively, "State-issued Licenses and Permits").

While all of the foregoing "State-issued" licenses and permits do not require the interaction of the local municipality (since the State is the issuing authority), the same concerns outlined below apply to the renewal of the approximately 400 wholesale licenses and the thousands of other licenses and permits due for renewal by July 1, 2015. Therefore, in an abundance of caution, I am including them in this Order.

The new electronic licensing system represents a sea change in how municipal issuing authorities and the Division will renew the licenses. Under the new system, licensees will be given an access code, and will be required to enter their application data electronically. The retail licensee renewal applications will be reviewed and processed by the municipal issuing authorities and the Division in accordance with the instructions set forth in Schedule A, which is attached hereto and incorporated herein. All State-issued Licenses and Permits will be reviewed, processed and renewed by the Division in accordance with the instructions set forth in Schedule B, which is attached hereto and incorporated herein. With this new system in place, the Division will have the capability to receive, review and store license renewal data electronically, which will greatly assist it in fulfilling its statutory duties under N.J.S.A. 33:1-12.13, N.J.S.A. 33:1-18, N.J.S.A. 33:1-25 and N.J.S.A. 33:1-26.

The launch of the new electronic licensing system will begin on June 4, 2015. All holders of plenary retail licenses and State-issued Licenses and Permits are expected to renew their licenses for the 2015-2016 license term electronically. However, due to the compressed amount of time provided and the potential for technical difficulties, the Division anticipates that some licensees may not be able to effectuate the renewal of their liquor licenses by July 1, 2015. Accordingly, the Director has determined to issue this Order to extend the 2014-2015 license term and to permit

certain licensees to continue to operate until they successfully renew their licenses for the 2015-2016 license term, but no later than September 18, 2015. A retail licensee may avail itself of this relief only if the municipal issuing authority receives (1) both the full annual municipal fee and the State filing fee, and (2) the licensee's Alcoholic Beverage Retail License Clearance Certificate from the Division of Taxation as required by N.J.S.A. 33:1-17.1 (known as a "Tax Clearance Certificate"). A State-issued licensee or permittee may avail itself of this relief only if the Division (1) receives the full annual fee due to the State, and (2) the licensee has provided the appropriate Tax Clearance Certificate, where applicable. In effect, the Division is providing a "grace period" for the "paper" portion of the renewal process, for those licensees who have paid their fees and obtained their Tax Clearance Certificate.

The decision to issue this Order has been made for several reasons that take into account potential unforeseen contingencies. First, POSSE ABC involves the Division's inauguration of a new electronic licensing system, which may have unanticipated problems that the Division will need to address. Second, the governing bodies or boards of municipal issuing authorities may have limited meetings scheduled or may have busy agendas, and may not be able to complete the renewal process prior to July 1, 2015. Third, municipal issuing authorities may need additional time to decide and hold hearings regarding specific licenses. Finally, and perhaps most importantly, this Order is intended to prevent a potential interruption in the sale and service of alcoholic beverages in the State of New Jersey, and to accommodate the needs of the industry, the Division, and municipal licensing authorities during this time of transition.

The Director has ample authority to issue this Order. Pursuant to N.J.S.A. 33:1-39, the Director has the broad authority to issue special rulings and findings "as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and

the enforcement of [the ABC Act] ...” The Supreme Court interpreted this provision to include the Director’s explicit, as well as inherent, powers to ensure a stable and well-regulated alcoholic beverage industry. See Heir v. Degnan, 82 N.J. 109, 121 (1980). Without question, modernizing the licensing system to utilize 21st century technology, and allowing for a limited “grace period” for the paper portion of the renewal process, if the transition to electronic licensing has unanticipated glitches fits within the Director’s almost “limitless” powers. See R&R Marketing, LLC v. Brown-Forman Company, 158 N.J. 170, 176 (1999); Joseph H. Reinfeld, Inc. v. Schieffelin & Co., 94 N.J. 400, 412 (1983). This authority to craft appropriate remedies to address unique situations has been recognized by the Supreme Court as part of the Director’s implied authority to deal fairly with holders of alcoholic beverage licenses. Circus Liquors Inc. v. Governing Body of Middletown Township, 199 N.J. 1, 19-21 (2009).

By way of example, the Director has used his broad authority to extend licenses beyond the June 30th expiration date in certain circumstances where a municipal issuing authority has not acted upon a license renewal application. Pursuant to N.J.S.A. 33:1-74 and N.J.A.C. 13:2-2.10(b), the Director has the authority to issue *ad interim* or temporary permits that allow a licensed business to continue to operate until the application has been acted upon. In promulgating N.J.A.C. 13:2-2.10(b), the Director exercised his authority to “provide for contingencies where it would be appropriate and consonant with the spirit of this chapter to issue a license but the contingency has not been expressly provided for ...” See N.J.S.A. 33:1-74.

In light of the foregoing statutory authority and precedent, the issuance of an Order extending plenary retail licenses and State-issued Licenses and Permits until September 18, 2015 to give the parties sufficient time to complete license renewals under the new electronic licensing system is consistent with the explicit and implicit authority of the Director to ensure trade stability

and to provide uniform and effective administration of the renewal and licensing procedure.

Accordingly, if a plenary retail licensee or holder of a State-issued License or Permit is not able to complete the renewal of its respective license using POSSE ABC on or before June 30, 2015, it is on this 4 day of May, 2015,

ORDERED, that all plenary retail licenses, issued and renewed for the 2014-2015 license term by a municipal issuing authority, shall be extended, where necessary, until renewal or until September 18, 2015, whichever occurs first, pursuant to the terms and conditions set forth in Schedule A which is attached hereto and incorporated herein; and

IT IS FURTHER ORDERED, that all State-issued Licenses and Permits, issued and renewed for the 2014-2015 license term by the Division, shall be extended, where necessary, until renewal or until September 18, 2015, whichever occurs first, pursuant to the terms and conditions set forth in Schedule B which is attached hereto and incorporated herein; and

IT IS FURTHER ORDERED, no license, whether plenary retail or State-issued, shall be extended under this Order until and unless the licensee shall pay all municipal and/or State license fees and shall pay all required State taxes, where applicable; and

IT IS FURTHER ORDERED, no license shall be extended under this Order if the municipal issuing authority has notified and informed the Division that it seeks a hearing to deny renewal or place special conditions upon the license effective July 1, 2015. In those cases, the appeal shall follow the procedures set forth in N.J.S.A. 33:1-22; and

IT IS FURTHER ORDERED, the Director may issue additional Orders to clarify and address problems not anticipated by this Order.



MICHAEL L. HALFACRE
DIRECTOR

SCHEDULE A



STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
P.O. BOX 087
TRENTON, NJ 08625-0087
PHONE: (609) 984-2830 FAX: (609) 633-6078
WWW.NJ.GOV/OAG/ABC

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JOHN J. HOFFMAN
Acting Attorney General

MICHAEL I. HALFACRE
Director

**IMPORTANT NOTICE TO LICENSEES FOR THE 2015-2016 RENEWAL PROCESS
RENEWAL GRACE PERIOD**

The Director of the New Jersey Division of Alcoholic Beverage Control (ABC) has issued an Order that all licenses and permits shall be provided with a grace period to allow Licensees and Municipal Clerk/Secretaries to acclimate to the new online licensing system. While the new system will be in place and ready to accept renewals prior to June 30, 2015, in order to accommodate the need for training and familiarization with the system, the Director is taking the precaution of extending the normal June 30th filing deadline to **September 18, 2015** to avoid confusion, errors, and the possibility of licenses not being renewed in a timely fashion. A full text of the Order will be available on the Division's web page at www.nj.gov/oag/abc.

Licensees can begin using the new system on June 4, 2015. You will be able to register and renew your 2015-2016 licenses online through POSSE, the new ABC Licensing System. We strongly encourage all licensees to take advantage of the online system to expedite the renewal process.

PLEASE NOTE THE FOLLOWING:

IN ACCORDANCE WITH THE DIRECTOR'S MAY 5, 2015 ORDER:

EVERY LICENSEE MUST PAY THEIR MUNICIPAL FEE PRIOR TO JUNE 30TH. (Bring a copy of this renewal notice with you.)

EVERY LICENSEE MUST ESTABLISH THEIR (DIVISION OF TAXATION) TAX CLEARANCE PRIOR TO JUNE 30TH.

DETAILED INSTRUCTIONS ON BECOMING A REGISTERED USER AND RENEWING YOUR LICENSE ONLINE ARE ATTACHED. ONLINE TUTORIALS WILL BE AVAILABLE TO ASSIST YOU AS WELL AS HELP TEXT WITHIN THE LICENSING SYSTEM.

KEEP CHECKING THE ABC WEB SITE FOR LINKS AND FUTURE NOTICES/UPDATES!





CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STATE OF NEW JERSEY
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JOHN J. HOFFMAN
Acting Attorney General

MICHAEL I. HALFACRE
Director

INSTRUCTIONS FOR RENEWAL OF RETAIL LICENSES FOR THE 2015-2016 LICENSE TERM

The label in the upper right hand corner includes your authorization code which is needed to register online to become a User. Visit the ABC Home page www.nj.gov/oag/abc for a link to ABC POSSE Licensing System. Click on the link and follow the instructions. Use the access code on the label above to complete the registration process.

Please note that all Plenary Retail Licenses have been extended to September 18, 2015 by Order of the Director regardless of when they were transferred. If this license has recently transferred and you are no longer the licensee of record please ignore this letter. If you hold multiple licenses and receive multiple renewal letters you will only need one of the access codes; disregard all others. All of your licenses will be associated to you by the system.

Note: IF Division records currently reflect you are required to Petition the Director for 12.39 Relief your notice will be stamped here in red "12.39 Special Ruling Required".
(See Item B for instructions)

Note: IF Division records currently reflect this license is to be treated as a conflict of interest your notice will be stamped here in red "Conflict".
(See Item C for instructions)

Note: IF Division records reflect you failed to file your 2014-2015 renewal application your notice will be stamped here in red "Not Renewed for 2014-2015 License Term Renewal Not Authorized for 2015-2016 License Term."
(See Item F for instructions)



A. Once you have registered you will be able to verify all of your license information and complete the renewal process which includes payment of your \$200 State renewal fee. If you haven't already paid your municipality fee as instructed, you must do so immediately; before June 30, 2015.

B. The renewal question regarding whether your license is being actively used at an operating premise must be answered. If your license is inactive, indicate the last date on which it was actively used.

If your license became inactive on or before *June 30, 2013*, you are required to file a Petition for a Special Ruling with the Division pursuant to N.J.S.A. 33:1-12.39.

A copy of the procedure for licensees to petition for 12.39 relief can be obtained from your Municipal Clerk/ABC Secretary or from the Division's web site at www.nj.gov/oag/abc.

C. The question regarding "does the applicant or any other person mentioned in this application, or any person having a beneficial interest in the licensed business, hold office in the unit of government issuing authority" must be answered with "yes" or "no."

If yes, you will be required to insert the name of the individual(s), title(s) of office and the municipality. Pursuant to N.J.S.A. 33:1-20 and N.J.A.C. 13:2-4.1 et seq the renewal of this license will be treated as a conflict license. The Director of the Division of Alcoholic Beverage Control will consider renewal.

D. If facts about your license have changed since you last filed a full 12-page application (i.e., trade name, mailing address, new officers, shareholders, managers, etc.) you will be able to report such changes separate from your renewal.

E. Be advised that your local governing body may not act upon the renewal of your license until the municipality has received your *Alcoholic Beverage Retail License Clearance Certificate* from the *Division of Taxation*.

During the first week of June, you should check with your municipal issuing authority to inquire as to whether they received a renewal clearance certificate for your license and if they have not you should contact the Division of Taxation immediately. Questions regarding a clearance certificate should be directed to your case worker at the Division of Taxation or by visiting the nearest Regional Office to your business.

F. This information only applies to licensees whose renewal notice has been stamped "Not Renewed for 2014-2015 License Term – Renewal Not Authorized for 2015-2016 License Term." A licensee who has not filed a renewal application for the 2014-2015 license term along with the municipal and state filing fees must apply for a 12.18 Special Ruling.

Pursuant to N.J.S.A. 33:1-12.18, a licensee who fails to file its renewal application and pay the annual fees on or before July 30 of the year beginning the license term for which renewal is sought (*July 30, 2014 for the 2014-2015 license term*), a 12.18 Special Ruling is required. The statute permits a licensee to petition the Director within one year (until July 30 of the year ending the license term for which renewal is sought) following the expiration of the license period (*July 30, 2015 for the 2014-2015 license term*) and request a Special Ruling to permit the filing of an application for a new license upon failure to timely renew.

A copy of the procedure for licensees to petition for 12.18 relief can be obtained from your Municipal Clerk/ABC Secretary or from the Division's web site at www.nj.gov/oag/abc.

G. Only in exceptional cases will a paper filing be an acceptable method of renewal. Not filing online could delay your renewal. Please contact your Municipal Clerk for instructions.

If you have questions concerning the renewal process, please contact your Municipal Clerk or A.B.C. Secretary for assistance.

Questions concerning POSSE ABC should be directed to the Division of ABC at 609-984-2830.

SCHEDULE B



CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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WWW.NJ.GOV/OAG/ABC

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL

MICHAEL I. HALFACRE
DIRECTOR

**INSTRUCTIONS FOR RENEWAL OF STATE ISSUED LICENSES
FOR THE 2015-2016 LICENSE TERM**

The Director of the New Jersey Division of Alcoholic Beverage Control (ABC) has issued an Order that all licenses and permits shall be provided with a grace period to allow Licensees to acclimate to the new online licensing system. While the new system will be in place and ready to accept renewals prior to June 30, 2015, in order to accommodate the need for training and familiarization with the system, the Director is taking the precaution of extending the normal June 30th filing deadline to **September 18, 2015** to avoid confusion, errors, and the possibility of licenses not being renewed in a timely fashion. A full text of the Order will be available on the Division's web page at www.nj.gov/oag/abc. Please continue to check our site for any updates or notices.

ALL WHOLESALE ASSOCIATED PERMITS AS WELL AS WINERY OUTLET/SALESROOMS ARE ALSO INCLUDED IN THIS GRACE PERIOD OF SEPTEMBER 18, 2015.

Commencing **June 4, 2015**, licensees will be able to register on the system and renew their 2015-2016 licenses online through POSSE, the new ABC Licensing System. We strongly encourage all licensees to take advantage of the online system to further expedite the renewal process. Please renew your license as soon as possible!!

YOU WILL NEED TO BECOME A REGISTERED USER ON OR AFTER JUNE 4, 2015. YOUR LOG IN ACCESS CODE IS LOCATED ON THE LABEL IN THE UPPER RIGHT HAND CORNER. GO TO THE ABC WEB PAGE AT www.nj.gov/oag/abc. CLICK ON THE POSSE LINK LOCATED IN THE MIDDLE OF THE PAGE. FOLLOW THE LOG ON INSTRUCTIONS. ENTER YOUR ACCESS CODE IN THE APPROPRIATE AREA. LICENSES ELIGIBLE FOR RENEWAL WILL BE DISPLAYED.

ONLINE TUTORIALS AND HELP TEXT WITHIN POSSE WILL BE AVAILABLE TO ASSIST YOU. WE SUGGEST THAT YOU TAKE ADVANTAGE OF THESE WHILE YOU START ON THE NEW SYSTEM.



140 EAST FRONT STREET, P.O. BOX 087, TRENTON, NEW JERSEY 08625-0087
NEW JERSEY IS AN EQUAL OPPORTUNITY EMPLOYER • PRINTED ON RECYCLED PAPER AND RECYCLABLE

Please read these online renewal filing instructions:

- A. If other facts about your license have changed since you last filed a full 12-page application (i.e., trade name, mailing address, new officers, shareholders, managers, etc.), contact the Division to obtain the appropriate application to report such change. Changes which require transfer of a license, such as the relocation, expansion or reduction of a licensed premises, dissolution or creation of a partnership or a change in the entity that holds the license **may not be reported** as part of the renewal application but must be treated as a separate matter.
- B. **NOTICE TO ALL PLENARY RETAIL TRANSIT AND ANNUAL STATE PERMITTEES also known as CONCESSIONAIRE'S:** Be advised that the Division may **not** act upon the renewal of your license until the Division has verified that your company has received *Alcoholic Beverage Retail Tax Clearance* from the *Division of Taxation*. Questions should be referred to your Regional Tax Office or by contacting the Division of Taxation's Retail Tax Unit at 609-292-0043.

LICENSEES THAT NEED TO ESTABLISH TAX CLEARANCE WITH THE DIVISION OF TAXATION MUST DO SO PRIOR TO JUNE 30, 2015.

- C. **NOTICE TO ALL CRAFT DISTILLERY, PLENARY DISTILLERY, RESTRICTED BREWERY, WINE BLENDING, PLENARY BREWERY, LIMITED BREWERY, RECTIFIER AND BLENDER, PLENARY WHOLESALE, LIMITED WHOLESALE, WINE WHOLESALE, AND OUT OF STATE WINERY LICENSEES:** The Division may not act upon the renewal of your license until the Division has received a **photocopy** of your Beverage Tax Bond. This document may be uploaded with your renewal application or sent to the Division via regular mail at Division of Alcoholic Beverage Control, Wholesale Unit, P.O. Box 087, Trenton, New Jersey 08625.

Please note that Beverage Tax Bond renewal applications are sent directly to you from the Division of Revenue. **All completed Beverage Tax Bond renewals must be sent directly to Ms. Gail Idlett,** Division of Revenue, P.O. Box 252, Trenton, New Jersey 08646. Please contact Ms. Idlett with any questions on your Tax Bond at 609-633-0979.

- D. **NOTICE TO ALL STATE BEVERAGE DISTRIBUTOR, PLENARY WINERY, AND FARM WINERY LICENSEES:** Be advised that the Division may **not** act upon the renewal of your license until the Division has verified that your company has received *Alcoholic Beverage Retail Tax Clearance* from the *Division of Taxation*. Questions should be referred to your Regional Tax Office or by contacting the Division of Taxation's Retail Tax Unit at 609-292-0043.

LICENSEES THAT NEED TO ESTABLISH TAX CLEARANCE WITH THE DIVISION OF TAXATION MUST DO SO PRIOR TO JUNE 30, 2015.

In addition, the Division may not act upon the renewal of your license until the Division has received a **photocopy** of your Beverage Tax Bond. This document may be uploaded with your renewal application or sent to the Division via regular mail at Division of Alcoholic Beverage Control, Wholesale Unit, P.O. Box 087, Trenton, New Jersey 08625.

Please note that Beverage Tax Bond renewal applications are sent directly to you from the Division of Revenue. **All completed Beverage Tax Bond renewals must be sent directly to Ms. Gail Idlett,** Division of Revenue, P.O. Box 252, Trenton, New Jersey 08646. Please contact Ms. Idlett with any questions on your Tax Bond at 609-633-0979.

E. NOTICE TO ALL TRANSPORTATION, PUBLIC WAREHOUSE, ADDITIONAL WAREHOUSE OR SALESROOM, WAREHOUSE RECEIPTS, BONDED WAREHOUSE BOTTLING, INSTRUCTIONAL WINEMAKING FACILITY, BROKER, AND SPECIAL PERMIT FOR A GOLF FACILITY: There are no special requirements for specific renewal questions pertaining to your license; please renew as soon as possible.

F. The following permits included with your renewal applications are extended to expire on September 18, 2015. Continue to check the ABC WEB PAGE at www.nj.gov/oag/abc for updates regarding the renewal or issuance of the following permits during Release 2 of the new online ABC Licensing System.

- Omnibus Permit [OMB]
- Gratuitous Gifts Permit [GG]
- Gratuitous Samples Permit [SP]
- Product Information/Introduction Permit [PI]
- Charitable/Trade Donations Permit [DON]
- Sampling Permit [GS]
- Consumer Tasting Permit for Wholesale Licensees [CTW]
- Charitable and Civic Event Sampling Permit for Restricted Brewery Licensees [CCR]
- Charitable and Civic Event Sampling Permit for Limited Brewery Licensees [CCL]
- Sacramental Wine Permit [SC]
- Transportation License Insignias [TLI] (transportation licensees only)
- Winery Salesrooms/Retail Outlets (plenary winery, farm winery, and out of state winery licensees only)
- Marketing Agent Permit [MA]
- Solicitor Permit [SOL] (*expires August 31, 2015 - extension to be determined*)
- Transit Insignia [TI] (*expires August 31, 2015 - extension to be determined*)

Please note that no licensee may engage in alcoholic beverage activity after ~~June 30, 2015~~ September 18, 2015 without a renewed license for the 2015-2016 license terms. Please do not wait until then to renew; renew as soon as possible to avoid a lapse in your license privilege which could result in an enforcement action.

Please notify the Division of Alcoholic Beverage Control in writing if you do not plan to renew this license.

If you have any questions concerning the renewal process, please contact Rosemary Bonney at 609-984-2673 or Tia Johnson at 609-984-2754.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN RE ANTI-COMPETITIVE AND/OR)	
POTENTIALLY DISCRIMINATORY	)	SPECIAL RULING
PRACTICES IN WHOLESALE ALCOHOLIC)	
BEVERAGE INDUSTRY)	
_____)	

BY THE DIRECTOR:

As Director of the Division of Alcoholic Beverage Control, I am duty bound "to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose" of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq ("Act"). The legislative policy and legislative purpose as set forth in N.J.S.A. 33:1-3.1 requires the Division to:

- (1) protect the interests of consumers against fraud and misleading practices in the sale of alcoholic beverages. [N.J.S.A. 33:1-3.1b(4)];
- (2) provide a framework for the alcoholic beverage industry that recognizes and encourages the beneficial aspects of competition [N.J.S.A. 33:1-3.1b(6)];
- (3) maintain trade stability [N.J.S.A. 33:1-3.1b(7)];
- (4) maintain a three-tier (manufacturer, wholesaler, retailer) distribution system [N.J.S.A. 33:1-3.1b(8)] and;
- (5) prohibit discrimination in the sale of alcoholic beverages to retail licensees [N.J.S.A. 33:1-3.1b(10)]

Consistent with the Division's authority to promulgate regulations to implement the Act, an entire subchapter of the Division's regulations addresses discriminatory sales. [See N.J.S.A. 33:1-12.38 and N.J.S.A. 33:1-39] The Division's regulations are intended "to promote competition while preserving an orderly marketplace, including, but not limited to, the prevention of destructive price wars..." N.J.A.C. 13:2-24.1(a).

The Division has identified specific practices within New Jersey's wholesale liquor industry which fall within the ambit of N.J.A.C. 13:2-24 et seq. and, if left unchecked, could be used by wholesalers as tools to manipulate and circumvent the Act's and regulations' anti-discrimination and trade practice provisions. These practices include (A) "blind posting," (B) closing-out of products below cost, (C) wholesaler warehousing of product purchased by retailers, commonly referred to as "bill and hold," (D) allocation of limited product to retail consumers and (E) "channel pricing." Due to the potential such practices hold for discriminatory manipulation of the marketplace, it is necessary for me to clarify that the foregoing practices, when engaged in outside of the parameters of this ruling, are violations of the applicable statute and regulations. This Special Ruling is intended to address how each of the practices set forth above are, and have been, viewed by the Division:

A. "BLIND POSTING"

Every licensee privileged to sell alcoholic beverages to retailers in New Jersey is required to file and maintain a "Current Price List." ("CPL"). N.J.A.C. 13:2-24.6(a)(3). Among the information that must be included in the CPL are the prices, inclusive of per unit costs, all discounts, allowances and differentials and other terms of sale, at which all products are offered for sale to retailers during the calendar month following the CPL filing. N.J.A.C. 13:2-

24.6(a)(3)(1). The CPL must be filed with the Division no later than the 15th day of each calendar month and is effective the first day of the following calendar month and remains effective for that entire month. N.J.A.C. 13:2-24.6(a)(4). Wholesalers must adhere to the prices listed in their CPLs and must sell products listed therein to retailers on a non-discriminatory basis. N.J.S.A. 33:1-89.

In the past, licensees subject to N.J.A.C. 13:2-24.6(a) have engaged in a sales practice known as "blind posting." This involves a licensee producing the above-referenced information in a manner that does not conspicuously identify a product's required information so as to be readily accessible to the interested community of retailers. An example of this practice is the posting of multiple prices for a specific product in the CPL but only listing the highest of these prices in trade journals distributed to retailers. Retailers who reasonably rely upon the trade journals to obtain the pricing information upon which their purchasing decisions are based, would not be aware of a potentially lower price for the products they seek to purchase from the wholesaler. Wholesalers that "blind post" increase the possibility and/or likelihood of discriminatory sales in violation of Subchapter 24 of the Division's regulations since the wholesalers could be selective in determining which retail customers will have the opportunity to purchase the product at the lower price.

I FIND that the practice of blind posting and resulting discriminatory sales practices are inconsistent with and detrimental to the Act's goals of competitive pricing, preserving an orderly marketplace, avoidance of destructive price wars, and the practices that foster moderate and responsible use and consumption of alcoholic beverages. Blind posting weakens the Division's ability to enforce these legislative mandates. Moreover, the drain on the Division's limited

investigative resources and efforts that would be needed to uncover the discriminatory sale(s) would be highly disruptive to the Division's operations as well as the suppliers, wholesalers, and retailers in the industry.

Therefore, in order to discourage future instances of blind posting or blind posts, the act of multiple filings in the CPL in such a manner so that different prices for the same product are not readily accessible to either the Division or all retail licensees is a violation of N.J.A.C. 13:2-24.6(a). If the Division becomes aware of a violation of N.J.A.C. 13:2-24.6(a) by the placement of a blind posting or conduct similar to that outlined above, the offending wholesaler will be notified and have 10 days to provide the Division with an explanation for the violation. If there is no satisfactory explanation provided, the wholesaler will be charged pursuant to N.J.S.A. 33:1-19.1 et seq. In addition to any penalties resulting from charges related to CPL and discrimination violations, the Division may seek as a penalty that sales of the product at the center of the violation may be suspended for up to 30 days for each violation, during which time the wholesaler will be prohibited from any sale, service, or delivery of the product to any retailer in New Jersey.

B. CLOSE OUT OF PRODUCTS BY SELLING BELOW COST

No wholesaler, distributor, or other licensee, privileged to sell to retailers in the State of New Jersey, is permitted to sell or offer to sell alcoholic beverages at a price below "cost." N.J.A.C. 13:2-24.8(a). "Cost" is defined as the actual proportionate invoice price and freight charge to a distributor or wholesaler... of any given container of an alcoholic beverage product,

plus applicable State and Federal taxes. The actual invoice price shall be determined by the 'last-in-first-out' method applying generally accepted accounting principles." N.J.A.C. 13:2-24.8(b).

An exception to the sale below cost prohibition is a bona fide "close out" sale that has been approved by the Director. N.J.A.C. 13:2-24.8(a). The regulations require a wholesaler intent on closing out a brand registered product or a specific vintage of a product to petition the Division for a permit to sell the product below cost. The cost of the permit is a dollar per case that is being sold below cost, with a minimum fee of \$20.00. Wholesalers typically apply for close out permits for a product that has not sold in sufficient quantities, in order to make space for a new vintage, or where a manufacturer has instituted a change in its labeling. Once a product has been "closed-out" it may not be re-acquired by the wholesaler for one year after the product on hand is exhausted. Inquiries made by the Division have revealed that wholesalers have taken steps to entice sales of these products to specific retailers prior to a petition being filed to close out the product below cost. This method is known as "steering" and directs the product to favored retailers at prices discounted below what the market would otherwise bear without the permit. This practice could be used to circumvent the anti-discrimination regulations and has the potential to be used beyond the scope for which the permit was intended to be used.

I FIND that the use of the close out permit process for anything other than a legitimate close out, i.e., end of vintage, label change, product otherwise going "out of date," etc. combined with the distribution of the closed-out product to a single or a small number of retailers, may be a violation of the anti-discrimination provisions set forth at N.J.A.C. 13:2-24, *et seq.* Where such practices come to the attention of the Division, they will be referred to the Enforcement Bureau for appropriate enforcement action. In addition, the close-out permit application will be modified

to require the wholesaler to set forth in writing its procedure for allocation of close out products, and to demonstrate that it is acting in compliance with the non-discrimination requirements of the Act and regulations.

C. WHOLESALE WAREHOUSING OF PRODUCTS FOR RETAILERS

Within the State, wholesalers have offered to "warehouse" product for its retail customers. This practice is also known as "bill and hold." Specifically, a wholesaler will sell product to a retailer and not deliver all of that order to the retailer's licensed premises. Rather, it will keep a portion of the paid-for product at its place of business (for which a public warehouse license has been issued) and allow the retailer to receive delivery at its discretion. A retailer will partake in this practice in order to purchase more of a product at what it perceives a good price even if it does not have the space to hold this product. It is alleged that wholesalers often will agree to hold the product for an unspecified period of time before charging a fee for storage of the product, or may never charge a fee.

This practice has the potential of undermining trade stability and could allow for discrimination in terms of sales. For example, a wholesaler, in order to compete for business could allow a larger customer to store more of a product at its facilities and for longer periods of time than it would for its smaller accounts. A retailer may also want to purchase larger quantities than it can store so as to take advantage of Retail Incentive Programs ("RIP") that require larger orders. This practice can also be used to manipulate the sale of close-out products.

This practice has not been considered a "Term of Sale" by the industry and has not been disclosed on the CPL pursuant to N.J.A.C. 13:2-24.6 (a)(3). It is the Division's determination

that the practice of holding product for later delivery, as well as the charges for same, must be disclosed on the CPL as a term of sale. It also is the long-standing view of the Division that storage or warehousing services must be equally available to all retailers, at equivalent prices.

Division inquiries have also revealed that in many cases wholesalers do not segregate the "stored" product being held for its retailer customers from its own product. This has resulted, due to fluctuating inventory and supplier deliveries, in a "virtual" warehouse of product where a wholesaler may not have physical custody of a product that has already been sold to a retailer. Among other concerns, such a practice could result in violation of N.J.A.C. 13:2-25.1, which prohibits deliveries to a licensed retailer unless it is from inventory in a warehouse located in New Jersey (inventory is deemed to include alcoholic beverages stored in the warehouse for at least 24 continuous hours).

At other times, the Division has found that, due to this virtual warehouse, product from a given vintage may be "sold out" even though a retailer has been "storing" its purchased product from that vintage with the wholesaler. The subsequent vintage is then substituted for the original vintage, with no change in price or terms, regardless of the actual price of the subsequent vintage.

To limit the potential abuses that could arise from this practice, I FIND, consistent with the Divisions existing policy, that any and all "warehousing" or "bill and hold" done by wholesalers for retail licensees must comply with the following conditions:

- 1) The availability of warehousing by a wholesaler and all associated costs to be charged to the retailer must be disclosed as a term of sale on the CPL and made available on equal terms to all retailers;
- 2) The wholesaler shall document and provide to the retailer, at the time of original invoicing, in addition to the requirements of N.J.A.C. 13:2-20.3, 13:2-24.4, 13:2-39.1 and 13:2-23.32, the full amount and price of the product purchased, and

designate how much product is to be delivered and how much is being stored. It shall designate the cost of storage and specify that a separate invoice for storage will issue.

- 3) A retailer on COD may not participate in bill and hold until all outstanding charges have been paid and the retailer has been removed from COD pursuant to N.J.A.C. 13:2-24.4. Further, all charges for bill and hold storage must be invoiced separately from the purchase transaction and paid on a 30 day basis. This is to be considered an extension of credit, and as such the provisions of N.J.A.C. 13:2-24.4 shall apply in the event a retailer does not timely satisfy its "bill and hold" obligation, including the placing of the retailer on "COD".
- 4) Wholesale licensees who extend "bill and hold" must charge all retailers the same amount, and in order to avoid illegal financial ties between retailers and wholesalers, that amount should be within a range of 5% of the average public warehouse price for storage in the geographic area of the warehouse, rounded to the nearest cent. Wholesalers should review public warehouse charges at least quarterly, and must publish this rate in their CPL. (Currently, for example, public warehouses charge approximately 32 cents per month per case for storage, meaning that wholesalers may charge between 30 and 34 cents per case per month)
- 5) Storage of product under "bill and hold" defeats one of the primary purposes of the "close out" permit. Therefore, "bill and hold" shall not be available on close out products.
- 6) While I am not requiring segregation of each retailer's product *at this time*, wholesale licensees who offer "bill and hold" to retail licensees must maintain the retailer's physical product on hand, at all times, and may not substitute one product for another. However, with regard to vintages, one vintage may be substituted for another ONLY in the event of a *bona fide* warehouse picking or inventory control error, AND if the price between vintages as filed in the CPL remains identical.
- 7) In order to limit the use of this practice that has such a potential for abuse, all product stored on behalf of a retailer must be delivered to the retailer within 75 days of the date of the initial sales invoice. Further, each retailer who wishes to take advantage of "bill and hold" with a wholesaler must place on file, with the wholesaler, a written certification identifying the location for the product(s) to be delivered on the 76th day. Failure of the retailer to accept delivery on the 76th (or first business day following the 75th day) and/or failure of the wholesaler to deliver the product(s) may constitute a violation of N.J.A.C. 13:2-24.1 and 13:2-24.4 in that it is discriminatory, and a violation of the terms of sale. Further, the failure to accept delivery of the product may constitute a violation of the terms of

sale, which will require the wholesaler to comply with the provisions of N.J.A.C. 13:2-24.4 et seq and placing the retailer on "COD" status. Such a failure may be treated by the Division as a violation of the foregoing provisions, the penalty for which may include, in addition to a suspension of the license, a prohibition upon participating in "bill and hold" in the future.

- 8) Wholesalers who engage in the practice of bill and hold shall submit a report to the Division at least quarterly setting forth the retail participants in bill and hold and the number and amount of time product has been stored pursuant to this provision.
- 9) This provision of the Special Ruling shall take effect on the first day of January, 2016, at which time all product then in storage with wholesalers shall begin at "Day 0" of the 75 day time frame.

There are a multitude of public warehouses licensed by the Division that could store product on behalf of retailers. Further, N.J.A.C. 13:2-23.21 permits retailers to petition the Director for a permit allowing the storage of alcoholic beverages in other than the licensed premises or a public warehouse. Therefore, nothing prevents a retailer from purchasing more than a 75 day supply of product and storing the excess product in their licensed premises, with a public warehouse, or in a third location pursuant to a special permit. In fact, some retailers currently maintain their own warehouses. The foregoing provisions are intended to eliminate the potential discriminatory practice and potential tied house violations that wholesalers and retailers currently face. These conditions, while implementing the Division's existing policy may be further evaluated and be subject to future rulemaking.

D. ALLOCATION OF LIMITED AVAILABILITY PRODUCT

A recurring issue brought to the Division's attention by retailers is the allocation of limited availability product, whether a certain vintage of wine or a highly regarded spirit. Due to demand, a wholesaler in New Jersey may only receive, for example, 5 cases of a particular

product, and have most of the 9,000 retail licensees in the state seeking to order that product. Alternatively, the wholesaler may have 2,500 cases of a product for which he has sought a legitimate close-out permit, and the pricing is attractive enough to drive up demand beyond supply for those 2,500 cases.

The Division finds that there are legitimate business purposes as to why a wholesaler may sell limited availability products to a single retailer or a small group of retailers. For example, a wine vintage may be near the end of its shelf life, and only certain large retailers may be able to sell the volume of product necessary in a timely manner to protect the brand's integrity. However, the method by which a wholesaler determines to allocate products under those circumstances could run afoul of the anti-discrimination regulation, N.J.A.C. 13:2-24.1 et seq.

I FIND that there is no need for the Division to mandate a method by which allocation of limited availability product is done by the wholesalers. However, I do recommend that each wholesaler develop a method by which it can ensure that limited availability product be allocated in a manner so as to avoid the appearance of discrimination in violation of N.J.A.C. 13:2-24.1. By way of example, only, a wholesaler might only sell a percentage of the product in the first days of the month, when there is a rush to order under a newly active CPL, and "hold back" a percentage of allocated product until the 15th of the month, at which time the remaining product can be divided up proportionately among interested retailers or offered anew to the original purchasers. All wholesalers should reduce their methodology to writing, and add it to their marketing manual as required by N.J.A.C. 13:2-24.6 (a)(2).

E. CHANNEL PRICING

Many states recognize "channel pricing" wherein the same product may be made available to on-premise retail licenses at a price different than the product is sold to off-premise licensees. While there are often legitimate business purposes behind a supplier or manufacturer wishing to price their product differently, it is clear that even a cursory review of New Jersey statutes and regulations would reveal that such a practice constitutes discrimination by a wholesaler, as it violates N.J.S.A. 33:1-89, which states, in part, "It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to discriminate in price, directly or indirectly, between different retailers purchasing alcoholic beverages...." Likewise, N.J.A.C. 13:2-24.1(b)(2) reiterates and expands upon the prohibition of discrimination, by specifically presenting different prices or credit terms for different purchasers of "alcoholic beverages of the same brand or *trade name of like age, quality and quantity* (including, but not limited, to proof and size)." (Emphasis mine)

I have become aware of a practice in New Jersey that I will call "channel labeling." Channel labeling, occurs when a product is designated by the supplier or manufacturer for either retail consumption licensees (on-premise) or for retail distribution licensees (off-premise) and the product includes a distinctive additional or supplemental label(s) that differentiates the on-premise and off-premise product, often including the presence or absence of a UPC code. While this practice is permissible, based upon the statute and regulation cited above, wholesalers must offer the product, regardless of labeling, to both on-premise and off-premise retailers on equal terms. In other words, whether the product contains a UPC code or a supplemental label is irrelevant to the product's pricing, as channel pricing is not permitted. However, suppliers

wholesalers may use various other "disincentives" to discourage the purchase of their product by one channel, such as differential labeling, brand registration, and/or pricing strategies, utilizing discounts or Retail Incentive Programs ("RIPS"), to encourage the purchase by the desired segment and/or discourage purchases by the disfavored segment.

Accordingly it is on this 12 day of June, 2015 ORDERED:


- 1) That the practice of blind posting as referenced herein, or multiple filings for a single product contained in a single CPL in such a manner that the different prices are not readily and conspicuously apparent to either the Division or a retail licensee that researches the product offering shall constitute a violation of N.J.A.C. 13:2-24.6(a). If the Division becomes aware of a violation of N.J.A.C. 13:2-24.6(a) by the placement a blind posting or conduct similar to that outlined above, the offending wholesaler will be notified and have 10 days to provide the Division with an explanation for the violation. If there is no satisfactory explanation provided, the wholesaler will be charged pursuant to N.J.S.A. 33:1-19.1 et seq. In addition to any penalties resulting from charges related to CPL and discrimination violations, the Division may seek as a penalty that sales of the product at the center of the violation may be suspended for up to 30 days for each violation, during which time the wholesaler will be prohibited from any sale, service, or delivery of the product to any retailer in New Jersey.
- 2) That the use of the close out permit process for anything other than a legitimate close out, i.e., end of vintage, label change, product otherwise going "out of date" etc., combined with the distribution of the closed-out product to a single or a small number of retailers, may be a violation of the anti-discrimination provisions set forth at N.J.A.C. 13:2-24 et seq.
- 3) That any and all "warehousing" or "bill and hold" done by wholesalers for retail licensees must comply with the following conditions:
 - a) All costs must be disclosed as a term of sale on the CPL and made available on equal terms to all retailers;
 - b) The wholesaler shall document and provide to the retailer, at the time of original invoicing, in addition to the requirements of N.J.A.C. 13:2-20.3, 13:2-24.4, 13:2-39.1 and 13:2-23.32, the full amount and price of the product purchased, and designate how much product is to be delivered and how much is being stored. It shall designate the cost of storage and specify

that a separate invoice for storage will issue.

- c) A retailer on COD may not participate in bill and hold until all outstanding charges have been paid and the retailer has been removed from COD pursuant to the Regulation. Further, all charges for bill and hold must be invoiced separately from the purchase transaction and paid on a 30 day basis. This is to be considered an extension of credit, and as such the provisions of N.J.A.C. 13:2-24.4 shall apply in the event a retailer does not timely satisfy its "bill and hold" obligation, including the placing of the retailer on "COD".
- d) Wholesale licensees who extend "bill and hold" must charge all retailers the same amount, and in order to avoid illegal financial ties between retailers and wholesalers, that amount should be within a range of 5% of the average public warehouse price for storage in the geographic area of the warehouse, rounded to the nearest cent. Wholesalers should review public warehouse charges at least quarterly, and must publish this rate in their CPL. (Currently, for example, public warehouses charge approximately 32 cents per month per case for storage, meaning that wholesalers may charge between 30 and 34 cents per case per month)
- e) Storage of product under "bill and hold" defeats one of the primary purposes of the "close out" permit. Therefore, "bill and hold" shall not be available on close out products.
- f) While I am not requiring segregation of each retailer's product *at this time*, wholesale licensees who offer "bill and hold" to retail licensees must maintain the retailer's physical product on hand, at all times, and may not substitute one product for another. However, with regard to vintages, one vintage may be substituted for another ONLY in the event of a *bona fide* warehouse picking or inventory control error, AND if the price between vintages as filed in the CPL remains identical.
- g) In order to limit the use of this practice that has such a potential for abuse, all product stored on behalf of a retailer must be delivered to the retailer within 75 days of the date of the initial sales invoice. Further, each retailer who wishes to take advantage of "bill and hold" with a wholesaler must place on file, with the wholesaler, a written certification identifying the location for the product(s) to be delivered on the 76th day. Failure of the retailer to accept delivery on the 76th (or first business day following the 75th day) and/or failure of the wholesaler to deliver the product(s) may constitute a violation of N.J.A.C. 13:2-24.1 and 13:2-24.4 in that it is discriminatory, and a violation of the terms of sale. Further, the failure to accept delivery of the product may constitute a violation of the terms of

sale, which will require the wholesaler to comply with the provisions of N.J.A.C. 13:2-24.4 et seq and placing the retailer on "COD" status. Such a failure may be treated by the Division as a violation of the foregoing provisions, the penalty for which may include, in addition to a suspension of the license, a prohibition upon participating in "bill and hold" in the future.

- h) Wholesalers who engage in the practice of bill and hold shall submit a report to the Division at least quarterly setting forth the retail participants in bill and hold and the number and amount of time product has been stored pursuant to this provision.
 - i) This provision of the Special Ruling shall take effect on the first day of the January, 2016, at which time all product then in storage with wholesalers shall begin at "Day 0" of the 75 day time frame.
- 4) That each wholesaler shall develop a method by which it can ensure that limited availability product be allocated in a manner so as to avoid the appearance of discrimination in violation of N.J.A.C. 13:2-24.1.
 - 5) Channel labeling as set forth above, is permissible and not a violation if the product is labeled by the supplier or manufacturer in such a fashion so as to be distinguishable from each other (i.e. a distinctive additional label(s) that differentiates the on-premise and off-premise product, including the presence or absence of a UPC code) provided that the product continues to be offered on equal terms to both segments of retailers regardless of labeling.


MICHAEL I. HALFACRE
DIRECTOR