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

BULLETIN 2200

October 2, 1975

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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BULLETIN 2200 October 2, 1975

1. APPELLATE DECISIONS - MOON STAR, INC. v. JERSEY CITY.

Moon Star, Inc.	:	
Appellant,	:	On Appeal
v.	:	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Jersey City,	:	
Respondent.	:	

Salvatore Perillo, Esq., Attorney for Appellant
Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which, on April 18, 1975, revoked appellant's Plenary Retail Consumption License C-235, for premises 268 Duncan Avenue, Jersey City, following a finding of guilt on a charge alleging that on divers dates during the 1974-75 licensing period, it permitted the licensed premises to be operated in such manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20.

Appellant contends that the action of the Board was arbitrary, capricious and unreasonable, and that its determination was without basis in fact or law. Further, it contends that the Board failed to adequately notify appellant of the specific charges against it. In its Answer, the Board denied these contentions.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. with full opportunity for counsel to present testimony and cross-examine witnesses. Additionally, a transcript of the proceedings held by the Board was admitted into evidence pursuant to Rule 8 of State Regulation No. 15. Further, the transcript of testimony taken in this Division at a hearing held upon an Order to Show Cause pursuant to Rule 11 of State Regulation No. 15 respecting a stay of revocation of the license by the Board pending the final determination of the appeal was made part of the record.

At the hearing in this Division, counsel for the appellant moved for immediate reversal of the Board's action on the ground that the charge lacked specificity upon which a defense could be interposed. He contended that he was denied an adjournment by the Board during which time he would seek to obtain information upon which the charge against appellant was predicated. He maintained that, as the Board failed to specify the charges upon which the revocation of license was grounded, the appellant should not be called upon to answer the complaint and, thus, the charge should be dismissed.

Procedural irregularities or infirmities which may have occurred at the time of the hearing before the Board, if any, are cured at this appeal de novo because the appellant has now been given full opportunity to offer testimony in support of its petition. Re Cino v. Driscoll,130, N.J.L. 535, cited in Nordco, Inc. v. State, 43 N.J. Super 237, 287 (App. Div. 1957); Rokay Wines and Liquor v. Passaic, Bulletin 1198, Item 1; Anwar Corp. v. Elizabeth, Bulletin 2152, Item 5, aff'd. App. Div. in an unreported decision, recorded in Bulletin 2184, Item 1.

Appellant was found guilty of permitting its licensed premises to be operated in such manner as to constitute a nuisance.

> "In determining what constitutes a 'nuisance', the question is whether the nuisance will or does produce such a condition of things as, in the judgment of reasonable men, is naturally productive of actual physical discomfort to persons of ordinary sensibility and ordinary tastes and habits. ...A public nuisance is one which affects an indefinite number of persons, or all the residents of a particular locality or all people coming within the extent of its range or operation although the extent of the annoyance or damage inflicted upon individuals may be unequal."

Black's Law Dictionary, Revised Fourth Edition, p. 1215.

Black's Law Dictionary further defines a "continuing" nuisance as:

> "An uninterrupted or periodically recurring nuisance; not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can be fairly said to be continuous". p. 1215.

By the plural nature of the charge, i.e.,

> "...;loitering, noisy obscene language, brawls, bothering pedestrians, general horse-play, drinking in front of the tavern, etc., in and about your licensed premises, all this in violation of Rule 5 of State Regulation No. 20."

it is apparent that the charge involves a continuing nuisance,

occurring within the time period indicated: "On diver dates during 1974-75 Alcoholic Beverage Control Licensing period."

If, as appellant contends, it did not know of the specificity of the charge prior to the hearing before the Board, at the conclusion of such hearing, it should have then known from the proofs adduced, the specific nature of the charge. At the de novo appeal to this Division, full opportunity was then available to it to advance all of evidence, testimony of witnesses and rebuttal testimony necessary to defend the action.

No witnesses were called other than Daniel W. Blue, owner of approximately half of the corporate stock of the appellant corporation. His exemplary background as a former Newark Police Officer, and the present Director of the Newark N.A.A.C.P., as well as his prior association with municipal government as Director of the Civil Rights Commission of Newark was explored in detail. His association with the licensed premises was somewhat limited. He spent about twenty or twenty-five hours in supervision of the premises, but admittedly relied on the closer supervision of his associate, William Moore.

Except for the posting of "No loitering" signs on the interior and exterior of the premises, and the stated refusal to sell alcoholic beverages for off-premises consumption, little else was done with respect to the loitering problem, which, he maintained was endemic to the area. His knowledge of the day-to-day operation of the premises was vague (he couldn't identify by name any of the three bartenders employed there) and his hours of attendance were irregular.

Significantly, appellant had obtained issuance of a subpoena ad testificandum and subpoena duces tecum upon Captain Raymond V. Blasczak for the de novo hearing at this Division. Captain Blasczak appeared with extensive files. Counsel for appellant requested and received opportunity to inspect such files, and, after doing so, failed to call the Captain as his witness, or to introduce those files into evidence.

At the conclusion of the hearing, appellant, through summation of its counsel, repeated its contention that the action of the Board was voidable in that the charges against it were not initially specified. It further contended that it relied upon an examination of the proceedings before the Board in its defense. Finally, it argued that the penalty imposed by the Board, i.e., revocation of appellant's license, was far too severe and resulted from the Board's reaction to the public hysteria generated at the hearing by certain objectors.

I.

An examination of the transcript of the proceedings before the Board reveal the testimony of fourteen witnesses, in support

of the revocation of appellant's license. Another fifty-three witnesses in support of the charge were also present; presumably their prospective testimony was considered to be cumulative and they were not permitted to testify.

Captain Raymond Blasczak testified that, during the summer of 1974, he observed persons, including juveniles, congregate in front of appellant's premises and drink beer, wine and whiskey. He directed his subordinate officers to notify the appellant's employees to clean up the debris of empty bottles and sweep the sidewalk. He characterized the conduct of persons in front of the premises as follows:

> "During the fall of 1974 I have on the records that is the precinct memobook of telephone complaints which have come into the 7th precinct of males, adults coming out of the Moon Star Tavern, of walking out of the Moon Star Taven, walking across the sidewalk where cars would be parked sometimes illegally, where they would get in between the cars and finish off bottles which they had and paper cups...."

He related that he had to assign extra police protection for the children who had to pass appellant's premises en route to school because of the "undesirables who insist upon hanging out in front of the ...tavern from which I receive little or no cooperation other than a sign which says 'Do not loiter in front of the tavern'. And that is supposed to take care of all our problems."

Captain Blasczak added that the Police Department had received forty or fifty telephone complaints against appellant's premises during the summer of 1974. He admitted that wine-drinking loiterers were often in front of appellant's premises during hours when the premises were closed.

Police Officer Gary Whelpley testified that, on March 23, 1975 he arrested a person in front of the tavern for being drunk and disorderly. Another arrest occurred when one of the persons in front of the tavern possessed a knife. In a later incident, he responded to a call that a hold-up was taking place within the tavern. On other occasions, when ordered to assist the school children who had to pass the premises there were people outside the bar drinking, drinking from beer cans, generally blocking the way as the children were going to school. They were creating a disturbance where the children had to go out around them. He noted that patrons urinated outside the premises, both in daytime as well as night. Another patron who was standing on the corner on the outside of the premises, was arrested for carrying a hatchet tucked in his waistband.

Police Officer John Sheyka testified that, on March 27, 1975 he arrested a patron who was emerging from appellant's premises and charged him with being drunk, disorderly and abusive. He

described later occasions when children passing that tavern were molested by panhandlers loitering in front of it.

On another occasion he arrested a patron who emerged from the premises in a drunken condition. He described different instances of panhandling; these acts were committed by "different people. There are so many different people hanging around there I don't all of them by name of faces. As I recall, its different people."

John W. Yengo, a municipal judge, testifying as a "taxpayer" stated that his office and the home of his parents is located at 244 Duncan Avenue, nearby to appellant's premises which is at 268 Duncan Avenue. He has frequently observed patrons of appellant's premises emerge therefrom with brown bags containing bottles, which the drinkers would pass among themselves.

On other occasions he observed a "...fat, dirty-looking (woman) permit men to force...themselves into her body" against the side wall of the tavern. He has observed school children having to wend their way among apparently intoxicated males who congregated on the sidewalk outside the premises. Some of the children were forced into the street because of that congestion. He has also frequently observed patrons leave the tavern, "go around the corner" and urinate on the trees. The use of vile and vulgar words by the loiterers was common.

He explained his reasons for making anonymous calls to the police:

> "I'll tell you why. Now that you asked me the question I'll tell you why. I put in a complaint about a double-parked car and I was the victim of a threat on my life by the very man who came to my home rang the bell, came in and wanted to know 'Are you the one who called the police about my car? I'll remember you. I'll kill you'."

A neighbor, Leo Scarpa, whose home is contiguous to the rear line of appellant's premises, testified that he observed a heavy woman "making love" in cars nearby to the tavern after she and her escort emerged therefrom. He has observed continuous drinking by patrons of the tavern in front of that premises. He frequently complained to the police about the constant disturbance to his family resulting from the activities in and about the licensed premises and which continue until after three o'clock in the morning.

Reverend Timothy Hourihan, Assistant Pastor of a nearby church, testified that, on regular occasions, he observed people loitering in front of appellant's premises; and on two occasions observed people urinating. Those standing outside would be drinking, and, children coming from school had to walk in the street to avoid these intoxicated patrons.

James Monroe, a seventh grade teacher in the nearby school testified that he has heard loud and abusive language from the patrons of appellant's premises directed to his fellow teachers as they were leaving their school, particularly when double-parked vehicles of patrons impeded the exit of the teachers. He made this observation:

> "A child is a product of the environment, and a tavern on the corner in my experience is detrimental to the students. It takes away everything I am trying to do."

Yolanda Cepero, a mother of three children who attended school, testified that she resides about a block away from appellant's premises. She attends courses in Rutgers University at night, and returns to her home about eleven p.m. On several occasions she observed male patrons of appellant's establishment bring out brown bags containing alcoholic beverage, which would be resold to young boys on the outside of the tavern.

Her daughter has been harassed on numerous occasions by men loitering on the outside of the bar, when she was on route to school. Her daughter was afraid to walk by the tavern, and the witness was required to escort her to school. Even though her home is about a block away "...I have no peace or quiet...screaming, shouting, cursing, arguments, cars speeding pulling away from the tavern," keeps her and her family awake.

She described the situation to which she objects:

> "People are being molested. I have to go through with my kids, men urinating against the walls--I mean exposing themselves, and it's embarrassing to try to bring your children up this way. It really is, and I'm tired of my children complaining...I can't even let my children go out after it turns dark because they can't even go to a candy store. They have to stay locked up in the house."

A Jersey City Police Officer, John Leavy, who resides a block away from appellant's premises, testified that he has observed people outside the tavern with brown bags, drinking parties in cars parked adjacent thereto. He has escorted his son to school because of intoxicated patrons loitering on the outside of the premises.

Dorothy Sullivan, the mother of five children, testified that her youngest children, ages thirteen and fourteen, are in fear of walking by appellant's premises. She has been the victim of immoral suggestions by loiterers there, and the language used by them is foul and obscene. She has observed fighting among the patrons outside the tavern.

Joseph McNally, owner of the third house behind appellant's premises testified that the opening hour of the premises was

recently set at four o'clock in the afternoon. Shortly prior thereto, he observed a man and woman patron performing a sex act in a car outside the premises in mid-afternoon. He recited a list of incidents occurring on March 12, March 21, 23, 27, April 1st, April 10, April 11 and April 12, 1975, during which he made observations of groups of persons in front of appellant's premises. He saw some being arrested, other patrons emerging from the tavern with beer cans which were consumed in or on cars parked nearby; he heard foul and filthy language by these patrons, and witnessed incidents described by the prior witnesses. He described the fears of his daughters to come and go from their home during the evening hours. His mother has been unable to visit his home via bus for the past three years because of her fears in walking by the premises.

Joseph Mannion, and Francis Duff, testified in brief corroboration of the previous witness.

No witnesses were called upon by the appellant in refutation of the conditions described by the foregoing witnesses. However, at a prior hearing in this Division, on the return of an Order to Show Cause respecting respondent's Order of Revocation, as noted hereinabove, the co-owner of the corporate stock of appellant corporation, William M. Moore did offer testimony in defense of the charge. An abstract of that testimony, as contained in the Director's Order denying such stay is as follows:

> "On behalf of the appellant, William M. Moore, the president and principal stockholder testified that he had been operating this facility for the past three years and denied that he sells any package goods. He asserts that there is a package liquor store directly across the street which sells to persons who drink in front of his premises.
>
> Because of various complaints he decided to open his premises at 3:00 p.m. a year ago and now begins his operation at 4:00 p.m.
>
> With respect to the shooting incident that occurred on February 17, 1975, he alleged that a man attempted to shoot the bartender but accidentally struck a parton.
>
> He has put signs on outside the tavern marked "No Loitering"; and he insists that those persons who do loiter are not his patrons."

Moon Star, Inc. v. Jersey City, Bulletin 2190 Item 2 .

Despite appellant's disclaimers to the contrary, it is abundantly clear that little, if any, meaningful action was taken to prevent repeated actions of appellant's patrons, which patently constituted the "nuisance" complained of in the charge. I find, as did the Board, that the constant indignities suffered

by the public resulted in an intolerable situation. From the credible evidence presented, it is further clear that the sole remedy for the elimination of the "nuisance" is the revocation of the license privilege. Cf. Ocean Club Corporation v. Jersey City, Bulletin 2122, Item 2, aff'd by the Superior Court, Appellate Division, Bulletin 2148, Item 2.

II.

Appellant urges that the situation faced by it is analagous to the condition described in Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (1971) where the court found that the anti-social behavior of the patrons was not the responsibility of the licensee who should be provided with an opportunity to relocate the premises. In Ishmal, such conclusion was based upon the long history of cooperation between the licensee and the police through which the licensee endeavored to prevent the congregation of narcotic "pushers" in her premises. In this matter, the appellant offered no evidence to indicate even a modicum of concern for official assistance in an effort to rid its place of the undesirables in and outside of its premises.

Relative to the applicability of the doctrine of Ishmal, supra, the court, in an unreported opinion in the matter of Ocean Club, Inc. v. Jersey City, supra, differentiated the factual background of Ishmal, from those in the matter more similar in context to the instant matter.

Further refining the distinction between Ishmal, supra, and the instant matter, Justice Schettino commented:

> "...But, where the problem thus inheres in the location, rather than the quality of the licensee's performance, the licensee, in fairness should be offered a chance to secure another location...." (at p. 352)

Here the testimony of witnesses placed the appellant's location at some two blocks away from a large housing project, between which lie single-family dwellings whose occupants were not partons of appellant's establishment. Those patrons, or others not indigenous to the area, had to select appellant's premises about which to congregate. In short, the appellant's premises were the root-cause of the problem, not the location of it. Cf. The Caje, Inc. v. Bower, App. Div. A3297-71, unreported opinion, recorded in Bulletin 2063, Item 2.

III.

Appellant's contention that the revocation of its license was unusually harsh must be examined in the context of the appellant's past history.

On June 12, 1973, the Board denied renewal of appellant's license and an appeal was taken therefrom to the Director of this

Division. Moon Star, Inc. v. Jersey City, Bulletin 2130, Item 3. The grounds for the denial and the supportive testimony, indicated that the premises were then being conducted in such manner as to constitute a nuisance. Some of the same witnesses in the instant matter, then testified to similar conditions. The Director determined that appellant should be afforded another opportunity to correct the complained of situation described, by retaining a uniformed guard to protect the public from loiterers and litterers.

Upon entry of the said Order, appellant appealed from the imposition of the special condition to the Appellate Division of the Superior Court which, by Order dated November 27, 1973, granted a stay of the said special condition until the determination of said appeal: the Appellate Division affirmed the Order of the Division on June 14, 1975. Re Moon Star, Inc. v. Jersey City, (App. Div. 1973, Docket A-621-73).

During the pendency of the appeal in the Appellate Division, appellant made application to the Board for the removal of the said special condition because it has obtained a purchaser for the said license; it argued, that the imposition of the special condition was based upon the inability of appellant to control its premises; and it asserted the said objections were not directed to the premises. Upon the representation of such sale, the Director entered an Amended Order on February 1, 1974, vacating the special condition upon the withdrawal of the said appeal and the concurrent transfer of the ownership of the licensed premises. Moon Star, Inc. v. Jersey City, Bulletin 2140, Item 2.

The ownership of the premises has, to date, not been transferred, and the appeal was not withdrawn. Moreover, the special condition was not in effect during the pendency of the appeal, and, of course, appellant did not voluntarily employ such special police.

Thus, it is abundantly clear that appellant having been given a full opportunity to rid itself of the social evil it created two years ago, no longer could prevail upon the Board to continue the nuisance.

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance. In order to prevail on this appeal, the appellant must show unreasonable action on the part of the Board constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

> "Did the decision of the local board represent a reasonable exercise of its discretion on the basis of the evidence presented? If it did, that ends the matter of review both by the Director and by the courts...." Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

As the Director held in Ocean Club Corporation v. Jersey City, supra:

> "Reviewing this matter in the ambience of the times in which it is common knowledge that crime and violence in the streets of most major cities have increased considerably in recent years, it is fair to say that the fears expressed by the objectors influenced the Board's action. It is my view that the Board, in honoring the objections, acted reasonably and in the lawful exercise of its discretion."

I find, from careful examination of the evidence, that the Board's determination was supported by substantial evidence, and that it acted in the public interest when, in the exercise of its lawful discretion, it revoked appellant's license.

I, therefore, conclude that appellant has not sustained its burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15. It is, therefore, recommended that the action of the Board be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 29th day of July 1975,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal filed herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-235, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Moon Star, Inc., for premises 268 Duncan Avenue, Jersey City, be and the same is hereby revoked, effective immediately.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - R & F CORPORATION v. JERSEY CITY.

R & F Corporation, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Russell and McAlevy, Esqs., by John P. Russell, Esq., Attorneys for Appellant,
Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action by the Municipal Board of Alcoholic Beverage Control (hereinafter Board) which, on February 3, 1975 revoked appellant's Plenary Retail Consumption License C-119, for premises 78 Stuyvesant Avenue, Jersey City, upon a finding that appellant allowed, permitted and suffered the possession and sale of narcotics (Controlled Dangerous Substances as defined by N.J.S.A. 24:18-2) on the licensed premises, in violation of Rule 4 of State Regulation No. 20.

Appellant contends that the action of the Board was in error, in that it found that the seller of the narcotics was an employee of the appellant. The Board denies this contention, and as a separate defense asserts that the appeal was untimely filed, in consequence of which, the Director had no jurisdiction to entertain the appeal.

At the de novo hearing in this Division, held pursuant to Rule 6 of State Regulation No. 15, counsel for the Board moved for the dismissal of the appeal based upon the answer filed and the contention therein that the appeal was filed out of time.

It was agreed, and uncontroverted, that the action of the Board took place on February 3, 1975. The applicable rule (Rule 3 of State Regulation No. 15) requires that "...all other appeals must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from."

A notice was sent by certified mail, with receipt therefor postmarked March 6, 1975, addressed to the then counsel for appellant. Additionally, a prior notice addressed to the president of appellant corporation at his home address as set forth in the last application for renewal of license, was returned "Address Unknown." Further investigation by the Board indicated that the licensed premises had been vacated by appellant for some time prior to the date of hearing.

The appeal notice was received by respondent April 15, 1975, but was not perfected by filing with this Division until April 23, 1975, which was seventeen days beyond proper filing date.

The legal principle involved here has been amply stated in Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393 (App. Div. 1963) in which the court held (at p. 396):

> "Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature, ...and not with the agency or the courts. ...Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction to accept the appeal."
>
> (emphasis added)

I, therefore, find that in view of the fact that the appeal was filed out of time, the Director lacks jurisdiction to entertain it.

It is further noted that the records of this Division reveal that the appellant's license was not renewed for the 1974-1975 licensing period in that no renewal application was filed. Hence, the issue advanced by the present appeal is moot.

I, therefore, recommend that the motion to dismiss the appeal be granted for the aforesaid reasons; and it is further recommended that the stay of the Board's Order of Revocation by the Director on April 23, 1975, be vacated.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

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

ORDERED, that the respondent's motion to dismiss the said appeal be and the same is hereby granted; and it is further

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed and the appeal filed herein be and the same is hereby dismissed; and it is further

ORDERED that my order of April 23, 1975, staying the respondent's order of revocation pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-119, issued to R & F Corporation for premises 78 Stuyvesant Avenue, Jersey City, be and the same is hereby revoked, effective immediately.

LEONARD D. RONCO
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against

Emersons Ltd. of Wayne, Inc.
t/a Emersons Ltd.
1377 Route #23
Wayne, N.J.,

Holder of Plenary Retail Consumption License C-29, issued by the Municipal Council of the Township of Wayne.

SUPPLEMENTAL ORDER

Cahill, McCarthy and Hicks, Esqs., by Gordon C. Strauss, Esq.
Attorneys for Licensee

BY THE DIRECTOR:

On August 2, 1974, Conclusions and Order were entered herein suspending the subject license for seventy-two days, commencing on Wednesday, August 14, 1974 after licensee pleaded non vult to a charge alleging that on May 11, 1974 it sold alcoholic beverages to four minors, three age sixteen, and one age seventeen, in violation of Rule 1 of State Regulation No. 20. Re Emersons Ltd. of Wayne, Inc., Bulletin 2186, Item 1.

Prior to the effectuation of the order of suspension, on appeal filed, the Appellate Division of the Superior Court, by order dated August 12, 1974, stayed the operation of the suspension. The court affirmed the action of the Director on April 22, 1975. In the Matter of Disciplinary Proceedings Against Emersons Ltd. of Wayne, Inc. (App. Div. 1973), not officially reported, recorded in Bulletin 2186, Item 2.

On June 26, 1975, the New Jersey Supreme Court entered an order denying petition for certification. The suspension may now be reimposed.

However, I have reconsidered the penalty heretofore imposed in this matter, which was the consequence of a violation which occurred before I became the Director of this Division, and was based upon a policy of suspensions then in effect. Since then, I revised the said policy, and, have determined to give the licensee the benefit of a modified penalty of suspension of license, presently in effect, for the subject violation.

Accordingly, I shall now impose a modified suspension of license for seventy days, with remission of fourteen days for the plea entered, making a net suspension of fifty-six days.

Furthermore, I have examined the petition of the licensee, which indicates that the "most significant portion" of its business occurs during the summer months. After considering the circumstances herein, and in order not to unduly penalize the licensee, I shall make the suspension effective as of October 1, 1975.

Accordingly, it is, on this 17th day of July 1975,

ORDERED that Plenary Retail Consumption License C-29, issued by the Municipal Council of the Township of Wayne to Emersons Ltd. of Wayne, Inc., t/a Emersons Ltd. for premises 1377 Route #23, Wayne, be and the same is hereby suspended for fifty-six (56) days, commencing 3:00 a.m. on Wednesday, October 1, 1975 and terminating 3:00 a.m. on Wednesday, November 26, 1975.

Leonard D. Ronco
Director

4. DISCIPLINARY PROCEEDINGS - CHARGE NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against Red's Package Store, Inc. 108 S. Broadway South Amboy, N.J., Holder of Plenary Retail Distribution License D-3, issued by the Common Council of the City of South Amboy.	O R D E R

Wilentz, Goldman & Spitzer, Esqs., by Marvin J. Brauth, Esq., Attorneys for Licensee

BY THE DIRECTOR:

Licensee pleaded "not guilty" to a charge alleging that, from about September 1972 to October 31, 1973, it employed or had connected with it, in a business capacity, Thomas E. Pawelek, the holder of an Unlimited Solicitor's Permit issued by the Director of the Division of Alcoholic Beverage Control, in violation of Rule 7 of State Regulation No. 14.

Prior to hearing on the said charge, certain facts were presented to me which established that there was a complete change of corporate structure, effective on April 14, 1975; and that the present principal officer and stockholders of the corporate licensee were not involved in the said violation. The charges were instituted subsequent to the said change in corporate structure.

Under these circumstances, I have determined to nolle pros the said charge.

Accordingly, it is, on this 24th day of July, 1975

ORDERED that the charge herein be and the same is hereby nolle prossed.

Leonard D. Ronco
Director

5. STATE LICENSES - NEW APPLICATIONS FILED.

Carillon Importers Ltd.
745 Fifth Avenue
New York, New York
Application filed September 29, 1975
for plenary wholesale license.

The Fleischmann Distilling Corporation
625 Madison Avenue
New York, New York
Application filed September 30, 1975
for place-to-place transfer of Plenary
Wholesale License W-83 to maintain a
salesroom at 560 Sylvan Avenue, Englewood
Cliffs, New Jersey.

Leonard D. Ronco
Director