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

BULLETIN 2231 June 29, 1976

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STATE OF NEW JERSEY
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BULLETIN 2231 June 29, 1976

1. APPELLATE DECISIONS - REINGOLD v. HACKENSACK.

Irving Reingold, t/a The New Bell,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
City Council of the City of Hackensack,	)	
Respondent.	)	

Jones, Cuccio, Klinger & Baldino, Esqs., by Allan H. Klinger, Esq., Attorneys for Appellant
Seymour Chase, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On December 8, 1975, the City Council of the City of Hackensack (hereinafter Council) suspended appellant's Plenary Retail Consumption License C-32 for premises 41 Route #4, Hackensack, for thirty days in consequence of a guilty finding of a charge alleging that, on October 30, 1975, appellant permitted the fire doors in the kitchen area to be locked in violation of the local Fire Code (Article 5, Section F-501.1 of the municipal ordinances). The suspension was stayed by order of the Director of this Division on December 18, 1975, pending the determination of this appeal.

Appellant contends that the evidence produced before the Council was insufficient to support its finding and, further, that the Council lacked jurisdiction to entertain the charge prior to its determination by the Municipal Court. The Council, in its answer, denied both contentions.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. By stipulation of counsel, a transcript of the record of proceedings before the Council was accepted into evidence in lieu of further evidence presented at this hearing.

In testimony before the Council, Fireman Bill Shisler testified that, on October 30, 1975 in the course of conducting a routine patrol of buildings in Hackensack, he visited appellant's premises. That building has four doorways, two of which are from the kitchen area. In the conduct of his inspection, he discovered that the doorways in the kitchen area, although legal exit doorways were, in fact, bolted by slip locks, which bolts were in violation of the fire code. During this visit, he was accompanied by appellant. He did not, however, inform appellant of the apparent violation.

Employees in appellant's establishment, Sanford B. Nusbaum, George Nevins, John Gardner and the appellant testified before the Council that a prior check of entranceways was made upon the arrival of the Fire Inspector, so that, by the time the inspection arrived at the subject doors, it had been determined that the doors were unbolted and working properly. Appellant indicated a concern that the doorways were properly opened because a prior infraction of identical nature resulted in a similar charge, and resultant fine about four months previously. He maintained that the doorways were unbolted and were in full compliance with the subject ordinance. He inferred that he was the special victim of an over-zealous administration.

Attempts were repeatedly made on behalf of appellant subject to valid objection, to establish the frequency of inspections to his establishment and the infrequency of inspections to other similar establishments.

In corroboration of the testimony of Fireman Shisler, a copy of his daily report was admitted into evidence. This report disclosed the many visits to locations that his days activity had encompassed, in the middle of which was a line carrying the following information:

> "10 00 pm Out of the Car at 'The Bell', Hackensack Ave. Checking Fire Exits found two locked unlocked them and notified owner of same. Resumed patrol 10 07 pm."

The above line appeared in the middle of the report and as a business entry.

In addition to the copy of the Inspector's log, a copy of a report which he prepared and submitted to Chief Jones, dated November 3, 1975, was also accepted into evidence. The substance of the report is as follows:

> "While on patrol the night of October 30, 1975, at approximately 10 00 PM I inspected the fire exits at 'The Bell', Hackensack Ave. & Route 4 East, I found two locked exits in the kitchen area, one on the southern wall, the other on the

Eastern wall, about the middle. The doors were marked with exit signs (lighted but were secured by means of a sliding bolt which protruded into the upper door jam. I unlocked both doors, and advised the person in charge that the doors should be left open.

Respectfully submitted

/signed/ Firefighter William Shisler #57"

I

The Council found that the testimony given by the Fire Officer was straightforward and credible. On the other hand, the testimony of the appellant and his witnesses appeared contrived and incredible. Each of the witnesses suggested that advice was freely given to him to inspect the doorways before they were seen by the Fire Officer. Such undue concentration of attention to the subject doorways suggests rationalization after the fact. The Council's assessment of such testimony was that it lacked credibility.

Testimony to be believed must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1. In short, testimony must relate circumstances which, in themselves, are credible.

The Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his own personal view. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960). In other words, he may not reverse unless he finds "the act of the board was clearly against the logic and effect of the presented facts". Hudson-Bergen County Retail Liquor Stores Ass'n, Inc. v. Hoboken, 135 N.J.L. at p.511. I find that there is substantial evidence to support the Council's determination.

II

Appellant's secondary contention was that the Council lacked jurisdiction to adjudge appellant's guilt or innocence in that the violation was, in fact, a criminal violation which should have been determined by the Municipal Court and not the Council. The direction of that contention relates to the degree of proof required in the Municipal Court, i.e., beyond a

reasonable doubt, whereas, disciplinary proceedings arising under N.J.S.A. 33:1-1 et seq. are civil in nature and require proof by a preponderance of evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Appellant contended that the Council was without power to impose a suspension as a penalty for the violation of the Fire Code. This contention was based upon the belief that as the Fire Code contained a prospective penalty of a fine and/or imprisonment, the penalty of suspension could not be invoked. Such contention is baseless.

Shortly after the passage of the present Alcoholic Beverage Law (Title 33 et seq.), the then Director (Commissioner) D. Frederick Burnett responded to a parallel question as follows:

> "An ordinance, prohibiting an act proscribed by statute is legally sound where the act is not only against the peace and dignity of the state but also subversive of, or dangerous to the peace, good order, safety or health of the municipality. Howe vs. Plainfield, 37 N.J.L. 145 (Sup. 1874); Bridgeton vs. Zellers, 100 N.J.L. 33 (Sup. 1924). These cases firmly establish the principle that the same act may constitute an offense both against the State and the municipality and constitutionally may be punished both by the state and municipality.
>
> It is clear that the sale of liquor is an act with such a dual aspect. Indeed, the Howe case, supra, dealt with a liquor violation."

Bulletin 87, Item 4. August 8, 1935.

N.J.S.A. 33:1-31 provides that "Any license, whether issued by the director or any other issuing authority may be suspended or revoked by the director, or the other issuing authority may suspend or revoke any license issued by it, for any of the following causes: ...

> h. Any violation of any ordinance, resolution or regulation of any other issuing authority or governing board or body;...."

It must be noted that the Legislature did not condition the applicability of the above to any "conviction" of any ordinance, etc., but merely the violation thereof.

The Council determined the existence of such violation and upon such determination has the authority under the aforesaid statute to impose a suspension against the license. Indeed, the power to convict, fine or imprison under the ordinance rests exclusively in this instance in the Municipal Court.

By further contention, appellant poses the analogy that if the licensee failed to obtain a license for his dog, a consequence of such failure would, if the above logic applied, result in the imposition of a suspension of his license. This contention, too, is without support. N.J.S.A. 33:1-31 must be read pari materia. The entire thrust of that Act relates to the management of a licensed premises; clearly secion "h" too, concerns itself with ordinances and regulations pertinent to the licensed premises. Appellant cannot seriously contend that the Fire Code which relates to places of public gatherings and the fire exits required, does not have a direct relationship to the safety of his patrons.

Notice can be taken of a recent tragic fire in a neighboring State in a licensed premises where heavy loss of life resulted from improper fire exits or regulations. The Fire Code is particularly applicable to places of public gatherings, including appellant's premises, which is typical of establishments requiring proper exits.

I conclude, therefore, the charge herein has been established by a fair preponderance of the credible evidence. Thus, the appellant has failed to sustain the burden of establishing that the Council's action was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Cf. Gach v. Irvington, Bulletin 2058, Item 1.

It is, accordingly, recommended that an order be entered affirming the Council's action, dismissing the appeal, vacating the Director's order staying the Council's order of suspension pending the determination of this appeal and fixing the effective dates for the suspension of license heretofore imposed by the Council and stayed by the said order.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by appellant, and Answer to the said Exceptions were filed by the respondent, pursuant to Rule 14 of State Regulation No. 15.

In his Exceptions, appellant repeats the contentions advanced in its petition of appeal and at the hearing in this Division. These contentions were considered and correctly resolved in the Hearer's report.

Appellant further contends that the Council has "engaged in selective enforcement and harrassment of appellant." However, no proof in support of this contention was advanced, or that his establishment was the only one receiving repeated inspections and violation charges. As was noted by the Hearer, the Council's extreme concern for the fire safety of the public is understandable and laudible. Its action was a lawful exercise of its discretion, and is not a ground for reversal.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the Exceptions filed thereto and Answer to the said Exceptions, 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 April 1976,

ORDERED that the action of the respondent, City Council of the City of Hackensack 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 the Order of December 18, 1975, staying the suspension heretofore imposed by the Council, pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-32, issued by the City Council of the City of Hackensack to Irving Reingold, t/a The New Bell for premises 41 Route #4, Hackensack, be and the same is hereby suspended for thirty (30) days commencing 2:00 a.m. on Monday, May 3, 1976 and terminating 2:00 a.m. on Wedensday, June 2, 1976.

Samuel Gold
Acting Director

2. DISCIPLINARY PROCEEDINGS - PERMITTING CONTROLLED DANGEROUS SUBSTANCES ON LICENSED PREMISES (MARIJUANA) - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

R & C Willis, Inc.
t/a The Rusty Nail
407-409 Boulevard
Seaside Heights, N.J.,

Holder of Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Seaside Heights.

CONCLUSIONS AND ORDER

Kushinsky, Gans & Chaplick, Esqs., by Burton T. Gans, Esq., Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to the following charge:

"On Friday, September 5th into Saturday, September 6, 1975, you allowed, permitted and suffered in and upon your licensed premises unlawful activity pertaining to controlled dangerous substances, as defined by the New Jersey Controlled Dangerous Substances Act (R.S. 24:21.1 et seq.) and on said dates of September 5 and 6, 1975 you allowed, permitted and suffered in and upon your licensed premises the unlawful possession of controlled, dangerous substances, viz., marijuana; in violation of Rule 4 of State Regulation No. 20."

ABC Agents N and P, visited the licensee's premises on Friday evening, September 5, 1975 and an account of their testimony may be capsulated in a brief conversation they had with a bartender, Robert (Bob) Willis, son of the owners of the capital stock of the corporate licensee.

The licensed premises principally attracts a youthful patronage. Shortly after being seated at the bar, Agent P, a female, struck up a conversation with a young patron and his companions. An offer was made to Agent P to try a marijuana cigarette and a conventional pack of cigarettes was produced by one of the patrons from which two 'joints' (marijuana cigarettes) were extracted. The patron lit one of the cigarettes, giving the other to Agent P, who in turn handed it to Agent N who put it in his pocket. The lit 'joint' was being passed

around among the several persons surrounding Agent P when the bartender, Bob Willis, appeared to refill glasses.

Agent N testified to the following:

"A While the joint was being passed around, well, the whole time there was three joints smoked by all of us and at one point Bob [Robert Willis] came up to reorder, to take orders again for drinks, and I stuck out my hand and asked him if he would like a hit of the 'J'.

Q Now, what does that mean in the English language?

A That means if he would like to take a drag off of the marijuana cigarette.

Q Drag? What does that mean?

A That means to smoke the marijuana cigarette.

Q Did he reply to your question?

A Yes, he did. He said, 'Not right now because my old lady is watching,' and at this point I asked him, I said, 'What do you mean your old lady is watching you,' and he said, 'My mother,' and indicated to the end of the bar and I looked and observed a woman who he claimed to be his mother."

Agent P recounted the same incident as follows:

"He [referring to a patron named Keith] asked Agent N to pass the 'J' to the bartender. At this time, I overheard Bobby say, 'I can't, my old lady is watching,' and then he said something about it wouldn't be too cool if she found out that he was smoking while working or something and Agent N kept the marijuana cigarette in his hand and continued to pass it around to the other patrons at this time. During the course of that evening, from the first marijuana cigarette, two more were passed around."

The version of the incident as recounted by Robert Willis differed from that of the agents but he admitted that the patron Keith had "called me over and he just had lit up a marijuana cigarette and I caught him with it and he asked me if I wanted a hit." Willis declared that he took the marijuana cigarette away from Keith and ordered him to leave.

On cross examination, Willis detailed the incident further:

"Q Did you ask him whether this was a marijuana cigarette?

A Well, when he asked me if I wanted a hit, I looked at it and said, 'What is it?' And he said, 'It's a joint.'

Q He told you 'It's a joint'?

A Yes. Then I said, 'You can't smoke that in here.' "

Of all of the youthful patrons surrounding the agents, Keith was the only one Willis was acquainted with; Keith had patronized the premises previously on weekends.

Two bartenders and the co-owner, Carol Willis, testified that, on the subject evening, the bar was very busy. A "Mardi Gras" type celebration was in progress with an attendant unusually loud noise level. They denied that marijuana cigarettes are permitted in the licensed premises.

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

I have had the opportunity to observe the demeanor of the witnesses as they testified and have been able to evaluate and assess such testimony. I am persuaded that the testimony of the agents is both credible and forthright, and stands in a more favorable light than that of the licensee's witnesses.

Robert Willis would have us believe that, although Keith was a regular patron whom he knew and who presumably was aware or should have been aware of the repugnance to marijuana smoking of the licensee, offered a smoke to Willis. Willis asserts that such offer incensed him to the extent that he took Keith's marijuana cigarette away from him and ordered him out of the premises. He threw the recently lit marijuana cigarette in the ash tray and did not notice whether Keith actually exited from the premises.

Both agents explained that Keith urged that the "joint" be passed to Willis; at no time did they hear Keith being ordered to leave the premises. Willis admitted that the alleged incident with Keith took place in close proximity to the agents.

It is illogical that Willis would have been so affirmative in his militancy against marijuana smoking, yet have disregarded the apparently obvious sharing of such smoking by the agents and the other patrons directly in front of him. Little credence can be attached to such self-serving declarations by Willis.

In his summation, the attorney for the licensee placed great emphasis on discrepancies in the testimony of the agents. The discrepancies, which I have carefully analyzed and considered, do not relate to the substance of the charge, or to any material issue; hence, do not affect the ultimate result.

I am persuaded that the testimony of the ABC Agents was forthright, credible and fully supportive of the charge. There was no showing of any improper motivation or bias on their part against the licensee. On the other hand, I have placed little credence upon the testimony offered by the licensee's chief witness, Robert Willis. It is my impression that Willis' account was colored in an attempt to exculpate the licensee.

The general rule in these cases is that the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. I find that the Division's evidence does establish the charge based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042.

Based upon such finding, I recommend that the licensee be found guilty as charged.

Absent prior chargeable record, it is recommended that the license be suspended for a period of thirty days.

Conclusions and Order

Written Exceptions to the Hearer's report were filed on behalf of the licensee, and a written Answer to the said Exceptions was filed on behalf of the Division pursuant to Rule 6 of State Regulation No. 16.

In its Exceptions, the licensee takes issue with the Hearer's acceptance of the facts as testified to by Division Agents. The licensee argues that the Hearer should not have accepted the testimony as credible but, instead, should have accepted the denial by the licensee's witness, Robert Willis, the bartender and son of the principal officers of the corporate licensee.

Since the Hearer had an opportunity to observe the demeanor of the witnesses as they testified, and evaluate and assess such testimony, his recommended factual finding that, "the testimony of the agents is both credible and forthright, and stands in a more favorably light than that of the licensee's witnesses," should be accepted. Thus this contention is devoid of merit.

The licensee argues that the Hearer proposes

> "a somewhat novel rule of law that unless improper motivation or bias is shown on the part of a witness testifying on behalf of the State, that all testimony must be accepted at face value."

This proposition is neither a novel rule of law nor does it require that all such testimony be accepted at face value. It is a fundamental principle that, in evaluating the testimony, the interest or bias of a witness is relevant. In re Hamilton State Bank, 106 N.J. Super 285, 291 (App. Div. 1969). The evidence clearly shows that the ABC Agents were specifically assigned to investigate alleged violations as charged herein and there was no showing that there was any bias or prejudice on their part in that they were improperly motivated. On the other hand, it is equally clear that the licensee's witnesses had a direct interest in the outcome of these proceedings. This argument is rejected.

I have examined the Exceptions and find that they have either been considered and correctly resolved in the Hearer's report, or are lacking in merit.

Consequently, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the Exceptions filed thereto and the Answer to the said Exceptions, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein. I, therefore, find the licensee guilty as charged.

Accordingly, it is, on this 15th day of April 1976,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Seaside Heights to R & C Willis, Inc., t/a The Rusty Nail, for premises 407-409 Boulevard, Seaside Heights, be and the same is hereby suspended for thirty (30) days, commencing 3:00 a.m. Tuesday, April 27, 1976 and terminating 3:00 a.m. Thursday, May 27, 1976.

Samuel Gold
Acting Director

3. APPELLATE DECISIONS - SOUTH PLAINFIELD LIQUOR STORE, INC. v. SOUTH PLAINFIELD.

South Plainfield Liquor Store, Inc.,

Appellant,

v.

Mayor and Council of the Borough of South Plainfield,

Respondent.

CONCLUSIONS AND ORDER

Weiner, Mirabelli & Glennon, Esqs., by Gerald T. Glennon, Esq., Attorneys for Appellant
Angelo H. Dalto, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant, a plenary retail distribution licensee, pleaded non vult to a charge alleging that on September 16, 1975, it sold and delivered an alcoholic beverage to a 17 year old minor; in violation of Rule 1 of State Regulation No. 20 and the pertinent borough ordinance. By resolution adopted on November 24, 1975, the local issuing authority suspended appellant's license for twenty days, with remission of seven days for the plea entered, leaving a net suspension of thirteen days.

In its notice of appeal (no petition of appeal having been filed as imperatively required by Rules 1 and 2 of State Regulation No. 15), appellant requests that the Director exercise his discretion in permitting it to pay a fine in lieu of suspension. That relief was opposed by the respondent in its Answer.

At the hearing de novo, the parties agreed that the sole issue presented for determination involved the question of whether the Director should modify the penalty by the acceptance of payment of a fine in lieu of the aforesaid suspension.

Appellant argues that the Director was invested by N.J.S.A. 33:1-31, (Chapter 9 of the Laws of 1971) with the sole discretion of accepting the payment of a fine in lieu of a suspension. It further argues that the sale to the minor was made by a part-time employee; that the minor was bearded and appeared to be of statutory age; and that the violation was neither willful nor intentional.

Respondent Council, introduced a resolution adopted unanimously which expressed its strenuous opposition to the modification of the penalty as assessed by it, irrespective of the amount of the fine to be imposed.

In justification of its objection to appellant's application, the Council argued that all licensees within the limits of the Borough were notified by letter dated May 14, 1975 from the Chief of Police, receipt of which was acknowledged by the said licensees, including appellant, that concern was expressed by citizens, parents and officials concerning the sale of alcoholic beverages to minors; and all licensees were admonished to immediately discontinue any such illegal liquor sales and services. The letter contained further admonition that all violators would be prosecuted to the fullest extent of the Law. The Council had not retreated from its position in that respect.

While the sole discretion with respect to the acceptance of a fine in lieu of suspension is vested in the Director, I have, as a matter of policy, solicited the views of local issuing authorities before arriving at my determination whether or not to approve such application.

Where, as in the matter sub judice, disciplinary proceedings were instituted by the local issuing authority, and there is absent any allegation or evidence that it was improperly motivated, its views must be afforded great weight. Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 at p. 307; Fanwood v. Rocco, 33 N.J. 404 (1960); F. & A. Distributing Co. v. Div. of A.B.C., 36 N.J. 34 (1961).

I find no evidence that the objection of respondent is arbitrary or manifestly unreasonable.

Having carefully considered all the facts and circumstances herein, I have determined, in the exercise of my discretion, to deny appellant's application for the payment of a fine in lieu of suspension, and to reimpose the aforementioned suspension.

In view of the nature of the issue involved, and as announced by the Hearer, a Hearer's report will not be prepared herein.

Accordingly, it is, on this 5th day of May 1976,

ORDERED that the action of the Borough Council of the Borough of South Plainfield be and the same is hereby affirmed, the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order dated November 26, 1975 staying the effective dates of the suspension heretofore imposed by the respondent pending the determination of the appeal be and the same is hereby vacated; and it is further

DETERMINED and ORDERED that appellant's application to pay a fine, in compromise, in lieu of suspension of license for thirteen (13) days be and the same is hereby denied; and it is further

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of South Plainfield to South Plainfield Liquor Store, Inc., for premises 115 Hamilton Boulevard, South Plainfield, be and the same is hereby suspended for thirteen (13) days, commencing 2:00 a.m. on Wednesday, May 19, 1976, and terminating 2:00 a.m. on Tuesday, June 1, 1976.

Joseph H. Lerner
Acting Director

4. APPELLATE DECISIONS - SOUTH PLAINFIELD LIQUOR STORE, INC. v. SOUTH PLAINFIELD - AMENDED ORDER.

South Plainfield Liquor Store, Inc.,	)	
Appellant,	)	On Appeal
v.	)	AMENDED ORDER
Mayor and Council of the Borough of South Plainfield,	)	
Respondent.	)	

Weiner, Mirabelli & Glennon, Esqs., by Gerald T. Glennon, Esq., Attorneys for Appellant
Angelo H. Dalto, Esq., Attorney for Respondent

BY THE ACTING DIRECTOR:

Conclusions and Order were entered herein on May 5, 1976, affirming the action of the respondent, dismissing the appeal, and reimposing the thirteen day suspension theretofore imposed by respondent, commencing Wednesday, May 19, 1976. Re South Plainfield Liquor Store, Inc. v. South Plainfield, Bulletin 2231, Item 3.

By letter dated May 11, 1976, received in this office on May 17, 1976, the attorney for the appellant requests that the commencement of the suspension be deferred until June 6, 1976 because the appellant had "ordered and made arrangements for substantially more stock and inventory then is normally and regularly ordered by reason of the Memorial Day weekend, commencing May 29 through May 31."

Since this suspension falls within the said period of suspension, I shall defer the commencement thereof until June 1, 1976. However, I find that the request to defer the commencement of the said suspension until June 6, 1976 to be unwarranted, and is, therefore, denied.

Accordingly, it is, on this 17th day of May 1976,

ORDERED that my Conclusions and Order dated May 5, 1976 be and the same is hereby amended, in pertinent part, as follows:

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of South Plainfield to South Plainfield Liquor Store, Inc., for premises 115 Hamilton Boulevard, South Plainfield, be and the same is hereby suspended for thirteen (13) days, commencing 2:00 a.m. on Tuesday, June 1, 1976 and terminating at 2:00 a.m. on Monday, June 14, 1976.

Joseph H. Lerner
Acting Director