

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

BULLETIN 2331

OCTOBER 31, 1979

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OCTOBER 31, 1979

1. COURT DECISIONS - 223 CORPORATION v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2370-78

STATE OF NEW JERSEY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,

Plaintiff-Respondent,

v.

223 CORPORATION, t/a COLONIAL ROOM
BEEF & BEER, PENNSAUKEN MART,
ROUTES 130 & 73, PENNSAUKEN, NEW JERSEY,

Defendant-Appellant.

Submitted May 29, 1979 - Decided June 11, 1979.

Before Judges Allcorn and Botter.

On appeal from New Jersey Department of Law and Public
Safety, Division of Alcoholic Beverage Control.

Novack & Trobman, attorneys for the appellant.

John J. Degnan, Attorney General, attorney for the
respondent (Stephen Skillman, Assistant Attorney General,
of counsel; Anne E. Tan, Deputy Attorney General, on the
brief).

PER CURIAM

(Appeal from the Director's decision in Re 223 Corporation,
Bulletin 2329, Item 1. Director affirmed. Opinion not
approved for publication by Court Committee on Opinions).

2. APPELLATE DECISIONS - PARLOR INN, INC. v. SPARTA.

DISCIPLINARY PROCEEDINGS - UNPROVOKED ASSAULT BY BARTENDER AND CORPORATE STOCKHOLDER UPON TWO PATRONS - EMPLOYED DISQUALIFIED PERSON - LICENSE SUSPENDED FOR 144 DAYS - SUBSEQUENT TRANSFER TO NEW OWNERS - CLOSED 74 DAYS FOR UNRELATED REASONS - CREDIT FOR SAME ALLOWED - EXTENUATING CIRCUMSTANCES.

Parlor Inn, Inc.,
t/a Sparta Inn, }

Appellant,

vs. }

Township of Sparta,

Respondent. }

ON APPEAL

CONCLUSIONS

In the Matter of Disciplinary
Proceedings against

AND

ORDER

Parlor Inn, Inc.
t/a Sparta Inn
15 Main Street
Sparta, New Jersey }

Holder of Plenary Retail Con-
sumption License 1918-33-007-
001, issued by the Township
Council of the Township of
Sparta. }

George J. Minish, Esq., Receiver, by Robert C. Williams, Esq.,
Attorney for Parlor Inn, Inc.
Frank L. Patti, Esq., Attorney for Respondent, Township of
Sparta.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for
the Division.
Michael G. Busche, Esq., Attorney for Raven Enterprises, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This consolidated Hearer's Report encompasses (1) an appeal from the determination of the Township Council of the Township of Sparta (Council) which, by Resolution dated February 28, 1978, sus-

pendent appellant's license for ten (10) days upon a finding of guilt to charges alleging that: (a) on December 29, 1977 at 2:17 a.m., it sold alcoholic beverages on its licensed premises, in violation of § 3-4 of Municipal Ordinance 246; and (b) at the same time and date, it violated Rule 16, Section C of the Township's Alcoholic Beverage Control Rules and Regulations by failing to produce an employee list when requested by police; and (2) a Disciplinary Proceedings instituted by this Division alleging that: (a) on October 28, 1977, it engaged in or allowed a brawl or act of violence upon its licensed premises, in violation of Rule 5 of State Regulation 20 (now N.J.A.C. 13:2-23.6), and (b) from on or about June 1977 to date, it employed a person who had been convicted of a crime involving moral turpitude without said person having his statutory disqualification removed by order of the Director of this Division; in violation of Rule 1 of State Regulation No. 13 (now N.J.A.C. 13:2-14.1).

- I -

Upon the filing of the appeal by the appellant, the Director, by Order dated March 28, 1978, stayed the suspension of ten (10) days pending determination of the appeal.

The Appeal was heard de novo pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

Sargeant Edward F. Finkle of the Sparta Police Department testified on behalf of the respondent that he observed automobiles in the appellant's parking lot at 2:17 a.m., on December 29, 1977. He saw a male enter the tavern through the rear door. Since local closing time was 2:00 a.m., he called police headquarters on the radio and verified the time.

Finkle entered the tavern and observed three persons whose identities were unknown to him, in addition to Peter Armellino, the owner of the stock of the corporate appellant, and a waitress. Armellino claimed that the three were employed by him. Finkle observed that one of them, later identified as Frank J. Rauchenberger, the owner of a licensed establishment in nearby Lafayette, N.J., was holding a so-called "Sour" glass in his hand which he immediately put down upon the bar upon seeing the officer. Finkle stated the glass contained an amber fluid, had froth on the surface and was topped by a slice of orange and a cherry. There were empty glasses on the bar-counter in front of the other two. He did not seize the drink for analysis, nor did he smell or sample it.

Finkle advised Armellino that it was after closing time and he was serving alcoholic beverages. He requested to see the employee list.

Armellino went upstairs to search for it, but could not produce it, stating that the A.B.C. had recently visited the premises and he presumed that they took it.

Peter Armellino, the President and sole stockholder of corporate licensee, testified on behalf of appellant that, at the time of the incident, he was in the process of closing the restaurant. Frank Rauchenberger had come to deliver a purse belonging to Gwen Vey (one of the three described earlier) who had left it at his establishment earlier in the evening. He denied that any alcoholic beverages were sold, delivered or consumed after 2:00 a.m. He explained that the empty glasses that Finkle observed upon the bar were about to be washed by him. He admitted he could not locate the employee form when requested, and stated he found it after the police officer left.

The establishment is, in Armellino's opinion, primarily a restaurant. He has a full kitchen, employs a chef (who departs at 11:00 p.m.), and will, if requested, serve sandwiches or eggs until 1:00 a.m.

Frank J. Rauchenberger next testified in behalf of appellant that he was on the premises to deliver Gwen's purse as hereinabove described. He denies drinking an alcoholic beverage as described by Finkle. As the result of having had bleeding ulcers in the past, lemon juice, an important constituent of a "Sour" would cause him severe stomach pain. He limits his alcoholic consumption to whisky and ginger ale.

- II -

The municipal ordinance which supports the hour's charge provides as follows:

3-4 Prohibited hours of sale.

No licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic beverages on the licensed premises between the following hours on the following days:

- (a) On New Year's Day when it is a weekday, between the hours of 5:00 a.m. and 7:00 a.m.
- (b) On New Year's Day when it is a Sunday, between the hours of 5:00 a.m. and 12:00 noon.
- (c) On other weekdays, between the hours of 2:00 a.m. and 7:00 a.m.
- (d) On other Sundays, between the hours of 2:00 a.m. and 12:00 noon.

(Ord. #246, 2-23-65, § 3-4.)

Note: Rule 1 of State Regulation No. 38 provides: "No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or allow, permit or suffer the removal of any alcoholic beverage in its original or opened container from retail licensed premises, on Sunday, or before 9:00 a.m. or after 10:00 p.m. on any day of the week."

For state statute authorizing a municipality to regulate the hours of sale, see R.S. 33:1-40 et seq.

- 3-5. Closing of premises during prohibited hours of sale; exceptions.

During the hours that sales are prohibited by section 3-4, the entire licensed premises shall also be closed. This requirement shall not apply to: hotels, restaurants as defined in R.S. 33:1-1(t); clubs as defined in R.S. 33:1-12(5).

(Ord. #246, 2-23-65, § 3-5.)

The uncontroverted testimony of Armellino establishes the premises to be a restaurant, not a tavern. It is, therefore, under Section 3-5 not limited to the 2:00 a.m., closing, although it may not sell, serve, deliver or allow the consumption of alcoholic beverages past that hour.

The investigating policeman did not seize the glass with its contents for laboratory analysis, nor did he sample or smell its contents. Coupled with the denial of the manager and his guests that no alcoholic beverage was sold, served, delivered or consumed, I find the evidence to be in equipoise relative to this charge, therefore, not proven by a preponderance of the credible evidence. However, by appellant's admission, the second charge (failure to produce the employee's list when requested) is established, and I so find.

In the absence of a specific advice from the local issuing authority as to how it arrived at the ten (10) days suspension, I shall presume they intended a five (5) days suspension for each of the two charges.

I, therefore, recommend that an order be entered reversing the finding of guilt to an after hour's sale of alcoholic beverages, in violation of Municipal Ordinance 246, Section 3-4; and affirming the finding of guilt for failing to produce an employee list when requested, in violation of Rule 16, Section C, of the Alcoholic Beverage Control Rules and Regulations of the Township of Sparta.

- III -

Parlor Inn, Inc. (now considered as licensee) pleads "not guilty" to the Division charge that:

1. On Friday, October 28, 1977, it engaged in or allowed, permitted or suffered in and upon its licensed premises a brawl, act of violence or disturbance; in violation of N.J.A.C. 13:2-23.6.

And non vult to the charge that:

2. From on or about June, 1977 to date, it employed or had connected with its licensed premises in a business capacity a person who had been convicted of a crime involving moral turpitude, viz., Lawrence Ebbitt, without said person having his statutory disqualification resulting from said conviction removed by order of the Director of the Division of Alcoholic Beverage Control, nor did said person first obtain a Rehabilitation Employment Permit from the Director; in violation of N.J.A.C. 13:2-14.1.

In support of the first charge, Edward H. Brown, a forty seven year old University Administrator and sometime instructor, gave the following testimony in support of the charges. Accompanied by Robert Jager, he entered the licensed premises at approximately 1:30 a.m. on October 28, 1977. They each ordered a drink and Brown noted that the bartender was pouring "bar vodka." He requested a "premium" instead. The bartender voiced annoyance and stated that he'd have to charge an additional sum for the requested vodka, which Brown consented to, without protest.

A few minutes later a woman, later identified as Dawn Simonson, entered, sat nearby and ordered a beer. The three were soon engaged in conversation, and Jager ordered another beer for her. A few moments later, the bartender, Lawrence Ebbitt, ordered them to leave. The order to leave followed so closely upon the service of the beer that Simonson was not afforded time to consume it.

A moment after the bartender ordered them to leave, Armellino, the sole stockholder of the corporate licensee, swore at them and began to approach, followed by four or five of his friends, who had been engaged in a coin-operated game. Armellino struck Brown violently upon the side of his head with his fist, without provocation.

Brown sought to protect himself and struggled with Armellino, falling to the floor. As he struggled to rise he was kicked about his body by the individuals who accompanied Armellino. When Brown finally regained a standing position and prepared to fight back, he was grabbed about the neck from behind by the bartender, Ebbitt, who struck him, the force of which propelled him to the floor where where the attackers proceeded to kick him again.

He was bodily picked up from the floor by an assailant, identified as "Paul", spun and thrown, the force of which broke a rib, and once again, was subjected to kicking about his body.

As he rose to his feet, he observed Ebbitt trying to assault Jager who was upon the floor being choked and kicked, Brown managed to grab a chair from Ebbitt's hand. The beating continued and Brown appealed to Ebbitt to exert his efforts to stop the fight. Ebbitt responded, "if you don't get out of here you black son-of-a-bitch, we'll kill you." The pair managed to fight their way to the door and to the comparative safety of the parking lot.

During the fracas, Brown dropped his auto keys which were retrieved and thrown out into the parking lot after them. As he searched the pavement, on his hands and knees, attempting to locate

them, Armellino came out and kicked him in the face and stated that if they were not gone in eight seconds he (Armellino) would call the police.

Grace Dawn Simonson then testified on behalf of the Division as to her recollections of that evening. With minor variation, she corroborated Brown's testimony. She does recall that Ebbitt explained it was closing time, when he ordered them out. She protested the service of the berr and collection of the money only to be ordered out a minute later.

As Armellino and his friends approached, she sensed trouble and reached for her purse preparing to leave at once. However, a blow to her shoulder knocked the purse to the floor scattering its contents. As soon as she retrieved them she left the barroom.

Robert Jager's testimony was, in the main, corroborative of that given by Edward Brown. Jager is a contractor, retail oil dealer and farmer. He recollects that the bartender ordered them out in an arrogant manner. He responded that he'd leave in a moment, after he finished his drink, explaining that he had only a sip left. Almost simultaneous with his response, he saw Armellino and his fellow pinball players advancing upon them. He was told, "If you don't get out now, we'll throw you out." The statement was followed by a shove which knocked him off balance, and the brawl broke out. He was beaten with fists, kicked and choked to the point that he had to bite his assailant in order to force him to remove his arm from his (Jager's) throat, so that he could breathe. A few of the assailants positioned themselves at the door preventing them from exiting the barroom. Jager stated that they (Jager and Brown) had to "fight their way out of the place." When asked on cross-examination how they managed to gain exit with six men opposing them he responded:

I was a Ranger in the infantry.
If I was a lesser man I would have
been killed. I wouldn't be here if
I was a lesser man. Mr. Brown the
same way . . . We wouldn't have been
there (here).

Jager required six or seven sutures to close a wound over his eye. He suffered various other injuries, including three broken ribs.

When asked on direct examination what the bartender was doing throughout the fracas, Jager responded:

He was enjoying it, he was in it with them . . . He was fighting right with the owner. The owner was the most aggressive of the bunch . . .

Lawrence P. Ebbitt, the bartender on duty that evening, testified on behalf of the licensee that he walked over to where Brown, Jager and Simonson were sitting and said to Brown:

Excuse me . . . the reason I'm starting with you, and I pointed right to Peter (Armellino), and I said, "it's last call. The reason I'm starting with you I don't have to tell that gentlemen it's last call he's the owner, he knows, and the people playing pinball with him are his friends and they know what time they're supposed to be out of here. I have to have you out of here, it's County Law, it's two o'clock.

Ebbitt explained that Brown's response to his reasonable request was an unprintable suggestion. He stated that Armellino overheard the exchange and said to Brown, "the bartender told you it was two o'clock, last call, you have to be out of here." Whereupon Brown reached for the beer mug that was in front of Simonson. Ebbitt reached for and retrieved the mug from Brown's grasp. At that point Ebbitt's friend, Jimmy Harlin, "grabbed him and from that point the fight began."

Ebbitt stated that Paul, whom he identified for the first time as Paul Prester, "a big boy, a wrestler", squared-off with Jager. Prester had Jager pinned to the floor, not punching but apparently choking him because Jager bit Prester's arm. Prester asked Ebbitt for assistance. Ebbitt stated that he ". . . pulled Jager's feet from underneath Paul and pulled him off." He also stated that, "to me that was a fair fight . . . Paul and Jager, one on one . . . the guy biting him, he drew blood, and he (Paul) was just getting back, Okay."

On cross-examination Ebbitt was asked the following question:

Q. So it's your opinion, . . .
is it fair to say, it's your mind that

Mr. Brown was mouthing off in response to your last call sort of caused this altercation by him, saying, (expletive deleted).

A. Yes, Sir.

Ebbitt admitted telling the local police, in a statement taken a day or two after the occurrence, that Brown responded to last call and his statement that the law requires patrons to vacate the bar, to the effect that he should "just beat it, I don't want to hear your problems." He admits not telling the police that Brown had uttered the expletive he testified to at the de novo hearing, but nonetheless maintains that the phrase was uttered.

Peter Armellino, the President, manager and sole stockholder of the corporate licensee, testified that the pair appeared to have been drinking prior to their arrival at his establishment. He corroborated Ebbitt's testimony of the manner and words used to advise Brown, Jager and Simonson of last call, and Brown's harsh response. Armellino then approached the trio, stating, "Excuse me, but you are going to have to leave by two", to which Jager responded, "well, that sounds like a challenge to me."

He asked Armellino who he was and Armellino responded, "I'm Mr. Armellino, I own the restaurant. You are going to have to leave. We don't want any trouble in here." Jager then uttered a vulgar retort. Armellino's fellow pinball players then approached, having observed Brown pick up the beer mug, apparently preparing to hit Armellino with it.

Armellino asserted that Brown and Jager were the aggressors and that he (Armellino) was the one attempting to restore peace. It was Armellino's opinion that they entered the establishment for the sole purpose of looking for trouble as "other people said they are always in trouble", and a detective who investigated the incident stated that, "Jager was always in trouble, regular barroom fighter."

Accordingly to Armellino, Miss Simonson was in the barroom throughout the fight and was neither shoved nor hit. Lastly, he stated the fight was not a serious one and not of the "knock-out battle type T.V. deal Mr. Brown made it out to be."

- IV -

Primarily, I observe that we are dealing with a purely disciplinary action; such action is civil in nature and not criminal.

In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a preponderance of the credible evidence only, Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

The critical inquiry is whether the licensee and its employee, acting under the obligation of the tremendous responsibility which is reposed in the holder of a liquor license, has exercised that degree of care consistent with such obligation in keeping the premises free from disturbances, noise and acts of violence.

It is apparent that the critical issue presented for determination is factual.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only, Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra; Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Evidence, 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 in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

I am persuaded that the version recited by Brown, Jager and Simonson, relative to the events which took place that evening and culminating in an unprovoked, savage assault upon Brown and Jager by Ebbitt, Armellino and their accomplices, was credible and factual.

On the other hand, I find the testimony of Ebbitt and Armellino incredible and unworthy of belief.

I find that the assault upon the two guests was initiated by the corporate licensee's employees, Ebbitt and Armellino.

My examination of the facts and the applicable law generates

no doubt that the aforesaid part of the charge generally dealing with brawls and acts of violence have been established by a fair preponderance of the believable evidence.

The assaults committed upon these patrons by licensee's employees were so brutal that they resulted in broken ribs, cuts that required sutures; and the choking of one of them reached the point where he had to bite his assailant's arm in order to breathe. Nothing in the transcript can in any way account for the ferocity of the attack. It was not enough that they were brutally beaten in the barroom; Armellino and an accomplice followed them into the parking area to continue the assault upon Brown.

I, therefore, recommend a suspension of corporate licensee's plenary retail consumption license for one hundred twenty (120) days because of the aggravated circumstances sub judice. To this should be added thirty (30) days, less a remission of six (6) days, for entering a non vult plea to the charge of employing a criminally disqualified person. Lastly, I recommend reducing the ten (10) days suspension imposed by the local issuing authority to five (5) days as a result of my recommendation that the finding of guilt be reversed one one of the two charges as hereinbefore discussed.

In sum, I recommend a suspension of licensee's plenary retail consumption license for a total of one hundred forty nine (149) days.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14 and N.J.A.C. 13:2-19.6 in these consolidated matters.

Counsel and the trustee in Bankruptcy have advised that, on or about September 7, 1978, the subject license was sold, in bankruptcy, to Raven Enterprises, Inc., now known as Pizza Plus of Sparta, Inc. None of the prior stockholders or anyone associated with the operation of Parlor Inn, Inc. have an interest in or are in any way connected with Pizza Plus of Sparta, Inc.

The subject license ceased active operations in September 1978, although said closing was voluntary and not pursuant to any order of this Division. Counsel for the new owners of the license request that it be credited, either in whole or part, for time served. Such practice is not accepted policy in this

Division, but, in consideration of extenuating circumstances herein, I shall credit 74 days against the total suspension of 149 days recommended by the Hearer in his Report. The license shall be suspended for seventy-five (75) days effective immediately.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them, subject to the aforementioned credit against suspension, as my conclusions herein.

Accordingly, it is, on this 2nd day of April, 1979,

ORDERED that, as to Appeal #4206, the action of the Township of Sparta be and the same is hereby reversed, and the charge therein be and is hereby dismissed; and it is further

ORDERED that, as to Disciplinary #S-11,527, Plenary Retail Consumption License No. 1918-33-007-001 issued by the Township Council of the Township of Sparta to Parlor Inn, Inc., t/a Sparta Inn, for premises 15 Main Street, Sparta, New Jersey be and the same is hereby suspended for seventy-five (75) days, commencing 2:00 a.m. this date and terminating 2:00 a.m. Saturday, June 16, 1979.

JOSEPH H. LERNER
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP A PHOTOSTATIC OR OTHER TRUE COPY OF APPLICATION FOR CURRENT LICENSE ON THE PREMISES - TWO PRIOR FINE LETTERS ELECTED NO RESPONSE - LICENSE SUSPENDED FIVE (5) DAYS - FINE IN LIEU THEREOF ACCEPTED.

In the Matter of Disciplinary Proceedings against)

Leon Sachs, Assignee for Garhill, Incorporated)
 828-830 So. Orange Ave.
 Newark, New Jersey 07106

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License 0714-33-265-003 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

ORDER

 Licensee, pro se.
 Mart Vaarsi, Esq., Deputy Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded "not guilty" to the following charge:

On May 11, 1977, you conducted your licensed business without keeping on the licensed premises a photostatic or other true copy of the application for your then current license; in violation of Rule 16(b) of State Regulation No. 20.

In substantiation of the charge A.B.C. Agent M. testified that, pursuant to routine assignment to inspect the liquor in the licensed premises, he entered the subject licensed premises on May 11, 1977. During the course of his investigation, the agent ascertained that the current license application was unavailable for inspection.

In defense of the charge, Frederick Garland, a principal stockholder of the corporate licensee and the manager of its business, testified that the licensee acquired the liquor business in May 1976. It filed the application with the Newark Board of

Alcoholic Beverage Control for the 1976-77 licensing year and commenced operating in November 1976. Although he and the law firm representing the licensee requested a copy of the license application from the said Board, by mail and by his calling at the Board office personally, neither he nor the attorneys ever received a copy thereof. He does have a copy of the 1977-78 license application on the premises.

The rule alleged to be violated, i.e., Rule 16(b) of State Regulation No. 20 (now N.J.A.C. 13:2-23.13) provides, in its relevant part, that no licensee shall conduct the licensed business unless a photostatic or other true copy of the application for the current license is kept on the licensed premises and available for inspection. It is patent that the rule imposes strict liability upon a licensee and that the rule was violated herein. The defense raised may be considered as a mitigating factor, solely.

Thus, I recommend that the licensee be found guilty of the said charge.

In recommending a penalty, I am mindful that similar offenses have been normally processed by a fine in the amount of \$50.00. The prosecutor averred that two such fine letters were mailed to the licensee and because these letters elicited no response, the aforementioned charge was preferred.

Upon considering all of the factors hereinabove expressed, including a suggestion offered by the Deputy Attorney General, I recommend that the licensee be afforded an opportunity to pay a fine in the sum of \$50.00 in lieu of a five (5) days suspension of license.

Conclusions and Order

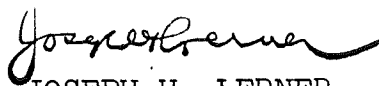
No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-19.6.

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

I find the licensee guilty of the charge and, in lieu of suspension of license for five (5) days, I shall accept a fine in the amount of \$50.00.

Accordingly, it is, on this 10th day of April, 1979,

ORDERED that a fine in the amount of \$50.00 be and the same is hereby accepted in lieu of suspension of license for five (5) days.

A handwritten signature in cursive script, appearing to read "Joseph H. Lerner".

JOSEPH H. LERNER
DIRECTOR