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

BULLETIN 2142 APRIL 8, 1974

TABLE OF CONTENTS

ITEM

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

BULLETIN 2142 APRIL 8, 1974

1. APPELLATE DECISIONS - ONE NINETY FOUR BAR, INC. v. PASSAIC.

One Ninety Four Bar, Inc., t/a One Ninety Four Bar, Inc.,
Appellant,
v.
Municipal Board of Alcoholic Beverage Control of the City of Passaic,
Respondent.

On Appeal

CONCLUSIONS and ORDER

Irving S. Zacharewitz, Esq., Attorney for Appellant
Michael Konopka, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) which on June 26, 1973 denied appellant's application for renewal of its plenary retail consumption license for premises 194 Passaic Street, Passaic.

The petition of appeal contends that the action of the Board was erroneous in that its determination was based upon one incident that took place within the premises; that, although the said incident resulted in a fatality, it had not occurred as a result of any violation of either the law or regulation pertaining to the license.

The Board denied this contention and stated that the resolution of denial adopted by the Board, while referring to the tragic situation outlined in the petition of appeal, also contained language that the Board "determined that the public convenience and necessity require that the ... license not be renewed ...."

A de novo hearing was held 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.

At the outset of the hearing counsel for both parties stipulated the introduction into evidence of the resolution of the Board and a prior resolution wherein charges against appellant were dismissed. Further, police reports theretofore submitted to the Board pertaining to incidents allegedly in connection with appellant's licensed premises were accepted into evidence. However, counsel for appellant did not stipulate that the information contained in the reports was necessarily factual from an evidentiary standpoint.

Rudolph Intelisano, a member of the Board when the resolution complained of was adopted, testified that the Board examined the reports of the Police Department which were admitted into evidence. He stated that the Board acted unanimously in its determination that the many incidents related would not in themselves have been sufficient to deny renewal of appellant's license but they were considered in light of the fatality which occurred in the premises on April 3, 1973. Based on the totality of the record, the Board determined that renewal of appellant's license would not be in the best interests of the community.

On cross examination Intelisano admitted that three of the matters brought before the Board resulted in no finding against appellant save one which was dismissed upon want of prosecution. He stated that he believed that the Board had had difficulty in getting the parties involved to come forward to testify. He further admitted that he recalled no police recommendation for either renewal or dismissal, but added that such recommendations were often given informally to the Chairman of the Board who referred to them in the Board's discussions. He added that no Board member or its secretary in office in the past year was presently in office.

Appellant introduced the testimony of Leslie Peters, who described himself as the manager of the corporate licensee's premises. His wife and another female are the owners of all of the corporate stock of the licensee corporation but take no active interest in the licensed business. He is on duty from eight o'clock in the morning until six o'clock in the evening but he often remains on the premises many hours after that. On weekends he closes the premises at its closing hour of 3 a.m.

While there have been no incidents in the premises since his tenure in 1970, excluding the fatal shooting, there have been some complaints made, which were dismissed. These primarily related to incidents that occurred outside of the premises which he described as having occurred without his knowledge. This establishment is very well run and his patronage is well-behaved. He had had no occasion to call for police aid at any time and, for a short two-months period in the latter part of 1972, he had hired a security guard to prevent entry of minors. That guard service was dismissed upon the advent of the eighteen-year-old drinking law. He is presently negotiating to sell the tavern and has a ready buyer. Appellant's lease extends to February 1975.

A capsulated version of the police reports in the hands of the Board reveals that: On June 28, 1972, one nineteen-year-old boy was stabbed and shot, taken by police to the hospital where it was alleged that the perpetrators had committed the act in appellant's premises. On August 21, 1972, a fifty-year-old man received a laceration on his arm in appellant's premises. On November 11, 1972, a woman attempting to break up a fight between two other women in appellant's premises was hit over the head. On December 14, 1972 a man initially claimed to have been stabbed in appellant's premises but, on hearing before the Board, the man declared that he had been stabbed outside and came into the premises merely to obtain aid. On December 22, 1972, a twenty-year-old lady was stabbed by a broken beer bottle in appellant's premises.

On April 3, 1973, appellant's bartender became engaged in an altercation with a recalcitrant patron, as a result of which the patron was shot by the bartender, who was charged with homicide and later convicted of manslaughter. Although counsel for appellant vigorously urged that the altercation was unprovoked by the bartender and was a spontaneous act for which the licensee should not be held accountable, the statements in the police report and by the bartender indicated that, following the shooting, the victim's body was carried to a vacant lot across the street from the premises and, save for an anonimous call to police, the connection between the shooting and the licensed premises might not have been discovered.

Appellant contends that, as there has been no adjudication of any disciplinary infraction by it and, as the police reports do not contain any reports of investigation of the incidents described in the reports submitted to the Board, there was no substantial evidence upon which the Board could properly deny renewal of appellant's license. Such contention is patently without merit.

The crucial issue on this appeal is whether the record substantiated and justified the Board's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where the renewal of a license is sought, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957). As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (1946):

> "The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585;

Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28.... The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support." In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953).

The line of demarcation between what is a proper exercise of discretion by a municipal issuing authority and what is a clear abuse of that discretion is not finite and often becomes beclouded by imponderables and variables. The Director of this Division has unhesitatingly reversed the action of the municipal authority where its action was manifestly unreasonable and arbitrary. See Board of Commissioners of Bayonne v. B & L Tavern, Inc., 42 N.J. 131 (1964), in which no complaint had been lodged against the licensee for more than a year-and-a-half. An illustrative sampling of instances in which the Director reversed the issuing authority upon denial of renewal embraces such situations as: absence of any charges preferred against the licensee (DeVries v. Passaic, Bulletin 1994, Item 1; Burks v. Passaic, Bulletin 1967, Item 4) or where the record involved a violation six years prior (Slobodian v. Passaic, Bulletin 1855, Item 1) or where the only serious charge against the licensee was pending at renewal date (Charlie's Capri, Inc. v. East Newark, Bulletin 1901, Item 1) or where the occurrence of a homicide within the licensed premises gave rise to no charge against the licensee (E A V Liquors & Bar, Inc. v. Paterson, Bulletin 1928, Item 2) or where newspaper accounts of difficulties arising within the licensed premises were not followed by any charges (Skipper's Inc. v. Long Branch, Bulletin 1843, Item 2) or where the Board did not approve of the type of patrons the licensee attracted (Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2).

Conversely, the Director has affirmed denials of renewal applications where licensee sustained a forty-days suspension for

permitting an indecent dance followed by a few minor incidents (570 Main, Inc. v. Passaic, Bulletin 1992, Item 1); where there were five minor complaints, none of which resulted in suspensions (Craner & Pilon v. Paterson, Bulletin 1918, Item 1); where there was loud and noisy conduct of patrons, not sufficient to cause suspensions (111 Park Street Corporation v. Orange, Bulletin 1935, Item 1 and R.B. & W. Corporation v. North Caldwell, Bulletin 1921, Item 1). The mere noise disturbance and "college boy pranks" without disciplinary proceedings (Edelson v. Paterson, Bulletin 1999, Item 4) in one instance, and the presence of homosexuals within the premises resulting in no suspension of license (Danny's Red Ball, Inc. v. Elizabeth, Bulletin 1978, Item 1) were both sufficient bases for denial of renewal.

The attorney for appellant argues that, in order to properly refuse to grant appellant's application for renewal it must present and prove charges as must be specified. Of course, this is not so. As the court expressed it in Tumulty v. Dunellen, Bulletin 1487, Item 4, aff'd App.Div. 1963, see Bulletin 1519, Item 1:

> "... The problem before the Director was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future ...."

See Downie v. Somerdale, 44 N.J. Super. 84.

It is proper for municipal issuing authorities in passing upon applications for renewal of liquor licenses to take into account not only the conduct of licensees but also conditions not attributable to its conduct which render a continuance of a tavern in particular location against public interest. Nordco, Inc. v. State, supra.

The courts will interfere in the exercise of discretion by the municipal issuing authority only in the case of manifest error, clearly unreasonable action or some more untoward impropriety. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598, 600 (1955). Cf. Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970).

The above illustrations of the applicability of the Director's appellate function clearly separate those typical situations when the action of the municipal authority represents an abuse of discretion from those where that action is proper. In the instant matter the record of appellant, containing as it does a lengthy suspension for a serious offense,

coupled with a series of minor but repeated situations, lead the Board to no other conclusion than that appellant's license should not be renewed.

It is accordingly concluded that appellant has not sustained the burden of establishing that the action of the Board was erroneous or an abuse of discretion and should be reversed, as required by Rule 6 of State Regulation No. 15.

I therefore recommend that the action of the Board be affirmed, and the appeal be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the appellant in accordance with Rule 14 of State Regulation No. 15. No answers to the said exceptions were filed on behalf of respondent.

I have carefully considered the said exceptions and find that they have either been fully considered and satisfactorily resolved in the Hearer's report, or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of February 1974,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic in denying appellant's application for renewal of its plenary retail consumption license for the current licensing period for premises 194 Passaic Street, Passaic, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated June 29, 1973 extending the term of the said license for the 1973-74 licensing period pending the determination of this appeal, be and the same is hereby vacated.

Robert E. Bower
Director

2. APPELLATE DECISIONS - BJB CORPORATION, ET ALS. v. LAKEWOOD ET AL.

BJB Corporation, et als., Appellants, v. Township Committee of the Township of Lakewood, and Barry Enterprises Corp., Respondents.	On Appeal CONCLUSIONS and ORDER

Gaetano J. Alaimo, Esq., Attorney for Appellant
James P. Jeck, Esq., Attorney for Respondent Township
Steinberg & Steele, Esqs., by Phillip L. Lucas, Esq., Attorneys for Respondent Barry Enterprises Corp.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action by the Township Committee of the Township of Lakewood (hereinafter Committee) which on July 16, 1973 approved an application for a place-to-place transfer of plenary retail distribution license issued to respondent Barry Enterprises Corp. from premises 210 Monmouth Avenue to 60 Chambers Bridge Road, Lakewood, which transfer was conditioned upon respondent obtaining municipal approval of premises to be constructed at the new location.

Although no petition of appeal was formally filed pursuant to Rule 1 of State Regulation No. 15, the notice of appeal filed by appellants carried with it its grounds of appeal indicating that a letter of objection had been furnished the Committee by appellants concurrent with the hearing before the Committee. While no copy of such letter supported the contention, the answer of respondent Barry Enterprises Corp. refers to the letter wherein appellants contend that the proposed area to which the transfer was approved would not support two retail distribution licensees and was too near to a local high school.

The Committee submitted a copy of the adopted resolution which indicated that its action was taken after a full hearing before it and when, upon its investigation, it determined that the transfer would be in the best interests of the community and should be granted.

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, the relevant minutes of the meetings of the Committee held on July 10 and July 23, 1973, were received into evidence.

Appellants introduced the testimony of Nicholas Stilwell, Business Administrator of Brick Township. By his testimony it appeared that the approved site in Lakewood Township was in close proximity to the municipal border of Brick Township, across which border are located a high school and a vocational school. His principal objection to the transfer was that the site was too close to those schools and alcoholic beverages would be too readily available to the students.

Ben Dykman, one of the principal stockholders of the corporate appellant, testified that the licensed premises which respondent Barry Enterprises Corp. operates are located about 650 feet from the proposed site to which transfer was approved. A distillation of his lengthy testimony revealed that his objection to the transfer was the potential loss of business his establishment might suffer because of an additional licensed premises in the area.

Lawrence D'Zio, a former mayor and member of the planning board, on behalf of the Committee testified that the unanimous action of the Committee approved Barry Enterprises Corp.'s application for transfer to the proposed site upon which a shopping center is contemplated. Such center, which will include a bank, is intended to serve a number of new residential complexes. He did not feel that the proximity to the Brick Township High School or to the Ocean County Vocational School would be detrimental to the students of either school. He and his fellow members felt the new location would inure to the best interest of the municipality.

Building Inspector Pierson Estell testified concerning several developments containing several hundred units planned or under construction within a three-mile radius of the proposed site.

The Committee relied on the testimony of Robert E. Powers and Robert F. Lightbody, a surveyor and traffic control analyst respectively. The testimony of neither witness contributed significantly to the issue involved other than affirming that the proposed site is located on a heavily trafficked road.

The crucial issue is whether the Committee acted reasonably and in the best interests of the community. Preliminarily, it is to be noted that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion and, if so based, its action will be

affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (1946). As the court stated in Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960), aff'd 33 N.J. 404 (1960). "... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

As the court articulated in Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970):

> "... Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

Appellants' primary contention that its business would be negatively affected when a new license comes into operation within the area is not a proper ground of reversal of Committee's action. It has long been held that:

> "... An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing licensee will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual. It is settled that a denial of a license may not be predicated upon the sole ground of injury to the profitable conduct of the business of existing licensees...."

Kelley v. Manalapan et al., Bulletin 531, Item 3; cf. Forbes Liquors, Inc. v. Brick and Kenmall, Inc., Bulletin 1641, Item 1.

The remaining objection that the proposed site lies in too close proximity to a school is also without merit. The schools involved are located in an adjacent municipality (Brick Township), the School Board of which raised no valid objection to the transfer other than by letter to the Director of this Division and by the testimony of the Brick Township's Business Administrator whose objections were based upon mere speculation that a distribution licensee, i.e., a package store, might sell alcoholic beverages to students.

The Committee was primarily concerned with the benefits the new shopping area would bring to the community and the need for such area to contain a distribution licensee to serve

the anticipated shoppers. Such concern is a reasonable exercise of the Committee's discretion and, in the absence of showing improper motives by the members of the Committee, of which none were shown, its determination should not be reversed.

Therefore, upon consideration of all of the credible evidence herein, including the exhibits and argument of counsel, I conclude that appellants have failed to sustain the burden of establishing that the action of the Committee was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Hence I recommend that an order be entered affirming the action of the Committee and dismissing the appeal.

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 and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of February 1974,

ORDERED that the action of the respondent Township Committee of the Township of Lakewood be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

Robert E. Bower
Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

De Forst Tavern, Inc.
t/a Sugar Bill's
305 Passaic Avenue
Passaic, N. J.,

Holder of Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.

CONCLUSIONS and ORDER

Michael N. Steinberg, Esq., Attorney for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on May 12, 16, 22, 30, June 6 and 8, 1973, it permitted gambling, i.e., "numbers game", in the licensed premises, in violation of Rule 6 of State Regulation No. 20.

ABC agent M testified that on May 12, 1973, he entered the licensed premises on specific assignment. He observed a barmaid, later identified as Dolores, hand a patron, identified only as "Coty", a slip of paper and orally indicated she wanted "518 for 4 and 1." The agent explained that in the parlance of "numbers" gambling such a bet involved a risk on number 518 for $4 on the totals of the first race at a given track and $1 on the second race, hence a total bet of $5. On May 16, 1973, the agent returned to the premises and again observed "Coty" handing patrons white pieces of paper and accepting money when the papers were returned to him.

Another patron was observed taking such papers and the agent indicated to the barmaid Dolores that he wished to make a bet, whereupon the barmaid referred another man to the agent. A bet was made by the agent on number 518 similar to the bet the agent had observed. He was advised by the male who accepted the bet that, in the event he won, he would receive $450.

Agent M further testified that he returned on May 22, 1973, and observed "Coty" receive white slips of paper and engage

in conversations concerning bets. On a subsequent date (May 30, 1973) the agent returned and he related conversations with reference to betting. In response to a question, he indicated that the principal owner of the corporate stock of the licensee corporation was not present, whereupon counsel for the licensee interposed an objection as to any testimony being admitted when the principal owner was not present. Upon explanation provided that the responsibility of the licensee extends to the employees of a licensee corporation (Rule 33 of State Regulation No. 20) and that such testimony was perfectly permissible, the licensee retracted its plea of not guilty and entered a plea of non vult.

In mitigation the licensee introduced the testimony of James De Loach who stated that he owns all of the corporate stock of the licensee corporation and has been conducting its business for the past four years. During that time there have been no complaints against his premises nor visits by police except at his invitation to remove a disorderly patron. He has personally never been arrested during his fifty-year lifetime and the only brush with the law that he has ever had was a traffic violation.

Counsel for the licensee urged the exemplary record of De Loach as a citizen and his otherwise unblemished operation of the licensed premises should be favorably considered by the Director in administering the penalty for the charge herein.

The fact that licensee has not been previously involved with local authorities is not a consideration in the imposition of a penalty herein. However, absent prior record, it is recommended that the license be suspended for ninety days. (Re Arnone, Bulletin 1971, Item 3), the minimum penalty precedentially imposed for the subject violation.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 6 of State Regulation No. 16.

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

By letter dated February 12, 1974, the attorney for the licensee has urged, in mitigation of the recommended penalty, that the Director consider the fact that the principal officer of the licensee has operated this tavern for the past four years and has had no prior conflicts with law enforcement agencies except for this

matter and "an indictment in connection with these charges now pending in the Passaic County Court". As the Hearer noted in his report, the recommended penalty was based upon precedential minimum penalty imposed in such cases by this Division where a licensee has no prior record.

Accordingly, it is, on this 21st day of February 1974,

ORDERED that Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to De Forst Tavern, Inc., t/a Sugar Bill's for premises 305 Passaic Avenue, Passaic, be and the same is hereby suspended for ninety (90) days, commencing 3:00 a.m. on Wednesday, March 6, 1974 and terminating 3:00 a.m. on Tuesday, June 4, 1974.

ROBERT E. BOWER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - MISLABELING OF BOTTLE - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against	)	
F. & J.'s Reservoir Bar and Grill, Inc. t/a Dutch House 24-07 Fair Lawn Avenue Fair Lawn, N.J.,	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Fair Lawn.	)	

David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

> "On March 26, 1973, you possessed, had custody of and allowed, permitted and suffered in and and upon your licensed premises an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz:
>
> One 4/5 quart bottle labeled 'Heaven Hill Old Style Kentucky Straight Bourbon Whiskey, 86 proof'
>
> in violation of Rule 27 of State Regulation No. 20."

Following the entry of the not guilty plea, notices of the scheduled hearing date (which had been rescheduled at the request of licensee, to enable it to obtain an attorney) were sent to the licensee. However, at the date of the hearing held in this Division, neither the licensee nor anyone on its behalf appeared to contest the charge, nor was any reason given for its failure to appear. Whereupon, the hearing was held ex parte.

In support of the charge, the Division file was entered into evidence. This file disclosed that on March 26, 1973, agents of this Division made a routine examination of the alcoholic beverage stock in the licensed premises. One bottle, as described in the charge, appeared, upon preliminary examination to contain an alcoholic beverage which was below the proof as described on its label. In consequence, this bottle and a sealed original bottle of the identical make and type were removed from the licensed premises and deposited in the laboratory of the Division chemist.

A laboratory report, properly certified by the Director, was accepted into evidence; the report revealed that the offending bottle contained proof of 80.35. The companion and unopened bottle, similarly examined, contained 86.26 proof. The labels of both bottles described the contents as containing 86 proof.

I, thus, conclude that the bottle seized, as possessed by the licensee, did not contain contents as described on the label thereof, in violation of Rule 27 of State Regulation No. 20.

Licensee has no prior adjudicated record. It is, accordingly, recommended that the license be suspended for ten days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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 conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 14th day of February 1974,

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Fair Lawn to F. & J.'s Reservoir Bar and Grill, Inc., t/a Dutch House for premises 24-07 Fair Lawn Avenue, Fair Lawn, be and the same is hereby suspended for ten (10) days, commencing 3:00 a.m. Wednesday, February 27, 1974 and terminating 3:00 a.m. Saturday, March 9, 1974.

ROBERT E. BOWER
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - HOURS VIOLATION - PRIOR DISSIMILAR VIOLATION - ON PLEA LICENSEE PERMITTED TO PAY A FINE IN LIEU OF 25 DAYS SUSPENSION.

In the Matter of Disciplinary Proceedings against

Terracina, Inc.
t/a Tube Bar
12 Tube Concourse
Jersey City, N.J.

Holder of Plenary Retail Consumption License C-184, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS and ORDER

Michael Halpern, Esq., Attorney for Licensee

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, October 14, 1973, it sold alcoholic beverages for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee, under its present corporate ownership, has a prior record of suspension for thirty-two days effective November 13,1973 for sale of alcoholic beverages at less than the filed price thereof, Re Terracina,Inc. Bulletin , Item .

The license would normally be suspended for twenty-five days on the charge herein, to which will be added five days by reason of the dissimilar violation occurring within the past five years, making a total suspension of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $6,625.00 in lieu of suspension of license for twenty-five days.

Accordingly, it is, on this 20th day of March 1974

ORDERED that the payment of a fine of $6,625.00 by the licensee is hereby accepted in lieu of suspension of license for twenty-five (25) days.

Joseph H. Lerner
Acting Director