

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

BULLETIN 2245

February 9, 1977

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STATE OF NEW JERSEY
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February 9, 1977

1. COURT DECISIONS - CELLA REALTY CO., INC.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 4073-74

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

Cella Realty Co., Inc.
t/a Cella's Ship's Bar
1001 N.W. Central Avenue
Seaside Park, N. J., etc.

Argued November 3, 1976 - Decided November 17, 1976

Before Judges Crane, Michels and Leonard

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

Mr. John A. Matthews, Jr., argued the cause on behalf
of appellant (Messrs. San Filippo, Matthews, Carkhuff &
Blackman, attorneys; Mr. Robert B. Blackman and Mr. John A.
Matthews, Jr., on the brief).

Mr. David S. Piltzer, Deputy Attorney General, argued the
cause on behalf of respondent (Mr. William F. Hyland,
Attorney General, attorney).

PER CURIAM

(Appeal from the Director's decision in Re Cella Realty
Co., Inc., Bulletin 2199, Item 1. Director affirmed.
Opinion not approved for publication by Court Committee
on Opinions).

2. NOTICE TO WHOLESALERS FILING RETAIL PRICES - EXTENSION OF FILING DATE FROM NOVEMBER 30 TO DECEMBER 4, 1976 DUE TO STRIKE.

TO ALL WHOLESALERS FILING WHOLESALE TO RETAIL PRICE LISTINGS:

As a result of the recent labor strike by warehouse employees of many New Jersey licensed wholesalers, the Division has been petitioned by said wholesalers to extend the period for deliveries of orders received on or before November 30, 1976 of their reduced alcoholic beverage price listings ("post-offs") filed for the month of November, 1976, for sales to retailers to help compensate for some of the number of days during which deliveries of alcoholic beverages could not be made by them to retailers. It has been requested that deliveries of orders received on or before November 30, 1976 of filed November price reductions should be extended to December 4, 1976 (inclusive).

Licensed wholesalers who were not involved in the strike should also have the privilege to extend deliveries of their reduced November price listings on orders received on or before November 30, 1976 for a similar period in December in order to remain competitive with other wholesalers. Obviously if this is not granted, the group of wholesalers receiving the extension would have an unfair advantage over those not receiving the extension, at least with respect to brands of alcoholic beverages being sold by a member of each group.

In view of the special hardship occasioned by the labor strike in question, I have decided to grant the relief requested by wholesalers who were involved in the strike. Since State Regulation No. 34, as an implementation of the legislative policy set forth in the Alcoholic Beverage Law (N.J.S.A. 33:1-89-93) to prevent price discrimination to retailers, is designed to afford manufacturers and wholesalers an equal opportunity to compete price-wise in their sales to retailers, I will also grant the relief to the other wholesalers.

Accordingly, pursuant to authority granted by N.J.S.A. 33:1-39 and State Regulation No. 34, and good cause appearing, it is specially ruled that deliveries of orders received on or before November 30, 1976 of all reduced alcoholic beverage price listings filed by wholesalers for sales to retailers for the month of November, 1976, pursuant to Rule 9(a) of State Regulation No. 34, are hereby extended to, and including December 4, 1976.

JOSEPH H. LERNER
DIRECTOR

Dated: 11/16/76

3. APPELLATE DECISIONS - GOMEZ v. HARRISON.

Ramia Gomez,	]	
	]	
Appellant,	]	
	]	On Appeal
v.	]	
	]	CONCLUSIONS
Town Council of the Town	]	AND
of Harrison,	]	ORDER
	]	
Respondent.	]	
	]	
Robert J. Jerome, Esq., Attorney for Appellant		
Walter Michaelson, Esq., Attorney for Respondent		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Mayor and Council of the Town of Harrison (hereinafter, Council) which, on February 3, 1976, unanimously denied appellant's application for a place-to-place transfer of her Plenary Retail Consumption License C-22, from premises 203 South 4th Street to 338 Sussex Street, Harrison.

Appellant contends that the action of the Council was arbitrary because, she alleges, she would better serve the public at the proposed location than at the existing one. The Council, in its answer, denies this contention and avers that the proposed location is adequately serviced by liquor licensees; that the transfer application was opposed by residents of the neighborhood; and that the public good would not be served by the grant of the application to transfer.

A de novo hearing on appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15 at which the parties were afforded full opportunity to present evidence and cross-examine witnesses.

During the course of the hearing, the name of Marcia Passos, one of the original appellants, was deleted as a party to the within proceeding for the reason that she is no longer connected with the license or the licensed premises.

In addition to appellant, the landlord of the proposed premises, Louisa Sanchez, and a neighbor, Anthony Pennella, testified concerning the existing premises and proposed location which were admittedly less than one hundred feet apart.

The factual contentions are not in substantial controversy. Appellant acquired her existing premises in the Summer of 1975. In February 1976, she applied for the place-to-place transfer for the reason that her existing facilities were too small for the operation of a restaurant business. Additionally, the proposed location had once been a tavern, the license for which had been revoked; thus, the proposed location afforded her a tavern-restaurant facility within less than one hundred feet from appellant's existing premises.

Pennella described the area as being both industrial and residential. There are factory buildings located across the street from the proposed location, and others are down the street from the existing premises.

The Council presented testimony of Angelo Cifelli, Chairman of the Licensing Committee of the Council, who, together with Council member Gorski testified that the Council had unanimously opposed the subject transfer.

Councilman Cifelli asserted that he voted against the proposed transfer because, in addition to considering the objections, articulated by the neighbors, to the transfer, he was also mindful of the fact that there were sufficient available liquor outlets in the area which also served food.

Councilman Stanley Gorski, in whose Ward the subject premises are located, testified that he is familiar with both the present premises and the proposed transfer situs. He asserted that appellant could install a kitchen at the present location and "...it would be much bigger than this here place that he wants to move into." Moreover, he considered the objections of the neighbors in voting against the transfer. He asserted that, ever since the liquor license of the previous occupant of the proposed transfer location was revoked, he has received no complaints from the neighbors relative to parking or anything else.

It was stipulated that the testimony of the other members of the Council (except for Councilman Makulinski) would be similar to the testimony offered by Councilmen Cifelli and Gorski.

Anna Caveney and Neil Goham who reside in the area of the proposed location, testified that their opposition to the transfer related to the conduct of that premises when it was previously licensed. The record of the then owner of that license was a particularly poor one, and the neighbors were relieved when that license was revoked. Since that time, there have been no difficulties in the area. A petition was obtained from several neighbors and presented to the Council.

Councilman John Makulinski testified that he has changed his opinion since he voted against the proposed transfer. In his opinion, the denial of appellant's application resulted from the political activity of Sanchez, the landlord of the proposed premises.

The burden of establishing that the action of the Board in denying the transfer was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license will be transferred to a particular locality resides, in the first instance, within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen, Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving or denying the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954).

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4.

Further, "once the municipal board has decided to grant or withhold approval of a...application...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...." Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970).

The Director abides by the municipality's grant or denial of the application so long as its exercise or judgment and discretion was reasonable. This has been the Director's settled practice. See Fanwood v. Rocco, 33 N.J. 404 (1960).

Appellant filed a memorandum in support of her position contending principally that the Council's action was politically motivated. Councilman Makulinski's statement of his belief that the Council's action was so motivated was urged as a basis for reversal of Council's decision. The record, however, despite Makulinski's opinion, fails to substantiate such alleged motivation. Councilman Cifelli vigorously denied such alleged improper motivation in rebuttal testimony and emphasized that the Council had rejected a prior application made for a transfer to the same proposed location for similar reasons expressed herein.

It is noted that Councilman Makulinski, who challenged the motives of his colleagues as having been politically inspired, did, himself, vote against appellant's application but at the hearing in this Division, apparently changed his mind and now feels that appellant is entitled to the transfer.

It is the duty of the Director of this Division to make findings based upon the presented facts as the record reveals.

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Willner's Liquors v. Irvington, Bulletin 1192, Item 2 and cases cited therein. See also Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In other words, the action of the municipal issuing authority may not be reversed by the Director 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 Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947). Cf. Fanwood v. Rocco, Supra.

If the appellant is to prevail, reliance must be placed in Bivona v. Hock, 5 N.J. Super. 118 (App. Div. 1949) wherein the factual context is somewhat similar to the instant matter. If the respondent is to be affirmed, Bivona, Supra, must be distinguished.

In Bivona, the Director affirmed the Board's denial of transfer and the Appellate Division reversed that determination basing its finding that the proposed nearby situs of the license would have about 1,500 square feet of space compared with 800 square feet in the existing location. The additional square footage was planned for food service, as here.

In the subject proceeding, appellant offered no proof relative to the size of the present and proposed premises. However, Committeeman Cifelli who examined both premises, testified:

"There's no difference. I mean there's no difference to this extent that Mr. Gomez has a place, his present operation is as big as the one that he would be moving into. His bar is almost the same size. He has the same width. The only difference would have been the kitchen, but that building is big enough to accommodate the same amount of people that would be going into the premises that he contemplates on renting. There's no difference in that premises."

In this connection, I am also mindful of the testimony of Councilman Gorski relative to the sizes of the respective premises.

It is apparent that the Council weighed the benefit to be derived by the appellant in moving to a new location which

contained kitchen facilities thus relieving her of the expense of remodeling her present facilities as against the objections of area residents who want to enjoy the status quo of peace and quiet which they did not have when a prior licensee was operating at the proposed transfer location.

The Council concluded that the proposed transfer would not be in the public interest. Therein lies the distinction between the instant matter and Bivona, supra.

It has been long held that "where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed." Paul v. Brass Rail Liquors, Inc., 31 N.J. Super. 211, (App. Div. 1954).

I find that there was neither improper motivation shown nor that the Council acted capriciously or improperly. In short, I find that the appellant did not sustain the burden of establishing that the action of the municipal issuing authority was in error, and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is, recommended, that the action of the Council be affirmed and the appeal be dismissed.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, 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 18th day of November 1976,

ORDERED that the action of the respondent Town Council of the Town of Harrison be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

Joseph H. Lerner
Director

4. APPELLATE DECISIONS - SCHMIDT v. BOGOTA.

Kevin A. Schmidt, t/a
R. E. 'S Plum,

Appellant,

v.

Borough Council of the
Borough of Bogota,

Respondent.

On Appeal

CONCLUSIONS
and
ORDER

E. Gerard McGovern, Esq. Attorney for Appellant
Robert A. Baron, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent Borough Council of the Borough of Bogota, (Council) suspending appellant's Plenary Retail Consumption License C-5, for premises 20 East Fort Lee Road, Bogota, for sixty days effective June 12, 1976 for permitting and allowing its premises to be conducted in such a manner as to constitute a nuisance; in violation of Rule 5 of State Regulation 20.

Appellant contends that the action of the Council was erroneous in that the Resolution and Order did not contain adequate findings of fact or conclusions of law; that it was arbitrary, capricious and an unreasonable exercise of the discretion of the Council; and was not based upon any competent proof submitted. Additionally, over appellant's objection the meeting was opened to the public and new testimony was received from witnesses on complaints of which licensee had no prior notice, and (by inference) had no opportunity to rebut.

Lastly, he contends that the sixty day suspension of license is unduly harsh since every occurrence occurred without the licensed premises.

By Order, dated June 14, 1976, the Director stayed the suspension pending the determination of this appeal, but not before three days of the sixty day suspension period had already been served.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15. Full opportunity was afforded the parties to introduce evidence, and to cross examine witnesses. This would have cured any procedural defects which may have occurred below. The parties hereto relied upon the transcript of the proceedings before the council and pursuant to Rule 8 of State Regulation 15 a certified copy thereof was received into evidence. This was supplemented by testimony of appellant.

The transcript reveals that testimony was elicited of 14 neighbors who reside in close proximity to the alleged subject premises, and one member of the local police department who testified relative to official department records. Briefly, they complained of conditions attributable to the appellant concerning band music emanating from the licensed premises at a volume that interrupted and, at times, prevented sleep; noise and shouting by youthful patrons especially past midnight, on their way to and from the tavern, which likewise disturbed or prevented sleep; bottles, glasses and other debris littering lawns, walks and driveways; bottles deliberately smashed against walls and pavements, creating hazardous conditions; destruction of private property; urination on plants, shrubs and walls; illegal parking which often blocked driveways and fire hydrants; foul language; the loading of a van at 4:45 A.M. on a Sunday morning, with band and audio equipment which necessitated rolling across a cement sidewalk, up a wooden ramp and across the metal floor of the van; and in general, conditions which have been characterized as unbearable.

On behalf of the appellant, it is argued that he managed the licensed premises properly, as evidence by the fact (uncontroverted) that there have been no complaints relating to acts or conduct within the premises. The difficulties ascribed to it resulted from persons, some of who were patrons, who conducted themselves improperly outside of the premises, which conduct was not the responsibility of the appellant.

As early as 1936, the then Director of this Division stated in the landmark case of Conte v. Princeton, Bulletin 139 Item 8, "A license is a privilege. A licensee must keep his place and his patronage under control. When the exercise of his personal right becomes a nuisance to the community public interest requires that the privilege terminate." This doctrine has been cited repeatedly through the years. The Midnight Sun v. Garfield, Bulletin 2188, Item 2, A's Inn v. South Belmar, Bulletin 2220, Item 1 are two of the more recent examples. The three aforecited cases dealt with the harsher penalty of revocation or refusal to renew an existing license; not a 60-day suspension as we have here.

".....it is well settled that a licensee must keep his place and his patronage under his control and is responsible for conditions inside and outside his premises...." Capri v. East Newark, Bulletin 1853, Item 3. The reason for the imposition of such a strict rule is that the liquor business is an exceptional one, and courts have always dealt with it exceptionally. See X-L Liquors v. Taylor, 17 N.J. 444 (1955); Mazza v. Canicchia, 15 N.J. 498 (1954).

It is firmly settled that the Director's function on appeal, is not to reverse the determination of the Municipal Issuing Authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1; Monteiro v. Newark, Bulletin 2073, Item 2 and cases cited therein.

The burden of establishing that the council acted erroneously and in an abuse of its discretion rests with appellant, Rule 6 of State Regulation No. 15. The ultimate test in these matters is one of reasonableness on the part of the council. Or, to put it another way; could the members of the council, as reasonable persons, acting reasonably, have come to their determination based upon the evidence presented? The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of

fact or mistake of the law by the board. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E & A 1947); NordCo, Inc. v. State, 43 N.J. Super 277, 282. (App.Div.1957); Lyons Farms Tavern v. Mun. Board of Alc., 55 N.J. 292 (Sup. Ct.1970).

Since there was a conflict in the testimony adduced before the Council, it became the duty of the Council to evaluate the testimony, after observing the demeanor of the witnesses, assessing the interests of each witness to the outcome of the proceeding; and giving weight to such testimony as it found credible. It is apparent that the Council found the testimony of the Council's witnesses to be believable in the circumstances and not improperly motivated. I concur in that view.

I find that the charge herein was proved by a fair preponderance of the credible evidence. I, therefore, find that appellant has failed to meet its burden of establishing that the action of Council herein was erroneous and should be reversed.

The testimony of the appellant, Keven A. Schmidt, offered at the hearing held by this Division clearly indicates a bona fide desire to correct those conditions which plagued his neighbors in Bogota. However, his action was undertaken subsequent to the hearing held by the Council and the imposition of the subject suspension and therefore, has no direct bearing upon it.

Accordingly, it is recommended that the action of the Council be affirmed, the appeal be dismissed, and that the suspension heretofore imposed by the Council and Stayed by the Director pending this appeal be reimposed. It is further recommended that appellant be credited with the three days suspension served prior to the effectuation of the Director's order staying the said suspension.

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 the recommendations of the Hearer and adopt them as my conclusions herein.

I have been informed that the very conditions complained of, which formed the basis of the determination by the Council, remain unabated.

The Hearer has pointed out that three (3) days of the sixty (60) days suspension heretofore imposed by the Council had been served before the Order of the Director was entered staying the said suspension. I shall therefore give the appellant credit for the three (3) days already served, and shall reimpose the suspension minus the said three (3) days suspension already served, making a total of fifty-seven (57) days.

Accordingly, it is, on this 19th day of November 1976

ORDERED that the action of the respondent Borough Council of the Borough of Bogota 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 14, 1976 staying the Council's suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-5 issued by the Borough Council of the Borough of Bogota to Kevin A. Schmidt, t/a R.E.'s Plum for premises 20 East Fort Lee Road, Bogota be and the same is hereby suspended for fifty-seven (57) days commencing 2:00 A.M. Monday, November 29, 1976 and terminating at 2:00 A.M. on Tuesday, January 25, 1977.

JOSEPH H. LERNER
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN UNLICENSED CLUB - CLAIM FOR RETURN OF ALCOHOLIC BEVERAGES AND PERSONALTY DENIED - CASH AND PERSONALTY FORFEITED - CLAIM OF VENDING EQUIPMENT OPERATOR RECOGNIZED - SUM POSTED RETURNED.

In the Matter of the Seizure on	:	
November 30, 1975 of a quantity	:	Case No. 13,337
of alcoholic beverages, miscel-	:	
laneous personal property and \$98.04	:	On Hearing
in cash at the unlicensed premises	:	
at 236 West Englewood Avenue, in	:	CONCLUSIONS and ORDER
Englewood, Bergen County, State of	:	
New Jersey.	:	

.....
Garden State Music, Inc., by Dante Sorrenti, Partner, claimant,
Pro Se.

Steven E. Pollan, Esq., Attorney for Claimant, Bergen County
Sportsman Club.

David S. Piltzer, Esq., Deputy Attorney General, Appearing for
Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether certain property, described in Schedule "A" annexed hereto and made part hereof, constitutes unlawful property and should be forfeited; and, whether the sum of \$150.00, deposited with the Director, under protest, pursuant to a stipulation entered into by Garden State Music, Inc., representing the appraised retail value of a juke box and cigarette machine, which were returned to it, should be forfeited or returned; and further, whether the sum of \$150.00, deposited with the Director, under protest, pursuant to a stipulation entered into by Bergen County Sportsman Club, Inc. representing the appraised retail value of the remaining personalty which were returned to it, should be forfeited or returned.

At the hearing in this Division, Dante Sorrenti, a partner of Garden State Music, Inc., appeared to assert a claim for the return of the sum of \$150.00, posted on behalf of the Garden State Music, Inc., as aforesaid. He related that he placed his machines in the subject premises less than two months before the seizure following which he was able to gain entry into the premises on the few occasions when the machines were to be serviced only by being admitted by a "Mr. Smith" who unlocked the door from the outside. No one was present in the premises on his arrival, nor did he ever see anyone present other than "Mr. Smith". There was no bar or alcoholic beverages visible to him.

ABC Agents MN and M testified that they made an investigation of the subject premises on November 30, 1975 about 1:45 A.M., proceeded into the basement area of the building, where a bar was located. One of the agents purchased a drink of bourbon-and-water, paying for the drink with "marked" money. Thereafter a seizure was effected.

No testimony was introduced on behalf of the remaining claimant, but counsel for the claimant, in oral argument contended that the entire seizure was illegal because the Agents had not procured a search warrant prior to their entry into the premises. In consequence of the alleged illegality of the seizure, all things taken, as well as sums posted with the Director, under protest, should be returned.

The Deputy Attorney General appearing on behalf of the Division, denied this thesis because the Agents had been invitees of the claimant, and, as such invitees made independent observations of sales of alcoholic beverages which they confirmed by purchase themselves. State v. DiRienzo, 53 N.J. 360 (1969); State v. Doyle, 42 N.J. 334, 349 (1964); State v. Romeo, 43 N.J. 188 (1964) cert. denied, 379 U.S. 970 (1965) State v. Green, 55 N.J. 13, 17 (1969). Hence, no search warrants were required to clothe the seizure with legality.

The seized alcoholic beverages are illicit because they were intended for sale without a license, in violation of N.J.S.A. 33:1-66 (1). Such illicit alcoholic beverages, property and cash seized constitute unlawful property, and are subject to forfeiture. N.J.S.A. 33:1-2, 66; Re Seizure Case No. 11,156, Bulletin 1557, Item 5.

The test relating to the forfeiture of seized equipment belonging to other than the owner revolves about the bona fideness of the bailor of the equipment. If the bailor knew or should have known that the equipment may be used or was being used, in connection with illicit sales of alcoholic beverages, then its claim for the return of the property would be denied. See Seizure Case No. 12,367, Bulletin 2008, Item 5.

The good faith of the owner of the vending equipment seized was not controverted. There was little or no opportunity afforded for disclosure that any alcoholic beverages were present or sold within the subject premises. In the two months during which the equipment was placed there, no visit was made when any persons were present within; hence the dismay of the vending machines owner when notified of the seizure, as related by the Agents. I, therefore, recommend that the claim for the return of the sum posted by the owner of the vending equipment, Garden State Music, Inc. be recognized, and that sum be returned.

It is, further, recommended that the claim asserted for the return of the alcoholic beverages, cash and sum posted under the aforesaid stipulation by the Bergen County Sportsman's Club be denied, and the same be forfeited, in accordance with law. N.J.S.A. 33:1-66(e).

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the claimant pursuant to Rule 4 of State Regulation No. 28.

The thrust of the Exceptions is that the Hearing Officer failed to find that the search by the Agents of this Division was an "illegal" search in that they conducted such search without a warrant. Claimant further contends that a warrant permitting such search was necessary in that the Agents were not "invitees" of the claimant, thus their presence within would require official sanction.

A review of the testimony of the Agents dispells such conclusion. They were outside claimant's premises which was the subject of investigation. As they observed three males enter, they joined those entering, and their presence was accepted. Thereupon, they approached a bar, ordered drinks and were served. Payment for such drinks was made and accepted. At no time was their presence challenged.

No testimony was offered by the claimant in contravention of that of the ABC Agents, whose testimony was accepted as uncontroverted. Their testimony was not enlarged by reason of claimant's failure to testify, nor did the Hearing Officer make any adverse conclusion by reason of such failure to testify.

The absence of the search warrant and the lack of necessity therefor, was adequately treated in the oral summation given by the Deputy Attorney General, at the conclusion of the hearing. The citations then advanced and referred to in the Hearer's Report are basic in these situations.

I find the Exceptions devoid of merit. I shall, therefore, deny the claim of Bergen County Sportsman Club., Inc.

Accordingly, it is on this 18th day of November, 1976

DETERMINED and ORDERED that the claim of Garden State Music, Inc. for the return of the sum of \$150.00 posted by it as aforesaid, be and the same is hereby recognized; said sum to be returned to it; and it is further

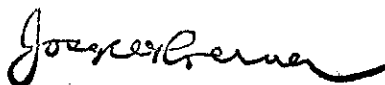
DETERMINED and ORDERED that the claim of Bergen County Sportsman Club, Inc. for the return of the sum of \$150.00, posted by it as aforesaid, be and the same is hereby denied; the said sum to be forfeited and accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and cash, in the amount of \$98.04, as more fully set forth in Schedule "A", attached hereto, constitutes unlawful property, and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said alcoholic beverages be and the same shall be retained for the use of hospitals and State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Joseph H. Lerner,
Director

SCHEDULE "A"

- 200 - containers of alcoholic beverages
- 1 - bar; 1 - refrigerator; 2 - freezers;
- 1 - juke box; 1 - cigarette machine;
- Misc. pers. prop., and \$98.04 - cash



Joseph H. Lerner
Director