

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

JANUARY 5, 1981

BULLETIN 2383

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

BULLETIN 2383

JANUARY 5, 1981

1. DISCIPLINARY PROCEEDINGS - ALLOWED, PERMITTED AND SUFFERED LEWD PERFORMANCE  
UPON LICENSED PREMISES - AUDIENCE PARTICIPATION - LICENSE SUSPENDED FOR  
48 DAYS.

In the Matter of Disciplinary  
Proceedings against

Lou Gary's, Inc.  
568 Christopher Street  
Orange, New Jersey

Holder of Plenary Retail Consumption  
License No. 0717-33-020-002 issued  
by the Municipal Board of Alcoholic  
Beverage Control of the City of Orange.

CONCLUSIONS

AND

ORDER

S-12,305

X-55,660-A

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Daniel Bell, Esq., Attorney for Licensee  
Charles J. Mysak, Esq., Deputy Attorney General for Division

Initial Decision Below

Hon. Sybil R. Moses, Administrative Law Judge

DATED: January 10, 1980

Received: January 11, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were filed pursuant  
to N.J.A.C. 13:2-19.6.

Having carefully considered and assessed the entire record herein,  
including the transcript of the testimony, the exhibits, and the  
Initial Decision Below, I concur in the conclusion of the Admini-  
strative Law Judge, which relates to her finding that the charge  
of allowing, permitting and suffering lewdness and immoral activity  
in and upon the licensed premises was established by a fair pre-  
ponderance of the credible evidence. However, I reject her finding  
that the portion of the charge which alleges that the licensee,  
"allowed, permitted and suffered a female person, while performing  
on the premises to engage in conduct 'in association with patrons  
and customers of the licensed premises', of a lewd, indecent and  
immoral character" has not been so established. Thus, I reject  
the recommended penalty of license suspension for a period of  
30 days, which does not reflect an appropriate penalty for such  
activity, which includes "audience participation".

The testimony is clear that the entertainer performed in a lewd  
and indecent manner by exposing her breasts and her vagina.  
According to Agent McN's testimony (which was corroborated by  
ABC Agent M), after the entertainer completed her performance  
on the stage, she "came down from the stage" and positioned

herself at a bar next to Agent McN. At that point, a patron approached her and stated to her "o'kay your're off the stage, now let me suck your tit". She then pulled her bra to the left side at which time her left breast was completely exposed. The male then began to suck her breast. After a "few minutes", the entertainer stated "allright give me a dollar now" which the patron proceeded to do.

The Administrative Law Judge concluded that this entertainment was "performed by herself and not in association with patrons and customers of the bar". She cites the regulation which she states "specifically prohibits the licensee to allowing, permitting and suffering such act by a female person while performing on the premises for entertainment. Activities at the bar during a break do not fall within its ambit." I find that contention lacking in substance.

It is incorrect to conclude that her performance terminated at the stage's edge. The mere fact that the entertainer completed that part of her performance for the customers on the stage did not terminate her performance and entertainment, and as it was quite obvious that the patrons sought to participate and she permitted them to participate after her stage act engagement, but while at the bar in the premises. It is patently unrealistic, and indeed, ingenuous to disassociate her activities after she left the stage but while still entertaining the patrons. Her continued activity in the premises, as described, including acceptance of money for a patron, manifestly come within the purview of the total charge.

Therefore, I cannot accept the recommended penalty of thirty (30) days, which is precedentially imposed with respect to straight lewd shows where no audience participation is involved. As the Deputy Attorney General has indicated, he is recommending a sixty (60) days suspension in accordance with the present penalty schedule if it should be determined that there was audience participation.

However, based on the circumstances in this matter, and expressly limited to the facts herein, I shall modify the usual penalty of 60 days suspension, and impose a license suspension of forty-eight (48) days.

Accordingly, it is, on this 15th day of February, 1980,

ORDERED that Plenary Retail Consumption License No. 0717-33-020-002 issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Lou Gary's, Inc. for premises 568 Christopher Street, Orange, be and the same is hereby suspended for forty-eight (48) days commencing 2:00 a.m. on Wednesday, February 27, 1980 and terminating 2:00 a.m. on Tuesday, April 15, 1980.

JOSEPH H. LERNER  
DIRECTOR

Appendix - Initial Decision Below

IN THE MATTER OF:  
LOU GARY'S, INC. t/a  
LOU GARY'S

INITIAL DECISION

O.A.L. DKT. NO. A.B.C. 3104-79  
A.B.C. S-12,305  
X-55, 660-A

APPEARANCES:

Charles Mysak, Deputy Attorney General  
for the Division of Alcoholic Beverage Control

Daniel S. Bell, Esq.  
Bell, Adubato & Ligham,  
for the Respondent, Lou Gary's, Inc.

BEFORE THE HONORABLE SYBIL R. MOSES, A.L.J.:

This matter was brought before the court as a result of charges filed pursuant to N.J.S.A. 33:1-31, that Respondent, Lou Gary's Inc., t/a Lou Gary's, on June 6, 1979 allowed, permitted and suffered lewdness and immoral activity in and upon the licensed premises; in that he allowed, permitted and suffered a female person, while performing on his premises for entertainment of his customers and patrons, to engage in conduct, by herself and in association with patrons and customers of the licensed premises, of a lewd, indecent and immoral character and to commit and engage in acts, gestures and movements of and with her hands, legs and other parts of her body, by herself and in association with his patrons and customers, in a manner and form having a lewd, indecent and immorally suggestive import and meaning; in violation of N.J.A.C. 13:2-23.6.

By letter dated August 10, 1979, Respondent entered a plea of not guilty. Pursuant to N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., the matter was referred to the Office of Administrative Law for an administrative hearing. All parties received proper notice and a hearing was held on November 8, 1979 and November 13, 1979 at the Office of Administrative Law, 185 Washington Street, Newark, New Jersey.\* Appearances are noted above.

The Division of Alcoholic Beverage Control (hereinafter Division) presented two witnesses in support of the allegations, Agents McN and M. Agent McN testified that he had been employed by the Division as an inspector for eight years. On June 6, 1979 he was assigned to investigate Lou Gary's by a superior officer. He arrived at approximately 9:00 p.m. in the company of Agent M, another inspector. He sat on the right side of the bar, with his back to the bar so he could see the dancing stage, which was in the far right corner of the room, five feet from where he sat. There were approximately 20 patrons on the premises. The inspector testified that both Lena Ragin and her son, Louis Ragin, were on the premises.

Crucial testimony in this case concerned the inspector's observations of the dancer, Claudia Walker. He testified that she was a black female, five feet six inches, weighing approximately 125-130 pounds. He observed two performances wherein Ms. Walker performed certain actions which led to this complaint. She was wearing a two piece silver costume. It was Agent McN's testimony that she exposed both her breasts and vagina area during both performances. While exposing her genitals she massaged her vagina. She also twisted her nipples and moved her lower body in a circular motion. He testified she pulled the bra part of her costume down and exposed her breasts completely. During the first performance she not only exposed her breasts, but massaged her genitals with her right hand while holding her pants aside with her left hand so the genital area was completely exposed.

The second performance commenced at approximately 10:00 p.m. During the performance, the agent said the dancer lay on the stage, unfastened her bikini bottom, pulled it down and massaged her vagina. He testified that one patron said "Let me eat it", but her response was "Not now". She then pulled her pants up and pulled her bra down, as in the first performance, with her breasts exposed and twisted the nipples so they protruded. Agent McN said that the bartender, Lena Ragin, observed all of this and did nothing. He also testified that one of the patrons offered the dancer a dollar to "suck her tits" but that she replied, "I can't let you suck my tits on the stage".

\*The Transcript of the hearing on November 8, 1979 shall be designated T1. The transcript of the hearing on November 13, 1979 shall be designated T2.

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At approximately 10:30 p.m. the second performance was completed and Ms. Walker came down to the bar and sat to the right of Agent McN. When she came to the bar, Agent McN said the patron was allowed to suck her left breast for a few minutes, for which she received a dollar. Other patrons had given money to Ms. Walker during her performances.

Agent McN testified that after they observed the performances, the agents identified themselves to the Ragins and Ms. Walker, informed them of the charges, itemized the various gestures and movements of the dancer which gave rise to the charges, and asked for various identifying papers from Mrs. Ragin.

Cross-examination by counsel for Respondent centered on an attack on Inspector McN's credibility. Agent McN did not waiver in his testimony in regard to his description of size and color of the costume. He also did not waiver in regard to the fact that money was passed to the dancer at the bar and that she performed part of the dance in a prone position. I found this agent to be extremely candid in his testimony. He responded honestly to questions of counsel in regard to the fact that neither he nor the other agent ever learned the name of the patron who kissed the dancer's breasts. He also honestly conceded that the patrons who approached her were rebuffed, albeit in a smiling fashion, by Ms. Walker during the course of her performance.

The Division also called Agent M, who corroborated, in every major detail, the testimony of Agent McN. Agent M has been employed as an inspector by the Division for seven years. On June 6, 1979 he went to Lou Gary's to investigate an allegation of lewd dancing. He saw the go-go dancer perform twice in the very same fashion as described by Agent McN. A question of credibility was raised in regard to Agent M's recollection of whether or not the dancer took her bra off completely, (see T1, 62-24 to 64-4), or whether she just pulled it down and exposed her breasts, (see T2, 119-22 to 120-18). This slight discrepancy in no wise affects the fact that Agent M was a credible and honest witness who did not attempt to deceive the court. Whether or not Ms. Walker took the bra off completely or pulled it down does not, in any way, diminish the fact that her breasts were exposed completely during both performances.

Agent M corroborated Agent McN's testimony that the dancer refused to allow the patrons to participate while she was on the stage, but that she did allow a patron to "suck" her breast at the bar after the performance. Both he and Agent McN

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insisted that Mrs. Ragin never asked them if they were from the ABC, but that she did ask for a break since they were all black.

The Court finds the general credibility and demeanor of these witnesses to be of such a nature as to instill confidence in their testimony. They conducted themselves in a professional and fair manner during the investigation and while testifying.

The Deputy Attorney General requested a penalty of thirty (30) days suspension if there was a finding of lewd and immoral activity without audience and sixty (60) days with audience participation. It was stipulated Lou Gary's has no prior violations.

Respondent, Lou Gary's, presented four witnesses in its behalf. The two main witnesses were Mrs. Lena Ragin, whose husband owns Lou Gary's and who was the bartender on June 6, 1979, and Claudia Walker, the go-go dancer who performed on that date.

Mrs. Ragin testified that at 9:00 p.m. on June 6, 1979, she was tending bar, and there were approximately sixteen (16) people present, including the two agents. She described the bar, which has twenty six (26) seats, and the stage, which is about four feet above the floor, with a three foot railing in front of it, and an opening between the stage and the wall. Mrs. Ragin testified that Agents McN and M did not come in together but that M came in first, then left, then McN came in and then M returned. She insisted that Agent McN had his back to the stage during the entire time he was at the bar. She also insisted that she asked the men four times if they were ABC men because someone in the bar, (who she was reluctant to identify), told her the two men were from the Division. Mrs. Ragin denied seeing Claudia expose her breasts or her vagina, and denied seeing her lie down on the stage while dancing. She also denied ever seeing her do any of the other alleged acts in regard to massaging her private parts, taking money or allowing a patron to kiss her breasts while at the bar. Mrs. Ragin was adamant that Lou Gary's doesn't let men congregate around the stage.

Certain diagrams and photographs were marked into evidence during the course of her testimony which confirmed the fact that the stage is raised and has a railing on it.

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Cross-examination of Mrs. Ragin focused on her credibility and memory. She was an understandably emotional witness, who became angry and accusative towards the agents, who were present during her testimony.

Ms. Claudia Walker testified that she danced at Lou Gary's on June 6, 1979, the third time she had performed there. Her first performance began at 9:00 p.m. and her schedule was twenty minutes on and twenty minutes off. She insisted that she heard Mrs. Ragin ask the agents if they were from the ABC and became alert, and thus would not have performed lewd acts. Ms. Walker testified she never revealed her breasts or other private areas of her body and that she did not lie down on the stage while dancing. She also testified that she wore a silver costume with black trim which had a full front and full back. She said no one ever approached her to offer her a dollar to kiss her breasts or, in fact, did so.

Ms. Walker did not have her costume with her when she testified on November 13, 1979. She attributed this to the fact that she had forgotten it on that day but swore she had it with her on the first day of this hearing, November 8, 1979. At the conclusion of cross-examination, she was given permission to go to New York and bring it in.

Ms. Walker conceded, during cross-examination, that she had received dollar tips at Lou Gary's on other occasions, from various men who would walk to the stage and hand her the money. Her recollection of the amounts of money she received at Lou Gary's was minimal. She also conceded that on June 6, 1979, she spoke to a "customer I knew", at the bar, (see T2, 22-8 to 18), but denied he ever kissed her breasts. Ms. Walker also admitted that, on occasion, patrons had made specific and explicit comments to her in regard to her breasts and legs, using the words, "tits" and "suck". She had been approached with the comment, "I'd like to suck your tit", but couldn't recall if it was at Lou Gary's. Her response was to ignore the person and not to smile. She insisted she would never expose her breasts or other private parts of her body.

After a recess Ms. Walker brought in her costume, R-10 in evidence. She identified it as the costume worn on June 6, 1979. She had purchased it in New York City, but had no receipt. She reiterated that she brought it on November 8th, but forgot it on November 13th. Upon review of the testimony in regard to the costume, and over objection of counsel for the Division, R-10 was admitted in evidence. I have reviewed the



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costume and note that, although both top and bottom are silver in color, the material in the top is different than the material in the bottom, as is the lining. The Court finds Ms. Walker's testimony was less than candid and attributes this to possible embarrassment in regard to the events of June 6, 1979.

Also testifying on behalf of Respondent was Louis N. Ragin, son of Mrs. Ragin, Ms. Carrie M. Fleming, a regular patron and friend of Mrs. Ragin and Ross Wright, another regular patron and friend of Mrs. Ragin.

All three witnesses testified they had observed Ms. Walker dancing and that she never performed in the manner described by the inspectors. They represented regular patrons and friends and their testimony must be scrutinized carefully. Both attorneys agreed that if five other patrons, who were present that evening, were to testify, in all likelihood it would be in the same fashion as Ms. Fleming and Mr. Wright.

The Division presented both agents in rebuttal to contradict the testimony of Ms. Walker in regard to the costume. Both of them indicated that the bikini bottom which she had worn on the night in question had fasteners on it, which she opened when she removed the bottom and massaged her vagina, and was much smaller than the one marked R-10 in evidence. I find the agents believable in that description, especially in light of the fact that fasteners were indicated in their reports, written very shortly after June 6, 1979, and in light of the differing fabric in the top and bottom.

Both counsel made eloquent summations in support of their positions.

The following items were marked for identification by the Division:

- S-1 Inspector McN's report
- S-2 Inspector M's report

The following items were marked into evidence by Respondent:

- R-1 Diagram of bar and stage by agent McN
- R-2 Diagram of bar by Lena Ragin
- R-3 Photograph of bar and immediate area
- R-4 Photograph of bar and immediate area
- R-5 Photograph of bar and immediate area

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- R-6 Photograph of bar and immediate area
- R-7 Photograph of bar and immediate area
- R-8 Photograph of bar and immediate area
- R-9 Photograph of bar and immediate area
- R-10 Two piece silver bikini costume and black shawl

After listening to the testimony, reviewing the evidence, reading the transcripts and listening to summations of counsel, and giving consideration to all these factors, I make the following findings of fact:

1. Lou Gary's Inc. is a bar and tavern located at 168 Christopher Street, Orange, New Jersey, license no. 0717 33 020 002.

2. Lou Gary's has no prior violations of ABC regulations.

3. Agents McN and M testified to the following acts, which I find to be facts:

- a) Both agents were present on the premises of Lou Gary's for approximately two hours on the evening of June 6, 1979, from 9:00 p.m. to 11:00 p.m.
- b) Claudia Walker, a go-go dancer, gave two performances that evening, beginning at 9:00 p.m.
- c) Ms. Walker was wearing a two piece silver bikini.
- d) During the course of both performance Ms. Walker exposed her breasts, and twisted her nipples so they protruded. She did this by pulling her bikini bra down so the breasts were revealed, and also removing the bikini bra.
- e) During the course of both performances Ms. Walker exposed her genital area, and massaged her vagina. She did this by pulling her bikini bottom down during the first performance. During the second performance she unfastened her bikini bottom while lying prone on the stage, pulled it down and massaged her vagina.
- f) During the course of both performances she moved her lower body in a circular motion.
- g) During the second performance one of the patrons approached Ms. Walker while she was massaging her vagina and said, "Let me eat it". Ms. Walker responded, "Not now".

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- h) During the course of the second performance a patron offered Ms. Walker a dollar to "suck her tits". Ms. Walker replied, "I can't let you suck my tits on stage".

4. Although patrons suggested participating with Ms. Walker during her performances, she refused their requests. Thus, no member of the audience participated with Ms. Walker, or shared in any of the lewd gestures of her performances.

5. Ms. Walker did speak to a man at the bar and allowed him to kiss or suck her breasts. His name and description were not obtained by the agents.

6. Any actions at the bar were not part of her performances.

7. R-10 in evidence, which Ms. Walker testified she wore on the night in question, is not the same bikini the inspectors saw her wear on June 6, 1979. The bottom of the bikini, R-10, is a different fabric and has a different lining than the top, does not have fasteners, as did the one worn on June 6, and is larger than the one worn on June 6, 1979.

8. The movements and motions of the dancer, Claudia Walker, during both performances on June 6, 1979, constitute lewd, immoral and lascivious behavior.

9. The bartender, Lena Ragin, was aware of said activities and was able to observe them from her position at the bar, which is approximately five feet away from the stage where Ms. Walker performed.

In determining these facts to be what actually occurred on June 6, 1979 in Lou Gary's, in Orange, New Jersey, I have carefully weighed the credibility of the witnesses for the Division and for the Respondent. It is a unique responsibility of the trier of fact to determine if the testimony comes from credible witnesses and is credible in and of itself. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954), Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

In evaluating the testimony I am guided by the firmly established principal that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). I have viewed all the facts and

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circumstances which show the witnesses' relation to the case and to the parties and I have evaluated any possible interest or bias of each and every witness who has testified. See In re Hamilton State Bank, 106 N.J. Super. 285 (App. Div. 1969).

In evaluating the testimony and evidence and observing the demeanor of the witnesses as they testified, I have come to the inescapable conclusion that the charges of lewd and lascivious behavior by the dancer, Claudia Walker, have been supported by the credible and forthright testimony of the agents. Their version of what occurred on June 6 is factual and believable. I was not impressed with the credibility of the licensee's witnesses.

There is no need for the Division to prove a standard of morality in the community, as was suggested during the course of the hearing by Respondent's counsel. The Appellate Courts have already determined that a restrictive standard of conduct may be applied. See In Re Club "D" Lane, Inc., 112 N.J. Super. 577, 579 (App. Div. 1971), which affirmed the Division's policy of prohibiting "topless" and, (in this instance), "bottomless" female employees in bars whether entertainers or otherwise. See also McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61 (App. Div. 1954). The United States Supreme Court has also affirmed proscriptions of such performances in licensed establishments. See California v. LaRue, 409 U.S. 109 (1972), reh. den. 410 U.S. 948 (1972).

It is clear that the licensee's responsibility is independent of personal knowledge, intent or participation. Even if the licensee gives contrary or express instructions, that licensee still has responsibility for what goes on in the bar or tavern. Thus, Mrs. Ragin's protestations that she doesn't allow this sort of thing in her bar do not hold water, for even if she didn't see the performance or allow it, the licensee is responsible. See In re Olympic, Inc. 49 N.J. Super. 299 (App. Div. 1958).

The only troubling issue is whether or not there was audience participation in the lewd action of Ms. Walker. The word "participate" has been defined by Webster, 3rd New International Dictionary, 1976, as "to take part in something, have a share in", at 1646. The testimony of the agents, which I found to be credible throughout, made it clear that, although the patrons made lewd suggestions during the course of the performances,

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Ms. Walker turned them away. The giving of tips, such as dollar bills, to the dancer cannot be seen to be sharing or participating in the actual dance or in the lewd and lascivious motions.

I CONCLUDE that in light of the applicable law as detailed above, and the findings of fact, the Division has proved, by a preponderance of the believable evidence, that N.J.A.C. 13:2-23.6 has been violated. The go-go dancer in question did engage in conduct of a lewd, indecent and immoral character by removing the top and bottom of her costume, massaging her private parts, top and bottom, and making gestures and movements of and with her hands, legs and other parts of her body which had a lewd, indecent and immorally suggestive import and meaning. I FURTHER CONCLUDE that she performed by herself and not in association with patrons and customers of the bar. The regulation specifically prohibits the licensee allowing, permitting and suffering such act by a female person "while performing on the premises for entertainment". Activities at the bar during a break do not fall within its ambit. I am, therefore, not persuaded by a preponderance of credible and competent evidence that there was audience participation in the performances. I FURTHER CONCLUDE that, in light of the licensee's lack of a prior record, its license be suspended, for the June 6, 1979 violation, for a period of thirty (30) days.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a decision in this matter. However, if the agency head does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceeding.

2. SPECIAL RULING - PURSUANT TO N.J.A.C. 33:1-12.39 - IN THE MATTER OF THE  
PETITION OF R.H.I., INC.

In the Matter of the Petition of

R.H.I., Inc.  
t/a The Road House

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption  
License No. 0112-33-045-001 issued by  
the Township Committee of the Township  
of Hamilton.

Andrew J. Karcich, Esq., Attorney for Petitioner.

Initial Decision Below

Hon. Norman Smith, Administrative Law Judge

Dated: January 9, 1980 - Received: January 10, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were  
filed in connection with this application for relief pursuant  
to N.J.S.A. 33:1-12.39

Having carefully considered the entire record herein,  
including the transcript of the testimony, the exhibits and  
the Initial Decision, I concur in the findings and recommen-  
dations of the Administrative Law Judge and adopt them as  
my conclusions herein.

I note that this is the second application submitted  
under the "pocket license" statute. While I am reluctant to  
authorize subsequent waivers where the intent to activate  
continues to be speculative, the licensee herein has repre-  
sented that it will resume active operations prior to the  
expiration of the 1979-80 license term. Thus, I shall approve  
the petition.

Accordingly, it is, on this 22nd day of February, 1980.

ORDERED that the Township Committee of the Township of  
Hamilton be and the same is hereby authorized to consider the  
application for renewal of the subject license for the 1979-80  
license term, and, to thereupon, either grant or deny said  
application in the reasonable exercise of its discretion.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX  
INITIAL DECISION BELOW

IN RE: R.H.I., INC. :

INITIAL DECISION  
OAL DKT. NO. ABC 2757-79

## APPEARANCES:

Andrew J. Karcich, Esq., on behalf of the Petition,  
R.H.I., Inc.

## WITNESSES:

Gennaro M. Esposito

SEE ATTACHED LIST OF EXHIBITS

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

On May 29, 1979 the licensee filed with the Director of the Division of Alcoholic Beverage Control a verified petition requesting an extension of his right to renew its Plenary Retail License No. C-13, Hamilton Township, pursuant to the authority of N.J.S.A. 33:1-12.39. The matter was certified as a contested case and forwarded to the Office of Administrative Law pursuant to N.J.S.A. 52:14F-1 et seq.

A hearing was held before the undersigned on November 20, 1979. Written summation was received by this office on December 11, 1979.

The only witness was Gennaro M. Esposito, whose uncontradicted testimony I find to be credible. Based upon that testimony and the thirteen exhibits in evidence I find the following facts:

1. The licensee purchased the license and location in June, 1977. At that time, it had been inactive since the premises were destroyed by fire in November, 1975.
2. On June 20, 1978 Director Joseph H. Lerner granted an extension for the 1978-79 license term for the reasons set forth in his special ruling of that date (P-12 in evidence).
3. In June of 1978, the contract of sale which was referred to in Director Lerner's opinion in P-1 in evidence was voided. The prospective purchaser was unable to obtain the necessary sewage approval for a site on the Blackhorse Pike to which it intended to transfer the subject license. The escrow monies which it had paid upon signing the contract were forfeited.
4. The petitioner applied to several banks including the Community Bank and First National Bank of South Jersey in an attempt to finance the construction of a new building suitable for the operation of a restaurant and retail liquor outlet. However, the petitioner was unable to obtain such financing. At the suggestion of one bank, the petitioner hired Hugo Esposito, who had the desired experience to manage a retail liquor outlet, but his credit application also failed.

5. The petitioner entered into a contract with one Isabel Horton (P-6) but Mrs. Horton has similarly failed to obtain financing.

6. On April 2, 1979 the Township of Hamilton ammended its zoning ordinance so that the petitioner's site would now require two acres. Since the petitioner only owns one acre, it cannot now build a retail liquor outlet on that site.

7. The petitioner has been actively negotiating with one Frank Carey, a Philadelphia Real Estate broker. Mr. Carey owns property on the Blackhorse Pike which is properly zoned and is available for construction. The additional acreage contained on that site will improve the collateral and renders it more likely to be approved by a financial institution. The consummation of a sale of the license to Mr. Carey awaits only the approval of the Division of Alcoholic Beverage Control for the renewal of the license.

8. To date the petitioner has invested the initial \$43,000 purchase price for the license, approximately \$1,500 in architectural fees, over \$1,000 in legal fees, and various other licensing fees, financing applications, site plan fees and travelling expenses. These total, in the petitioner's estimate, some \$5,000.

9. The petitioner has, since the extension granted by Director Lerner on June 20, 1978, retained a architect who has drafted and filed with local and county authorities a site plan for the construction of a facility to house the subject license (P-10 and 11 in evidence).

I CONCLUDE that the petitioner has proceeded in good faith and continues to proceed in good faith to attempt to reactivate the subject license. The current negotiations render it likely that the license will be activated if its renewal is extended.

Based upon all of the foregoing factual findings I CONCLUDE that good cause has been demonstrated to extend the renewal of the subject license for the 1979-80 license term.

Accordingly, the Township Committee of the Township of Hamilton be and the same is hereby authorized to consider the application for renewal of the subject license for the 1978-79 license term, and, to thereupon grant or deny said application in the reasonable exercise of its discretion.

This recommended decision may be affirmed, modified or rejected by the head of agency, Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

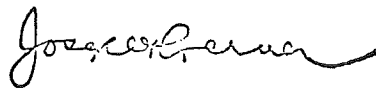
I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, my Initial Decision in this matter and the record in these proceedings.



LIST OF EXHIBITS

P-1 Certificate of Corporation of R.H.I.  
P-2 Agreement of Sale  
P-3 Floor Plan  
P-4 Site plan application  
P-5 Site plan application  
P-6 Contract of sale  
P-7 Proof of service  
P-8 Receipt of application by Township Clerk  
P-9 Renewal of license fee receipt  
P-10 Original floor plan  
P-11 County site plan approval  
P-12 Decision of Director Lerner dated June 20, 1978  
P-13 Financing application

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Joseph H. Lerner  
Director