

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2021

January 6, 1972

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

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January 6, 1972

1. APPELLATE DECISIONS - MAGLIES v. HELMETTA et al.

Robert Maglies,)	
Appellant,)	
v.)	On Appeal
Borough Council of the Borough)	CONCLUSIONS
of Helmetta, and Henry Richard,)	and
t/a Richard's General Store,)	ORDER
Respondents.)	

Robert Maglies, Appellant, Pro se
Richard F. Plechner, Esq., Attorney for Respondent Borough
James B. Brown, Jr., Esq., Attorney for Respondent Richard

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Respondent Mayor and Council of the Borough of Helmetta (hereinafter Council) adopted a resolution on August 11, 1971 granting the application of respondent Henry Richard, t/a Richard's General Store, for a plenary retail distribution license for the 1971-72 licensing period, for his premises located at 66 Main Street, Helmetta.

The resolution, in its preamble, sets forth the reasons for the Council's action as follows:

"WHEREAS Henry Richard, trading as Richard's General Store, has made application to the Borough Council of the Borough of Helmetta for a plenary retail distribution license, and

WHEREAS the Borough Council of the Borough of Helmetta does hereby find that the application of said Henry Richard is in proper order and complete, and further finds that the said Henry Richard is a person of good moral character and has never been convicted of any crime and is presently engaged in a retail grocery business in the Borough of Helmetta, and is the only applicant presently engaged and that said grocery store is where the applicant intends to conduct the retail liquor store for which he has applied, and further find that said premises are located in a business zone where such a use is permitted, and

WHEREAS the said Henry Richard, trading as Richard's General Store, is the only applicant capable of commencing business immediately, and

WHEREAS the Borough Council further finds that the location of said plenary retail distribution license in the aforesaid location would be of most benefit to the Borough and to the residents of the Borough of Helmetta,..."

In his petition of appeal the appellant alleges that the action of the Council was erroneous for reasons which may be briefly summarized as follows:

1. That he was not afforded a hearing on timely objections made.
2. That the Council did not make a statutory investigation, as required by Rule 8 of State Regulation No. 2.
3. That no affidavit of publication was presented to the Council.
4. That the statutory fees were not paid by Richard.
5. That the issuance of the said license to these premises would be in violation of the zoning ordinance.

The answer of the Council denies the substantive allegations of the complaint and defends that the Council granted Richard's application after a full hearing, and were based upon the reasons set forth in the adopted resolution. Richard also filed an Answer in which he also denies the substantive allegations of the petition and sets forth, as an affirmative defense, that the appellant appeared at the meeting at which Richard's application was considered, and "...was given an opportunity at said meeting to make any pertinent objections, and availed himself of the opportunity afforded him to voice his objections."

The appeal was heard de novo with full opportunity for the parties hereto to present testimony, and cross-examine witnesses. Rule 6 of State Regulation No. 15.

I

Appellant alleges that no application was made to the Council, in violation of Rule 1 of State Regulation No. 2; that no affidavit of publication was presented to the Council, in violation of Rule 10 of State Regulation No. 2; and that no fees were paid by the respondent, in violation of Rule 3 of State Regulation No. 4.

My examination of the record in the case including the exhibits in evidence, disclosed that there was substantial compliance with the applicable regulations and there has been no evidence produced by the appellant to indicate any failure by Richard to comply fully with the appropriate statutory requirements.

II

Appellant contends that the Council did not notify him of the time of the hearing at which the subject application was considered by the Council. However, the testimony discloses that appellant was personally present at the July meeting of the Council at which time he was notified that the hearing on the said application would be held on its regularly scheduled August 11, 1971 meeting. At that meeting, appellant was given an opportunity to voice his objections.

Appellant maintains that he was not given an opportunity to "raise my objections and to speak on them." However, he did not testify at this de novo hearing in support of this allegation and there has been affirmative testimony presented by the Council that the appellant was actually present; that he participated as an objector at the meeting at which the application was discussed. His presence at the meeting and his failure to protest at that time that he did not receive notice of the hearing waives any alleged deficiency in the service of notices upon him. See Field v. Field, 31 N.J. Super. 139, 148; Kaplan v. Angelique Realty Co., 10 N.J. Misc. 648.

In any event, any procedural irregularities/or infirmities which may have occurred at the time of the hearing before the Council is cured at this appeal de novo because the appellant was given full opportunity to be heard and to offer testimony in support of his petition. Re Cino v. Driscoll, 130 N.J.L. 535; cited in Nordco, Inc. v. State, 43 N.J. Super. 237, 287 (App. Div. 1957); Rokay Wines and Liquor v. Passaic, Bulletin 1198, Item 1; Sidoroff et al. v. Jersey City et al. Bulletin 1310, Item 1.

I, therefore, conclude that appellant's contentions with respect thereto have no merit.

III

The Council consists of the Mayor and six councilmen, and is organized under the provisions of N.J.S.A. 40:88-1 (Borough Act). Under the provisions of this Act, three councilmen and the Mayor, or in the absence of the Mayor, four councilmen shall constitute a quorum for the transaction of business.

At the August 11, 1971 meeting, four councilmen and the Mayor were present, the Mayor of course, had no vote except in case of a tie. The vote on this resolution consisted of two councilmen voting for, and two councilmen abstaining. The question, therefore, arises whether the said votes were sufficient to adopt this resolution.

In Manno v. City of Clifton, 14 N.J. Super. 100, Cert. denied, 8 N.J. 167, the court cited the common law rule which requires the affirmative vote of the majority of a quorum for valid action in the absence of statutory provision. The court pointed out that the State-wide policy of the Legislature as evidenced by the Alcoholic Beverage Control Act (R.S. 33:1-1 et seq.) "governs the procedure applicable to municipal boards acting as the 'other issuing authority'"; and since the act contains no provision requiring a majority vote of all members of the Council for valid action the common law rule applies. Therefore, the Council could take action by the affirmative vote of the majority of the quorum present. The common law rule has been uniformly applied in this State in alcoholic beverage matters.

In the instant matter, there were two affirmative votes and two abstentions. The rule followed in this State has been that where a quorum of a Council regularly convened, is entitled to act, abstentees who do not dissent are considered to have assented to the vote of the majority, and must be considered as having voted affirmatively. State, Mount, pros. v. Parker, Receiver, 32 N.J.L. 341; Mann v. Housing Authority Paterson, 20 N.J. Super. 276 (1952). As the court stated in Abels v. McKeen, 18 N.J. Equity 462 at p.465:

"...at such meeting if such a vote is taken, and no one dissents, all who do not vote are considered as voting with the majority for the motion, and a vote of three ayes at a meeting of twenty, where no one dissents, is considered as an affirmative vote of all present."

See 62 C.J.S. sec. 406 at p.772. Many other States have adopted the same ruling. Thus, in Rushville Gas Co. v. City of Rushville, 23 N.E. 72, three councilmen voted for the resolution and three abstained. The court held that the resolution may be legally adopted by the vote of three of the six members, where the other three are present but refused to vote, as the vote of the majority of the quorum present is effective. The court further stated that:

"...their silence is acquiescent, rather than opposition. Their refusal to vote is, in effect, a declaration that they consent that the majority of the quorum of those who vote, may act for the body of which they are members."

See Willcock, Mun. Corp. sec. 546 to the effect that members present but not voting assented to the adoption of the resolution. I, therefore, find that the subject resolution was validly adopted by the Council.

IV

Appellant further alleges that the grant of a license for the premises was erroneous because it violates the applicable zoning ordinance.

The issuance of a license by this Division need not concern itself with zoning restrictions. In Lubliner et al. v. Paterson et al., 59 N.J. Super. 419 (1960), the court stated that the matter of a violation of a zoning ordinance, building codes, health codes and the like, would not in itself prevent a local issuing authority from granting a license to a particular premises but, before the liquor licensee could operate the establishment, he must comply with all applicable statutes and ordinances. On appeal to the Supreme Court, Justice Jacobs, speaking for the court, with reference to an alleged zoning violation, stated (33 N.J. 428):

"...In dealing with that contention the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available. See Garron v. Teaneck Tryon Co., 11 N.J. 294 (1953)."

Furthermore, I have examined the pertinent zoning ordinance and find no such restriction for the operation of the said license. This contention is, therefore, rejected.

V

The central issue herein is whether the Council acted in the proper exercise of its discretionary authority in approving Richard's application for a plenary retail distribution license.

Councilman Louis H. Allen who voted for approval of the application stated that the appellant was present at the meeting at which action was taken on the subject application and availed himself of the opportunity to voice his objections. After consideration of this matter, he voted for the grant of the license because he felt that the grant of the license "... would help the Borough. The store was in operation in the Borough at the time. Mr. Richard was known to be a reputable person in town, in the Borough...We felt it was beneficial to issue the license at this time to Mr. Richard...."

Frances A. Vincent, the clerk of the Council, corroborated the fact that the appellant was given a full opportunity to be heard on his objections at the Council meeting. She stated that Richard's General Store is the only retail store in this municipality; as a resident of the Town she felt that the people needed a liquor facility, and that it would be a great convenience to the residents particularly for "...the older citizens to go to...." They presently can only obtain alcoholic beverages in neighboring communities.

Although the appellant availed himself of cross examination of the witnesses he did not testify at this de novo hearing nor did he produce any witnesses to testify in support of the allegations of the petition. Such failure of a party to testify may invite the indulgence against him of every inference warranted by the evidence presented by his adversary. 31A C.J.S. 156 (4) Evidence, p.422 and cases cited therein. See State v. Clawans, 38 N.J. 162, 170 (Sup. Ct. 1962).

It is well settled that the issuing authority's discretionary power in matters of this kind are broad and it has the power to determine, in the first instance, whether or not a license should be granted. The burden of proof that the Council abused its discretion falls upon the appellant and he must make out his case by a fair preponderance of the credible proofs. O'Hara and Yutall v. West Orange, Bulletin 1483, Item 2. The action of the Council is consistent with the view stated in Ward v. Scott, 16 N.J. 16 (1954), where the Superior Court, dealing with an appeal from a zoning ordinance, set forth the following applicable principle:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determination should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

Since the municipal action is discretionary, appellant must show manifest error or clear abuse of discretion. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598.

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 view. The action of the municipal issuing authority may not be reversed by the Director unless he finds the "act of the Council was clearly against the logic and effect of the presented facts." Hudson-Bergen County Retail Liquor Stores Association v. Hoboken et al., 135 N.J.L. 502.

As the court stated in Lyons Farms Tavern v. Newark et al.,
55 N.J. 292, 307 (1970):

"Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts"

I am persuaded that the action of the Council represented a reasonable exercise of its discretion on the basis of the entire record.

I have examined the other matters raised in the petition and find them lacking in merit.

Accordingly, it is recommended that the Council's action in granting Richard's application for a plenary retail distribution license be affirmed, and that the appeal herein 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 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 24th day of November 1971,

ORDERED that the action of respondent Borough Council of the Borough of Helmetta in granting the subject application for a plenary retail distribution license for the 1971-72 license period be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough,
Director.

2. APPELLATE DECISIONS - PICKWICK PRODUCTS INC., et al. v. JERSEY CITY, et al.

Pickwick Products, Inc., et al.,)	
Appellants,)	On Appeal
v.)	
)	CONCLUSIONS
Municipal Board of Alcoholic Beverage Control of the City of Jersey City and Joseph Diaz, t/a Joe's Tavern,)	and
)	ORDER
Respondents.)	

-----)
 Joseph S. Nester, Esq., Attorney for Appellants
 James F. Ryan, Esq., by Louis P. Caroselli, Esq., Attorney for Respondent Municipal Board
 Herbert Winokur, Esq., Attorney for Respondent Diaz

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board), wherein it approved the place-to-place transfer of the license held by Joseph Diaz, t/a Joe's Tavern (hereinafter Diaz), from 480 Communipaw Avenue to 488-492 Communipaw Avenue and 1 and 5 Prescott Street, Jersey City.

Appellant contended that the transfer was erroneous because it had been predicated upon an exception in the local ordinance permitting transfers within 500 feet where a licensee shall be compelled to vacate the licensed premises for any reason that, in the opinion of the Board, was not caused by any action on the part of the licensee; and that the licensee had not been compelled to vacate.

The Board did not file a formal answer as required by Rule 4 of State Regulation No. 15, but its counsel forwarded a letter, of which notice is here taken, indicating that the Board had considered that respondent Diaz, by suffering a serious and damaging fire at his premises had been compelled to vacate, and was entitled to approval of the said transfer.

No answer had been filed by respondent Diaz, but he appeared at the hearing with counsel. The Board was not represented at the hearing which was held de novo with oral testimony, cross examination and documentary evidence offered, pursuant to Rule 6 of State Regulation No. 15.

The burden of establishing that the action of the Board in granting the transfer was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The action of the municipal issuing authority may not be reversed by the Director unless he finds the act to have been clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. et al. v. Hoboken et als., 135 N.J.L. 502 (1947).

Testimony of David C. O'Connell, principal stockholder of appellant indicated that the Diaz tavern is about three hundred feet from that of appellant, and the location to which it would be transferred was diagonally across the street. The building housing the Diaz tavern burned early this year and no efforts whatever were made to rebuild it. On cross examination he admitted that, four or more years ago, there were five taverns in the area, but that now there are two.

Pictures of fire-damage to the tavern were presented into evidence by Diaz who testified that while he was in Florida visiting his mother, the building next door to his tavern building caught fire which spread to his tavern, leaving it gutted. Since then vandals have removed anything in it of value. He was not insured and his agent had been unable to get him a fire policy. The building was so badly damaged as to require whole rebuilding the costs of which would be so great that he knew he could not afford it. Hence, he never obtained estimates for rebuilding.

Within two-hundred-fifty feet or so of the Diaz tavern exists the site of a tavern that went bankrupt about four years ago. These premises contain all the equipment necessary to begin operation and all he would need do would be to stock it and get the refrigeration running again. It was to this location that the application for transfer was approved. As owner of the building containing his fire-damaged tavern, he received a notice introduced into evidence, indicating that the building is not fit for habitation, occupancy or use and must be vacated. That notice was given him by the Department of Health of Jersey City.

Diaz further testified that he has a bank account containing \$1,400, owns an \$18,000 home in Jersey City with a small mortgage on it, and he supports himself and family through a job which he obtained after the fire. He added that a tavern had existed across the street from appellant's premises for twelve years until four years ago.

Counsel for appellant urged the applicability of dicta within Smith v. Bosco, 66 N.J. Super. 165, 169 (App. Div. 1961), in which the court said:

"...we are in agreement with the Director that vacation of the premises because of the inability to operate the enterprise profitably is not the type of external compulsion, unrelated to 'any action on the part of the licensee', which is contemplated by the ordinances as a basis for waiving the distance restrictions."

There is a wide difference between Smith, supra, and the matter sub judice. It is not here an election against profitabilities but rather to operate or not to operate at all. The court added in Smith, supra:

"It is elementary that concern for the licensee's own financial misfortunes will not be elevated above the public interest."

However, the vacation of the Diaz premises was brought about by "external compulsion", not from "internal financial disaster". See Smith, supra. It has been well established that an owner of a liquor license or privilege acquires through its investment therein an interest which is entitled to some measure of protection in connection with a renewal or transfer. Cf. Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (1955).

Further, the Board properly applied the provision of the local ordinance (Section 4), which permits transfers of licensed premises within five-hundred feet of the licensed premises vacated when such vacation shall have been compelled "...for any reason that in the opinion of the Board...was not caused by any action on the part of the licensee". It determined that respondent Diaz was compelled to vacate as a result of the fire; such determination was well within its discretionary authority, the exercise of which I find to have been reasonable.

The Board considered the transfer and the public interest involved, and by its determination, was apparently satisfied that such transfer would not be repugnant to the public interest. The premises to which Diaz's tavern is to move was a tavern site and presumably had that establishment been operated profitably would still be in existence. It is well settled that the issuing authority is vested with a sound discretion in the grant or refusal to grant licenses for the sale of intoxicating beverages. See Bumball v. Burnett, 115 N.J.L. 254; Zicherman v. Driscoll, 133 N.J.L. 586 (1945). Such discretion will not be disturbed in the absence of a showing of clear abuse thereof. Blanck v. Magnolia, 38 N.J. 484 (1962).

It is well established that in matters involving transfers of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide the "public interest". Lubliner v. Paterson, 33 N.J. 428, 446 (1960). As indicated hereinabove, the Director is governed by the principle that where reasonable men, acting reasonably, may have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. et al. v. Hoboken, et als. supra.

The Board has, in my opinion, understood its full responsibility and has acted circumspectly and with a reasonable exercise of its discretion in granting the transfer. I do not find the objections of sufficient merit, and thus conclude that appellant has failed to sustain the burden of establishing that the action of the Board was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report were filed by appellant and no written answers to the said exceptions were filed by respondents pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the matters contained in the exceptions and find that they have either been considered by the Hearer in his report, or are without merit.

Therefore, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the exceptions with supportive argument filed with reference thereto, I concur with the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 24th day of November 1971,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough
Director

3. APPELLATE DECISIONS - 111 PARK ST. CORP. v. ORANGE - SUPPLEMENTAL ORDER STAYING SUSPENSION.

111 Park Street Corporation,)
t/a The Galaxy,)
Appellant,)
v.)

On Appeal

Municipal Board of Alcoholic)
Beverage Control of the City)
of Orange,)
Respondent.)
-----)

SUPPLEMENTAL ORDER

Friedman & D'Alessandro, Esqs., by Louis M. Minotti, Esq.,
Attorneys for Appellant
Martin G. Picillo, Esq., by Mark D. Larner, Esq., Attorney
for Respondent

BY THE DIRECTOR:

On August 11, 1970 Conclusions and Order were entered herein affirming the action of respondent which denied appellant's application for renewal of its plenary retail consumption license for the 1969-70 license period for premises 111 Park Street, Orange. The order provided also that an order dated August 8, 1969 extending the term of appellant's 1968-69 license pending determination of the appeal be vacated effective immediately. 111 Park Street Corporation v. Orange, Bulletin 1935, Item 1. Appellant thereupon appealed to the Appellate Division of the Superior Court, which on September 14, 1970 stayed the aforesaid order under which appellant has been operating until further order of the court.

On October 22, 1971 the Appellate Division of the Superior Court affirmed the order of the Director. 111 Park Street Corporation v. Orange and Div. of Alcoholic Beverage Control (App.Div. 1969), not officially reported, recorded in Bulletin ____, Item ____.

It is, therefore, on this 22nd day of November 1971,

ORDERED that, in accordance with the order of the Appellate Division of the Superior Court, my order of August 8, 1969, extending the term of the license pending determination of the appeal, be and the same is hereby vacated, effective immediately.

Richard C. McDonough,
Director.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT.

In the Matter of Disciplinary Proceedings against)

Frank W. Ciccone)
t/a Torch Lounge)
535 Ridge Road)
Lyndhurst, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Township of Lyndhurst.)
-----)

Crummy, O'Neill, Del Deo & Dolan, Esqs., by Frank J. Vecchione, Esq., Attorneys for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

- "1. In your short-form application dated June 11, 1971, filed with the Board of Commissioners of the Township of Lyndhurst and upon which you obtained your current plenary retail consumption license, you failed to state in answer to Question 10 therein a change in facts in your last prior long-form application, viz., a change from 'No' to 'Yes' to Question 29 which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? _____ If so, state names, addresses and interest of such individuals, partnerships, corporations or associations _____.', and to show and disclose that Ernest C. Mueller, had such an interest in that he was a partner with you in the license applied for and in the business to be conducted under said license; such evasion and suppression of a material fact being in violation of R.S. 33:1-25.
- "2. In your aforesaid short-form application for license, you failed to state in answer to Question 10 therein a change in facts in your last prior long-form application, viz., a change of answer from 'No' to 'Yes' to Question 30 in said long-form application which asks: 'Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for? _____ If so, give complete details.', and to show and disclose you had agreed to pay to the aforementioned Ernest C. Mueller a portion or percentage of the profits or income derived from the business to be conducted under said license; said evasion and suppression of a material fact being in violation of R.S. 33:1-25.

- "3. From on or about October 1, 1969 to date you knowingly aided and abetted said Ernest C. Mueller to exercise, contrary to R.S. 33:1-26 the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52."

Licensee has a prior record of suspension of license by the Director (1) for thirty-five days effective August 2, 1966 for possessing liquor not truly labeled (Re Ciccone, Bulletin 1692, Item 8); for twenty days effective July 2, 1968 for purchase of alcoholic beverages from another retailer without special permit, in violation of Rule 15 of State Regulation No. 20 (Re Ciccone, Bulletin 1780, Item 6; 1810, Items 1 and 2); (3) for twenty-five days effective June 23, 1969 for possessing liquor not truly labeled (Re Ciccone, Bulletin 1869, Item 6) and by the municipal issuing authority for thirty-five days effective July 18, 1969 for sale to minors.

Counsel for licensee has indicated that the unlawful situation described in the charges herein is being corrected by virtue of an application for transfer of license to another now pending before the municipal issuing authority. Upon approval of such transfer, the unlawful situation will then have been corrected.

The prior record of suspension of license in 1966 for dissimilar violation disregarded for penalty purposes, having occurred more than five years ago, but the suspensions in 1968 and 1969 for dissimilar violations occurring within the past five years considered, the license would normally be suspended for thirty-five days with remission of seven days for the plea entered, leaving a net suspension of twenty-eight days. Re G.G.H. Corp., Bulletin 1928, Item 7.

However, as the unlawful situation has not to date been corrected, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than twenty-eight days from the commencement of the suspension herein.

Accordingly, it is, on this 29th day of November 1971,

ORDERED that Plenary Retail Consumption License No. C-12, issued by the Board of Commissioners of the Township of Lyndhurst to Frank W. Ciccone, t/a Torch Lounge, for premises 535 Ridge Road, Lyndhurst, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, effective 2 a.m. Monday, December 13, 1971, with leave to licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than twenty-eight (28) days from the commencement of the suspension herein.

Richard C. McDonough,
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Frances De Mario)
t/a De Mario's Tavern)
185 Elmora Avenue)
Elizabeth, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-235, issued by the City Council of the City of Elizabeth.)

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleaded guilty before the municipal issuing authority to a charge alleging that on September 5, 1971, she sold alcoholic beverages to three minors, one age eighteen and two, age nineteen, in violation of Rule 1 of State Regulation No. 20, whereupon her license was suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. The effective date of the suspension was deferred by the issuing authority to permit the licensee an opportunity to apply to the Director for the imposition of a fine in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971, whereupon the licensee made such application promptly.

Having carefully considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$800 in lieu of suspension.

Accordingly, it is, on this 24th day of November 1971,

ORDERED that the payment of an \$800 fine by the licensee is hereby accepted in lieu of a suspension of license for twenty (20) days.

Richard C. McDonough
Director

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Michael Gaber and Stephanie Gaber)
t/a M & S Bar and Grill)
22 Washington Avenue)
Manville, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Mayor and Council of the Borough of Manville.)

Weiss, Ehrlich & Goorno, Esqs., by Milton A. Weiss, Esq.,
Attorneys for Licensees
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on May 28, 1971, they sold alcoholic beverages to a minor, age twenty, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Buckwald, Bulletin 1982, Item 8.

However, the licensees have 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 licensees to pay a fine of \$235 in lieu of suspension.

Accordingly, it is, on this 24th day of November 1971,

ORDERED that the payment of a \$235 fine by the licensees is hereby accepted in lieu of a suspension of license for five (5) days.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

James Joseph Kenny t/a Kenny's Tavern 224 Palisade Avenue Jersey City, N.J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-140 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

-----) Malcolm J. Robbins, Esq., Attorney for the Licensee. Walter H. Cleaver, Esq., appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 24, 1971 he sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for 10 days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Allgeier Associates, Inc., Bulletin 2007, Item 9. 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 \$200 in lieu of suspension.

Accordingly, it is, on this 3rd day of December, 1971,

ORDERED that the payment of a \$200 fine by the licensee is hereby accepted in lieu of a suspension of license for five days.

Richard C. McDonough Director

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Freddie's Tavern, Inc.)
11 South Broadway)
Long Branch, N.J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-61 issued by the City Council of the City of Long Branch.)

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Tepper and Goldberg, Esqs., Attorneys for Licensee.
Edward F. Ambrose, Esq., appearing for the Division.

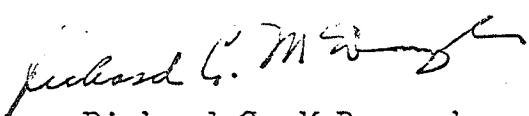
BY THE DIRECTOR:

Licensee pleaded guilty before the municipal issuing authority to a charge that it sold alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20, whereupon its license was suspended for fifteen days. The effective date thereof was deferred pending licensee's application to the Director to pay a fine in lieu of suspension, in accordance with 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 \$600 in lieu of suspension.

Accordingly, it is, on this 3rd day of December, 1971,

ORDERED that the payment of a fine of \$600 by the licensee is hereby accepted in lieu of a suspension of fifteen days.


Richard C. McDonough
Director