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

BULLETIN 2278 February 14, 1978

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - OLD MILL STREAM, INC. v. PARAMUS.

#4158 Old Mill Stream, Inc. t/a Cuss from Hoe, Appellant, v. Mayor and Council of the Borough of Paramus, Respondent.	ON APPEAL CONCLUSIONS and ORDER

Picinich and Rigolosi, Esqs., by Vincent P. Rigolosi, Esq., Attorneys for Appellant.
Joseph S. DiMaria, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of the respondent, Mayor and Council of the Borough of Paramus which, by Resolution dated June 23, 1977, granted appellant's application for renewal of Plenary Retail Consumption License C-25 for the 1977-78 licensing year, subject to the following special conditions:

> 1. The Licensee shall provide three (3) security guards no later than 10:00 p.m. on Mondays, Thursdays, Fridays, Saturdays and Sundays and other nights as needed and as requested by the Chief of Police, who are to remain on the licensed premises until all patrons are cleared of the premises and the parking area to maintain peace and order and to control the activities of the patrons of the licensed premises so as to not disturb the neighborhood residents.
>
> 2. The Licensee shall keep the interior stairways clear and free from patrons in order to assure safe passage in the event of a fire.
>
> 3. The above conditions shall be completed no later than sixty (60) days after approval by all municipal boards and agencies that may be required to review and approve the above.

Prior to a de novo hearing in this Division, by letter dated September 9, 1977, the attorneys for appellant advise that an amicable resolution of the issues in dispute has been adopted. Respondent, by resolution adopted September 8, 1977,

has modified the special conditions attached to the renewal of appellant's license. Respondent requests approval of the special conditions, as modified, and upon approval of same, the appellant requests dismissal of its appeal.

Good cause appearing, I shall grant the said requests.

Accordingly, it is, on this 7th day of October, 1977,

ORDERED that the special conditions imposed by the respondent, Mayor and Council of the Borough of Paramus upon the grant of appellant's application for renewal of Plenary Retail Consumption License C-25, for the 1977-78 licensing year, be and the same are hereby modified, as follows:

1. The first special condition is modified to delete the requirement of security guards on Sunday and Thursday nights. On other nights when security guards are not mandated, when the Chief of Police determines that security guards may be necessary, the Chief of Police and the licensee shall discuss same and agree upon security provisions to cover these situations.

2. The second special condition shall remain in effect.

3. The third special condition shall remain in effect; and it is further

ORDERED that the said special conditions, as herein modified, shall take effect immediately; and it is further

ORDERED that with the said special conditions as so modified, the action of the respondent, Mayor and Council of the Borough of Paramus, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner
Director

2. APPELLATE DECISIONS - MJM WINE AND LIQUORS, CORP. v. ATLANTIC HIGHLANDS.

MJM Wine and Liquors, Corp., t/a Joey Miles Tavern, Appellant, v. Mayor and Council of the Borough of Atlantic Highlands, Respondent.	ON APPEAL CONCLUSIONS and ORDER

Drazin & Warshaw, Esqs., by G. Donald Heneke, Esq., Attorneys for Appellant.
Pappa, Manna & Kreizman, Esqs., by John C. Manna, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

In this consolidated proceeding, the appellant appeals from the actions of the respondent, Borough of Atlantic Highlands which, (1) on June 28, 1977, denied appellant's application for renewal of Plenary Retail Consumption License C-1 for the 1977-78 licensing year; and (2) on August 16, 1977, suspended appellant's license for sixty (60) days, effective August 17, 1977, after finding appellant guilty of charges alleging a nuisance, failure to advise police of criminal or quasi-criminal offenses occurring on the licensed premises, and unspecified violations of municipal ordinances.

Upon filing of the within appeals, by Orders dated June 30, 1977 and August 17, 1977, an ad interim extension of license pending a hearing on the return date of an Order to Show Cause, and a stay of the suspension pending determination of the appeal, were granted by the Director.

At the de novo hearing in this Division, but prior to the introduction of any testimony, counsel for the parties submitted a proposed stipulation of settlement of all issues in dispute for review and approval of the Director.

The terms of the stipulation are as follows:

(1) The action of the respondent Borough of Atlantic Highlands in denying appellant's application for renewal of its Plenary Retail Consumption License shall be affirmed; and

(2) The action of the respondent Borough of Atlantic Highlands in finding appellant guilty of violations of Rule 5 of State Regulation No. 20 and local ordinances shall be affirmed, subject to a modification of the penalty imposed from a sixty (60) days suspension of license to a thirty (30) days suspension; and

(3) The effective date for implementation of this stipulation, as it relates to terms (1) and (2), shall be deferred until January 2, 1978 to permit the appellant the opportunity to obtain a qualified purchaser of its license and complete a transfer of same; and

(4) The plenary retail consumption license of appellant shall be extended by the Director on an ad interim basis until January 2, 1978; subject to the following subject condition:

(a) The licensee shall maintain, on the licensed premises, a professional uniformed security guard from the hours of 10:00 p.m. to closing, every day during which the subject premises are in operation.

In the event the appellant obtains a purchaser who obtains approval by respondent for a transfer of the said license, then, and in that event, the respondent shall renew the license for the 1977-78 licensing year, and the effective dates of the thirty days suspension of license shall be fixed by the Director. The respondent has no objection to an application being made by the appellant, or its transferee, to the Director to permit the payment of fine, in compromise, in lieu of suspension of license.

Good cause appearing, I shall accept the terms and conditions of the stipulation of settlement.

Accordingly, it is, on this 24th day of October 1977,

ORDERED that the term of Plenary Retail Consumption License C-1 for premises 33 First Avenue, Atlantic Highlands, issued by the Mayor and Council of the Borough of Atlantic Highlands to MJM Wine & Liquors, Corp., t/a Joey Miles Tavern, be and the same is hereby extended for the 1977-78 license period, subject to the terms and conditions of the stipulation of settlement and special condition imposed, hereinabove set forth and incorporated herein as though set forth at length, pending further order of the Director, or on January 2, 1978, whichever first occurs.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - THE FIRST PRESBYTERIAN CHURCH AND CONGREGATION OF DOVER, NEW JERSEY v. DOVER ET AL.

The First Presbyterian Church and Congregation of Dover, New Jersey,

Appellant,

v.

The Town of Dover and Aguadeno Social Club,

Respondents.

ON APPEAL
CONCLUSIONS
AND
ORDER

Paul Colvin, Esq., Attorney for Appellant.
Hugh DeFazio, Esq., Attorney for Respondent, Town of Dover.
Albert Dalena, Esq., Attorney for Respondent, Aguadeno Social Club.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent, Mayor and Board of Alderman of the Town of Dover (hereinafter Board) which, by unanimous vote on June 1, 1977, adopted a resolution granting the amended application of respondent, Aguadeno Social Club (hereinafter Club) for a place-to-place transfer of its club license from premises 24 East Blackwell St. to premises 50 West Blackwell St., in the Town of Dover.

Appellant, in its petition of appeal, contends that the action of the Board was erroneous in that: (1) the relocation of the door of the proposed club situs constitutes an impermissible circumvention of the statutory 200 foot distance limitation to appellant Church; (2) the relocation of the club door would still be violative of the aforesaid statutory provision when measured from a structure adjacent to the Church designated as the Church House; (3) the Board failed to consider the proximity of the Church to the proposed premises; and (4) the intrusion of a licensed premises in an area devoted to religious and humanitarian purposes is contrary to the general welfare of the community, and the effect of increased traffic was not thoroughly evaluated by the Board.

In its answer, the Board denies the substantive allegations presented in the petition of appeal. It asserts that its action was not arbitrary or an abuse of discretion, but was rendered after full consideration of the facts and evidence before it.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. Additionally, transcripts of the proceedings held by the Board on May 19, May 23, June 1 and June 13, 1977 were received in evidence, in accordance with Rule 8 of State Regulation No. 15. This was supplemented by the receipt into evidence of several other exhibits and stipulations.

It was stipulated that the distance between the Church door and the presently located door of the proposed club situs is 196.7 feet. If the doorway at the proposed club situs was relocated in accordance with an amended application, the entrance of the club would be at a point beyond the 200 foot limitation, as measured from the Church.

At the hearings held before the Board, the Pastor and the President of the Board of Trustees of the appellant Church articulated their objections to the proposed transfer.

Reverend Hugh Miller, Pastor of the appellant Church for 31 years, who testified before the Board and at the hearing de novo, asserted that, in his opinion, the substantial financial investment of the Church in the downtown area of Dover may be threatened by the addition of a liquor license to a location across the street from the Church and the Church House. The Pastor was fearful that the addition of a liquor license would compound the traffic and parking problems in an area which contained a theatre, a bowling alley and various shops.

He states that the transfer of a liquor license in such close porximity to the Church and the Church House is not compatible with the various Church functions. These functions include the use of the Church House, which consists of a residence for the Church's caretaker on its two upper floors and a meeting room on its main floor. The meeting room is used for meetings by various Church related and community groups; such as, educational associations, youth organizations and several alcoholic anonymous chapters.

Duncan Smith, Jr., president of appellant's Board of Trustees testified that the Board of Trustees, by its official action, opposed the proposed transfer of the license.

In support of the application for the transfer of the club license, Ovidio Ruiz, president of Aguadeno Social Club and a resident of Dover for the past 20 years, testified that the Club had purchased the premises it now occupies from a church. For the past 12 years it has been located adjacent to 2 churches and the Club has never caused any problems or interfered with any of those churchs' activities.

The Club has engaged in civic and charitable ac-

tivities in the community, and it has strictly adhered to the rules and regulations which permit the service of alcoholic beverages only to members and bona fide guests. Usually, the club license is in operation nightly for several hours with a very limited number of members patronizing the facilities.

Ruiz indicated the Club's intent to use the Prospect Street parking lot and the other lots available for parking.

It appears from the record and from an exhibit filed by the Club that, upon implementation of the amended plan, the existing doorway which is 196.7 feet from the Church doorway (formerly used as a means of ingress and egress to a space occupied by the prior tenant, Dover Electric Company) would be used by a tenant for commercial or storage purposes only. A door and vestibule providing access to the rear of the commercial area, which would be used by the Club for the conduct of its activities, would be provided. This entrance to the Club would be to the left of the door leading to the commercial facilities and at the easterly side of the front of the building, which point is admittedly in excess of 200 feet from the nearest Church door, but within 200 feet of the nearest Church House entrance.

Prior to arriving at a determination herein I have reviewed pertinent precedential decisions governing this Division's role and function in deciding appeals from the action of a local issuing authority.

The well-settled principle governing the subject controversy is expressed in Paul v. Brass Rail Liquors, 31 N.J. Super. 211, 214 (App. Div. 1954), wherein it was held:

> The issuance, renewal and transfer of liquor licenses rest in the sound discretion of the issuing authority and its action will not be judicially disturbed in the absence of a clear abuse of discretion. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

In Lyons Farms Tavern v. Mun. Bd. of Alcoholic Beverage Control, Newark, 55 N.J. 292, 303 (1970), the court stated:

> The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or

> arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgement for that of the local board or reverse the ruling if reasonable support for it can be found in the record.

The following expressions from the recent case of Margate Civic Assoc. v. Board of Commissioners, Margate, 132 N.J. Super. 58, 63 (App. Div. 1975) are pertinent:

> The responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place or to cover enlarged premises is primarily committed to municipal authorities. N.J.S.A. 33: 1-19, 24; Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Con., Newark, supra. Local boards considering applications for such transfers are invested by our Legislature with wide discretion, and their principal guide in making a determination is the public interest. Id., 303; Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). See Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).
>
> Once the local board has made its determination, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control who conducts a de novo hearing of the appeal, making the necessary factual and legal determinations on the record before him. Fanwood v. Rocco, 33 N.J. 404, 414 (1960).
>
> However, the rule is well established that the Director will not substitute his judgement for that of the local board, or reverse the ruling if reasonable support for it can be found in the record. On judicial review the court will generally accept the Director's factual findings as well as his ultimate determination unless unreasonable or illegally grounded. Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Con., Newark, supra at 303; Fanwood v. Rocco, supra at 414-415.

I shall first consider appellant's argument that the Church House building is a Church within the intendment of N.J.S.A. 33:1-16, and thus, even the proposed entrance is within

200 feet and proscribed by statute.

In Manning v. Trenton, Bulletin 247, Item 1, the late Commissioner Burnett stated:

> The word "church" may designate either a religious congregation or an edifice of worship, according to the context. See Trustees, etc. vs. Fisher, 18 N.J.L. 254, 257 (Sup. Ct. 1841); Newark Athletic Club vs. Board of Adjustment, 7 N.J. Misc. 55, 59 (Sup. Ct. 1929). As used in the Alcoholic Beverage Control Act, it means a "recognized edifice devoted permanently to the worship of God." Bulletin 5, Item 3. That an edifice is what is meant appears from the fact that the yardstick in the statute is a distance of 200 feet, to be measured between "the nearest entrance of said church" and "the nearest entrance of the premises sought to be license." Hence, being a religious body is not of itself sufficient to invoke the benefit of the statute. Cf. George vs. Board of Excise, 73 N.J.L. 366 (Sup. Ct. 1906) aff'd. 74 N.J.L. 816 (E. & A. 1907), where the Court said: "The Legislature clearly did not intend that wherever religiously inclined persons meet together for Bible study and the like, a church existed within the meaning of this excise regulation." The mere fact, therefore, that a religious organization calls itself a "church" does not make it a church within the meaning of Section 76 of the Control Act, R.S. 33:1-76.

In Manning, the church was a duly constituted body belonging to the Methodist Episcopal Church. The building in which it was located was formerly a two story dwelling house. On the first floor partitions were removed to form an auditorium where religious services were held. The second floor contained an apartment undergoing repairs. Formerly, it was used as a residence by the pastor, but later it was rented to a tenant. Upon completion of the repairs it is the intention of the religious organization to continue to rent out the apartment, or to allow their pastor to reside there.

Commissioner Burnett held in Manning:

> [No] one would recognize this ordinary dwelling house as being a church. The most anyone could say is that it is used to some extent like a church. It is not used exclusively for the worship of God. It was not built with that in mind. The second floor of this dwelling house is nothing

> but a flat to be rented out to tenants. The Church Trustee (who testified on behalf of all the Trustees) himself talks of the "church downstairs." A house divided against itself into a place of worship and an ordinary flat is not, within the contemplation of the statute, a church edifice.

In Quality House Wine & Liquor, Inc. v. New Brunswick, Bulletin 249, Item 4, a brick building in which church services were conducted on the ground floor with six tenants occupying the upper two stories was held not to be a "church" within the meaning of the statute. See also Parisi v. Jersey City, Bulletin 1201, Item 1.

Thus, I find that the Church House building is not a "Church" within the intendment of the Alcoholic Beverage Control Act.

The appellant next argues that the relocation of the door of the club was an unlawful evasion of the statutory 200 foot distance limitation, and relies upon for support the holding of Karam, et al v. Alcoholic Bev. Control, et al, 102 N.J. Super. 291 (App. Div. 1968).

In Karam, the licensee constructed a wall for the sole purpose of making it impossible for a pedestrian to effect normal entrance to the building via the nearest sidewalk, so as to inflate the walking distance. Judge Conford, in holding that such device of creating a physical obstruction was an improper evasion of the statute and invalid, also observed at 102 N.J. Super. at 297-98 the following:

> We would concede that any functionally legitimate purpose in fixing the entrance of a licensed premises in one part of a building rather than another should not be vetoed by a court merely because an incidental result thereof would be the increase of the distance to another licensed premises enough to comply with a distance ordinance such as the present one.

In the instant matter, no such subterfuge was involved. The existing doorway (as shown on the original plan) was the entrance way to store premises and could not be used as a means of ingress and egress to the Club quarters, which is to be located in the rear of the building. The amended plan disclosed an entrance way for the exclusive use of the club members. I see no unlawful evasion of the distance requirement contained in the statute, and I find this contention of appellant to be without merit.

Insofar as the remaining grounds are concerned, I find that the reasons expressed by the appellant at this de novo hearing were, in the main, similar to the objections presented forcefully and at length to the Board at the meetings held by it to the proposed transfer.

Apparently, the Board felt that the transfer of the club license would have no perceptible affect upon the traffic or parking situation in the area, and may create a lesser problem than the establishment of certain other businesses.

Additionally, I observe this case is unlike Lyons Farms Tavern, Inc. v. Newark, supra wherein, numerous individual objectors, petitions, clergymen and organizations, including a hospital which contained a school of nursing, appeared to voice their strenuous objections to a place-to-place transfer occasioned by a premise's enlargement. In Lyons Farms Tavern mich of the locality was devoted tp residences. Area residents and hospital employees (male and female) had been molested. The Supreme Court affirmed the local Board's denial of the place-to-place transfer and held that, the Board's finding that the paramount equities favored the objectors was reasonably grounded. None of these factors, or the other factors considered by the Court in Lyons Farms, are present in the matter sub judice.

The Board, in its deliberations, was aware of the objections concerning the proximity of the proposed club license to the Church, and its Church related and community activities. I must assume that, not only the Board, but the Club, are well aware of the fact that application for the renewal of a license must be made annually. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject its license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell, Inc. v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown, et al., Bulletin 1572, Item 1.

The Director's function, as previously indicated, 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 Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

The Board has, in my opinion, understood its full responsibility and has acted circumspectly and in reasonable

exercise of its discretion, in granting the transfer. I, 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, as required by Rule 6 of State Regulation No. 15. Therefore, I recommend that the appeal be dismissed.

In reviewing the record herein, including the exhibits and the testimony presented, I further find and recommend that, for the reasons hereinabove expressed, the license should be transferred in compliance with the special conditions expressed in the Resolution adopted by the Board in approving the subject transfer. The special conditions are as follows:

(1) The application receives all approvals of all agencies and Board of the Town of Dover.

(2) Upon the construction of Dickerson Street, the entrance to the premises shall be changed from Blackwell Street to Dickerson Street, and the Blackwell Street entrance shall be closed.

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 further adopt the Hearer's recommendation that the transfer of license be subject to the two special conditions imposed by the respondent, Town of Dover, to wit,

(1) The application receives all necessary approvals of municipal agencies, and the Board of the Town of Dover.

(2) Upon the construction of Dickerson Street, the entrance to the premises shall be changed form Blackwell Street to Dickerson Street, and the Blackwell Street entrance shall be closed.

Accordingly, it is, on this 24th day of October, 1977,

ORDERED that the action of the respondent, Town of Dover in granting the license transfer application of respondent Aguadeno Social Club, and imposing the aforestated special conditions upon said license, which are incorporated herein, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

4. APPELLATE DECISIONS - DAGOBERTO AZCUY v. UNION CITY - SUPPLEMENTAL ORDER.

#4110 Dagoberto Azcuy, Appellant, v. Board of Commissioners of the City of Union City, Respondent.	ON APPEAL SUPPLEMENTAL ORDER

James E. Anderson, Esq., Attorney for Appellant.
Edward J. Lynch, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On August 2, 1977, Conclusions and Order were entered herein affirming the action of the respondent Board of Commissioners of the City of Union City (Board), subject to my modification of the penalty imposed by the respondent of revocation of license, to a one-hundred and fifty (150) days suspension of license, upon the finding of "guilty" to charges alleging that, on January 9 and 10, 1977, he permitted an act of violence within the licensed premises, hindered an investigation of the said licensed premises, and permitted the premises to be conducted as a nuisance; in violation of Rule 5 of State Regulation No. 20 and N.J.S.A. 2A:85-1.

The effective dates of said suspension were deferred due to the fact that the licensed premises were partially destroyed by fire and the Board had withheld consideration on appellant's application to renew his license for the 1977-78 licensing year.

By Resolution dated August 18, 1977, the Board renewed the appellant's plenary retail consumption license, subject to payment of fees fixed therefor, and further indicated that it had no objection to having the suspension of license for one hundred and fifty (150) days commence nunc pro tunc, as of July 1, 1977.

Good cause appearing, the effective dates of the suspension can now be imposed.

Accordingly, it is, on this 19th day of October, 1977,

ORDERED that Plenary Retail Consumption License C-125 issued by the Board of Commissioners of the City of Union City to Dagoberto Azcuy for premises 615-17 Bergenline Avenue, Union City, be and the same is hereby suspended for one hundred and fifty (150) days commencing nunc pro tunc at 3:00 a.m. Friday, July 1, 1977, and terminating at 3:00 a.m. Monday, November 28, 1977.

Joseph H. Lerner
Director

5. DISCIPLINARY PROCEEDINGS - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - EX PARTE PROCEEDING - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against Bienvenido C. Colon t/a 182 Club 182 3rd Street Passaic, N.J. Holder of Plenary Retail Consumption License C-126, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.	CONCLUSIONS AND ORDER

Licensee, Pro se
Mart Vaarsi, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

A charge was preferred against the licensee alleging that, on January 7, 1977, he possessed and allowed, permitted and suffered, in his licensed premises, an alcoholic beverage in a four-fifths quart bottle labeled "Calvert Extra American Whiskey, 80 proof" which did not truly describe its contents; in violation of Rule 27 of State Regulation No. 20.

After the licensee entered a plea of "not guilty" to the above charge, a letter dated May 19, 1977, was mailed informing licensee that a hearing relating hereto was scheduled at the Division offices for Wednesday, June 8, 1977, at 9:30 a.m. The aforesaid scheduling of the hearing was confirmed by conversation between the licensee and Mr. William Harrison, Esq. of the Prosecution Section of this Division.

On the day set for the hearing, neither the licensee, or anyone in his behalf, appeared at the hearing; nor was any communication received by this Division from the licensee relative to the hearing. The prosecution staff was unable to contact the licensee at his licensed premises or at his home, due to lack of telephone service at either location.

Accordingly, the hearing relating to the subject charge and proof thereof was presented ex parte.

The report of the Division chemist received in evidence establishes that the subject bottle bore a label which did not truly describe its contents. Its proof was 65 and not 80 proof as inscribed on its label.

A handwritten statement by the licensee, delivered to the Division, was also admitted into evidence. In this statement, the licensee admitted the subject bottle was on his licensed premises for "a couple of years".

It is a well-established principle that a licensee is responsible for any alcoholic beverages not truly labeled, which are found in its licensed premises. Cedar Restaurant and Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947).

Thus, I find that the Division has established the truth of the charge by a fair preponderance of the evidence, indeed, by unchallenged evidence.

The licensee has no prior adjudicated record and it is, therefore, recommended that the license be suspended for ten (10) days.

Conclusions and Order

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

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

Therefore, it is, on this 7th day of October, 1977,

ORDERED that Plenary Retail Consumption License C-126, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Bienvenido C. Colon, t/a 182 Club, for premises 182 3rd Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing 3:00 a.m. Friday, October 21, 1977 and terminating 3:00 a.m. Monday, October 31, 1977.

Joseph H. Lerner
Director