

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

BULLETIN 2295

September 14, 1978

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - LA BUE ENTERPRISES, INC. v. GARFIELD ET AL.
2. APPELLATE DECISIONS - 900 UNION AVENUE, INC. v. UNION BEACH.
3. APPELLATE DECISIONS - JEMLNN, INC. v. PASSAIC.
4. DISCIPLINARY PROCEEDINGS (Wall Township) - SALE TO A MINOR - PRIOR
DISSIMILAR OFFENSE - LICENSE SUSPENDED FOR 15 DAYS.
5. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 2295

September 14, 1978

1. APPELLATE DECISIONS - LA BUE ENTERPRISES, INC. v. GARFIELD ET AL.

La Bue Enterprises, Inc.,)	
		ON APPEAL
Appellant,)	
v.)	CONCLUSIONS
		and
City Council of the City of)	ORDER
Garfield, and Barce, Inc.,)	
Respondents.)	

Roth and Ferrante, Esqs., by Frank A. Ferrante, Esq.,
Attorneys for Appellant.
Walsh, Sciuto and Dimin, Esqs., by Anthony J. Sciuto, Esq.,
Attorneys for Respondent City of Garfield,
Samuel J. Davidson, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the City Council of the City of Garfield (Council) which in effect, on July 19, 1977 denied appellant's application by failing to adopt a resolution with respect to its application for a place-to-place and person-to-person transfer of Plenary Retail Consumption License C-63 from Barce, Inc., to La Bue Enterprises, Inc. and from 424 River Drive to proposed premises at 91 River Drive, Garfield.

The vote taken by the council on this resolution was:
Two in favor; Two opposed; One abstention.

The appellant contends, in its Petition of Appeal that the Council's action was arbitrary, capricious, and unreasonable.

The Council, in its Answer, denies the substantive allegations of the appellant's petition and asserts as separate defenses:

- A. There are already several other taverns in close proximity to the proposed site for transfer of the license. It is felt that the institution of a new tavern in this area is not conducive to public peace or order, and, in fact, would be damaging to the public health and welfare.

- B. The license is not now, nor has it been for several years, in active use.
- C. The license in question, #C-63, is a plenary retail consumption license. However, the intended actual use is mainly for a package store.
- D. There are already more than a sufficient number of package stores within the City of Garfield to service the needs of the public.
- E. There have been objections from local package store dealers to this transfer.

A de novo appeal was held in this Division, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. However, at the hearing herein, no witnesses were introduced by either side, the parties relying, instead, upon the transcript of the hearing below, the application and pleadings filed, pursuant to Rule 8 of State Regulation No. 15.

Appellant alleges that the transcript of the hearing does not disclose the basis for the abstention. Councilwoman Jarocz voted "no", based on the fact that she had never met the applicant. The Mayor voted "no", because of his desire to have the City, in concert with the association of local tavern owners, purchase and retire the license.

The transcript of the regular meeting of July 19, 1977 discloses that the City Engineer, J. Albert Frank, was asked whether the proposed site violated the 500 foot City ordinance relative to distances between licensed establishments; he answered that..."the distance door to door is in excess of the 500 feet required by the ordinance," and, it is, therefore, not in violation.

Councilman Migliaccio asked the following of Anthony Sciuto, the Council's Attorney:

"There's no violation of any ordinance, there's no criminal records involved, there's no character information made available to this Council to stop the transfer and based on the information presented to the Council and since the Council has nothing more than a normal transfer in front of them, if they appeal to the ABC Board Mr. Sciuto, its your opinion they will be granted the license."

Mr. Sciuto replied, "Correct."

Thereupon, the Mayor indicated that a representative of a liquor organization appeared before them the evening prior to this meeting, and stated that it is willing to buy liquor licenses. The Council indicated that..."they could put the difference in..." and it is the Council's desire to do away with [some of the outstanding] liquor licenses.

The following colloquy between Mayor and Attorney Sciuto occurred:

Mayor: "How do you know they [La Bue] would succeed? The City and the liquor dealers want to buy this license to do away with and have less taverns in the City of Garfield."

Sciuto: "Because they would first honor the contract."

Mayor: "I don't think so, because the contract isn't binding - the contract is binding if it is passed by the Mayor and Council. ...The City of Garfield wants to buy the license, I think the ABC would consider the City first, because we want to do away with taverns in the City of Garfield..."

There followed some discussion that there are no funds available, and surely none appropriated, for the purchase and retirement of liquor licenses.

Councilwoman Jarosz commented that she does not know the persons as they didn't come before the Council.

Samuel J. Davidson, Attorney for the Hudson-Bergen Package Stores Association, objectors herein, voiced the liquor dealers objections which were two fold.

1. The applicant fails to comply with State Regulation No. 26 in that their name does not indicate "bar, saloon, tavern," etc., in its title, although, in fact, it will operate under a consumption ("C") license; and

2. There was nothing presented about public convenience or necessity requiring the relocation of this tavern at the proposed site.

Councilman Migliaccio stated that the appellant's attor-

ney advised them that corporate applicant is willing to amend the application to include the necessary words, if required.

After the roll call vote the appellant's attorney requested a resolution setting forth the basis of the denial in order to frame its appeal. None was forthcoming.

I

The crucial issue to be determined is whether the Board acted reasonably in denying the appellant's application.

It is a firmly established principle that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div.) aff'd 33 N.J. 404 (1960): "No person is entitled to [the transfer of a license] as a matter of law."

However, where the municipal action is unreasonable or improperly grounded, the Director may grant such relief or take such action as is appropriate. Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965).

The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove transfer applications. The action of the Council in either approving or denying an application for such transfer may not be reversed by the Director unless he finds "...the act of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947).

The application of fairness has long been a hallmark in the administration of this Division. As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with fair recognition of the fact that justice to the litigant is always the polestar. Samuel Berelman, Inc. v. Camden, Bulletin 1940, Item 1. Cf. Barbire v. Wry, 75 N.J. Super. 327 (App. Div. 1962); Martindell v. Martindell, 21 N.J. 341, 349 (1956).

Using the above principles as a guide, I am persuaded that they Mayor voted as he did, for the reasons which he so clearly stated for the record on the evening of the regular meeting. However, despite her denial and statements to the contrary, I find as a fact, that the basis of Councilwoman Jarosz's vote was as stated, that the corporate stockholder did not personally present himself

for questioning, despite being confined to a wheelchair and physically incapable of reaching the second floor where the meeting was conducted, but was available downstairs should any Council member desire to meet with him.

The transcript is almost devoid of any testimony whatsoever relative to the various separate defenses raised by the Council in its Answer herein, save the fact that the license has been inactive for several years.

Inactivity of itself is not a valid basis for denial. Were it contrary, there would have been no need for the legislature to enact Assembly Bill No. 1875 (Chapter 246, Laws of N.J., 1977; approved 10/3/77) wherein it specifically limits inactive licenses to a stated time period, and provides under certain circumstances for extension by the Director of this Division upon showing by Affidavit "...that he is making a good faith effort to resume active use of the license..."

Rule 10 of State Regulation No. 6 states that in every action adverse to an applicant or objector, the issuing authority shall state the reasons therefor. I find as a fact, that the Council's failure or refusal to do so was unreasonable in the circumstance, and violative of this rule resulting in unfair treatment of applicant.

N.J.S.A. 40:48-2.39 through 2.45 inclusive, sets forth the procedures and restrictions whereby a municipality may reduce the number of licenses outstanding in its community. No useful purpose would be served by reciting them; suffice to say the City of Garfield could not under the relevant statutes retire this license at this time, in the event all parties consented.

I find the vague statements made by the Hudson Bergen Package Stores Association relative to its possible purchase of this license in order to retire it, to lack substance, and uttered solely to influence the Council to deny the application, sub judice.

For reasons stated, I find that the appellant has met the burden imposed by Rule 14 of State Regulation No. 15. It has established that the action of the Council was erroneous and should be reversed. I so recommend.

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

Accordingly, it is, on this 28th day of March 1978,

ORDERED that the action of the respondent City Council of the City of Garfield be and the same is hereby reversed; and it is further

ORDERED that the City Council of the City of Garfield be and the same are hereby directed to grant appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-63, in accordance with the application (with modification of trade name) filed therefor.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - 900 UNION AVENUE, INC. v. UNION BEACH.

900 UNION AVENUE, INC.

Appellant,

v.

Borough Council of the Borough
of Union Beach,

Respondent.

CONCLUSIONS
AND
ORDER

.....
Sapiro & Gottlieb, Esqs., by David Sapiro, Esq., Attorneys
for Appellant.
Healy & Falk, Esqs., by Patrick D. Healy, Esq., Attorneys
for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of the respondent Borough of Union Beach which, by Resolution dated November 7, 1977, suspended appellant's plenary retail consumption license for twenty days, commencing November 14, 1977, upon a finding of guilt to charges alleging that the appellant sold an alcoholic beverage to a minor, age 15 years, on March 18, 1977, and permitted the premises to be conducted as a nuisance; in violation of Rules 1 and 5 of State Regulation No. 20. N.J.A.C. 13:2-23.1,6.

Upon the filing of this appeal, by Order dated November 14, 1977, the Director stayed the suspension pending the determination of the appeal.

Subsequent to the de novo hearing, but prior to the Hearer's Report, the appellant advised of a pending sale of the stock of the appellant corporation, and petitioned to the Director for the imposition of a fine, in compromise, in lieu of suspension of the license; in accordance with the provisions of N.J.S.A. 33:1-31.

Upon consideration of the facts and circumstances herein, I have determined to favorably consider the said application, and shall enter an order dismissing the appeal, vacating the stay of suspension and approving appellant's application to pay a fine of \$840.00, in compromise, in lieu of suspension of the license.

Accordingly, it is, on this 25th day of April, 1978,

ORDERED that the action of respondent be and is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order of November 14, 1977, staying the Borough's suspension pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that the payment of a \$840.00 fine by the appellant be and the same is hereby accepted, in compromise, in lieu of suspension of the license for twenty (20) days.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - JEMLNN, INC. v. PASSAIC.

Jemlnn, Inc.,)	
t/a Melody Bar & Grill,)	
Appellant,)	
v.)	ON APPEAL
Municipal Board of Alcoholic)	CONCLUSIONS
Beverage Control of the)	and
City of Passaic,)	ORDER
Respondent.)	

 Robert H. Chester, Esq., Attorney for Appellant.
 Randolph Newman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) which, on March 14, 1977, suspended appellant's Plenary Retail Consumption License, C-11, for premises 47 Howe Avenue, Passaic, for forty days, following a finding of guilt to charges alleging that (1) appellant permitted a sale of alcoholic beverages to a minor, age 17 years, and (2) it allowed the unlawful possession of controlled dangerous substances on the licensed premises; in violation of Rules 1 and 4 of State Regulation No. 20.

The effective date of the suspension was stayed by Order of the Director of this Division of March 25, 1977, pending determination of this appeal.

Appellant contends in its Petition of Appeal that the Board's findings were not based upon legally admissible evidence, and that the Board was collaterally estopped by the decision of the Passaic Municipal Court, which dismissed the Disorderly Person charge made against appellant's employee of sale to a minor. The Board in its Answer denies the appellant's contentions.

A de novo appeal was scheduled to be heard in this Division with due notice acknowledged by all of the parties hereto, at which time they would be afforded full opportunity to present evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. However, counsel for the parties re-

requested they be provided the opportunity to submit a transcript of the testimony of the proceedings before the Board, in accordance with Rule 8 of said Regulation, in lieu of presenting any further evidence.

Prior to an examination of the transcript of the proceedings of the Board, I find that the contention of appellant that the Board was "collaterally estopped" by the determination in the Municipal Court, is without merit whatever. Continental Can Co. v. Hudson Foam, 123 N.J. Super. 364 (Law Div. 1973), rev'd on other grounds, 129 N.J. Super. 426 (App. Div. 1974); In re Darcy, 114 N.J. Super. 454 (App. Div. 1971).

An examination of the transcript of the proceedings before the Board, held March 14, 1977, reveals the testimony of "Patrolman Iapico", presumably a patrolman attached to the Passaic Police Department, as the sole witness in support of the charges. He and his partner entered the appellant's premises at 11:03 in the evening of October 13, 1976.

Patrolman Iapico's testimony in support of the charge related to his observation that, upon entry, he saw a young girl sitting at the bar, whose age he determined to be seventeen years. She had an eight ounce glass of a carmel colored liquid "sitting in front of her". This was the substance of the testimony in support of the charge of selling alcoholic beverage to a minor.

Relative to the charge that the licensee allowed the unlawful possession of narcotic drugs on the premises, Officer Iapico's account indicated that when he went behind the bar to observe the license documents, he noticed a box of garbage on the floor. In the box he discovered a "manila envelope containing marijuana seeds". He opened the barmaid's pocketbook and found a "pipe containing marijuana residue" and "two hypodermic needles".

This account of Officer Iapico's testimony respecting the two charges was all the evidence produced before the Board. Other than the officer's testimony, there was no proof of age of the alleged minor. She did not testify, nor was there any production of substitute evidence confirming her identity or age.

There was no report or testimony offered to the Board to support the statement that the pipe discovered in the barmaid's pocketbook had "marijuana residue" in its bowl. Counsel for appellant stipulated that there was a glass of beer on the bar and the substance found in the garbage can was marijuana.

The barmaid, Sharon Smollen, testified in defense of the charges. She did not recall selling or serving any alcoholic beverage to the individual alleged to be a minor. She denied any knowledge of the marijuana or narcotics paraphernalia in her pocketbook.

Disciplinary proceedings of this nature require proof by a preponderance of the believable evidence only, as these actions are civil in nature. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

The Administrative Procedure Act permits the introduction of hearsay evidence, otherwise impermissible in judicial proceedings. N.J.S.A. 52:14B-10. However, hearsay evidence alone may not be the basis upon which a determination is made. As stated in Weston v. State, 60 N.J. 36, 51 (1972):

For a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it.

The hearsay evidence of the alleged minor's age was not corroborated by any other legally admissible evidence. A licensee may be found guilty of serving a minor an alcoholic beverage despite the absence of the minor's testimony; but proof of the age of the minor within the meaning of Rules 64 (23) and 62 (6) of the Rules of Evidence must be observed. Re Harry M. Stevens, Inc. of N.J., Bulletin 2265, Item 3.

There was no testimony to show, by a preponderance of the evidence, that there was sale, service or consumption on the licensed premises by a minor, or that the licensee allowed controlled dangerous substances on the premises. The charges have not been proven. Albert Zagnit, Inc. v. Newark, Bulletin 2223, Item 3.

The efforts of the Board to act decisively to prevent sales to minors and possession of narcotic drugs in the liquor establishments of the municipality is highly commendable. However, it is a quasi-judicial body, and its determinations must be predicated upon fundamental due process. A guilty finding must never be founded upon inadequate proofs. Re J.P.S. Inc., Bulletin 2207, Item 3.

In consequence of the failure of the Board to substantiate its action by the production of sufficient competent evidence to sustain the specific charges alleged, I find that appellant has met its burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be reversed, and the charges herein be dismissed.

Conclusions and Order

No Exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 20.

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

Accordingly, it is, on this 17th day of April 1978,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control for the City of Passaic be and the same is hereby reversed, and the charges herein be and the same are hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR DISSIMILAR OFFENSE -
LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary
Proceedings against

A.H.S., Inc.
t/a Royal Manor
s/w corner Wall Church Road
& State Highway #35
Wall Township
P.O. Spring Lake, N.J. 07719

Holder of Plenary Retail Consumption
License C-10, issued by the Township
Committee of the Township of Wall.

CONCLUSIONS
and
ORDER

Thomas C. Brown, Esq., Attorney for Licensee.
Leonard A. Peduto, Jr., Deputy Attorney General,
Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to a charge alleging that, on March 23, 1977, it sold, served and delivered, and permitted the consumption of, an alcoholic beverage in and upon the licensed premises to a person under the age of eighteen years; in violation of Rule 1 of State Regulation No. 20.

On behalf of the Division, ABC Agents B and G testified that, on March 23, 1977, they entered the subject premises after paying the required admission charge.

The premises are very large, accomodating more than eight-hundred patrons. Musical entertainment, as enjoyed by young people, is offered, and alcoholic beverages are provided at four bars. On this evening the premises appeared crowded.

The Agents centered their attention upon a group of three young people seated at one of the bars, particularly upon one young female, later identified as Andrea ----. They observed the sale and consumption of alcoholic beverages by all members of this group, and then approached them and asked for identification.

When asked by the Agents to produce proof of age, Andrea ---- exhibited a driver's license purporting to be hers, but which was, in fact, a license of another person. This license indicated that its holder was twenty-one years of age.

Thereafter, Andrea ---- exhibited a motor vehicle "learners permit" in her true name, which disclosed her date of birth as September 23, 1958. The "8" in 1958 on this permit was obviously altered. Further inquiry of Andrea revealed that she had made such alteration and had also received a valid driver's license belonging to another person. It was this latter document that she had exhibited upon entry into the licensed premises.

The testimony of Andrea ---- was introduced on behalf of the Division. She stated that she was born on September 23, 1959, which made her age on the date of the charge to be 17. She recounted her visit to the subject premises and her having ordered, received and consumed some beer and one mixed drink.

The licensee, in its defense to the charge, introduced the testimony of its President, Arthur Stock, who described the extent of the business carried on within the licensed premises. He identified it as a "singles-nightclub", which accomodates between eight hundred to one thousand patrons. During the summer months, he employs about a hundred people to keep the business functioning in a proper manner.

Although he had been in the premises on the night of the charge, he had no direct knowledge of the entry of the minor, Andrea ----, or the subsequent sale to her. He described the usual precautions that his personnel assigned to the entrance-ways take in order to "screen" minors. He admitted that, although these doormen have age representation forms for the purpose of execution by possible minors who do produce other forms of identification, none was obtained of Andrea ---- on that evening.

Following the hearing in this Division, counsel for the licensee submitted an extensive memorandum outlining the position of the licensee in facing the daily challenges which may develop from the thousands of patrons of the younger population group. The sale to Andrea ---- was admitted, but the licensee argues that it properly relied upon what purported to be a valid driver's license and took all reasonable steps possible. It submits that this was not a flagrant violation and seeks leniency in any penalty imposed.

A special note contained in Appendix 5 of Rules and Regulations of this Division refers to sales to minors, and provides as follows:

In disciplinary proceedings involving alleged sale of alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20, the defense provided by R.S. 33:1-77 is available to the licensee. However, to establish the defense, it must affirmatively appear (a) that the minor falsely represented himself in writing to be of age;

and (b) that the minor's appearance was such that an ordinary prudent person would believe him to be of age; and (c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 18.
(emphasis added as to driver's license)

The above admonition is merely a restatement of the statutory requirements as set forth in N.J.S.A. 33:1-77, with emphasis noted of the usual fraudulent documents exhibited by some minors.

It is an established doctrine that the production by a minor of a driver's license or draft card cannot exonerate the licensee from responsibility under the Alcoholic Beverage Law. See Sportsmen 300 v. Nutley, 42 N.J. Super. 488 (App. Div. 1956); Re Obay, Incorporated, Bulletin 2014, Item 5, aff'd Appellate Division, 1972, opinion not approved for publication, reported in Bulletin 2072, Item 2; Re Ano, Inc., Bulletin 2092, Item 4; Re Camden Liquor Corp., Bulletin 2076, Item 5; Re Urna, Bulletin 2042, Item 7; Re DiCostanzo, Bulletin 2207, Item 1.

In order to obviate the dangers of accepting other documentary evidence, which can be fraudulently obtained or altered, a "written representation" of age at the time of sale is a statutory requirement. As the Director said in Re Wedemeyer, Bulletin 1050, Item 8, cited in Sportsmen 300 v. Nutley, supra:

Where the licensee follows the statutory method, there is always the desirable and substantial possibility that the patron, if a minor, will refuse to commit himself to writing and will leave the establishment.

I find that the Division has established the charge by a fair preponderance of the credible evidence; and that the sale to and consumption of the alcoholic beverage by the minor is uncontroverted.

Licensee has no prior adjudicated record. It is recommended that the license be suspended for fifteen days. Re Nabru,

Inc., Bulletin 2207, Item 2.

Counsel for the licensee requests that it be given an opportunity to pay a fine, in compromise, in lieu of suspension of license. It is noted that the licensee operates licensed premises accomodating over eight hundred young patrons. His description of the precautions taken to preclude the presence of minors reveals a bona fide intent to prevent the presence of such minors.

The Deputy Attorney General appearing for the Division in this matter has expressed no objection to the acceptance of a fine, by the Director, in compromise, in lieu of the recommended suspension of license.

The monetary fine would, in itself, be sufficient to induce the licensee to maintain its alertness to the prevention of sales to minors; and I so recommend that said fine be permitted.

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 transcripts of the testimony, the exhibits, the legal memoranda of the parties, and the Hearer's Report, I concur in the findings and recommendations of the Hearer, as they relate to the finding of guilt and the imposition of a fifteen days suspension of license, and adopt them as my conclusions herein.

The licensee has a prior adjudicated record of permitting lewdness, and offering prizes to its customers on the licensed premises, in violation of Rules 5 and 20 of State Regulation No. 20, for which a fifty (50) days suspension was imposed by my Conclusions and Order of March 10, 1978. Re A.H.S., Inc., t/a Royal Manor, Bulletin 2293, Item 1.

Therefore, I shall deny the licensee's application to pay a fine, in compromise, in lieu of suspension of license, pursuant to N.J.S.A. 33:1-31.

Accordingly, it is, on this 22nd day of March, 1978,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Wall to A.H.S., Inc., t/a Royal Manor, for premises s/w corner Wall Church Road & State Highway #35, Wall Township, be and the same is hereby suspended for fifteen (15) days, commencing 2:00 a.m. Tuesday, April 4, 1978 and terminating 2:00 a.m. Wednesday, April 19, 1978.

Joseph H. Lerner
Director

5. STATE LICENSES - NEW APPLICATION FILED.

Robert Pomert Incorporated

Dogwood Lane

Alpine, New Jersey

Application filed September 7, 1978 for limited wholesale license.

A handwritten signature in cursive script, appearing to read "Joseph H. Lerner", with a long horizontal flourish extending to the right.

Joseph H. Lerner
Director