

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

BULLETIN 2253

May 19, 1977

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - A. R. A., INC. and ARMELLINO v. DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL.
2. APPELLATE DECISIONS - W.I.C.K., INC. v. CHATHAM.
3. APPELLATE DECISIONS - MAURER v. TEANECK.
4. DISCIPLINARY PROCEEDINGS (Cape May City) - SALE TO MINOR - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED 40 DAYS.
5. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
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1. COURT DECISIONS - A. R. A., INC. and ARMELLINO v. DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-891-76

A. R. A., INC.
t/a THE PUB, and JOHN ARMELLINO,

Appellants

v.

DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE
CONTROL,

Respondent.

Argued January 25, 1977 Decided February 8, 1977.

Before Judges Lora, Crane and Michels.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Thomas T. Warshaw argued the cause for appellant A. R. A., Inc., t/a The Pub (Messrs. Drazin & Warshaw, attorneys).

Mr. Spencer N. Miller argued the cause for appellant John Armellino (Messrs. Krivit, Miller & Galdieri, attorneys).

Mr. John P. Dizzia, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. William F. Hyland, Attorney General of New Jersey, attorney; Mr. Stephen Skillman, Assistant Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re A.R.A., Inc. and John Armellino v. Director, Division of Alcoholic Beverage Control. Bulletin 2241, Item 1. Director Affirmed. Opinion not approved for publication by Court Committee on Opinions.)

2. APPELLATE DECISIONS - W.I.C.K., INC. v. CHATHAM.

W.I.C.K., Inc.,

Appellant,

v.

Mayor and Council of the
Borough of Chatham,

Respondent.

On Appeal

CONCLUSIONS
AND
ORDER

Friedman and D'Alessandro, Esqs., by Edward G. D'Alessandro, Esq.,
Attorneys for Appellant
Stickel, Frahn and Stockholm, Esqs., by Carl A. Frahn, Esq.,
Attorneys for Respondent, Council
Arnold Miller, Esq., Attorney for Objectors
Kein, Pollatschek and Iacopino, Esqs., by Donald G. Kein, Esq.,
Attorneys for Objecting Association

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Mayor and Council of the Borough of Chatham (hereinafter Council) which, on April 26, 1976, denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Distribution License D-1, from Guida Pagliara to appellant, and from premises 168 Main Street, to 393 Main Street, Chatham. In its Resolution (#46-76) the Council set forth, in detail, its determination of the factual details with respect to the application, and the rationale upon which it based its conclusions.

The appellant contends that the Council's action is erroneous and contrary to the evidence adduced at the hearing before it, and, the Council erroneously applied the applicable law. The Council denies appellant's contentions, averring that its conclusions were properly reached, based upon its evaluation of the appellant's applications.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity provided the parties to introduce evidence and cross-examine witnesses.

From the pleading documents filed, the extensive memoranda outlining the alleged facts and the applicable law, and the detailed resolution adopted by the Council, the following

appears: the appellant is the owner and operator of a large supermarket located on the main street of the Borough near its border to its neighboring community. The existing license, sought to be transferred, is presently located in a small package-store at the other end of Main street, but nearby to its main shopping center. The transferor, owner of the package liquor store, wishes to retire, and the transferee, appellant, wishes to add a package goods facility within its supermarket as an adjunct to its business.

The Council determined to disapprove appellant's application after an extended hearing, receipt of petitions against the transfer and its findings which were set forth in its Resolution (#46-76), as follows:

"WHEREAS, W.I.C.K. Inc., a New Jersey corporation, has applied to the Mayor and Council of the Borough of Chatham for the transfer to it of Plenary Retail Distribution License #D-1 from Guido Pagliara and for a transfer of the license from 168 Main Street to premises at 393 Main Street, and

WHEREAS, this governing body, being the local issuing authority of the Borough of Chatham, following receipt of written objections to such transfers, held a public hearing on February 23, 1976 and concluded the same on March 22, 1976, and

WHEREAS, this governing body has made the following findings of fact:

1. An application to transfer this license to this same location was denied by this body on July 14, 1975. It was refused on the basis of disqualification of the then applicant, Kings, a supermarket chain which owns and operates the premises at 393 Main Street.

2. This application is submitted by a new independent corporation, the principals of which intend to enter into a business arrangement with Kings for the exclusive right to sell liquors in its supermarket at 393 Main Street.

3. Formal objections to this application were presented on behalf of the owners of the three other Plenary Retail Distribution Licenses which exist in this municipality. In addition, a great many residents by petition and in person voiced their objections.

4. All four of the Borough's Plenary Retail Distribution Licenses are presently located in the central business zone, relatively close to each other, and to established municipal parking areas provided for the many businesses located in that zone. Each license is located in relatively small independent business establishments owned and operated exclusively by the licensees.

5. Kings itself holds two Plenary Retail Distribution Licenses, one in Summit and one in Morristown.

6. The contemplated business arrangement between the applicant and Kings as the subject of much argument and testimony. Only an outline and not the final agreement was submitted. It will be called a lease but many aspects of the arrangement are more normally found in agency agreements or employment contracts.

7. According to the arrangement described, the applicant agreed to apply for this license and if approved to conduct a retail liquor business in Kings Supermarket for at least ten years. The stock of the applicant corporation will be pledged first to secure purchase of the license and business and then to Kings' to secure performance of the arrangement. The business must be operated during all supermarket store hours except when illegal, the applicant is required to carry an adequate inventory, conduct its business in all ways consistent with Kings' rules, regulations and policies governing the store, and to provide satisfactory and courteous service to its customers. Kings will handle all advertising exclusively and the applicant is to carry Kings personal label liquor as well as use the name 'Kings Fine Wines and Spirits'. The applicant will not be allowed to carry any other merchandise except with Kings' permission and the whole arrangement may be cancelled by Kings if the license of the applicant is ever suspended. Upon the denial of this application, the applicant or Kings in the applicant's name, may pursue an appeal, and

WHEREAS, this governing body, after considering the evidence presented, the arguments of counsel, the individual objectors and said findings, has concluded that each of the following reasons precludes it from approving the requested transfer:

1. It will not benefit this community nor is it in accordance with the public interest to transfer

this license out of the central business zone or into a large supermarket. The detrimental effect on the other businesses in the central business zone, the availability of police protection and control in the central business zone and the social and moral desirability of confining liquor sales to small owner operated shops outweighs the convenience argument of so-called one stop shopping.

2. The applicant has not met the burden of proof that the interest of Kings Supermarket in the license after transfer to the applicant and when their agreement is finalized will not place Kings Supermarket in violation of either or both RS 33:1-12.31 and RS 33:1-26.

3. The interest of Kings Supermarkets in this matter has been demonstrated to be far more than that of an ordinary landlord, even one who will receive 5% of the gross sales of its tenant. Such interest coupled with the control it will have over the licensee, both under the terms of the proposed lease and by virtue of the applicant's utter dependence upon the supermarket for its continued prosperity as a business, is a relationship that this body feels will not be in the best interests of the public nor promote proper, careful and conscientious adherence to the Alcoholic Beverage Control Law."

Appellant produced the testimony of Robert Bleiburg and Edward Sabo, stockholders of appellant corporation; John Vaughn, a realtor; Guido Pagliara, the transferor; Allen Bildner, President of Kings Supermarket; Abraham Simoff and Howard L. Green, both expert witnesses in the areas of traffic and marketing; John J. Merrigan, John C. Staff, Carl M. Ulmer, William Kastler, all security or traffic guards; and Angelo Palmisano, a Special Investigator.

Synthesizing their testimony as a whole, the following picture emerges:

Bleiberg, who works for a meat packing house presently, but who has had extensive experience in an alcoholic beverage retail establishment, was searching for a liquor business. He spoke to Vaughn who knew Pagliara's retail distribution license was for sale, and that Kings supermarket had previously attempted to secure such a license for its building, and had been rejected.

Eventually, after considerable discussions, arrangements were entered into for Bleiberg and his neighbor, Sabo, through a newly-formed corporation, (appellant), to purchase Pagliara's license and move the business into the Kings supermarket, subject, of course, to obtaining municipal approval.

The proposal for transfer of the license was presented by way of proper legal application to the Council, which, following a hearing, rejected the application, for the reasons noted in its resolution.

Bildner, Simoff and Green each advocated that the transfer of the liquor business to Kings would be beneficial to the community or, at least, to some aspect of it. Bildner insisted that the liquor facility would be an accomodation to the shoppers; Simoff rejected the Council's conclusion that the transfer would increase traffic problems; and Green suggested that the transfer would add to the convenience of the public, in that there would be a one-stop shopping convenience to include alcoholic beverages, rather than two stops as is presently required.

Merrigan, Staff, Ulmer and Kastler each supported the thesis that the traffic accident potential would not be increased by the transfer, and that the present store, considering the amount of present traffic, does not represent a hazard, and certainly would not by virtue of the addition of the alcoholic distribution facility.

Palmisano investigated the number of reportable accidents at the subject site, and found that there had been two. He had also investigated the number of disciplinary proceedings initiated against the holders of alcoholic beverage licenses in the Borough and found there had been none.

Finally, he had surveyed the neighboring businesses to the place occupied by the transferor and found that there would be no objection to the transfer by those business people. Specific reference to the above testimony shall be hereinafter made.

The burden of establishing that the action of the municipal issuing authority is erroneous and should be reversed rests entirely upon the appellant. Rule 6 of State Regulation No. 15.

The issues in this matter are narrowed to two aspects by virtue of the Council's resolution. The first relates the conclusion that the transfer would be detrimental to the public interest, as stated in item #1 of that resolution. The second is the determination by the Council that Kings Supermarkets has an undisclosed interest in the prospective license, contrary to the pertinent statute.

I.

With respect to that determination relative to such undisclosed interest of Kings, I find that the record does not support such conclusion. At best, the Council would conclude only the merest suspicion that Bleiberg and Sobo will be indirect employees of Kings. The testimony of Bildner, president of Kings, does not support that thesis. He has elequently articulated the position of his Company, that it wishes an alcoholic beverage

facility principally to complete their total service. What profits to the Company that such facility would generate, if it were under their management would probably not exceed the net profit produced as appellant's landlord.

Additionally, were Bleiberg and Sobo to act as a "front" for Kings, Council's suspicions would be sufficient to institute an investigation by agents of this Division, and, if such suspicions were proved correct, appellant's license would be in jeopardy.

Hence, I find that determination of the Council in this respect to be unreasonable. Cf. Re Five Points Liquor Store, Inc., Bulletin 2154, Item 4; Re Diaz, Bulletin 2169, Item 5; Re 482 Jackson Avenue Corporation, Bulletin 2211, Item 3; Re Belba, Inc. Bulletin 2228, Item 1.

II.

The primary basis upon which the application for transfer was rejected is contained in Item #1 of the subject resolution, set forth in detail hereinabove. The Council produced the testimony of its Business Administrator, Peter M. Rayner, and its President, Joseph C. Molitor, Jr.

The substance of their testimony related to the planning considerations given to the central business area in which the subject license is presently located. In the past few years, there were eleven business establishments which moved from the area, such departure alarmed the Council as well as the municipal planners. To counteract what appeared to be the onset of a business decline, a modest plan was adopted which included the widening of the road, the expansion of parking and the increase in police vigilance. The present situs of the subject license was attractive, for it was an integral part of the business community and fulfilled a specific need.

With respect to the proposed transfer on the license to the supermarket, the Council President commented:

"We were more concerned in the supermarket situation with that proximity of underaged children with the proximity of liquor; but not the other way with the police station."

The philosophy guiding the Council was succinctly expressed by Molitor "...We feel that the personal approach of the small individual business is the way the town will survive." It was apparently this premises that underlay the unanimous determination of the Council that the proposed transfer to a supermarket should be rejected.

It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages.

Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1956); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance, within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, Bulletin 997, Item 2.

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

A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject of course, to review by this Division in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (1949).

In Fanwood v. Rocco, 33 N.J. 404, 414 (1960), Justice Jacobs stated:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable...."

In short the action of the municipal issuing authority should not be reversed by the Director unless he finds the "act of the Board was clearly against the logic and effect of the presented facts." Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502; Cf. Teofilak v. Wildwood, Bulletin 1782, Item 2.

The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them. Fanwood v. Rocco, *supra*. No person is entitled, as above, to such transfer. N.J.S.A. 33:1-26; Cf. Hutchins v. Paterson, Bulletin 2185, Item 2.

The instant matter is basically identical to countless other application denials which have come, on appeal, to the Director. His settled practice is not to substitute his judgment for that of the local issuing authority unless he finds that there was a

manifest abuse of discretion by the said authority. Vargas v. Union City, Bulletin 2237, Item 4; Brick Church Pub v. East Orange, Bulletin 2232, Item 4; Clinton Hill Liquors, Inc. v. Newark, Bulletin 2182, Item 2; A. N. Butler, Inc. v. Butler, Bulletin 2171, Item 1; Hero Corp. v. Hammonton, Bulletin 2161, Item 1; Szarko's Liquor Store, Inc. v. Hillside, Bulletin 2160, Item 1; Conn v. Dover, Bulletin 2125, Item 2; Alloway Beverages, Inc. v. Burlington, Bulletin 2133, Item 2; Felicetta v. Wallington, Bulletin 2126, Item 3.

In a similar matter, Bell Beef Co., Inc. v. Matawan, Bulletin 2119, Item 2, (affirmed by Appellate Division in an unreported opinion cited in Bulletin 2152, Item 1), in which a supermarket attempted to secure the license of a neighboring package store, the denial of transfer was affirmed by the Director, who cited Justice Francis's opinion in Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970):

"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 had 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...."

In sum, the Council here considered appellant's application; it was attuned to the oral protests and written petitions of objectors; it considered the impact upon the community of the proposed move in light of their hopes for a revitalization of the business area; found the proposal not to be in the best interest of the public; and unanimously determined to reject the said application for transfer.

Since it is uncontroverted that the Council's motives are pure, the Director's function on appeal, as hereinabove stated, is to affirm the Council's action upon a finding that the Council acted, circumspectly and in the proper exercise of its discretion in reaching its well-reasoned conclusion.

Accordingly, I find that the appellant has failed to meet its burden of establishing that the Council's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the action of the Council be affirmed and the appeal be dismissed.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by Appellant, and written Answers to the said Exceptions were filed by the Council and the Objectors, pursuant to Rule 14 of State Regulation No. 15.

The Exceptions in substance, contends that the factual findings by the Hearer were contrary to the evidence produced. Appellant maintains that the proposed transfer would not require additional police protection, additional security or tighter traffic control. Furthermore, it argues that the desire of the Council to keep a plenary retail distribution license in central business district of the municipality is "irrational"; public sentiment is not adverse to the transfer; and that the proposed transfer will have no detrimental effect on the business community. Lastly, appellant charges that the Council abused its discretion, and has acted arbitrarily.

In one particular aspect, the Hearer erred when he alluded to appellant as the owner of a large supermarket, when, in fact, the appellant corporation is merely a prospective tenant of the supermarket. However, this allusion was sufficiently overcome in the report wherein the Council's contention that the owners of the appellant corporate stock were a "front" for the supermarket was flatly rejected by the Hearer.

Appellant ultimately concludes that "...the facts show that the Council's determination is the product of irrational fears and unsubstantiated beliefs flamed by the rhetoric of a self-interested, vocal few." However, what the appellant refers to as "facts" are merely the opinions of its witnesses, which opinions sharply differed from those of the governing body.

From my analysis of the Council's action, I find that it acted reasonably and in the proper exercise of its discretion in its determination that the proposed transfer would be contrary to the public interest. The Council's action was quite consistent with the principles articulated in Fanwood v. Rocco, Supra, and is neither arbitrary nor an abuse of its discretion.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the Exceptions filed with respect thereto, and the Answers to the said Exceptions, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of January 1977,

ORDERED that the action of the respondent Mayor and Council of the Borough of Chatham be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - MAURER v. TEANECK.

George C. Maurer,)	
t/a Enterprise Liquor Shop)	
)	
Appellant,)	ON APPEAL
)	
v.)	
)	
Township Council of the)	AMENDED
Township of Teaneck,)	ORDER
)	
Respondent.)	
)	

 Samuel J. Davidson, Esq., Attorney for Appellant.
 Jacob Schneider, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Conclusions and Order were entered herein on January 6, 1977, affirming the action of the respondent, Township Council of the Township of Teaneck, dismissing the appeal, and reimposing a suspension of four (4) days, heretofore imposed by the Council, which said suspension was to commence on Monday, January 10, 1977. The commencement date was inadvertent since it is the usual Division policy to set such date at least ten days after the date of the order. Hence, in fairness to the appellant, I shall enter an amended corrective order.

Accordingly, it is, on this 10th day of January, 1977,

ORDERED that my Conclusions and Order, dated January 6, 1977 be and the same is hereby amended, as follows:

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Council of the Township of Teaneck to George C. Maurer t/a Enterprise Liquor Shop, for premises 441 Cedar Lane, Teaneck, be and the same is hereby suspended for four (4) days commencing 2:00 a.m. on Monday, January 24, 1977 and terminating on Friday, January 28, 1977.

Joseph H. Lerner
 Director

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED 40 DAYS.

In the Matter of Disciplinary Proceedings against

Janlu, Inc.
t/a Shore Bar
315 - 317 Washington Street
Cape May City, N.J.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-13, issued by the City Council of the City of Cape May.

Reuss, Spall and Cavagnaro, Esqs., by Carl W. Cavagnaro, Esq.,
Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded "not guilty" to the following charge:

"On or about July 23, 1976, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of eighteen (18) years, viz., Jeffrey Ernest S___, age 15, and allowed, permitted and suffered the consumption of alcoholic beverages by said person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Agent W testified that, accompanied by Agent K, he entered through a rear door of the licensed premises, on the evening of July 23, 1976, and seated himself at the bar.

He observed two males enter through the front door of the premises and sit at a table in the service area. A doorman was stationed at the front door; but he occasionally left his position at the door, and at the time that the aforesaid males entered, the doorman was not at his station.

One of two males was identified as Peter ---, who had attained his statutory majority, and the other was identified as Jeffrey S---, whose age was stipulated to be fifteen years.

A waitress, identified as Barbara Gruccio took their order for drinks, proceeded to the bar, and obtained a pitcher of beer from a bartender. She also, obtained two mugs and placed the pitcher of beer and the mugs on the table in front of the males. Peter paid for the beer.

After Jeffrey consumed the first mug of beer and took a sip of the second mug, Agent W approached the minor and identified himself. He also identified himself to Gruccio and placed her under arrest.

On cross-examination, Agent W explained that Jeffrey showed no identification to the waitress. The minor did have an identification card in his possession wherein his age was falsified to show he was nineteen years of age.

It was stipulated that the testimony of Agent K would be corroborative of Agent W's testimony.

In defense of the charge, Barbara Gruccio, testified that on July 23, 1976, after the two youths sat at a table in the service area, she brought a pitcher of beer and two mugs to the table at Peter's request, and received payment of the sum of \$4.00 from him. She did not see them enter the licensed premises. An employee is stationed at the entrance whose sole duty was to check the identification of prospective patrons. It was not her duty to check identifications.

Albert Giancola, sole stockholder of the corporate licensee, testified that he did not come into the licensed premises until after the ABC Agents had identified themselves and the arrest was made. He has employees checking identification at the entranceways at all times.

Although it is immaterial to the adjudication of the subject charge, the charge lodged against Gruccio in the Municipal Court was dismissed for lack of evidence. It was explained by Agent W that the minor, who was not a resident of this State, did not appear at the hearing.

In adjudicating this matter, we are guided by the long established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. David, 64 N.J. Super. 242 (App. Div. 1960). The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I find, as a fact, that the licensee sold and delivered and allowed, permitted and suffered the consumption of an alcoholic beverage (beer) by a fifteen-year old minor in its licensed premises.

The fact that the minor did not pay for the drink or that it was not ordered directly by him does not relieve the licensee of its responsibility since it has been held, under the broad sweep of the Alcoholic Beverage Law and the principle of rigid control underlying its administration, that service, even indirectly, to a minor by service by the minor's companion is a violation of the statute. Cf. Re Gene Bulmer's Enterprises, Inc., Bulletin 2067, Item 7 and cases therein cited.

I find that this case clearly comes within the ambit of Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947), wherein several minors (who were accompanying adults at a banquet) admitted imbibing beer which they "sneaked" when the older men were not looking and the waiters were not present. Judge (later Justice) Wachenfeld held as follows (at pp. 30, 31):

"In construing this section consideration must be given to the legislative intent, and inquiry should be made to determine if it concluded to make the offense complete without guilty knowledge. The lawmakers may declare an act criminal irrespective of the knowledge or motive of the doer of such act and the court has no right to insert an element not intended by the legislature."

* * * * *

"The prevention of the sale to, or the consumption by, minors of liquor upon licensed premises is of the utmost importance. Its purpose is to protect our youth and thereby make more secure the foundation of society. The intent of the legislature and the rules and regulations of the department governing enforcement clearly encompass the responsibility of the licensee for the consumption of alcoholic beverages by minors under the circumstances complained of."

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Trennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

Licensees are under the full responsibility of seeing to it that no minor is sold or served or allowed to consume any alcoholic beverages on the licensed premises. Re Gene Bulmer's Enterprises, Inc., supra.

The testimony fails to sustain licensee's assertion that it relied upon the minor's written representation through an identification card which incorrectly represented that the minor had attained his legal majority. At no time was proof of age requested of the minor, nor did he exhibit an identification card to any of

the licensee's employees. The fraudulent identification was discovered to be in the minor's possession by the ABC Agents.

In any event, the decisional law is clear that the mere display of an identification such as a driver's license, a draft card or a social security card, under similar circumstances, does not exculpate the licensee. Re Di Costanzo, Bulletin 2207, Item 1 and cases cited therein. See also, Sportsman 300 v. Bd. of Comm'rs. of Town of Nutley, 42 N.J. Super. 488, 493 (App. Div. 1956).

Licensee's contention that the dismissal of criminal charges against the waitress is a factor to be considered herein is without merit.

The fact that Gruccio was found not guilty of serving a minor in the local municipal proceeding is irrelevant in arriving at an adjudication of the subject charge. This is an action against the licensee, and not against an individual. Furthermore, the subject action is a civil proceeding and thus the truth of the charge must be established by a fair preponderance of the believable evidence only, and, thus, different from the criminal charge leveled in the Municipal Court against the seller, which was criminal in nature wherein the guilt had to be proven beyond a reasonable doubt. See In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Kravis v. Hoek, 137 N.J.L. 252 (Sup. Ct. 1948); Butler Oak Tavern v. Division of Alcoholic Beverage Control, Supra.

In sum, I find all of licensee's contentions lacking in merit.

Accordingly, upon considering the totality of the record herein, and the various precedents cited, I find that the charge has been sustained by a fair preponderance of the credible evidence, indeed, by substantial evidence. I, therefore, recommend that the licensee be found guilty of the said charge.

The licensee has a previous record of suspension of license by the Director for five days, effective November 10, 1975 for possession of alcoholic beverages not truly labeled. I, further, recommend that the license be suspended for thirty-five days to which should be added five days by reason of the record of suspension for prior dissimilar violation which occurred within the past five years, making a total suspension of forty (40) 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.

By letter dated December 20, 1976, the attorney for the licensee requests that, "In light of the findings of the Hearer, the minor matter of the previous violation and the fact that the licenses shall be transferred to new owners in the future," a fine in compromise, in lieu of suspension, should be imposed.

The violation consisted of sale and service of alcoholic beverages to a fifteen year old minor. In addition, the subject license was suspended on November 10, 1975 on the charge of possession of alcoholic beverages in bottles bearing labels which did not truly describe their contents. I consider the sale to a fifteen year old minor a serious offense, which is compounded by the prior serious violation.

Accordingly, the licensee's request for the imposition of a fine in lieu of suspension of license is denied.

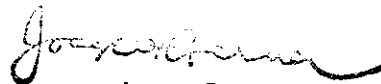
THEREFORE, it is, on this 11th day of January 1977,

ORDERED that Plenary Retail Consumption License C-13, issued by the City Council of the City of Cape May to Jonlu, Inc. t/a Shore Bar for premises 315-317 Washington Street, Cape May City, be and the same is hereby suspended for forty (40) days commencing 1:00 a.m. Wednesday, January 26, 1977 and terminating at 1:00 a.m. on Monday, March 7, 1977.

JOSEPH H. LERNER
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

- D and D Beverages, Inc., 145 Stelton Rd., Piscataway Township, N. J.
Application filed May 2, 1977 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-47 from Lincolt Distributors, Inc., Bldg. # 7, Brookdale Shopping Center, Newman Springs Road, Middletown Township, PO Lincroft, N. J.
- Delaware Valley Dist., Inc., 1434 Parkside Ave., Ewing Township, PO Trenton, N.J.
Application filed May 4, 1977 for a state beverage distributor's license.
- Holly Distributors, Inc., 103 Gaither Dr., East Gate Industrial Center, Mt. Laurel.
Application filed May 10, 1977 for place-to-place transfer of State Beverage Distributor's License SBD-83 from 36 E. South Ave., Mt. Holly, N. J.
- Leone Wine Distributing Co. of N. J., 999 Airport Rd. Lakewood, N. J.
Applications filed May 17, 1977 for limited wholesale and wine wholesale licenses
- Ruth Orris, t/a John Lawrence Co., Ltd., 11 Devonshire Rd., Livingston, N. J.
Application filed May 17, 1977 for limited wholesale license.


Joseph H. Lerner
Director