

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

BULLETIN 2303

November 21, 1978

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1. COURT DECISIONS - COLALILLO and MALLOY v BOUND BROOK and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4928-76

IN THE MATTER OF THE APPEAL OF
JOSEPH A. COLALILLO and DONALD
J. MALLOY,

Appellants,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH
OF BOUND BROOK and DIVISION OF ALCOHOLIC BEVERAGE
CONTROL,

Respondents.

JOSEPH A. COLALILLO and DONALD J. MALLOY,
doing business as a partnership,

Plaintiffs-Appellants,

A-323-77

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF
BOUND BROOK, a municipal corporation of the
State of New Jersey,

Defendants-Respondents.

Argument October 5, 1978 Decided October 1978.

Before Judges Lora, Michels and Larner.

On appeal from the Division of Alcoholic Beverage Control and
the Superior Court of New Jersey, Law Division, Somerset County.

Mr. Marvin J. Brauth argued the cause for appellants (Messrs.
Wilentz, Goldman & Spitzer, attorneys; Mr. Francis X. Journick, of
counsel and on the brief).

Mr. Elia Barbati, Jr., argued the cause for respondents the

Mayor and Council of the Borough of Bound Brook.

Mr. John J. Degnan, Attorney General of New Jersey, submitted a statement in lieu of brief on behalf of respondent Division of Alcoholic Beverage Control (Mr. Mart Vaarsi, Deputy Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re Colalillo and Malloy v Bound Brook, Bulletin 2270, Item 1. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - BARR v. PHILLIPSBURG and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2976-76

FREDERICK C. BARR and ANNE MARIE BARR,
t/a BARR'S PLACE,

Plaintiffs-Appellants,

v.

THE TOWN COUNCIL OF THE TOWN OF PHILLIPSBURG
and JOSEPH H. LERNER, DIRECTOR, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,

Defendants-Respondents.

Submitted October 4, 1978 - Decided October 18, 1978.

Before Judges Seidman and Botter.

On appeal from order of the Director of the Division of Alcoholic Beverage Control.

Mr. D. Scott Curzi, attorney for appellants.

Messrs. Silverman, Hughes & Kinton, attorneys for respondent the Town Council of the Town of Phillipsburg.

Mr. John J. Degnan, Attorney General of New Jersey, filed a Statement in Lieu of Brief on behalf of Division of Alcoholic Beverage Control (Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. Mart Vaarsi, Deputy Attorney General, on the Statement).

PER CURIAM

(Appeal from the Director's decision in Re Barr v. Phillipsburg, Bulletin 2263, Item 1. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

3. NOTICE TO MUNICIPAL CLERKS AND LOCAL ABC BOARD SECRETARIES - CLARIFICATION OF REQUIREMENTS TO COMPLETE APPLICATION FORMS.

TO: ALL MUNICIPAL CLERKS AND LOCAL ALCOHOLIC BEVERAGE CONTROL SECRETARIES

We wish to commend you for your cooperation in helping to achieve the computerization of our records. In most cases we are proceeding according to plan. However, it has become apparent that further clarification is necessary.

- * May we remind you that the new application form MUST be used when a license is issued, renewed or transferred.
- * Individual pages of the form (in triplicate) MUST be used for ANY changes that occur during the license year.
- * If the change involves the removal of information, (a person is no longer part of a corporation as a Vice President, for instance, and his position is now vacant) you may convey this type notice in letter form.
- * Address changes, changes of internal corporate structure, t/a name, partnership, etc., are some examples of times the new application pages must be used.
- * All pages reflecting changes MUST be accompanied by a Page 12, signed and notarized as for renewals.
- * All application pages, all resolutions and all correspondence must bear the 12-digit License Number. We no longer recognize any locally issued numbers, only the number assigned by this office.
- * Notification of changes to a license are to be made within ten days. Please get them in to us promptly to protect your licensees.
- * Renewal applications were due in here last month. Those of you who have not complied, please send them immediately.
- * The application will be revised slightly next year to reflect helpful suggestions now being made.
- * Extra individual page sets for license information changes are available. You may use clear photocopies, but the 3-color sets are preferable for clarity.
- * A number of licensees have reported that they have not as yet received copies of the revised Rules and Regulations. Sufficient copies have been provided to the Clerks. Please see that the licensees receive them as soon as possible. If a person must abide by certain Regulations, it is only fair that he be aware of them.

JOSEPH H. LERNER
DIRECTOR

Dated: September 18, 1978

4. APPELLATE DECISIONS - JAMES V. SYLVESTER, INC. v. KEARNY.

James V. Sylvester, Inc. :
 Appellant, :
 vs. :
 Town Council of the Town :
 of Kearny, :
 Respondent. :
 :

CONCLUSIONS
AND
ORDER

Samuel Raffaello, Esq., Attorney for Appellant.
Doyle & Brady, by Norman A. Doyle Jr., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of respondent, Town Council of the Town of Kearny (hereafter Council) which, by Resolution adopted November 9, 1977, denied appellant's application for renewal of its Plenary Retail Distribution License, D-8, for premises 179-181 Kearny Avenue, Kearny, for the 1977-1978 licensing year.

Appellant contends that the action of the Council was arbitrary, and contrary to the evidence presented before it. The Council in its Answer denies this contention and avers that its determination, which is supported by factual findings, set forth in relevant part herein after, is based upon adequate proofs.

Upon filing of the appeal, the Director of this Division, by Order dated November 17, 1977, granted an ad interim extension of the subject license pending return date of the Order to Show Cause.

A hearing on this appeal de novo was held in this Division with full opportunity afforded the parties to introduce evidence and cross-examine witnesses, in accordance with Rule 6 of State Regulation No. 15. Additionally, copies of the transcripts of the proceedings held by the Council on July 13, September 28 and October 13, 1977 were submitted to the Division to be made part of the record, pursuant to Rule 8 of said Regulation.

Part of the Council's Resolution denying renewal of appellant's license contained the following:

5. A petition was presented and received in evidence as S-1 signed by neighbors in the area of licensee's premises objecting to the renewal (T1-pl2-2).
6. Over the past four years the neighbors in the area of licensee's premises have been disturbed by constant careening and double parking of cars until 2:00 a.m. in the morning (T1-pl7-5) (T1-p40-17).
7. Neighbors have had their sleep interrupted by noises from cars, yelling, screaming and bottle throwing, with constant cursing and fights (T1-pl7-8).
8. There were windows broken in the neighborhood and beer bottles, cans and broken whiskey bottles, were being thrown into alleyways and doorways in the neighborhood, and car windows were broken (T1-pl7-10) (T1pl9-3).
9. There are other liquor stores in the neighborhood but they present no problem and they are closed at 10:00 p.m. (T1-pl8-L3).
10. Many of the vehicles causing the noise and traffic problems are painted vans, often with two to ten "Kids" in them. (T1p30-10)
11. Generally the age group of youths congregating in the area of the licensee's premises, is from 15 to 20 (T1-p34-9).
12. The thrown bottles have on occasion been seen by the neighbors to be thrown by customers who have recently exited from the licensee's premises. (T1-p36-13) (T1-p37-16) (T1-p40-5).
13. There were some 20 incident reports in the records of the Kearny Police Department over a two year period wherein the police were called to licensees premises. (T1-p54-6).
14. Many of the incidents concerned unrelated problems wherein Mr. Sylvester himself called the police (T1-p54-16).
15. Licensee was closed for 15 days by the Town, effective December 21, 1971 for selling to

- minors. This action was affirmed by the Division of ABC and no appeal was taken.
16. Licensee was found guilty again of selling to minors on August 18, 1976, this time by action of the Division of ABC and was closed for 20 days effective June 21, 1977. This matter is presently on appeal before the Appellate Division (T1-p53-4).
 17. Cpt. Henry Black, who reviews all incident reports occurring in the Town of Kearny was of the opinion, that the complaints emanating from Wilson and Kearny Avenue (ie. the location of licensee's premises) are very excessive compared to other areas in the Town of Kearny.
 18. Although no record was introduced, the principal stockholder of James V. Sylvester, Inc., ie. James Sylvester, testified that he was also fined in the Kearny Municipal Court by Hon. Judge Vartan for selling to minors on approximately October 1975 (T3-p39-2). This conviction was affirmed in the Hudson County Court and is now pending before the Appellate Division of the Superior Court.

AND BE IT FURTHER RESOLVED, that based on the foregoing findings the Council concludes that the licensee's premises have been a "trouble spot" and a "nuisance", causing an excessive drain on the municipal police resources of the Town of Kearny, and a constant source of complaints and disturbances to the surrounding neighborhood, and it is therefore further

RESOLVED, that the application of James V. Sylvester, Inc., for the renewal of PDR license #D-8, be and the same is hereby denied.

It is noted that the appeal by the appellant to the Appellate Division of the Superior Court, referred to in Paragraph 16 above, has now been decided. The action of the Director was affirmed and the twenty days suspension reimposed.

The transcripts of the proceedings before the Council set forth the testimony of objectors to renewal, including Angela Fearon, Thomas Brennan, William Fearon and Kearny Police Captain Henry Black. The principal stockholder of appellant

corporation, James V. Sylvester, testified in support of his application for renewal. The testimony of all of the witnesses objecting to the renewal of appellant's license before the Council, amply supported the conclusions reached by the Council that the licensed premises was a "trouble spot" and a "nuisance".

A further examination of appellant's record reveals that its license was suspended by the Council for fifteen days, in consequence of a sale to two minors on October 7, 1971. On Appeal from that determination to the Director of this Division, appellant contended it was a victim of "police harassment". The sales however were admitted. The Director affirmed the action of the Council, by Order dated July 11, 1972. James V. Sylvester, Inc. v. Kearny, Bulletin 2061, Item 1.

Thereafter, the appellant was again charged with selling alcoholic beverages to two minors on August 18, 1976, as a result of an investigation by agents of this Division. In consequence of this charge, appellant was found guilty and its license was suspended for twenty days. James V. Sylvester, Inc., v. Kearny, Bulletin 2269, Item 4. This determination by the Director, as previously noted, was affirmed by the Appellate Division of Superior Court.

The crucial issue in this appeal is: Did the Council act reasonably and in the proper exercise of its discretion in denying appellant's application for renewal?

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Council in the first instance. In order to prevail on this appeal, the appellant must show unreasonable action on the part of the Council constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962).

The burden of proof in all cases which involve discretion; such as, renewal of a license, rests with appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957). As stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587-88 (Sup. Ct. 1946):

A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail,... Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority.

Supplementing his testimony before the Council, which consisted, in essence, of a denial of any improper activity and assertion of the alleged failure by the town to properly supervise or control the area, the holder of the corporate stock of appellate corporation, James V. Sylvester, made an extensive statement to be included in the record at the hearing in this Division.

In that statement, Sylvester recounted what he described as difficulties within the area attributed to him erroneously and generated with a purpose to embarrass him. He maintained that only his establishment is a point of censure by police, who blatantly ignore far more serious offenses occurring at other establishments. No corroborative evidence in support of these contentions was offered.

It is a well established principle that a licensee is responsible for conditions both inside and outside of the licensed premises. Gueche, Inc. v. Union City, Bulletin 2072, Item 5; Perkins v. Newark, Bulletin 2083, Item 2. As Captain Black testified, the activities in the area in front of and surrounding appellant's premises was a constant source of police calls.

From the entire record herein, it has been clearly shown that appellant's premises has become a source of trouble and annoyance to the neighbors and to the police. The number of repeated calls to the police requiring response, as well as the numerous acts of anti-social behavior by congregating youths and appellant's patrons, clearly supports the conclusion that the premises are a nuisance. The municipality is under no obligation to accept such conditions within its Town.

I find that the Council's action was properly within its discretionary power and not manifestly erroneous or unreasonable. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

The Director should not substitute his judgment for that of the Council, or reverse its findings, absent clear abuse or unreasonable or arbitrary exercise of discretion. Lyons Farms Tavern Inc. v. Mun. Bd. of Alcoholic Beverage Control, Newark, 55 N.J. 292 (1970).

Therefore, I find that appellant has not met the burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15. I recommend that the action of the Council be affirmed, and the appeal be dismissed.

Conclusions and Order

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14 (formerly Rule 14 of State Regulation No. 15).

In lieu thereof, a request was made by the appellant to permit a bona fide transfer of the subject license to a third party. The Council advised me that it has no objection to same, and adopted a Resolution, dated August 8, 1978, wherein it agreed to modify its previous denials of renewal for the 1977-78 and 1978-79 license terms, subject to special conditions, solely to permit a transfer of the license to F. & M. Connolly, Inc.

Said Resolution also provides that the renewals, if permitted by the Director, are expressly conditioned upon the current owner and principal stockholder having no interest, either directly or indirectly, in the operation of the business. It contains a further special condition which requires that the new owner cease the sale of all alcoholic beverages at 10:00 P.M. each night.

The action of the Council in denying renewal is patently supported by my review of the record in its entirety, including the transcripts of the testimony, the exhibits and the Hearer's Report.

However, the special conditions are consistent with the difficulties attendant to the operation of the license by the appellant as evidenced in the record herein.

In lieu of expiration of this license, the Council has indicated its approval of a viable alternative method of resolving the past difficulties it has experienced in the operation by appellant.

Under the facts and circumstances herein, I shall permit the renewals of the license. I further indicate that I do not consider such action appropriate in all circumstances, nor is it required on the part of the Council or the Director of the Division. See Downie v. Somerdale, 44 N.J. Super 84 (App. Div. 1957), Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

But for the active intervention of the Council and its cogent response, with detailed conditions, to the underlying difficulties, I would have had no hesitancy in affirming the denial of renewal sub judice.

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

ORDERED that the action of the Mayor and Council of the Town of Kearny, which, by Resolution dated August 8, 1978, reversed its previous action denying renewal of the subject license, be and the same is hereby approved; and it is further

ORDERED that, subject to all of the special conditions set forth in the Resolution of August 8, 1978, which are incorporated herein by reference, the action of the Council in denying renewals be and is hereby reversed.

JOSEPH H. LERNER
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 70 DAYS.

In the Matter of Disciplinary Proceedings against

F.W. Corporation
t/a Galasso's Bar & Liquor
63 Hwy. 36, Corner of
Pimper Place
Keyport, New Jersey

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

.....

CONCLUSIONS
AND
ORDER

Klitzman, Klitzman & Gallagher, Esqs., by William B. Gallagher, Jr., Esq., Attorneys for Licensee.
Leonard Peduto, Esq., Deputy Attorney-General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee entered a plea of "not guilty" to the following Division charge:

On July 24, 1977, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of eighteen (18) years, viz., Kevin M____, age 14, Joseph A____, age 15 and John Mc____, age 14; in violation of Rule 1 of State Regulation No. 20.

In behalf of the Division, Joseph A____ testified that he was born on December 23, 1961 and was, this, fifteen years old on the date of the alleged offense, July 24, 1977. He recounted the several incidents occurring on the evening of July 24th, wherein he and five or six friends met to engage in a drinking party.

Leaving several of his friends in a nearby cemetery, he crossed the highway and entered the subject tavern. He approached a self-service refrigerator and, from it, selected "two Miller eight-packs and two Michelob six-packs" of beer, brought them to the counter and paid about seven dollars.

He was not asked to produce any proof of age or identification. He then returned to his waiting friends and the drinking spree began.

John Mc_____ next testified on behalf of the Division, that he was fourteen years old on July 24, 1977. He had entered the subject tavern before joining his friends in the cemetery. He went to the self-service refrigerator and selected a six-pack of Michelob beer. He brought the beer to the counter and paid \$2.05 for same. He was not asked for any proof of age or identification. Thereafter, he joined his friends, which included Joseph A_____.

Kevin M_____ also testified for the Division that he saw Joseph A_____ enter Galasso's (the subject tavern) and come out with two eight-packs of Miller beer and two six-packs of Michelob beer. He further stated that, at approximately 9:00 P.M., he entered the licensed premises and purchases a six-pack of Michelob. He was not required to show any proof of age. He identified the seller of the beer as Sabato Galasso.

Police Officer John Murphy of the Hazlet Township Police Department testified in behalf of the licensee. He recounted an arrest he made of Joseph A_____ and another youth on the evening of July 24th. Other boys of the group were apprehended in the cemetery nearby. Considerable vandalism had been done to property in the area and the boys were arrested for "being under the influence of alcohol and for malicious damage."

Detective Thomas Johnson of the Hazlet Township Police Department testified on behalf of the licensee and stated that, on the following day, he took statements from several of the minors involved. Kevin M_____ admitted purchasing a six-pack of beer at Galasso's Tavern. Joseph A_____ also admitted buying beer at that same tavern.

The minors' admissions that they purchased the beer at the subject premises were repeated to Inspector Richard B., an ABC Agent who conducted an investigation of the incident about a month after the date of the charge.

Sabato Galasso, the principal owner of the corporate stock of the licensee corporation, testified in defense of the charge that he was first made aware of the alleged sale of alcoholic beverages to these minors by the ABC Agent about a month after the incident. He had no recollection of the evening in question, since he left at 6:00 P.M. Two other employees maintained coverage of his establishment after he left.

Galasso denied ever selling alcoholic beverages to Kevin M _____. He set forth his practice of always requiring identification in connection with a sale to any individual who appears to be in the 18 years old age bracket. He stated that a six-pack of Michelob cost \$2.05; and that, there are two other taverns in the area. Viewing the minors who testified at the Hearing, he would have required proof of age had they sought to purchase any alcoholic beverages.

The bartenders employed by the licensee, George Theiss and John Pulverenti, both denied that they had sold beer at any time to the minors designated in the Division's charge. Pulverenti listed the items he usually required of a suspected minor before a sale is made. He insisted that, under no circumstances, could any of the named boys have obtained a purchase of alcoholic beverages of any kind in his establishment, particularly without producing proof of age.

In adjudicating matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal, 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. Davis, 64 N.J. Super. 242 (App. Div. 1960).

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). The demeanor of a witness may be as revealing as his words. Reynolds v. U.S., 98 U.S. 145, 156-7, 25 L. Ed. 244, 247 (1879).

In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of all of the evidence. 32A C J.S., Evidence, sec 1042 (1964). It is a fundamental principle that no testimony need be believed, but rather, the hearer may credit as much, or as little, as he finds reliable. 7 Wigmore Evidence, sec 2100 (1940); Greenleaf Evidence sec. 201 (16th Ed. 1899).

Applying these principles, I am persuaded that the more credible version was presented on behalf of the Division through the testimony of the minors, the police officers and the Division Agent. The statements of the boys to the police on the next day, identifying the place where they had made the purchases as the subject premises, despite the minor discrepancies among their testimony, has a ring of truth.

In contrast, the testimony of the licensee and his bartenders consisted merely of a denial in general terms.

It is regrettable that the minors were not brought by the Police to the licensed premises on the very next day following the incident. Yet it must be recognized that an on-going investigation into the extensive property damage resulting from the vandalism, in which a greater number of boys than were named in the charge herein were involved, was required, and an investigation at the premises was conducted as soon as practicable.

I have had the opportunity to observe the demeanor of the witnesses as they testified, and, in view of the conflict in the testimony which I have carefully evaluated and assayed, I am persuaded that the testimony of the minors is credible. They presented a reasonably accurate account of what transpired on the date of the charge herein. I am equally impressed with the testimony of the police officers subpoenaed by the licensee. From the accounts given to them on the night of the incident, and on the day after from the minors whom they placed under arrest, I am satisfied that the origin of the beer was the licensee's premises.

In the testimony of all of the witnesses who related the incidents on that evening, exclusive of the owner and its employees, the source of the beer was solely the premises of the licensee. Additionally, the police reports and statements taken by the police after the incident, consistently refer to the licensed premises as the place where the beer was procured.

I would find it incredible that these boys, who were arrested in an inebriated condition, had conjured up a story identifying the licensed premises herein as the source of the beer and had woven a story of their involved itinerary that evening.

From my evaluation of the totality of the evidence, I conclude that the Division has established the truth of this charge by a fair preponderance of the credible evidence. I therefore, recommend that the licensee be found guilty as charged.

Licensee has no prior record. It is, accordingly, recommended that the license be suspended for seventy (70) days.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the licensee, and written Answers thereto were submitted on behalf of the Division, pursuant to N.J.A.C. 13:2-19.6 (formerly Rule 6 of State Regulation No. 16).

In its Exceptions, the licensee asserts that the Hearer's finding attributing credibility to the testimony of the minors was not supported by the record. Specifically, it argues that the absence of identification by the minors of the subject premises as the source of purchase on the date of their arrest, but subsequent identification on the following day, gives rise to an inference that the minors collaborated in the intervening period to coordinate a fabricated story to protect the true source of purchase. It maintains that the inability of two of the minors to identify the alleged salesperson and the incorrect identification by the third minor support the aforesaid inference.

I find that the aforementioned facts do not create "... a natural force and efficacy in generating belief or conviction in the mind" for the proposed hypothesis or presumption. In re Blake's Will, 21 N.J. 50, 58 (1956), I find the same to be conjectural, speculative, and unworthy of acceptance. Despite inconsistencies there is substantial support, in the record as a whole to establish credibility in the testimony of the minors. Thus, I find these exceptions to be without merit.

The licensee also contends, that a delay of approximately one month from the date of the alleged occurrence to actual notification of an investigation into a potential violation was prejudicial in the preparation of its defense. While recollections will diminish as time passes, I find no specific showing of any prejudice which would constitute a basis to dismiss the charges on that ground. Therefore, I reject this exception, as lacking in merit.

Lastly, the licensee seeks the opportunity to present favorable facts in mitigation of the proposed penalty of seventy days suspension of license. The circumstances herein require a stern response, even though the licensee has no prior adjudicated record. Three direct sales of alcoholic beverages were made to minors aged 14, 14, and 15. The consequences

thereof are set forth in the Hearer's Report. The inability of the licensee to adequately sustain the integrity of the Alcoholic Beverage Law and the Division Regulations in preventing sales to minors, particularly those of such young age, mandates the recommended suspension.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's Report, the Exceptions to the said Report and the Answers filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein. I find the licensee guilty of the subject charges.

Accordingly, it is, on this 7th day of September, 1978,

ORDERED that Plenary Retail Consumption Lic. 1322-33-004-001, issued by the Mayor and Council of the Borough of Keyport to F.W. Corporation, t/a Galasso's Bar & Liquor, for premises 63 Hwy. 36, Corner of Pimper Place, Keyport, be and the same is hereby suspended for seventy (70) days commencing 2:00 A.M. Tuesday, September 19, 1978 and terminating 2:00 A.M. Tuesday, November 28, 1978.



JOSEPH H. LERNER
DIRECTOR