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

BULLETIN 2219 March 17, 1976

TABLE OF CONTENTS

ITEM

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

BULLETIN 2219 March 17, 1976

1. APPELLATE DECISIONS - VILANOVA v. PASSAIC.

Elias Pardo Vilanova, t/a Walt's Casino,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Passaic,	)	
Respondent.	)	

Joseph M. Keegan, Esq., Attorney for Appellant
Michael A. Konopka, 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, by resolution dated June 24, 1975, denied appellant's application for renewal of his plenary retail consumption license for the current licensing period, for premises 161 Eighth Avenue, Passaic.

In his petition of appeal, the appellant alleges that the action of the Board was erroneous and should be reversed because its determination was "against the weight of evidence", was contrary to law, and "constituted an abuse of the discretionary power of the Board".

In answer to the said petition, the Board denies the substantive allegations of the petition, and asserts that the Board

> "considered all the facts and circumstances pertaining to the suspension (sic) in question, and that the grounds to suspend (sic) were reasonable and proper, and in the best interests of the public welfare".

Upon the filing of the appeal, the Director, by order dated July 10, 1975 extended appellant's 1974-75 license, pending the determination of the appeal, and the entry of a further order herein.

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

On behalf of the Committee, Detective James Burcell, assigned to the Anti-Vice Squad of the Passaic Police Department, testifed that he conducted a surveillance of the said premises on July 2, 3, 7 and 9, 1974. As a result thereof, a search warrant was obtained, and a raid conducted in the premises on July 15, 1974, during which betting slips on illegal lottery and lottery paraphernalia were found.

Juan Pardo, a brother-in-law of the licensee, who identified himself as the manager of the premises, and the appellant were arrested. Pardo was subsequently indicted and found guilty of gambling charges. The appellant, however, was not indicted by the grand jury.

Burcell stated that Pardo was behind the bar and actually employed on these premises on the dates on which the surveillance was made. A business card containing Pardo's name and describing him as manager of these premises was admitted into evidence.

Detective Michael Gargate of the Passaic Police Department testified that he assisted in the conduct of the raid and observed Pardo and one David Montalbo behind the bar. He participated in the search which revealed the presence of gambling paraphernalia and lottery bet slips.

He questioned Pardo with respect to his employment in these premises and Pardo admitted that he was its manager. He stated that while he himself did not make any report to the Board with respect to this incident, his superior Sgt. A. Sniatkowski did make such report.

No police report of this incident or of any incidents which allegedly occurred during the past licensing period was introduced into evidence; nor was Sgt. A. Snaitkowski called as a witness at this hearing to testify with respect to his report, or as to the conduct of this facility.

Mrs. Lois Allen, Chairman of the Board, gave the following account: the Board receives police reports, and in this matter, reviewed the police sergeant's report recommending denial of renewal as well as a letter from the Chief of Police. She identified a letter sent to the Mayor by the Chief of Police and Police Director Kenneth A. Hill, a copy of which was sent to this witness. This letter dated June 20, 1975 sets forth in substance that Pardo was arrested and subsequently found guilty in the County Court on June 17, 1975 of "maintaining a gambling resort, possession of lottery slips and working for

a lottery". The letter also calls the Board's attention to the fact that this violation occurred in the premises of the appellant and notes that a copy of this letter is being sent to "Lois Allen, Chairman, Alcoholic Beverage Control Board for appropriate action". The witness stated that "based upon these documents, the Board's decision was to deny renewal of (appellant's) license".

A copy of the report and recommendation by Sgt. A. Snaitkowski to Chief Hill was admitted into evidence. This report lists four licensees (including the appellant) whom the Sergeant states have applications pending for renewal of their licenses. The letter asserts that the Intelligence Unit of the Police Department, which he commands, objects to the renewal of these licenses because investigation discloses that

> "these taverns are controlled by known gamblers and are apparently 'Fronted' by other individuals, whose sole purpose is to give the business a legitimate ownership in name only, but do not have an active participation in the daily operation of the business".

It should be noted that an uncertified copy of this report was submitted because the attorney for the Board alleges that he has had difficulty in obtaining the original from the City Clerk.

Mrs. Allen explained that the Board adopted the resolution denying renewal because it felt, on the basis of the report, that "(the licensed business) was not being run in the betterment of the community". The resolution which was introduced into evidence sets forth that the license would not be renewed for the following reasons:

> "Past record of violence and/or lack of ability of licensee to carry on operation within the Community on a normal, peaceful and/or proper manner as regard the good and welfare of the community specifically referring to incidents on:
>
> July 15, 1974 Gambling
>
> August 18, 1974 Open after hours"

The witness, however, on cross examination, could not recall any specific acts of violence which are alleged in the resolution, nor when any of these alleged acts took place. She admitted that, in any event, no charges were preferred against the appellant; indeed no disciplinary proceedings were instituted against the appellant during the 1974-75 licensing period.

Finally, the witness admitted that no local residents appeared at the hearing to object to the renewal; and that the action of the Board was based solely upon the police report, and

not upon the Board's own independent investigation.

Elias Pardo Vilanova, the appellant herein, testified that his brother-in-law, Pardo, was not actually employed by him on the date of the raid. He had been employed as bartender some months prior to this raid, but was merely a patron of the premises at the time the raid took place. This was also true with respect to David Montalbo. He denied any knowledge of gambling activities and, in fact, stated that the grand jury dismissed the charges against him because they were apparently convinced that he was not in the premises at the time that the alleged gambling activities took place, and was unaware of them.

A resolution of the Board dated April 15, 1974 was introduced to show that the appellant was, in fact, found not guilty, in disciplinary proceedings instituted by the Board, of a charge alleging an act of violence, which occurred on December 20, 1973. The witness denied that there was any other act of violence which occurred on the premises. He also stated that there were no complaints made against him either with respect to gambling or alleged acts of violence.

Finally, he explained that Pardo was not in court during this hearing because he was in jail and was due to be released on the date of this hearing. He was not sure whether he was, in fact, released.

The critical and decisive issue is whether the action of the Board in denying renewal of appellant's license was reasonable under the circumstances presented to it. It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance, and in order to prevail on this appeal, appellant must show that the action of the committee was unreasonable and a clear abuse of its discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

The burden of proof in these cases which involve discretion, falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

In matters relating to the denial of renewal of licenses the Director has unhesitatingly affirmed the action of the local issuing authority in denying renewal particularly where the licensee has an extensive adjudicated record of license suspensions. Greenstein v. Elizabeth, Bulletin 2135, Item 4; The Back Street Lounge, Inc. v. Newark, Bulletin 2138, Item 1; or where the licensee fails to correct intolerable conditions either inside or outside the premises. Delroz, Inc. v. West Orange, Bulletin 2027, Item 2; Silver Edge Corp v. Newark, Bulletin 2083, Item 2.

On the other hand, the Director has reversed the local action where he finds inadequate proof that the premises were operated in an improper and unlawful manner, or where the licensee has made good faith efforts to operate the premises lawfully and to control the patronage. Don Patten Corp. v. Union, Bulletin 2172, Item 1; To-Jon, Inc. v. Watchung, Bulletin 1946, Item 1; Scuderi v. Paulsboro, Bulletin 2177, Item 4; Bayonne v. B. & L. Tavern, Inc., 42 N.J. 131 (1964).

As the court stated in Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955):

> "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection...."

I find that the Board based its determination, according to the testimony of Mrs. Allen, solely upon the recommendation of Sgt. Snaitkowski. His report refers to four licensees, included in which is that of the appellant. The essence of the report is that the police department has compiled evidence that these four taverns are "controlled by known gamblers and are apparently 'fronted' by other individuals".

There is nothing in the report which identifies or specifies any violations of the Alcoholic Beverage Law committed by this appellant or any specifics with respect to the alleged unlawful conduct in the operation of these premises. Nor is there any specific evidence with respect to the allegation of the "front" for known gamblers.

Based upon this report, the Board adopted the resolution denying renewal because of the alleged

> "Past record of violence and/or lack of ability of licensee to carry on operation within the Community on a normal, peaceful and/or proper manner".

It then refers to two incidents:

> "(1) July 15, 1974, Gambling; (2) August 18, 1974, Open after hours".

With respect to the past record of violence there is not one shred of evidence in the record to support that charge. No police reports or records of any specific incidents chargeable to appellant were introduced into evidence. No disciplinary proceedings were brought on any charge against the appellant. In fact, proceedings were instituted in the prior licensing period in which the appellant was charged with allowing, permitting and suffering, upon his licensed premises, an act of violence. As noted hereinabove, by resolution dated April 15, 1974, the appellant was found not guilty of this charge.

There is also no evidence in the file to support the statement and the resolution that the appellant lacked the ability to carry on the operation within the community on a normal, peaceful or proper manner. It is difficult to understand why the reasons were set forth in the alternative, that the appellant had a past record of violence or lacked the ability to operate his premises in a peaceful manner. Finally, no evidence was produced to support the charge of an alleged "front".

It is difficult to understand why disciplinary proceedings were not instituted against the appellant on the gambling charge. The attorney for the Board maintains that it did not institute such proceedings because of the criminal charges pending in the County Court.

Obviously, the disciplinary proceedings against the license should not have been withheld because of the pending criminal charges against the manager of the premises, or the appellant. In any event, the charges against the appellant were dismissed by the grand jury in the September 1974 session; thus, there was no valid reason to withhold disciplinary proceedings against the appellant if the same were warranted.

The appellant has testified in this hearing that he was unaware of any gambling activities at his premises. In any event, there is no indication in the record that the appellant has not operated his premises in a lawful manner since August 1974.

Furthermore, it should be pointed out that this is not a case where the operation of the premises has resulted in an outcry from neighbors and residents against the renewal. Cf. Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44,49 (1975). In fact, no one appeared to object to the said renewal.

It appears to me that the action of the Board was clearly one of over-kill. It is basic that the action of the Board must be reasonable in equating the rights of the licensee with the paramount rights of the public. As the court stated in Rajah Liquors v. Div. of Alcoholic Beverage Control, Supra.

> "It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local issuing authority. Common fairness to the licensee has been the basis for this policy. If undesirable conditions develop...the local authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired."

Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2.

I, therefore, find that the action of the Board was manifestly unreasonable in denying renewal of the said license. I conclude that the appellant has sustained his burden, pursuant to Rule 6 of State Regulation No. 15, of establishing that the action of the Board was erroneous and should be reversed.

Accordingly, it is recommended that the action of the Board be reversed, and that it be directed to renew appellant's plenary retail consumption license for the 1975-76 licensing period in accordance with the application filed therefor.

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 19th day of December 1975,

ORDERED that the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Passaic, be and is hereby reversed; and it is further

ORDERED that the Board is hereby directed to renew appellant's plenary retail consumption license for the 1975-76 licensing period in accordance with the application filed therefor.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - DAVRON, INC. v. POHATCONG.

Davron, Inc. t/a The Brandy Keg,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Township Committee of Pohatcong Township,	)	
Respondent.	)	

John J. Coyle, Jr., Esq., Attorney for Appellant
Robert E. Frederick, 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 Township Committee of Pohatcong Township (hereinafter Committee) which, on August 18, 1975, denied appellant's application for renewal of its plenary retail consumption license for premises 535 High Street, Pohatcong.

Appellant's petition of appeal alleges that the action of the Committee was erroneous because the licensed premises were the subject of an anticipated person-to-person transfer which evaporated upon the denial. Additionally, there was insufficient evidence upon which the denial was based. The Committee denied these contentions and answered that its action was proper and based solely upon evidence adduced before it.

On August 8, 1975 the Director entered an order extending appellant's license pending the determination of this appeal.

A de novo hearing was held in this Division, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. Additionally, pursuant to Rule 8 of State Regulation No. 15, transcripts of the hearings held by the Committee on July 29, 31, and August 13, of 1975 were admitted into evidence.

The action of the Committee denying appellants application for renewal of license took the form of a 'Decision'

of the Committee which listed twelve reasons upon which the Committee grounded its action. These reasons were listed as follows:

"1. That there was extreme noise on and around the licensed premises;

2. That Mrs. Alexander in June, 1974, when she appeared before the Township Committee for renewal of her 1974-1975 license, was warned that she would have to take measures to remedy conditions about the premises;

3. That the Police Department had received 101 complaints during the licensed year about conditions on the premises, and about patrons from the premises in the neighborhood causing disturbances;

4. That the almost unanimous sentiment of a substantial number of persons in the locality of the licensed premises was that it was not in the public interest to renew the license because of the disturbances, destruction of property, extreme noise and loud, foul and obscene language used by patrons of the licensee;

5. That the action of the patrons of the premises had disturbed the tranquility of the entire neighborhood, prevented children and their parents from sleeping at night; and that the use of foul, loud and obscene language disturbed guests of the families in the area and their children;

6. That the patrons from the Licensee caused damage to properties in the neighborhood and that despite complaints to the Licensee, it failed to take measures to control its patrons;

7. That garbage and other debris was allowed to accumulate for long periods of time around the licensed premises creating an eyesore, nuisance and health hazard;

8. That the manner in which the Licensee conducted its business depreciated the value of the surrounding residential properties;

9. That the Licensee was located in a residential neighborhood; that it conducted a business which catered to large groups of young persons,

principally from Pennsylvania, whose ages usually ranged from 18 to 25 years and that the premises were not in a suitable location for the type of extensive operation which the Licensee engaged in;

10. That the licensed premises were used formerly as a neighborhood tavern but since the purchase by the present Licensee, it has been used as a discotheque or night club catering to young patrons principally from Pennsylvania or outside of the Township, and it was not in the public interests to continue the license;

11. Although in June, 1974 the Licensee was warned about selling alcoholic beverages to minors, subsequent thereto it was charged and entered a plea of non vult to such charge;

12. The character of the persons frequenting the Licensee were such that they constituted a nuisance to the neighborhood.

For the foregoing reasons, the Township Committee members hearing the aforesaid matter, have voted unanimously not to renew Alcoholic Beverage License C1 for DAVRON, INC. t/a THE BRANDY KEG INN.

Witnesses before the Committee consisted of twenty-six persons who addressed themselves to the problems posed by the continuance of appellant's premises. Two policemen, several employees and some patrons extolled the management of appellant's premises and described the efforts which had been made to eliminate the troublesome conditions, which were the basis of the complaints, during the year and one-half of appellant's operation. Numerous residents in the area complained of the noise, litter and vandalism caused by patrons of appellant's premises.

Detective-Patrolman James Flynn recounted that, at the request of the Police Commissioner, he reviewed all of the police calls received in the prior year respecting the area of appellant's premises and discovered that there were 101 calls. Of this number, 39 concerned parking offenses; 6 resulted from vandalism; 27 were from excessive noise; 7 came from motor vehicle infractions; fights accounted for 6; open lewdness 5; violent crimes-one and a miscellany of 10 others. He admitted that some of these calls could not be accurately pin-pointed to the appellant's premises itself, only the area, but volunteered that other infractions occurring within the Township obviously resulted from actions of patrons of appellant, not listed in the above accounting.

From all of the testimony, including that of the principal stockholder, Grace Alexander, (who with her husband Ronald owned all of the capital stock of appellant corporation), it appeared that the licensed premises had been a sleepy neighborhood tavern located in a Village on the Delaware River.

The appellant, after purchase of the tavern, found that, by opening the place as a gathering spot for the Pennsylvania youths, with appropriate folk or rock music, a hundred or more would congregate there several evenings a week. This crowd however quickly caused the premises to become what the neighbors felt to be a nuisance. The Committee agreed and denied renewal of the license.

The testimony given at the hearing in this Division was essentially repetitious of that given before the Committee. An additional folk singer described the volume of sound during his performances, which the Committee had not heard, and denied that it was of such volume which could be heard on the exterior of the building.

The Mayor and the remaining Committeeman who voted on appellant's application recounted, at the hearing in this Division, the great number of calls received since the operation was begun by appellants, and how, prior to the grant of renewal of license for the 1974-1975 licensing period, the Mayor had discussed with Mrs. Alexander the problems her facility was causing. Warnings were then given that if the conditions were not immediately remedied, the license would not thereafter be renewed.

Mr. and Mrs. Alexander both described how they faced the problem of insufficiency of off-street parking by leasing lands belonging to the County for additional parking, and how they hired part time employees to keep order in both the parking lot as well as on the local streets.

Ronald Alexander assayed the problems as having been substantially reduced for a number of reasons. The Committee had adopted a stern street parking ordinance which precluded parking on streets nearby to their establishment. Live entertainment programs had been introduced in other premises located in the adjacent municipality which was only two city-blocks away. The general recession had reduced the number of their patrons, and hence the amount of annoyance caused to the neighbors.

It is well established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Committee in the first instance; and, in order to prevail on this appeal, the appellant must show that the Committee acted unreasonably. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955);

Blanck v. Magnolia, 38 N.J. 484 (1962). Upon such showing the Director is authorized to reverse the Committee's action. Florence Methodist Church v. Florence, 38 N.J. Super. 85 (App. Div. 1955); Belmar v. Division of Alc. Bev. Control, 50 N.J. Super. 423 (App. Div. 1958).

No one is entitled to the renewal of a liquor license as an inherent right. The Courts will interfere in the exercise of discretion by a municipal issuing authority only in the case of manifest error, clearly unreasonable action or some untoward impropriety. Rajah Liquors v. Div. of Alcoholic Bev. Control, supra.

It is proper for municipal issuing authorities to take into consideration in passing upon applications for renewal of liquor licenses not only the conduct of licensees but also conditions not attributal to its conduct which render a continuance of a tavern in a particular location against public interest. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

As the court has held in Zicherman v. Driscoll, 133 N.J.L. 586 (1946):

> "The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. 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, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license."

The attorney for appellant argues that, in order to properly refuse to grant appellant's application for renewal, the Committee must present and prove charges specified against it. This is not so. As the court expressed it in Tumulty v. Dunellen, Bulletin 1487, Item 4, aff'd App. Div. 1963, Bulletin 1519, Item 1:

> "...The problem before the Director was what penalty to impose for what his investigators had discovered the licensee had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future."

It is thus apparent from the entire record herein that appellant's patrons have caused the premises to become a nuisance which the public need not tolerate. The cause of that condition is directly attributable to the failure of the appellant to discourage a patronage which has become the despair

of the neighbors. It is further apparent that the large area of the municipality and its small population places a burden on its tiny police department beyond its ability to cope with the intrusion of the noisy and active young drinkers from the neighboring State.

Hence, the Committee felt it was without alternative and denied renewal of the license. At the hearing in this Division, inquiry was made of the Mayor and Committeeman respecting the possibility of having the license renewed with condition that no live music be permitted in the licensed premises. Such constraint would unquestionably dilute the interest of the hordes of young persons who now view the premises as a music mecca and disturb the quiet in the area. The Mayor and the Committeeman apparently had not realized that the license could be so conditioned, hence the solitary remedy to cure the nuisance was denial or renewal.

Accordingly, it is recommended that the action of the Committee be reversed and it be directed to renew the license subject to a special condition forbidding the presentation of live music within the licensed premises. Cf. Marinaccio v. Asbury Park, Bulletin 2009, Item 2.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the respondent pursuant to Rule 14 of State Regulation No. 15. A letter signed by the principal officers of the corporate appellant was submitted, presumably in response to the said exceptions.

I have considered the contentions set forth in the said exceptions and find that they have been either considered and correctly resolved in the Hearer's report, or are lacking in merit.

Thus, having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Hearer's report, the exceptions filed thereto, and the answer 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 19th day of December 1975,

ORDERED that the action of the respondent, Township Committee of Pohatcong Township, be and the same is hereby reversed; and it is further

ORDERED that the said Committee is hereby directed to renew the subject license for the 1975-76 license period in accordance with the application filed therefor, expressly subject,

however, to the special condition that the presentation of live music within the licensed premises is impermissible, and shall be prohibited.

LEONARD D. RONCO
DIRECTOR

3. APPELLATE DECISIONS - HERERO ET AL. v. UNION CITY.

Angel Roberto Herero and Pio Hiheldo Garcia,	)	
	)	On Appeal
Appellants,	)	
	)	CONCLUSIONS and ORDER
v.	)	
Board of Commissioners of the City of Union City,	)	
Respondent.	)	

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

BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the City of Union City (hereinafter Board) which, on August 21, 1975, revoked appellants' Plenary Retail Consumption License C-13, for premises 408 - 37th Street, Union City, upon finding appellants guilty of charges alleging that on April 25 and April 26, 1974, they permitted the sale, and possession of Controlled Dangerous Substances for the purpose of sale, on the licensed premises, in violation of Rule 4 of State Regulation No. 20.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15 wherein full opportunity was provided the parties to introduce evidence and cross-examine witnesses. However, in lieu of presentation of evidence, counsel stipulated to certain facts being accepted supplemented by oral argument of counsel.

The uncontroverted facts, as stipulated, are as follows: Appellant Herero is a Cuban refugee who, upon arrival in Union City invested his savings with another Cuban, the co-appellant Garcia, in the purchase of a tavern. Herero would relieve in the evenings only; Garcia would be in complete charge during daytime hours.

Without any knowledge on the part of Herero, Garcia sold drugs and did so to a Federal Narcotics agent on the date charged herein. This sale resulted in criminal conviction of Hareia who is presently serving a custodial sentence in a Federal penitentiary.

It was conceded both by the police and the Board that Herero himself was completely ignorant of Garcia's illegal activities. Nevertheless, the Board considered the license entity as a partnership which was involved in the sale of narcotic drugs and determined to revoke its license despite the lack of participation by Herero.

At the conclusion of the hearing in this Division, counsel for the respective parties agreed that the matter should be determined by immediate decision of the Director and waived a Hearer's report. Moreover, since the sole issue was the extent of the penalty imposed, the Director was urged to take such steps as would restore the license for the benefit of Herero, upon the imposition of a penalty of one hundred and eighty days suspension, which the Board would consider appropriate.

Precedent for such action has been established in this Division in Re Gi-Mo-Do, Inc., Bulletin 1979, Item 1. This was a disciplinary proceeding initiated by this Division involving similar charges, where one of the principal stockholders of a corporate licensee was found selling narcotic drugs. In Gi-Mo-Do, the Director decided, upon the special facts and circumstances therein, including the fact that it did not involve large scale commercial narcotics activity similar to the revocation cases cited by the Hearer, that a suspension of one hundred and eighty days, rather than outright revocation of the license, would be appropriate.

However, in this instant matter, an additional problem arises: the convicted narcotic selling partner is still on the license; and, although appellant Herero produced a paper allegedly signed by Garcia eliminating himself from any interest in the licensed premises, it is conceivable that such undertaking would not be of sufficient force to terminate Garcia's interest in the premises.

Thus, the appellant has the burden of extinguishing any interest Garcia may have in the license so that upon Garcia's discharge from the penitentiary, he will not then be able to assert any claim in the license.

Therefore, the action of the Board in revoking appellants' license will be modified to a suspension of license for one hundred and eighty days. However, whatever interest Garcia has in the license must be effectively terminated prior to the lifting of the said suspension. I shall, therefore, suspend the license for the balance of its term, with leave granted to appellant Herero or any bona fide transferee of the license to apply by verified petition to the Director for the lifting of the said suspension whenever Garcia's interest in the licensed premises has ended, but in no event sooner than one hundred and eighty days following the effective date of the suspension herein.

Accordingly, it is, on this 17th day of December 1975,

ORDERED that the action of the respondent Board of Commissioners of the City of Union City in revoking the said license

be and the same is hereby modified, as follows:

Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Union City to Angel Roberto Herero and Pio Hiheldo Garcia for premises 408 - 37th Street, Union City, be and the same is hereby suspended for the balance of its term, i.e., midnight, June 30, 1976, commencing at 3:00 a.m. Monday, January 5, 1976, with leave granted to appellant Angel Roberto Herero or any bona fide transferee of the license, to apply to the Director by verified petition, for the lifting of the suspension and establishing that the interest of Pio Hiheldo Garcia has been effectively terminated and removed from the license and the licensed premises, but, in no event sooner than one hundred and eighty (180) days, from the date of the commencement herein; and it is further

ORDERED that, expressly subject to the said modification with respect to the penalty, the action of the Board, in all other respects, be and is hereby affirmed.

Leonard D. Ronco
Director

4. STATE LICENSES - NEW APPLICATION FILED.

Point Pleasant Distributors, Inc.
314 to 328 & 319 & 323 Hawthorne Ave.,
& 312 Richmond Ave.
Point Pleasant Beach, New Jersey
Application filed March 15, 1976
for additional warehouse license
for premises 700 Brooklyn Boulevard,
Sea Girt, New Jersey, operated under
Limited Wholesale License WL-30.

Leonard D. Ronco
Director