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

BULLETIN 2118 October 3, 1973

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ITEM

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

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1. APPELLATE DECISIONS - WIERDO v. HARRISON.

Robert Wierdo, t/a Wierdo's Tavern,
Appellant,
v.
Town Council of the Town of Harrison,
Respondent.

On Appeal

CONCLUSIONS and ORDER

Russell & McAlevy, Esqs., by John P. Russell, Esq., Attorneys for Appellant
Walter Michaelson, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Town Council of the Town of Harrison (hereinafter Council) which on April 3, 1973, denied appellant's application for a place-to-place transfer of his plenary retail consumption license from premises 215 North 4th Street to 239 Middlesex Street, Harrison.

The petition of appeal advances the contention that the Council's denial of the application to transfer was in contravention of both the applicable statute and the local ordinance and, further, that its action was arbitrary, unreasonable and based upon mistake of fact and law.

The Council denied these contentions, alleging that its action was based upon neighborhood sentiment objecting to said proposed transfer, the present overabundance of consumption licenses in the area of the proposed transfer site, and the parking and traffic problems which would be exacerbated if appellant's application was approved.

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

At the outset of the hearing the attorney for the Council called attention to a prior determination by the Director in the matter of Herbert H. Levine, Inc. v. Harrison, Bulletin 1032, Item 1, decided September 7, 1954, in which an appeal had been similarly taken from Council's denial of another application for a place-to-place transfer to the same proposed location. Counsel were advised that, while this prior conclusion would be examined, the determination of the then Director would not be presently controlling in that the conditions upon which that conclusion was predicated may well have changed so as not to be truly reflective of the present situation.

Appellant Robert Wierdo testified that he is the present owner of licensed premises located at 215 North 4th Street, at which he has operated a tavern for more than five years. In July 1972 he received a letter from his landlord's attorney noticing him that, as he had not exercised his option to renew his present lease, it would not be renewed. Thereafter he received a notice to quit and vacate the said premises, with the alternative that he could remain in possession at a substantial increase in rent. He stated that the demanded rent was exorbitant. Rejecting such demand, he then negotiated a lease for the premises to which he intended to locate, which premises were subject to approval of the Council for his place-to-place application.

In anticipation of a hearing before the Council, he obtained petitions from neighbors, which petitions were introduced into evidence. However, after filing of his application with the Town Clerk, he heard nothing further until he later learned that his application had been denied. Upon inquiry at the town office, he had that information confirmed and was given copies of letters the Council had received from two other tavern owners, as well as one received from the management of one of the principal factories in the area. These letters contained objections to the proposed transfer.

Appellant stated that his present premises are opened only between the hours of 4:00 p.m. and closing time. He has no daytime patronage, nor would he have in his new location. As his business hours would be subsequent to the hours of the normal working day, there would be no parking problem as there is ample evening parking in the area.

Respondent introduced testimony of Angelo A. Cifelli, a councilman and member of the "town ABC board" for twenty years. In his opinion the operation of a tavern at the proposed location would cause a hardship to the people in the area. The present number of licensed beverage facilities is presently ample and, as the adjacent factories operate shifts, the traffic problems and parking situation would not be solved by appellant's proposed hour schedule. He asserted that his judgment would not have been changed had he known appellant intended to conduct business only in the evening hours, or if he had known that no food was intended to be served on the premises. He considered the letter of the health officer, as well as his personal knowledge

of the area, as reasons for determining that the approval of appellant's application would not serve the best interests of the community.

Councilman Patrick J. McGuigan testified in substantial corroboration of the testimony adduced by Councilman Cifelli.

Councilman Thomas Kinselon testified that he joined in the unanimous votes of denial of appellant's application because of the petitions filed against the transfer, his knowledge of the area which he frequents, the letter from the factory management, and an underlying opinion that the area is presently adequately serviced by licensed facilities.

Health Officer Arnold Saporito testified that he, accompanied by appellant, inspected the proposed location. The basement of the premises showed evidence of sewer backup and the building generally could not be approved under present sanitary codes for the service of food. The sewer of the building is below street level, hence a continual disposal problem exists.

Appellant, called in rebuttal, testified that there is an overabundance of license facilities in the entire community and his present location is much closer to other establishments than would be the new location. He added that the sanitary conditions outlined by the health officer would be corrected in his reconstruction of the proposed premises.

I

Note is taken of the candid admission of the councilmen that no hearing was afforded appellant prior to denial of his application. Rule 6 of State Regulation No. 2 provides:

> "Each municipal clerk shall immediately upon receipt of a written objection, duly signed by an objector, transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it shall become the duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant and the objector of the date, hour and place thereof." (underscore added)

While the action of the Council was completely violative of the regulation, the lack of hearing afforded appellant was corrected at this de novo hearing at which the parties had full opportunity to present testimony, evidence and argument. Cino v. Driscoll, 130 N.J.L. 535 (Sup.Ct. 1943); Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App.Div. 1957). Thus appellant was not prejudiced.

II

The testimony of the three councilmen who were convinced that the approval of appellant's application would not be for the best interests of the community, and which conviction and determination were reflected in the unanimous action of the Council, brings the issue squarely within the ambit of Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), in which the court held:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record ...."

A map of the municipality, with all of the licensed premises marked thereon, was admitted into evidence and appellant urged that, since it disclosed a far greater concentration of licenses in his present location than in the area where transfer is sought, the Council was arbitrary in concluding that there is an overabundance of licensed facilities in the new area. The conclusion of the Board in determining that a new facility in the area of the proposed site is not in the public interest is particularly within the province of the Council, for it is a long-established principle that the duty of determining transfer issues rests in the first instance with the Council.

In this connection it may be well to quote from Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App.Div. 1960), aff'd 33 N.J. 404:

> "The primary purpose of the act is to promote temperance (R.S. 33:1-39) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs of City of Hoboken [135 N.J.L. 502 (E. & A. 1947)]. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent.

"The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'"

III

Appellant further contended that the Council should have acted affirmatively on his application because of the hardship situation in which he has found himself. Appellant testified, however, that his situation with respect to his present landlord was instigated by his own failure to notify the landlord of his exercising of the option to renew. Thereafter, when he did express such interest, the prospective rental demanded was in excess of what he could afford. This is therefore not a situation where a licensee is forced to vacate because of a situation over which he had no control, such as condemnation, demolition or destruction of the building in which the licensed premises are housed.

It is a well-established principle that concern for the licensee's own financial problems will not be elevated above the public interest. Bosco et al. v. Jersey City and Smith, Bulletin 1353, Item 1, aff'd 66 N.J. Super. 165 (App.Div. 1961); Nordco, Inc. v. State, supra; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs of City of Hoboken, supra, at p. 511.

I find that appellant has failed to sustain the burden of showing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

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

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 conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 6th day of August, 1973

ORDERED that the action of respondent Town Council of the Town of Harrison be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ROBERT E. BOWER
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - GIFT OF ALCOHOLIC BEVERAGES TO PATRONS OF RESTAURANT - CLAIM FOR RETURN OF PERSONAL PROPERTY AND CASH DENIED - ABSENT GOOD FAITH - CLAIM FOR RETURN OF SUM DEPOSITED BY OWNER OF PREMISES IN LIEU OF SEIZURE REJECTED - ALCOHOLIC BEVERAGES CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on March 16, 1973 of a quantity of alcoholic beverages, miscellaneous personalty and equipment, together with $420.00 in cash in a restaurant known as Antonio's Restaurant, Englishtown Road, Old Bridge, Madison, County of Middlesex, State of New Jersey.	Case No. 12,893 On Hearing CONCLUSIONS and ORDER

Wilentz, Goldman & Spitzer, Esqs., by Louis F. Locasio, Esq.
Attorneys for Claimant
Harry D. Gross, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66, and State Regulation No. 28, to determine whether certain seized property as described in Schedule "A" attached hereto and made part hereof, constitutes unlawful property and should be forfeited.

On March 16, 1973, agents of this Division entered a restaurant known as Antonio's Restaurant, Englishtown Road, Old Bridge, armed with "marked" money. Having determined from Division records that the premises were unlicensed for the sale of alcoholic beverages, the ABC agents ordered dinner and asked if they could be served drinks, meaning thereby that they wished to purchase alcoholic beverages. The waitress responded that while no drinks were available for sale, she would bring a carafe of wine for which no charge would be made. Two such carafes were brought during the dinner.

Upon payment of the check for the dinners, no charge having been made for the wine, the agents noticed the owner that the free gift of the wine was and constituted an illegal sale of alcoholic beverages. The agents had observed similar carafes of wine being served other patrons of the establishment. The "marked" money was retrieved and the personal property and equipment belonging to the owner was seized together with $420.00 in cash taken from the register.

At the hearing, the owner of the restaurant appeared and sought return of the sum of $1,000.00 posted by him, under protest, and pursuant to a stipulation entered into at the time of the seizure representing the retail value as appraised for the Director of the personalty and equipment seized, which said property was returned to him.

At the hearing in this Division, ABC Agents S and G testified as to their visit to the restaurant, the purchase of food and the service of the bottles of wine, for which, both admitted, no charge had been made.

The Division file, introduced into evidence, contained a certification by the Director that no license or permit had ever been issued to Anthony Marottoli, the owner of Antonio's Restaurant or for the premises itself. That the seized alcoholic beverages contained alcoholic content as defined in N.J.S.A. 33:1-1 was established, and is not in dispute.

The claimant projected two fundamental contentions in furtherance of his claim which was advanced by his testimony and the testimony of the waitress. He described his restaurant as a new venture specializing in Italian food which was opened approximately five weeks prior to the seizure. As a means of inducing patronage, he devised the plan to present each group of patrons consuming meals with a carafe of wine to supplement the dinner as a complementary gesture. Lawyers and judges had been patrons in the establishment, received such gratuitous alcoholic beverages without comment that such was illegal and in fact praised the good-will expression of the owner. He, therefore, thought that the gift of the wine was not violative of any law and presumed that so long as there was no sale, the gift was permissible.

On cross examination, he explained that the cost of the wine was not added to the price of the meal in any fashion, and considered that the additional cost to him would be chargeable to advertising or to start-up costs. The cessation of the custom, and the custom had been terminated upon advice of counsel shortly after the seizure, resulted in no reduction or modification of the food prices charged to the patrons.

Hence, the claimant argued the proposition that as no sale had been made and the cost of the gifts of wine were not reflected in the prices of the meals, he could not have violated the prohibition against illegal sale.

This contention has been resolved in the very early history of this Division. The first Director, then Commissioner, D. Frederick Burnett responded to a query posed by a citizen who asked:

> "I have a chicken farm in Cassville and in order to help meet expenses I would like to take in a few guests and if possible I would like sometimes to serve some wine with the meals, without receiving any pay for the wine. Will you please advise me what permit to obtain to do so. Will you kindly advise me if I have to get a permit to have a few guests?"

Commissioner Burnett's response was as follows:

> "I take it that the proposed guests will pay for their keep. In such case, it is not permissible to serve them wine unless you first take out a liquor license. The reason is that where the price of the drink is included in the price of the board or the lodging, the ostensible gift is, under the law, a sale. No sales of alcoholic beverages may be made in any manner whatsoever unless a license or permit has been obtained." (Re Naschatier, Bulletin 258, Item 7, (1938))

Following Commissioner Burnett's initial precedent establishing determination, matters similar in nature came before this Division. In 1946 almost identical circumstances arose where a claimant restauranteur gave free wine to his customers. (Re Amato, Bulletin 726, Item 8.) In this matter the then Director restated the legal principles:

> "Moreover the service of alcoholic beverages with meals is expressly defined by law as a sale of alcoholic beverages. N.J.S.A. 33:1-1(w), which reads:
>
> " 'Sale'. Every delivery of an alcoholic beverage otherwise than by purely gratuitous title --- and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell---"(underscore mine).
>
> This language is clear. "Serving with meals" is declared to be a sale. It is indubitable that this applies to a commercial restaurant which serves meals for pay; that the purpose of this law was to prohibit the service of alcoholic beverages in such a restaurant without a license irrespective of whether such alcoholic beverages are paid for or are ostensibly given to the customers with their meals without extra charge."

The precedent has continued uninterrupted to the present time. Even in such instances where the gratuitous additive of whiskey to coffee (Re Seizure Case 7002, Bulletin 731, Item 2) or drinks given free with the purchase of sandwiches (Re Seizure Case 7250, Bulletin 826, Item 5) or the mere transfer of bottles of beer without profit as accommodation (Re Seizure Case 7322, Bulletin 829, Item 7), the gratuitous delivery constituted a "sale" within the meaning of the statute.

The principle has been thereafter enunciated repeatedly to such an extent that it is now common knowledge that the service and delivery of alcoholic beverages in almost any undertaking requires official approval. While the gift of the complementary bottles of wine was charged off as advertising or start-off costs, it is obvious that the cost of such wine would of necessity be borne by the business and its cost, however indirect, would be reflected in other prices charged and thus constitute prohibited sales.

A further contention was advanced by the claimant, that, as the donations of the wines was made without knowledge or understanding of the above restrictions, his claim could be predicated upon Rule 3 (b) of State Regulation No. 28 which provides that:

> "An application may be made for the return of the seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law by presenting evidence to that effect at the hearing....."

The sole evidence upon which this contention could be grounded consists of the testimony of the claimant who with full candor admitted that to his knowledge the gift of wine to his patrons would be permissible providing that there was neither a sale or a mark-up of other prices as an off-set, came from mere heresay from others not qualified to make such determinations. It never occurred to him that there could be any violation and the placement of the wine bottles on the tables was open, unconcealed and announced. His impression of legality was further buttressed as a result of the encouragement received from lawyers and judges who, as patrons, offered no suggestion that the practice was tainted with illegality. However, it is clear that this was a gimmick or device to attract patrons, and the claimant did so at his peril.

A mere telephone call to this Division or to the clerk of the local issuing authority or to personal counsel would have been sufficient to alert the claimant to the violation resulting from the proposed practice. However, the claimant did none of these things, and he made no effort to obtain an official explanation of the applicable law. Thus, the contention that Rule 3 (b) supra applies is without merit, and must be rejected.

It is, accordingly, recommended that the claim of Anthony Marottoli for the return of $1,000.00 posted by him under the aforesaid stipulation be denied, and the said sum be forfeited. It is further recommended that the seized alconolic beverages and cash, which constitute illicit property, be forfeited.

Conclusions and Order

Written exceptions to the Hearer's Report were filed by claimant, Anthony Marottoli, trading as Antonio's Restaurant, within the time permitted by Rule 4 of State Regulation No. 28.

The exceptions contended that the sum posted by stipulation, under protest, with the Director should not be forfeited in that the claimant's violation of the law was due to his lack of knowledge and misimpression of the prohibition against the gratuitous dispensing of alcoholic beverages. In short, he contended that he was innocent of wrongdoing and that his claim was bona fide.

After carefully considering the entire matter herein, including an abstract of the testimony, the exhibits, the Hearer's Report and the exceptions filed thereto, I find that the claimant's contention is not well-founded. It is not assumed that all persons know all of the laws relative to the sale of alcoholic beverages but it is assumed that the public is aware of the existence of statutory controls. Thus, prompt inquiry thereto would have been made by prudent persons before embarking upon this tightly controlled business. The failure of claimant to do so manifests an absence of good faith. His claim is, accordingly, rejected. I, therefore, concur with the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of August, 1973

DETERMINED and ORDERED that the alcoholic beverages and cash, in the sum of $420.00, as more fully set forth in Schedule "A" attached hereto, constitute unlawful property and the same be and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and that the said alcoholic beverages shall be retained for the use of hospitals and State, county or municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the sum of $1,000.00, representing the appraised retail value of certain personalty listed in Schedule "A", attached hereto, paid under protest by Antonio Marottoli to the Director to obtain return of said items, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66 to be disposed of in accordance with law.

Robert E. Bower,
Director

SCHEDULE "A"

6 - containers of alcoholic beverages
2 - pizza ovens; 1 - coffee machine;
1 - juice machine; 1 - cash register;
1 - ice machine; 1 - dough retarder;
1 - slicer; 1 - dishwasher; 2 - freezers;
1 - stove; 1 - dough machine
Miscellaneous personal property
$420.00 - cash

3. APPELLATE DECISIONS - O'DONNELL and EVANS, INC. v. POMPTON LAKES.

O'Donnell and Evans, Inc. t/a The Winners Circle,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Borough Council of the Borough of Pompton Lakes,	)	
Respondent.	)	

Edwards & Gallo, Esqs., by Robert F. Gallo, Esq., Attorneys for Appellant
Isenberg, Isenberg & Reiss, Esqs., by Lawrence T. Isenberg, Esq., 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 Borough Council of the Borough of Pompton Lakes (hereinafter Council) which, on May 9, 1973 suspended appellant's plenary retail consumption license for thirty days, effective May 19, 1973 after finding it guilty of a charge alleging that on March 5, 7, 10 and 11, 1973, it served alcoholic beverages to a minor, Dianne --, age 15, in violation of Rule 1 of State Regulation No. 20. The effective dates of the said suspension were stayed by the Director by order of May 18, 1973, pending determination of this appeal.

The appellant contended, in its petition of appeal, that there was an insufficiency of credible evidence adduced at the hearing before the Council upon which a guilty finding could be predicated. The Council, in its answer, denied this contention.

The hearing in this Division was de novo pursuant to Rule 6 of State Regulation No. 15. While full opportunity was afforded all parties to introduce evidence and present witnesses, counsel offered the transcript of the testimony before the Council and stipulated that such transcript be used for purposes of this

appeal in lieu of the introduction of further evidence. Such stipulation was accepted pursuant to Rule 8 of State Regulation No. 15.

The minor, Dianne, testified before the Council that she had been served alcoholic beverages (beer) in appellant's premises on March 5, 7, 10 and 11, 1973. However, an analysis of her testimony and that of the other witnesses reveal but three incidents, March 6th, 7th and March 11th, in which her testimony was corroborated.

On Wednesday, March 7, 1973, Dianne stated that she entered appellant's premises about 8:30 p.m. and, in the company of two male friends, both named John, drank beer until about 11:30 p.m. Bartender James Evans testified that, although Dianne exhibited a false driver's license indicating she was eighteen, he still did not serve her because she appeared drunk. However, he admitted she was permitted to remain at the bar and it was possible that someone bought her drinks.

The previous evening, March 6th, Dianne stated she was in the premises and consumed beer. Bartender David Symonson testified that Dianne had exhibited a fictitious license indicating that she was of legal age, on which basis she was served beer. He admitted requesting her to leave because she became intoxicated.

On Sunday evening, March 11th, Dianne testified that she arrived at appellant's premises alone, was served and paid for several glasses of beer. A patron, Timothy Diller, testified that he bought Dianne two glasses of beer and that he saw her drink beer which he presumed was purchased by others.

Another patron, Gary Mara, testified that at one point during the evening, Dianne fell from a bar stool, whereupon he advised one of the owners that Dianne was but fifteen years old. One of the owners, John Evans, testified that he observed Dianne to be intoxicated, escorted her to the doorway, and disposed of her unfinished mug of beer.

It is beyond denial that Dianne consumed beer in the appellant's premises at least on three occasions. Despite vigorous denials by the several bartenders employed on the premises that they had even seen Dianne present or had ever served her, there is an abundance of testimony that she, a fifteen-year old minor, was served on the three occasions cited herein.

Appellant contends that as the service to Dianne was based upon her production of a fictitious driver's license, the

service of alcoholic beverages to her at those instances were not violative of the subject regulation. However, it has long been held that the production of a driver's license without more, is no defense to such charge. Additionally, the statute (N.J.S.A. 33:1-77) details available defenses to charges of selling to minors and requires that the minor (a) falsely represents that he is of age; that (b) the appearance of the minor would lead a prudent person to believe that representation; and (c) that the representation relied upon must be in writing. Under the present statute, the sale to a minor gives rise to a disorderly person charge. Under Rule 1 of State Regulation No. 20, such infraction is the basis of suspension of license.

In conjunction with the regulation, the printed regulations available to all licensees, carry a "Special Note" on page 86 which set forth a clear proscription pertaining to sales to minors, in the following language:

> "Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 21. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale...."

Display of a driver's license thus has been held to be insufficient upon which a sale to a minor posing as an adult could be used as a defense. Sportsman 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488 (App. Div. 1956). This doctrine has long been followed and most recently in Re Ano, Inc., Bulletin 2092, Item 4; Re Camden Liquor Corp. Bulletin 2076, Item 5; Re Urna, Bulletin 2042, Item 7; Re Druda, Bulletin 2033, Item 4; Re Obay, Inc., Bulletin 2014, Item 5.

Additionally, the Director promulgated a Notice to all Licensees (Bulletin 2075, Item 7) at the time of the statutory reduction to age eighteen of legal drinking age, warning of the increased necessity by licensees to be positive of the age of

apparent minors before service. Presumably a copy of this notice was supplied appellant. Carelessness by a licensee by failing to comply with both the statute and regulation is not exculpatory of the said charge.

As the sale to the minor cannot be reasonably denied, and as appellant's employees did not require the proper identification, and did not obtain a written representation at the time of service to the minor, upon which good faith could be predicated, the Council came to the only conclusion based upon the full presentation of the evidence.

Had the violation been established by agents of this Division, the Division policy controlling the penalty for the sale to a fifteen-year old minor would have been forty days for any of the three occasions charged. The suspension of thirty days imposed by the Council was less than the minimum for like offenses. Hence any finding that the charges referring to other than the three dates cited herein were not established gives rise to no diminution of penalty.

Accordingly, it is recommended that an order be entered affirming the action of the Council, dismissing the appeal, and reimposing the suspension imposed by Council and stayed by the Director pending the determination of this appeal.

Conclusions and Order

No exceptions were filed to the Hearer's Report pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 7th day of August 1973,

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

ORDERED that my order dated May 18, 1973, staying respondent's order of suspension pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-2, issued by respondent, Borough Council of the Borough of Pompton Lakes to appellants, O'Donnell and Evans, Inc., t/a The Winner's Circle for premises 278 Wanaque Avenue, Pompton Lakes, shall be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. on Wednesday, August 15, 1973 and terminating at 3:00 a.m. on Friday, September 14, 1973.

Robert E. Bower
Director