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

BULLETIN 2143 April 15, 1974

TABLE OF CONTENTS

ITEM

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

BULLETIN 2143 April 15, 1974

1. AMENDMENT TO STATE REGULATION No. 13 - DELETIONS AND ADDITIONS TO RULES 1, 4, 5, 6 and 13 - RESPECTING CRIMINAL DISQUALIFICATIONS AND REHABILITATION EMPLOYMENT PERMITS.

Pursuant to authority of N.J.S.A. 33:1-26 and 39, on February 15, 1974, Robert E. Bower, Director of the Division of Alcoholic Beverage Control amended and adopted rules contained in State Regulation No. 13, concerning the employment of persons convicted of a crime involving moral turpitude by a licensee to read as follows (deleted matter in brackets, new matter underscored):

Rule 1. No licensee shall employ or have connected in any business capacity with the licensee any person who has been convicted of a crime involving moral turpitude unless (a) the statutory disqualification resulting from such conviction has been removed by order of the Director [pursuant to R.S. 33:1-31.2] or (b) such person has first obtained the appropriate Rehabilitation Employment Permit from the Director.

Rule 4. Any person convicted, as a first offender, of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a Rehabilitation Employment Permit. Whenever any such application is made, and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in his discretion issue such employment permit.

Rule 5. The Rehabilitation Employment Permit shall be issued for the calendar year beginning January 1st, and renewable annually for the term of disqualification, as set forth in N.J.S.A. 33:1-31.2. The fee shall be ten ($10) dollars per annum, payable on the date of application. Rehabilitation Employment Permits shall consist of the following types:

(1) Unlimited Employment Permit

This permit shall allow the holder thereof to be employed, by any class license, without restriction as to type of employment. Such permits may not be issued to persons who have been convicted of crimes which, in the opinion of the Director, present a special risk to the alcoholic beverage industry.

(2) Limited Employment Permit

This permit shall allow the holder thereof to be employed, by any class license, in any non-managerial capacity, except that the holder may not sell, serve or deliver any alcoholic beverages.

Rule 6. No licensee shall allow, permit or suffer the holder of a Limited Rehabilitation Employment Permit, issued pursuant to Rule 4 and 4(a) hereof, to act in a managerial capacity with respect to the licensed business, or to sell, serve or deliver any alcoholic beverage, nor shall any holder of a Limited Rehabilitation Employment Permit engage in any such activity.

Rule 13. Any employment permit may be cancelled or suspended or revoked by the Director for cause, including among others any of the following causes:

(e) Any other act or happening, occurring after the time of making of an application for an employment permit which if it had occurred before said time would have prevented issuance of the permit [.] ;

(f) With respect to a Rehabilitation Employment Permit issued pursuant to Rule 4 and 4(a) hereof, conviction of any crime or disorderly persons offense.

Robert E. Bower
Director

Promulgated: January 10, 1974
Effective: February 15, 1974
Filed with the Secretary of State (N.J.) February 15, 1974

2. APPELLATE DECISIONS - FELDMAN v. IRVINGTON.

August Feldman & Anna Feldman, t/a Town Tavern,

Appellants,

v.

Municipal Council of the Town of Irvington,

Respondent.

On Appeal

CONCLUSIONS and ORDER

Maurer & Maurer, Esqs., by Barry D. Maurer, Esq. and Myron P. Maurer, Esq., Attorneys for Appellants
Samuel J. Zucker, Esq., by Herman W. Kurtz, 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 Municipal Council of the Town of Irvington (hereinafter Council) which on September 11, 1973, by unanimous action of its members adopted a resolution revoking appellants' plenary retail consumption license in consequence of a guilty finding on charges alleging that on April 12, 1973 appellants permitted a brawl to occur on the licensed premises and hindered an investigation taking place with respect thereto, in violation of Rules 5 and 35, respectively, of State Regulation No. 20.

Appellants' petition of appeal alleges that the action of the Council was against the weight of the evidence and should be set aside. The Council in its answer defends that its action was the result of evidence presented before it, and such was sufficient to justify its conclusions.

Upon filing of the appeal, the Director by order dated September 28, 1973, stayed the order of revocation imposed by the Council pending determination of the appeal and entry of a further order herein.

Transcript of the proceedings by the Council, supplemented by oral argument, was presented at this appeal de novo hearing, in accordance with Rules 6 and 8 of State Regulation No. 15, in lieu of the proffer of further testimony. Additionally, both counsel submitted written memoranda in summation.

I

In support of the first charge the transcript reflects that two patrons (brothers) had entered the licensed premises on April 12, 1973, and while there both sustained cuts from a broken bottle and glasses which were inflicted by another patron or patrons. They escaped the tavern and were eventually taken to the local hospital for treatment. The lacerations received were the culmination of an argument which, according to the testimony of Hershey Edwards (a patron) lasted about ten minutes. During that period the bartender John Petrozelle neither did nor said anything to stop the argument, although the witness Edwards asserted that he could have interceded.

Police Officer Nicholas Cefolo testified that he was on duty at a nearby intersection when someone alerted him to a brawl taking place in appellants' premises. He notified police headquarters of this information and started for the tavern. About half-way there he observed four black males "tumbling out" of appellants' premises, two of whom had cuts and were bleeding. Upon entering the premises he observed broken glass and blood upon the floor. He also observed a coat sleeve from a man's jacket on the floor.

Two patrons testified on behalf of appellants, neither of whom saw any altercation or blood. Only one saw broken glass on the floor but he could not explain the reason for its presence.

The bartender Petrozelle testified that all he observed were some black patrons and white patrons "moving at each other and they were running out the door;"he saw no glass thrown at anyone but he heard glass breaking.

It is apparent that the Council, which had the opportunity to observe the demeanor of the witnesses and to assess their credibility, chose to place the greater weight of the credible evidence upon the testimony of the witnesses against appellants. The defense that appellants were victims of a sudden flare-up appears to be without merit in light of the estimate of the duration of the argument culminating in the brawl. This duration was evaluated by a witness who guessed it took "ten to fifteen" minutes. It certainly permitted sufficient time to allow someone to leave appellants' premises at its commencement, go several hundred feet to the post of the nearby police officer, and for the police officer to go half-way to the premises when the victims left or were ejected from the establishment.

Preliminarily it should be observed that disciplinary proceedings 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). Testimony, to be believed, must not only come from the

mouths of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

The burden of establishing that the Council acted erroneously and in an abuse of its discretion is upon appellants. The ultimate test in these matters is one of reasonableness on the part of the Council. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App.Div. 1957).

In short, I find that appellants have failed to sustain the burden of showing that the Council's action on this charge was erroneous and should be reversed.

II

In substantiation of the second charge, i.e., that appellants hindered an investigation in the licensed premises in violation of Rule 35 of State Regulation No. 20, the Council produced testimony of Sergeant Vito Rizzo, Lieutenant Jerry Podolak, Detectives Thomas Huefner and Stephen Schneider, all of the Irvington Police Department. The sum of their testimony was that bartender Petrozelle, when asked for an account of what had transpired resulting in the lacerations to two victims, replied that he saw nothing as he was busy serving customers. Asked particularly what he did see, the bartender advised the police that he saw nothing. He further denied seeing any broken glass until its presence was called to his attention by a customer.

On being interrogated at the hearing before the Council he was asked why he did not summon the police and replied that he "wouldn't leave the register." When questioned further as to why he didn't request a patron to summon police, he replied that he did not think to do so. The bartender's attitude manifested a totally uncooperative attitude toward the police investigation which clearly "hindered" their required activity in conducting this investigation.

Again, appellants have failed to sustain the burden of showing that the Council's action with respect to this charge was erroneous and should be reversed. See Riverdale Enterprise Corp. v. Jersey City, Bulletin 2103, Item 1.

III

Appellants contend further that the penalty of revocation of license was excessive. The Council unquestionably considered the sorry record of appellants' operation of their licensed premises. Six weeks prior to the incidents herein charged, the appellants were found guilty of serving alcoholic beverages to an

intoxicated person on June 8, 1972; of permitting a nuisance during the period from June 24, 1971 to September 9, 1972, and selling alcoholic beverages to a minor on September 1, 1972, resulting in appellants' license being suspended for thirty days on each charge, which suspension was affirmed thereafter on appeal by the Director. Feldman v. Irvington, Bulletin 2123, Item 1. The Director's action in affirming the Council has been appealed to the Appellate Division of the Superior Court, which said appeal is presently pending.

Additionally, the Council noted the ten or more police calls to appellants' establishment during the previous two years which involved brawls, misconduct and fights.

A liquor license is a privilege. Mazza v. Cavicchia, 15 N.J. 498 (1954). The privilege of selling alcoholic beverages at retail, which is granted to the few and denied to the many, must be exercised in the public interest. Paul v. Gloucester County, 50 N.J.L. 585 (1888). The control of that privilege is vested in the issuing authority. "In the exercise of that power, the Legislature invested the local issuing authority (Council) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations including violation of the law or of State or local regulations. R.S. 33:1-31. The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive." Maczka v. Elizabeth, Bulletin 1746, Item 1; Benedetti v. Trenton, Bulletin 1040, Item 1, aff'd 35 N.J. Super. 30 (1955); Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2.

I therefore conclude that appellants have failed to establish that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is accordingly recommended that the action of the Council be affirmed, the appeal be dismissed, and the order of the Director staying the Council's action pending determination of this appeal be vacated.

Conclusions and Order

Exceptions to the Hearer's report with supportive argument were filed by appellants herein pursuant to Rule 14 of State Regulation No. 15. Answer to the said exceptions was filed by the respondent.

Having carefully considered the entire matter herein, including the transcript of the testimony, the exhibits, the Hearer's

report, the exceptions filed with respect thereto, which I find to be lacking in merit, I concur in the findings and the recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of February 1974,

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

ORDERED that the order dated September 28, 1973, staying the revocation of appellants' license pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-20, issued by the respondent Municipal Council of the Town of Irvington to August Feldman and Anna Feldman, t/a Town Tavern for premises 928 Springfield Avenue and 16 Myrtle Avenue, Irvington, be and the same is hereby revoked, effective immediately.

Robert E. Bower
Director

3. APPELLATE DECISIONS - ZAMORA v. PASSAIC.

Manuel Zamora, t/a Zamora's Bar, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Passaic, Respondent.	On Appeal CONCLUSIONS and ORDER

Walter J. Tencza, Esq., Attorney for Appellant
William P. Schey, Esq., by 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 on June 26, 1973, denied appellant's application for renewal of his plenary retail consumption license for premises 159 Passaic Street, Passaic, for the 1973-74 license period.

Appellant's petition of appeal contends that the action of the Board was erroneous in that its determination was against the weight of evidence and contrary to law. The Board answered asserting that its action was reasonable and proper and in the best interests of the community.

Concurrent with filing of the appeal, the Director by order of July 1, 1973, extended the 1972-73 license pending determination of the appeal and until entry of a further order herein.

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

The adopted resolution complained of sets forth the following:

"WHEREAS, the Municipal Board of Alcoholic Beverage Control of the City of Passaic has upon due

examination and consideration determined that the public convenience and necessity require that the following license not be renewed for the year July 1, 1973 to June 30, 1974, Plenary Retail Consumption License C-89, Manuel Zamora, t/a Zamora's Bar, 159 Passaic Street, Passaic, New Jersey for the following reasons:

"On December 2, 1972, an individual namely one Juan Nobles Calderon was stabbed inside the licensed premises which later result in death. In addition, an extremely poor record during the 1972-1973 licensing year resulted in numerous closings of the licensed premises as a result of disciplinary proceedings.

"BE IT FURTHER RESOLVED, that the renewal application of the said license for the year July 1, 1973 to June 30, 1974 be and the same is hereby denied."

In substantiation of its action the Board introduced into evidence the record of disciplinary proceedings relating to appellant's premises during the prior license year. That record indicated that appellant was found guilty of permitting a nuisance on October 5, 1972, for which the license was suspended for ten days. On November 24, 1972, he permitted unnecessary noise in violation of Division regulations, in consequence of which the license was suspended for fifteen days. On December 30, 1972, he permitted an act of violence to have occurred on licensed premises, in consequence of which the license was suspended for twenty days.

Detective Henry Dukes, of the Passaic Police Department, testifying on behalf of the Board, described the act of violence which occurred on December 30, 1972: A patron was hit on the head inside the premises and was removed to the local hospital. He recounted another incident which occurred on February 19, 1973, when a patron was struck on the head by another patron using a pool cue. He characterized appellant's premises as a "trouble spot", defining a trouble spot a "bar that's a trouble spot is a place where there's an average of maybe four or five calls a week, where there's always a crowd hanging out in front of the place, police have to stop there to keep the crowd moving, and definitely where a homicide has taken place."

In reponse to the following question, "And during those seven or eight visits there, how many times did you observe known narcotic users, as you label them, in the premises, known to you?" the witness responded, "I'd say just about all of them." Later the officer testified that he may have observed "two, three, four or five" narcotic users and that not all of the patrons were narcotic users.

He has been despatched to appellant's tavern on call four or five times during the two years that appellant has operated

the tavern.

The Board offered the police records in conjunction with the homicide that took place in appellant's premises on December 2, 1972. That one patron killed another was not in dispute; appellant did contend, however, that the killing was spontaneous and not within his control. The Board contended that, in view of the fact that the assailant was a juvenile and the incident occurred about 1:30 a.m., appellant should have anticipated possible disturbance, if not an actual homicide.

Reports of the Police Department of the City of Passaic introduced into evidence revealed a series of incidents involving fights, loud noises, patron receiving a laceration resulting from a dispute, an arrest of narcotic users, and several other assaults within the premises.

The testimony of appellant Manuel Zamora was barren of anything in contravention to the myriad of police reports. First he denied having any knowledge of the stabbing on December 2 and asserted that, although he was present and on the premises, he saw nothing. Further, he had no recollection of the incident on December 30, 1972, when a patron was taken by police to the hospital. He denied that there had been fights in the premises during the past year. He was unable to recall or supply any details whatever concerning any of the several incidents related to his premises. In sum, I find appellant's testimony to be totally lacking in candor.

It is elementary that appellant has the burden of proving that the action of the local issuing authority was erroneous, arbitrary or unreasonable and should be reversed. Rule 6 of State Regulation No. 15.

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 appeal, appellant must show unreasonable action on the part of the Board constituting clear abuse of discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App.Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

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. Zicherman v. Driscoll, 133 N.J.L. 586 (1946).

Appellant failed to meet the burden of establishing that the action of the Board was erroneous and should be reversed. To the contrary, the evidence in support of the Board's action was overwhelming. Appellant's premises had been the subject of charges in three disciplinary proceedings for which the license had been suspended during the prior license year. In addition, numerous police investigations occurred as the

result of several altercations and some of the victims required hospitalization. Lastly, the homicide might not have occurred if appellant had kept his patronage under proper control.

As a peripheral defense appellant insisted that, as the Board had before it applications for renewal of four licenses, all of which were "trouble spots" and did not reject the applications for the other three, the denial of appellant's application as the remaining trouble spot was in effect discriminatory. Counsel for the Board responded that in fact another license was also not renewed under similar circumstances. In any event, the action of the Board must be weighed on the merits of the specific matter before it, and this has been done in this instance. Thus such defense lacks merit and is summarily rejected.

Since appellant has failed to sustain the burden imposed upon him by the aforesaid Rule 6 of State Regulation No. 15, it is recommended that the action of the Board be affirmed, the appeal be dismissed, and the order of the Director extending appellant's license during the pendency of this appeal be vacated.

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 transcripts of the testimony, the exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of March 1974,

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

ORDERED that the order dated July 1, 1973, extending the term of appellant's 1972-73 license pending the determination of the appeal be and the same is hereby vacated, effective immediately.

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - HOURS VIOLATION - HINDERING - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against

Joseph Noona
t/a Rogues Den
138 Fifth Avenue
Paterson, N. J.,

Holder of Plenary Retail Consumption License C-257, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

Licensee, Pro se
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to charges alleging that on August 4, 1973, he (1) permitted the sale of alcoholic beverages for off-premises consumption in violation of Rule 1 of State Regulation No. 38, and (2) hindered an investigation then under progress by agents of this Division in violation of Rule 35 of State Regulation No. 20.

The Division's case was presented through the testimony of two ABC agents. Agent J testified that on the date of the charges, about 10:40 p.m., he and agent B entered the licensed premises, which contains two public rooms, a front barroom with a long bar, and a rear room with a small service bar, tables and bandstand. They proceeded to the rear room, entrance to which required the payment of a one-dollar admission fee by each agent. There, seated at a table, they ordered a round of beer and made observations. The licensee was on duty at the small bar in the rear room in which ten or twelve patrons were present. After a short time the agents departed the rear room and took seats at the front bar. While consuming another round of beer, they observed the licensee appear behind this bar and from him agent B ordered a "pint bottle of gin to go." The licensee procured a bottle from a case at the front of the bar, returned to the agents, opened the bottle, accepted three dollars of marked money from the agent, and returned fifty cents in change. The agents then departed the premises.

Within a very few minutes both agents returned to the

interior of the licensed premises, displayed the bottle to the licensee, identified themselves as agents, and demanded production of the copy of the license application, the license and the employee registry form. The licensee, upon being apprised of the alleged violation, became incensed and demanded to know "What's going on here?" The agents demanded identification of the licensee, who drew his wallet containing a driver's license on the bar and walked away. His actions were described as "throwing a tantrum" and his attitude was totally uncooperative. The agents advised the licensee that, if he failed to produce the necessary and requested documents, he would be further charged with hindering an investigation. He refused to produce any required information, and what information the agents could obtain came from the posted license and the information of the licensee's identity from his driver's license.

Under cross examination by the licensee, the agent admitted that he did not know that no beer whatever was served in the rear room and, despite the uncooperative attitude of the licensee, the local police were not called.

Agent B testified in general corroboration of the testimony of agent J, adding only that he had observed other patrons purchase bottles of alcoholic beverages for off-premises consumption while they were seated at the front bar, which observation led them to attempt to make their own off-premises purchase.

The licensee, testifying on his own behalf, stated that he is in sole charge of the licensed premises and employs four persons as bartenders or barmaids on week-end evenings. As this evening on the date charged herein was a Saturday, the premises had about eighty patrons occupying both rooms. He had no recollection of the agents visiting the rear room, but does recall their being seated at the front bar and, as he walked by, one of the agents asked if he could "get some gin to go in the back." Assuming the agents intended to have a "set-up" for drinking in the rear room, he procured a bottle of gin, opened it, and received payment for it. He admitted carelessness in not supplying the ice and water or soda that usually accompany a "set-up." He had no idea that the agents were intending to leave or that they in fact did leave.

Upon the agents' return, and being accosted with their announcement that a violation had been committed, he assumed that one or another of his bartenders had made an illegal sale. When he was advised that it was he who committed the violation, he became incensed for he knew that he had made no sale for off-premises consumption. At this point he began to doubt the authenticity of the agents' credentials and refused to provide information until one of the agents produced a gun in a holster which was held in the agent's hand. He then retreated into the rear room, telling

the agents to look for whatever they liked. He admitted that he was given a receipt for the marked money retrieved from the register. He also admitted telling the agents, when the documents were requested, "You look for it, I'm not going to help you."

We are dealing here with a purely disciplinary measure and its alleged infraction. Such measures are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948). Thus the Division need establish its case only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042.

Accepting the entire testimony of all witnesses as entirely credible, both charges have been fully substantiated. The agents purchased the bottle of gin and carried the bottle out of the premises without notice of the licensee, who candidly admitted failing to provide the set-ups, which provision would have reinforced his impression that a sale for on-premises consumption was intended. His temper seizure, resulting in his refusal to assist the agents in the performance of their required duty, was equally admitted by the licensee. Although there was some small marked discrepancy between the agents' and the licensee's testimony, those variances, attributable to faulty recollection, cannot obscure the effective happenings reduced to writing by the agents in their respective reports that their testimony was clear and convincing.

I conclude, after evaluation of the evidence and the applicable law, that the charges have been established by a fair preponderance of the credible evidence and recommend that the licensee be found guilty as charged.

Absent prior record, it is recommended that the license be suspended for thirty days on the first charge herein (Re Pawlicki, Bulletin 2121, Item 2) and for twenty days on the second charge (Re Young, Bulletin 2082, Item 4), making a total suspension of fifty days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the

of the Hearer and adopt them as my conclusions herein, except for his recommendation with respect to the penalty, in which the Hearer recommended that the license be suspended for thirty days on the first charge herein, citing Re Pawlicki, Bulletin 2121, Item 2. This citation is not applicable to the said charge.

The usual penalty for permitting the sale of alcoholic beverages for off-premises consumption in violation of Rule 1 of State Regulation No. 38, absent prior record, is a suspension of license for fifteen days. Therefore, I shall modify the recommended penalty of thirty days with respect to the first charge herein, to a suspension of license for fifteen days.

Accordingly, it is, on this 27th day of February 1974,

ORDERED that Plenary Retail Consumption License C-257, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph Noona, t/a Rogues Den for premises 138 Fifth Avenue, Paterson, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. on Tuesday, March 12, 1974 and terminating at 3:00 a.m. on Tuesday, April 16, 1974.

ROBERT E. BOWER
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against	)	
Terracina Inc. t/a Tube Bar 12 Tube Concourse Jersey City, N.J.,	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption C-184, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)	

Michael Halpern, Esq., Attorney for Licensee

BY THE DIRECTOR:

On November 1, 1973, Conclusions and Order were entered in the above matter suspending the subject license for thirty-two days, after the licensee pleaded non vult to a charge alleging that on June 13, 1973, it sold an alcoholic beverage at less than the filed price thereof, in violation of Rule 5 of State Regulation No. 30. Re Terracina, Inc., Bulletin 2139, Item 2.

Prior to the effectuation of the said suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the said suspension until the outcome of the appeal.

On February 13, 1974 the Appellate Division of the Superior Court entered an order affirming the action of the Director. Re Terracina Inc., t/a Tube Bar v. Division of Alcoholic Beverage Control (App. Div. 1973), Docket A-506-73, not officially reported, recorded in Bulletin 2140, Item 1. The suspension may now be reimposed.

Accordingly, it is, on this 21st day of February 1974,

ORDERED that Plenary Retail Consumption License C-185, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Terracina Inc., t/a Tube Bar, for premises 12 Tube Concourse, Jersey City, be and the same is hereby suspended for thirty-two (32) days, commencing 2:00 a.m. on Thursday, March 7, 1974, and terminating 2:00 a.m. on Monday, April 8, 1974.

Robert E. Bower
Director

Joseph H. Lerner
Acting Director