

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2006

November 1, 1971

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1. APPELLATE DECISIONS - HAUSNER v. ELIZABETH.

S. Edward Hausner, t/a Skyline Lounge,	)	
	)	
Appellant,	)	On Appeal
v.	)	
	)	CONCLUSIONS
City Council of the City of Elizabeth,	)	and
	)	ORDER
Respondent.	)	

-----  
Theodore Cohen, Esq., Attorney for Appellant  
Daniel J. O'Hara, 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 respondent City Council of the City of Elizabeth (hereinafter Council) by which appellant was notified after he had filed his application for renewal of his plenary retail consumption license for the 1970-71 licensing period that:

"You are hereby advised that approval of your application for your 1970-1971 liquor license has been withheld by City Council, sitting as the Municipal Board of Alcoholic Beverage Control. Consequently, your licensed premises must remain closed starting July 1, 1970."

This notice, dated June 26, 1970 was captioned "Renewal of License C-111 Withheld", and resulted from a resolution adopted the previous day by respondent when by vote of four to two action to renew the license was withheld.

Upon the filing of this appeal an order was entered by the Director extending appellant's 1969-1970 license until further order herein. The appeal was heard *de novo* pursuant to Rule 6 of State Regulation No. 15 and the attorneys for the respective parties were given full opportunity to present testimony and to cross-examine witnesses.

The petition of appeal alleges that the appellant timely filed his application for renewal, paid the necessary fees, and properly published notice of application. Thereafter, without further notice of any kind, appellant received the letter quoted hereinabove withholding the license and directing the closing of the licensed premises. Appellant alleges that the action of the Council was unreasonable, arbitrary and capricious and that such action if based on a pending charge before the Director of the Division of Alcoholic Beverage Control was premature. Respondent filed no answer to the petition.

Thomas J. Garvey, Secretary of the City Council acting on ABC matters, testified that the application of appellant for

renewal had been withheld by motion made at the Council meeting and that motion had been adopted by a four to two vote. A copy of the pertinent minutes of the meeting was introduced into evidence. The witness indicated that the record of the licensee, as recited in the minutes was before the Council at its prior meetings in previous years and the inclusion of reference to the charges then pending drawn in 1969 was the only difference in the record.

Councilman Maurice A. O'Keefe, a member of the Council testified that he introduced the resolution under which the appellant's license was withheld and had unsuccessfully introduced a similar resolution for the prior year. He admitted that he voted to deny renewal of the license because the applicant had been found guilty on three occasions of having improperly labeled bottles (in violation of Rule 27 of State Regulation No. 20). In response to a question directed to the witness by the Hearer, his statement was as follows:

"Judge, I am under oath, and I say that definitely this license was withheld at this date the resolution asked that this be withheld. Now, we intended to withhold this, at least I intended to withhold this until we had some word from the State. Now, this hearing took place in March on the State level, and it was an important hearing, and it would definitely have a very important bearing on this particular license, I mean with the established record as it has been up until 1969."

The witness further declared that "There is no place in the City that has the record of four penalties at a State level or at any level as this one has, and that establishes its reputation." The witness admitted visiting the premises long ago to talk to the appellant about its possible sale; he denied, however, that he was ever interested in purchasing it.

Councilman Michael A. McGuire testified that the appellant has had three prior violations, drawing penalties of sixty-five, forty and fifty days, respectively, and no other licensee has such a record. He indicated that based on the number of days closed it is one of the worst places in the city. However, he added "Now, in addition, that the charges not yet proven for which a decision is due or pending or some other time. I didn't vote to deny the license. I voted to withhold the license subject to some decision on this. And I think reading these charges, I certainly think I am fulfilling my obligation and my responsibility as an elected official."

Councilman William J. McCloud testified in response to a question relating to his potential vote should pending charges against appellant be substantiated:

"Well, very frankly, if your question is does it make a difference of the guilt or not, I will answer you this way: If the charge that's brought against Mr. Hausner is decided in his favor, then I would be consistent with the vote that I cast in 1969 and vote to renew his license. If it were otherwise, I would like to have an opportunity to review that record and find out that situation. I don't know how I would vote in that posture."

Councilman Theodore E. Farra testified that he has been a member of the Council for six or seven months. He voted against the renewal of appellant's application because of the three violations listed on the record and that such vote was consistent with his view of his obligation to the community as a councilman,

The appellant, S. Edward Hausner, testified that his business embraces a coffee shop, a tavern and a restaurant, the latter two constituting the licensed premises. He employs between twenty-six and thirty-six persons. He claims to be the biggest restaurant-tavern in the city. He stated Councilman O'Keefe visited him four years ago to discuss a possible purchase of the business, but the business was not the kind he had in mind.

Further testimony of a patron, Chester Grabowski, indicated that the coffee shop is open twenty-four hours a day. There is a dance floor and stage and the place is large enough for rallies and other gatherings.

Neither the statutes (R.S. 33-1 et seq.) nor the regulations of the Division of Alcoholic Beverage Control provide for the "withholding" of a license. From the testimony of each of the councilmen, it appears that an unreasonable "withholding" was, in effect, a denial. While there is no procedure accepted in the form of "conditional denial" of a license there is, conversely, a "conditional approval". The statute (R.S. 33:1-32) provides for a license to be issued on conditions, first approved by the Director. Such licenses, conditionally approved, become effective only upon compliance with the conditions. Suburban v. East Orange, Bulletin 790, Item 5. The Director may disapprove conditions attached to a license and in the past has often done so. Cf. Truxon v. Atlantic City, Bulletin 790, Item 1. For example, in a very early decision, the first Director (then Commissioner) Burnett, said "The prevention of a fire hazard on property other than licensed premises is wholly unrelated to the problem of liquor control. However laudable the condition, I cannot approve it because it requires the performance of an act which is not connected with the conduct and character of the premises for which the license is sought, and which neither accomplishes the objects of the Control Act nor secures compliance with its provisions." Balaniz v. East Newark, Bulletin 156, Item 1.

Hence the "withholding" of the license as a "conditional denial" is utterly without foundation. The conditional approval as encompassed by R.S. 33:1-32 has no corollary of conditional denial.

As there is no avenue on which a "withholding" of license may legally travel, it must then be considered as a denial of renewal. Webster defines withholding as "to desist or refrain from granting, giving, allowing: keep in one's possession or control" (Webster's Third New International Dictionary - 1961). Therefore, when the term is applied to the disposition of licenses, it must of necessity, result in denial.

The dispositive issue is whether the action of the Board was unreasonable, arbitrary and capricious in denying renewal of license. The boundaries for such issues have long been fixed.

"Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. 404 at 414 (1960).

or as later stated:

"...Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...." Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292 (1970)

To determine the reasonableness of the exercise of the discretion of this Council it is necessary to peruse the testimony and the exhibits again, limited to the above definition.

Testimony of the four Council members who voted against the renewal reveals that Councilman O'Keefe voted similarly in the prior year, and at the instant meeting expressed his opinion that the appellant's premises were "the worst in the city". The remaining three members considered that they were taking temporary action and that their decision to renew or not would follow a decision of the Director of the Alcoholic Beverage Control Division in the matter then pending against the appellant. Councilman O'Keefe admitted he once talked with the appellant, four years ago, about a possible purchase of the premises but denied any personal interest in the premises. Councilman McGuire did not vote to deny renewal of the license, but instead withheld final disposition. Councilman McCloud withheld renewal "...until such time as a disposition was made, we would be in a better position to judge the whole picture." To the question "If these charges were unfounded or determined to be unfounded, would you still vote against the renewal of this license?" Councilman Farra responded "I don't know, sir. I honestly don't know."

It follows then, with reasonable certainty, based upon the testimony that, had the issue been properly presented to the Council, i.e., denial of license C-111, only one or possibly two of the six voting members would have denied the renewal of the license. This is a deduction stemming from the testimony and is inescapable.

In order to avoid a conclusion based upon surmise or speculation, the record of the appellant should be examined here as the Council examined it. The record reveals that in 1960, when the appellant had an interest in the corporate owner of Penn Brook Inn, there was an infraction of Rule 27 of State Regulation No. 20 (alcoholic beverages not truly labeled). The resultant penalty was sixty-five days suspension. In 1968, the appellant was similarly charged at his present establishment and penalized with a suspension of forty days. About a year thereafter he was again penalized for an identical offense with a suspension of fifty days. Rule 27 of State Regulation No. 20 was promulgated with obvious intent to discourage licensees from tampering with the contents of bottled goods. It is intended, among other things, to prevent the dilution of alcoholic beverages. While this is a serious offense and calls for severe penalty, as the appellant has experienced, it is an offense that is malum prohibitum rather than an offense which is mala in se.

The repeated offenses against public morals or continuous abrasions to communal peace and security give rise to those situations that sometimes bar renewals. Cf. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957). The denial of renewal to a licensee is tantamount to revocation and is thus the most severe penalty that can be imposed. While the issuing authority may reject a renewal of license, it may not do so without making a thorough investigation on its own initiative and setting forth its reasons for the denial (underscoring added). Rule 8 of State Regulation No. 2. As Commissioner Driscoll stated in Monesson v. Lakewood Twp., Bulletin 657, Item 1:

"If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary

proceedings for the suspension or revocation of the license instituted."

The application of fairness has long been a hallmark in the administration of this Division.

"As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with 'fair recognition of the fact that justice to the litigant is always the polestar'." Berelman v. Camden, Bulletin 1940, Item 1. Cf. Barbire v. Wry, 75 N.J. Super. 327 (App. Div. 1962). Martindell v. Martindell, 21 N.J. 341 at 349 (1956).

It has long been held that a liquor license is merely a privilege and no one is entitled thereto as a matter of right. Paul v. Gloucester County, 50 N.J.L. 585 (1888). However, an owner of a license or privilege acquires through his investment an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). Hence where a license has been renewed for prior licensing periods, a refusal to renew thereafter must be founded upon valid and substantial grounds supported by the weight of the evidence. R.B. & W. Corporation v. Caldwell, Bulletin 1921, Item 1:

"...it would have been a more satisfactory procedure for the Council to initiate such proceedings, upon specific charges, and to base its refusal to renew on an adjudicated record. However it is understandable that local issuing authorities, at times, withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the licensed business." Downie v. Somerdale, *supra*.

Thus, in matters of this kind it must be emphasized that:

"...while the local issuing authority is vested with discretion in the exercise of any statutory jurisdiction committed to it, nevertheless when the Division determines on appeal that that discretion has been exercised improperly or mistakenly and the court is reviewing the Division's determination, the inquiry becomes one as to whether it can be said that the Director's action was a manifestly mistaken exercise of his own sound discretion." Belmar v. Div. of Alcoholic Bev. Control, 50 N.J. Super. 423 at 426 (App. Div. 1958).

From the testimony presented in this matter it appears that there was no independent investigation of the licensed premises initiated by the Council. Were such investigation to reveal only the record as it appears in the resolution, such record consisting of the three "bottle" violations in the prior years, it would hardly have sufficient strength to warrant revocation. Even adding the matter in which the appellant's license was suspended by the Director for fifty days, effective January 21, 1971 after being found guilty of possession of indecent matter (pictures and writings), and of contraceptive devices (Re Hausner, Bulletin 1956, Item 1, suspension stayed by Order of Appellate Division of the Superior Court, upon appeal filed therein), to his prior record, revocation would not have been warranted.

I find that the "withholding", which was in effect, a denial of appellant's application for renewal was unreasonable, arbitrary and an abuse of discretion. Dayonne v. B & L Tavern, Inc., Bulletin 1509, Item 1; Jones v. Passaic, Bulletin 1972, Item 2; Burks v. Passaic, Bulletin 1967, Item 4.

Finally, it should be significantly noted that the Council has renewed appellant's license for the current (1971-72) licensing period.

Accordingly, it is recommended that the action of the Council be reversed, and that the Council be directed to grant the license to the appellant for the 1970-71 license period nunc pro tunc 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.

After careful consideration of the entire record herein, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 9th day of September 1971,

ORDERED that the action of respondent City Council of the City of Elizabeth be and the same is hereby reversed, and the Council be and is hereby directed to grant the plenary retail consumption license to the appellant for the 1970-71 license period nunc pro tunc in accordance with the application filed therefor.

Richard C. McDonough  
Director

2. APPELLATE DECISIONS - ORITANI MOTOR HOTEL v. HACKENSACK ET AL.

Oritani Motor Hotel (a corporation), )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 City Council of the City of Hackensack and Continental Plaza Corp., )  
 )  
 Respondents. )  
 - - - - - )

On Appeal  
 CONCLUSIONS  
 and  
 ORDER

Seymour Chase, Esq., Attorney for Appellant  
 Zisa and Jacobs, Esqs., by Joseph C. Zisa, Esq., Attorneys for Respondent Council  
 Emil M. Wulster, Esq., Attorney for Respondent Continental Plaza, Corp.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On May 17, 1971 the City Council of the City of Hackensack (Council) unanimously granted the application of respondent Continental Plaza Corp., for person-to-person and place-to-place transfer of Plenary Retail Consumption License C-49, issued to the Red Lion Inn, and from premises 11 Euclid Avenue, Hackensack, to premises to be constructed at 407 Hackensack Avenue, Hackensack. The resolution provided that the license shall not be issued until the building is "completed and approved by the Building Department."

The Red Lion was made a party to this appeal but since it was merely the transferor it is neither a necessary nor proper party hereto. Re Essex County Retail Liquor Stores Association v. Orange et al., Bulletin 1376, Item 6.

The appellant a plenary retail consumption licensee, alleges, as its sole ground of appeal that the aforesaid action of the Council was erroneous because the same was prohibited under the provisions of City Ordinance No. 382, Section 9. This was amended at hearing to properly allege the superceding applicable Ordinance No. 597.

The pertinent section of the ordinance, as it relates to the issue herein, states:

"Section 9. No Plenary Retail Consumption License shall hereafter be granted for or transferred to any premises within five hundred (500) feet of any other premises for which a Plenary Retail Consumption License is outstanding; said distance to be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed; ...."

Appellant alleges that the said transfer was less than five hundred (500) feet from its premises and, therefore, was in violation of the said ordinance. Both respondents filed answers denying the allegations of the complaint. The answer of the Council included other separate defenses which need not be considered in the determination of this appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity to all parties to present testimony under oath and cross-examine witnesses.

The simple and dispositive issue for resolution on this appeal was whether the said transfer complied with the distance-between-premises requirements of the subject ordinance. The ordinance simply says that no plenary retail consumption license may be granted for or transferred to any premises within five hundred (500) feet of any other premises for which a plenary retail consumption license is outstanding.

The uncontradicted testimony shows that the site of the building to be constructed to which the transfer of license was granted is on the west side of Hackensack Avenue, and the appellant's premises consist of a large motel on the east side of Hackensack Avenue. Hackensack Avenue is the main artery in this municipality, consists of four lanes which are very heavily trafficked; there are additional lanes for the traffic to enter into the Bloomingdale Department Store shopping center which is to the south of the motel and Two Guys Department Store, a large shopping facility, which is located to the north of the motel. The large department stores, and other prominent shopping facilities in the area generate an unusually heavy traffic flow in this section of the roadway. A temporary center barrier now exists along this avenue, and a permanent barrier in the center of the roadway is under construction.

There is no cross-walk leading from the motel to the opposite side of the roadway. The nearest cross-walks are about a quarter of a mile north and south of the motel and the proposed premises. Notwithstanding the fact that there is no cross-walk leading from or near appellant's premises to the premises on the west side of Hackensack Avenue both appellant and Council proceeded to measure the distance from the nearest entrance of appellant's premises to the site of the building to be constructed to which this license was to be transferred by crossing Hackensack Avenue in front of the said premises.

George Levitin, president of corporate appellant, testified that he measured the distance between the appellant's premises and premises which he mistakenly assumed to be the situs of the license transfer at 411 Hackensack Avenue without the aid of a surveyor, or anyone experienced in properly measuring distances. He made the measurement by walking from his premises to the easterly side of Hackensack Avenue and multiplying the distance between his two feet by the number of steps which he took. He also states that he used a tape measure, and, according to his calculation, the distance measured four hundred sixty-three (463) feet. He admitted that he had no professional training as an architect or engineer or surveyor.

Wilbur H. Lind, Building Inspector of this municipality, testified that, under his supervision, several measurements were made from the nearest entrance of the motel to the site of the proposed premises, directly across the said highway, and, according to the calculations arrived at, the distance measured five hundred twenty-four (524) feet from the entrance of the motel to the building to be constructed at 407 Hackensack Avenue.

He frankly admitted that there are no cross-walks there and that the nearest cross-walk is located about a quarter of a mile north of the premises.

Even based on the above measurements, the appellant's allegation that said transfer was in derogation of the distance ordinance was not established. The appellant failed to use a satisfactory method of measurement. Furthermore, it disregarded the statutory criterion for such measurement because it was not made between the actual location of the proposed site of transfer and the nearest entrance of the motel. Moreover, since it was agreed by the parties hereto that there is no cross-walk in this immediate area the measurements were in derogation of the ordinance, and invalid.

The subject ordinance defines the method of measurement, which is the same as that set forth in R.S. 33:1-76. This is the usual method of measurement that is used in the Alcoholic Beverage Law's so-called "two hundred foot rule" with respect to the distance between licensed premises, namely, "...in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed." See Franklin Stores Company and Sawczuk v. Newark and Gruber, Bulletin 381, Item 7; Ted's Bar & Grill, Inc. v. Newark, et al., Bulletin 841, Item 8.

The New Jersey Statutes regulating Motor Vehicles and Traffic (R.S. 39:1-1) defines any "crosswalk" in pertinent part, as follows: "A portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other marking on the surface."

Appellant argues that it would be unrealistic for a person to walk a quarter of a mile and cross at the designated cross-walk. The fact is, however, that it would be the only sensible and lawful method. A pedestrian should not be expected to be a jay-walker and try unlawfully to dodge the heavy on-coming traffic on this very busy County highway. Our cemeteries are filled with persons who disregarded and violated our motor vehicle and traffic safety laws. Furthermore, it is well-known that most of the patrons of the motel arrive and leave by motor vehicles.

R.S. 39:4-34 (Laws 1970, C156, Sec. 1) "Pedestrians" directs that "Where traffic is not controlled and directed either by a police officer or a traffic control signal, pedestrians shall cross the roadway within a crosswalk. ...It shall be unlawful for a pedestrian to cross any highway having roadways separated by a medial barrier, except where provision is made for pedestrian crossing."

The evidence herein shows that there exists a temporary barrier, and a permanent medial barrier is now under construction on this roadway in this area.

Appellant cites Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control, 53 N.J. Super. 271 (1958) in support of his contention that a person may cross from appellant's premises without regard to a proper crosswalk. In that case, the court held that the Director was not justified in disregarding a painted crosswalk for pedestrians in computing distance merely because the road was a county road upon which local police,

who painted crosswalk, had no authority to do so, since such crosswalk was a proper place to cross notwithstanding the fact that the local issuing authority had failed to obtain approval of the motor vehicle director.

This case is apposite and clearly distinguishable from the matter sub judice because it is here admitted that no crosswalk presently exists between the appellant's licensed premises and the premises to be licensed. See also Karam v. Alcoholic Beverage Control, 102 N.J. Super. 291 (1968), cert. denied, 53 N.J. 63. The evidence clearly establishes that the distance between premises, as measured by the statutory yardstick is well over five hundred (500) feet. I thus conclude that the appellant has failed to establish that the Council acted in derogation of the terms of the subject ordinance in approving the said transfer.

Appellant's attorney raises for the first time, in his Memorandum of Summation, the allegation that the transfer was not based on community need. The short answer to this is that the local issuing authority has been held to possess wide discretion in the transfer of a liquor license, and such action may not be reversed by the Director unless he finds that the "act of the Council was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502; Fanwood v. Rocco, 33 N.J. 404. The record is absent of any showing that the Council acted erroneously or in an abuse of its discretionary authority. This contention lacks merit.

After reviewing the testimony and exhibits I conclude that the appellant has failed to establish that the action of the Council was erroneous. Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that an order be entered affirming the Council's action and dismissing the appeal.

#### Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellant. Answering arguments to such exceptions and argument were filed by both respondents.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report, the exceptions and argument to the Hearer's report, and the answers and argument addressed to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 14th day of September 1971,

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

Richard C. McDonough,  
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN LUNCHEONETTE - CLAIM FOR RETURN OF SEIZED CIGARETTE MACHINE 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 : Case No. 12,368
on September 10, 1970 of a :
quantity of alcoholic beverages, : On Hearing
a quantity of non-alcoholic :
beverages, fixtures, furnishings, : CONCLUSIONS and ORDER
equipment, a quantity of soda, :
and \$56.03 in cash at a luncheonette :
located at 143 South Delsea Drive, :
Glassboro, County of Gloucester :
and State of New Jersey. :

.....
Dolores Cruz, Pro Se, claimant.
Joseph Musumeci, t/a Courtesy Vending Service, Pro Se, claimant.
Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 and further, pursuant to a stipulation dated February 9, 1971, signed by Dolores Cruz to determine whether 50 containers of alcoholic beverages, one cigarette machine, one juke box, one pinball machine, one cash register, one television set, 268 containers of non-alcoholic beverages, miscellaneous personal property and \$56.03 in cash as set forth in an inventory attached hereto, made a part hereof, and marked Schedule "A", seized on September 10, 1970 at a luncheonette located at 143 South Delsea Drive, Glassboro, County of Gloucester, State of New Jersey, constitutes unlawful property and should be forfeited; and further, to determine whether the sum of \$300.00, representing the appraised retail value of one deep fryer, one hot plate, two grills, one dairy case and one refrigerator, deposited by Dolores Cruz, lessee of the luncheonette in question, under protest, and which personal property was retained at the aforesaid unlicensed premises should be forfeited or returned to her.

When the matter came on for hearing pursuant to State Regulation No. 28, Dolores Cruz, lessee of the unlicensed premises appeared and sought the return of the sum deposited by her under the aforesaid stipulation. Joseph Musumeci, t/a Courtesy Vending Service, 11 Lake Avenue, Swedesboro, N.J. appeared and sought return of a cigarette machine. No one appeared to seek return of the pinball machine and juke box.

Reports of ABC agents in the Division file, which was admitted into evidence with consent of all the parties disclosed the following facts: On September 10, 1970 at approximately 7:30 P.M. ABC agents, in the company of local police officers and an informant arrived in the vicinity of the unlicensed premises. There had been five previous visits by Division agents to the premises at which observations were made. Several patrons were observed to approach the counter and hand currency to Dolores Cruz who was then observed to place a pint bottle in a brown paper bag and hand the bag to each patron.

The informant, supplied with "marked" money was directed, empty-handed, into the premises and kept under constant surveillance by Agents C and D who observed the informant approach the counter and converse with Mrs. Cruz. She, thereafter, was

observed to take a bottle from under the counter, place it in a brown paper bag and hand it to the informant, who handed currency to her. She rang the cash register, placed the currency therein, and returned change to the informant.

Acting upon the informant's pre-arranged signal, Agents C and D contact the other agents and entered the premises. The informant then delivered a 4/5 pint bottle of rum, full and sealed, to Agent C and identified Mrs. Cruz as the party from whom he had made the purchase for \$4.25. The "marked" currency was then retrieved from the cash register.

Mrs. Cruz was advised of her constitutional rights and placed under arrest for the sale of alcoholic beverages without a license in violation of R.S. 33:1-2, and possession of alcoholic beverages with intent to sell in violation of R.S. 33:1-50. The seizure was then completed.

The Division file also included the Director's certificate that no license or special permit of any kind has ever been issued to Dolores Cruz for the said premises; an inventory of the seized items; affidavit of mailing of notice of hearing and of publication; the report of chemical analysis by the Division chemist and certified by the Director, establishing that one 4/5 pint bottle of Palo Viejo Puerto Rican Rum seized in the instant matter is an alcoholic beverage, fit for beverage purposes with an alcoholic content of 37.90%, by volume.

At the hearing herein Dolores Cruz appeared and readily admitted having sold the pint bottle of rum to the informant for \$4.25. She admitted not having a license to sell alcoholic beverages and identified Agent C as having been on the premises when the seizure was made.

Joseph Musumeci appeared and claimed return of one cigarette machine seized in the instant matter. He testified that he trades as Courtesy Vending Service and has had his cigarette machine on the premises since May 5, 1965. He has regularly serviced the machine approximately every 10 days since that time, and at no time did he observe any evidence of the sale of alcoholic beverages on the premises.

With respect to investigation, he testified that while he has no standard procedure by which he investigates a proposed location, in this particular instance he knew the neighborhood, knew the owner of the premises leased by Mrs. Cruz, knew several local police officer who, aware that he had placed his machine at the instant premises made no adverse comment with respect thereto. He concluded that he had no reason to believe any illegal activity was taking place on the premises.

The seized alcoholic beverages are illicit because they were intended for sale without a license and were, in fact, sold. The testimony of Mrs. Cruz admitting the sale coupled with the Director's certificate that no license was in effect for the instant premises permits no other conclusion. Such illicit alcoholic beverages, the personal property and cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66. Seizure Case No. 12,294, Bulletin 1948, Item 4.

Assuming that Musumeci has satisfactorily established his ownership of the claimed cigarette machine, there remains the question whether he has also established that he, in good faith,

and unknowingly violated the provisions of R.S. 33:1-66(e). His testimony indicates that he placed the machine on the premises personally and serviced it personally at 10 day intervals for at least six years. He further testified that in addition to servicing the machine he paid the agreed commission to Mrs. Cruz at the lunch counter on the premises. Lastly, with respect to investigation of the premises and the stringent requirements imposed with respect thereto, see Seizure Case No. 12,252, Bulletin 1919, Item 5 Musumeci's testimony presents no affirmative acts taken on his behalf, either prior to placing the machine or in the course of servicing it which would meet these requirements.

I believe Musumeci knew or should have known of the illegal activity which formed the basis for the seizure. The credible evidence in this case establishes that Musumeci's conduct was one of careless indifference as to the use made of the premises which he regularly serviced. Under such circumstances, the claim of Musumeci for the return of one cigarette machine should be denied and I so recommend. Cf. Seizure Case No. 12,252, supra.

It is further recommended that an Order be entered forfeiting the alcoholic beverages seized, the \$300.00 cash deposited by Mrs. Cruz, the remaining personal property and \$56.03 in cash, as more particularly described in Schedule "A", attached hereto.

#### Conclusions and Order

No exceptions were filed to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein including the transcript of testimony, the exhibits 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 14th day of September, 1971

DETERMINED and ORDERED that the claim of Dolores Cruz be and the same is hereby denied, and the sum of \$300.00 deposited on behalf of the claimant, pursuant to the aforesaid Stipulation, be and the same is hereby forfeited in accordance with the terms of R.S. 33:1-66 to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the claim of Courtesy Vending Service, Swedesboro, N.J. for the return of one cigarette vending machine be and the same is hereby denied, and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the miscellaneous property, \$56.03 in cash and the alcoholic beverages, as set forth in Schedule "A", attached hereto, constitute unlawful property and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

Richard C. McDonough,  
Director

SCHEDULE "A"

- 50 - containers of alcoholic beverages
- 268 - containers of non-alcoholic beverages
- 1 - cigarette machine; 1 - juke box;
- 1 - pinball machine; 1 - cash register;
- 1 - television set; 1 - refrigerator
- Miscellaneous personal property
- \$56.03 in cash

4. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBER - LICENSE  
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

Royal Club of Beverly )  
121 Broad Street )  
Beverly, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Club License CB-2, )  
issued by the Common Council of )  
the City of Beverly. )  
----- )

Licensee, Pro se  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 25, 1971, it sold alcoholic beverages to a non-member in violation of Rule 8 of State Regulation No. 7.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered leaving a net suspension of ten days. Re Progressive Democratic Club, Bulletin 1911, Item 7.

Accordingly, it is, on this 2nd day of September 1971,

ORDERED that Club License CB-2, issued by the Common Council of the City of Beverly to Royal Club of Beverly for premises 121 Broad Street, Beverly, be and the same is hereby suspended for ten (10) days, commencing 2:00 a.m. on Monday, September 20, 1971, and terminating 2:00 a.m. on Thursday, September 30, 1971.

Richard C. McDonough  
Director

## 5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary )  
 Proceedings against )  
 JERSEY SHORE MOTOR LODGE, INC. ) AMENDED  
 t/a Holiday Inn of Hazlet ) ORDER  
 2870 State Hwy. #35 )  
 Hazlet, New Jersey )

Holder of Plenary Retail Consumption )  
 License C-16, issued by the Township )  
 Committee of the Township of Hazlet. )

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 Scott, Fox & Walsh, Esqs., by Frank V. Walsh, Jr., Esq.,  
 Attorneys for Licensee.  
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On June 10, 1970, Conclusions and Order were entered suspending the license herein for twenty-five days upon a plea of non vult to a charge alleging that it possessed alcoholic beverages bearing labels which did not truly describe their contents.  
Re Raritan Motel Corp., Bulletin 1922, Item 3.

On June 25, 1970 the said Order was amended deferring the effective dates of such suspension to commence on July 30, 1970.

Prior to the effectuation of the amended order of suspension, on appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal. The Court affirmed the action of the Director on May 3, 1971. Jersey Shore Motor Lodge, Inc. etc. and Raritan Motel Corp., etc. v. McDonough, Director, etc. (App.Div. 1969) not officially reported, recorded in Bulletin 1976, Item 1.

Thereupon on May 18, 1971 a Supplemental Order was entered reimposing suspension of license to become effective June 3, 1971.

Prior thereto, licensee applied for the imposition of a fine in lieu of suspension, under the provisions of Chapter 9 of the Laws of 1971 pending such application the suspension was further stayed.

The said application having been denied, the suspension may now be reimposed.

Accordingly, it is, on this 9th day of September 1971,

ORDERED that Plenary Retail Consumption License C-16 (for the 1971-72 license period) issued by the Township Committee of the Township of Hazlet for premises 2870 State Hwy. #35, Hazlet to Raritan Motel Corporation, t/a Holiday Inn of Hazlet, and transferred during pendency of these proceedings to Jersey Shore Motor Lodge, Inc., t/a Holiday Inn of Hazlet, for the same premises, be and the same is hereby suspended for twenty-five (25) days commencing at 2:00 A.M. Monday, September 20, 1971 and terminating at 2:00 A.M. Friday, October 15, 1971.

Richard C. McDonough  
 Director

6. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #340 )  
In the Matter of a Petition to )  
Lift the Automatic Suspension of )  
Plenary Retail Consumption License )  
C-15 (as renewed for 1971-72 license )  
period), issued by the Township )  
Committee of the Township of Egg )  
Harbor to )

On Petition

O R D E R

Earl A. Longo, Sr. )  
t/a Earl Longo's Bar )  
W. Delilah Rd., near Pleasantville )  
City Line )  
Egg Harbor Township )  
P.O. Box 170, Pleasantville, N. J. )  
----- )

Licensee, Pro se

BY THE DIRECTOR:

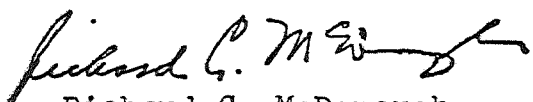
It appears from the records of this Division that on August 25, 1971 Earl A. Longo, Sr. (licensee) was fined \$100 and \$25 court costs upon his conviction of a charge of sale of alcoholic beverages to two minors (age 16) on Friday, August 20, 1971, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license held by the above named licensee for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are pending in this Division against the licensee because of the said sale of alcoholic beverages to the minors.

A petition may be filed with me by the licensee after such disciplinary proceedings have been concluded. In fairness to the licensee I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Della Rodolfa, Bulletin 1986, Item 8.

Accordingly, it is, on this 7th day of September 1971,

ORDERED that the aforesaid automatic suspension of Plenary Retail Consumption License C-15 be and the same is hereby stayed pending the entry of a further order herein.

  
Richard C. McDonough, Director.