

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

BULLETIN 2402

June 12, 1981

TABLE OF CONTENTS

ITEM

1. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - JOSEPH A. COLALILLO and DONALD MALLOY - ORDER ON MOTION.
2. DISCIPLINARY PROCEEDINGS (Keansburg) - LICENSEE PLEADED "NOT GUILTY" TO A CHARGE OF ALLOWING, PERMITTING AND SUFFERING SALE OF C.D.S. (MARIJUANA) UPON ITS PREMISES - MOTION TO DISMISS FOR FAILURE TO PROCEED TIMELY - GRANTED.
3. DISCIPLINARY PROCEEDINGS (West New York) - SUPPLEMENTAL CONCLUSIONS AND ORDER
4. DISCIPLINARY PROCEEDINGS (West New York) - SECOND SUPPLEMENTAL ORDER.
5. COURT DECISIONS - RE ROMANO CIPOLAT - DIRECTOR AFFIRMED.
6. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY  
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BULLETIN 2402

June 12, 1981

1. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - JOSEPH A. COLALILLO and DONALD MALLOY - ORDER ON MOTION.

In the Matter of the Petition of )

JOSEPH A. COLALILLO &  
DONALD MALLOY )

ORDER  
ON MOTION

For Relief Pursuant to N.J.S.A.  
33:1-12.39. )

-----  
Wilentz, Goldman & Spitzer, Esqs., by Francis X. Journick, Esq.,  
Attorneys for Petitioners.  
Skoloff & Wolfe, Esqs., by Marvin Olick, Esq., Attorneys for  
Objectors, Somerset County Tavern Owner's Association.

INITIAL DECISION BELOW

Hon. Joseph Rosa, Administrative Law Judge

Dated: March 24, 1980 - Received: March 26, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision on the Motions were filed by the Petitioners and the Objectors to said Petition.

The petitioners, Colalillo and Malloy, reiterate the arguments previously advanced that the "pocket license" statute, N.J.S.A. 33:1-12.39 is improperly being given a retroactive application by the Division. The objectors, Somerset County Tavern Owners Association reiterate its arguments that the Director cannot afford nunc pro tunc relief to petitioners for the 1978-79 license renewal period.

These arguments and the legal memoranda advanced in support thereof have been discussed and correctly resolved in the Initial Decision by Judge Rosa. Thus, I reject the Exceptions of the parties.

Having carefully considered the entire record herein, including the transcripts of the testimony, the motions filed, the legal memorandum submitted by the parties, the Initial Decision on the Motions, and the written Exceptions

filed thereto by the petitioners and the objectors, I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of May, 1980,

ORDERED that the petitioners' applications for relief pursuant to N.J.S.A. 33:1-12.39 for the 1978-79 and 1979-80 license terms be and the same are hereby consolidated for a "good cause" hearing before the Office of Administrative Law and any such determination therein shall be effective, nunc pro tunc, for the respective license periods of 1978-79 and 1979-80.

JOSEPH H. LERNER  
DIRECTOR

IN THE MATTER OF: )  
 )  
COLALILLO AND MALLOY )  
(Bound Brook) )

INITIAL DECISION  
ON MOTION

OAL DKT. NO. ABC 4271-79 and  
ABC 5181-79

APPEARANCES:

Wilentz, Goldman & Spitzer, Esqs.  
By: Francis X. Journick, Esq.,  
For Petitioners, Joseph A. Colalillo  
and Donald J. Malloy.

Skoloff & Wolfe, Esqs.  
By: Marvin Olick, Esq.  
For the Objectors, Somerset County  
Tavern Owner's Association.

BEFORE THE HONORABLE JOSEPH ROSA, JR., A.L.J.:

This is an initial decision on a motion concerning the applicability and construction of N.J.S.A. 33:1-12.36 and the powers of the Director of the Alcoholic Beverage Commission to grant nunc pro tunc relief with reference to N.J.S.A. 33:1-12.39. The Petitioners, Joseph A. Colalillo and Donald J. Malloy, were the holders of plenary retail consumption license No. 1804-44-006-001, issued by the Borough of Bound Brook. The license was for premises located at 313 Talmadge Avenue, Bound Brook and was last operated on or about June 12, 1976. Applications for renewal of the license were made to the Borough of Bound Brook for the license years 1976-1977, 1977-1978, 1978-1979, and 1979-1980. All the renewals were granted although the license was not utilized at any time after June 12, 1976, until after September 13, 1979, when the Borough of Bound Brook granted a place to place transfer of said license, permitting it to be utilized at 260 West Union Avenue, Bound Brook.

On, or about, September 12, 1979, the petitioners filed a petition with the Director of the Division of Alcoholic Beverage Control requesting good cause authorization, pursuant to N.J.S.A. 33:1-12.36, nunc pro tunc by the Director of the Division of

Alcoholic Beverage Control for the applications for license renewals for the licensing years 1978-1979 and 1979-1980. These applications had been approved by the governing body of the Borough of Bound Brook without the prior authorization required by N.J.S.A. 33:1-12.39. Upon receipt of this pocket license petition, pursuant to N.J.S.A. 33:1-12.39, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq.

Prior to the date of hearing, petitioners filed a motion for a ruling holding that N.J.S.A. 33:1-12.39 is inapplicable to the renewal of the said plenary retail consumption license for the 1978-1979 and 1979-1980 renewals, inasmuch as the statute should have prospective and not retrospective application. A further motion was made for a ruling holding that the Director of the Division of Alcoholic Beverage Control may grant the relief requested, by the petitioners nunc pro tunc. This initial decision is the disposition of those two motions.

I. DOES N.J.S.A. 33:1-12.39 HAVE RETROSPECTIVE OR PROSPECTIVE APPLICATION?

Generally speaking, a retrospective law is a law which looks backward on things that are passed and acts on things that have already occurred. It takes away, or impairs vested rights acquired under laws existing at a time in the past, and creates new obligations, imposing a new duty, or attaches a new disability in respect to transactions or considerations already passed. 82 C.J.S. Section 412, page 980. Statutory terms will not be given a retroactive effect "unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intent of the legislature cannot otherwise be satisfied." Kopczynsky v. County of Camden, 2 N.J. 419, 424 (1949), and see also La Parre v. Y.M.C.A. of The Oranges, 30 N.J. 225, 229 (1959); In Re Glen Rock, 25 N.J. 241, 249 (1957); Nichols v. Board of Education, Jersey City, 9 N.J. 241, 248 (1952). The words "heretofore," theretofore," "has been," or other expressions denoting past time expressly give a statute a retrospective operation. Cf. Nervo v. Mealey, 25 N.Y.S. (2d.) 632, 175 Misc. 952. All statutes are generally to be construed as having only a prospective operation and not as having retrospective one. Neel v. Ball, 6 N.J. 546 (1950) and Morin v. Becker, 6 N.J. 457 (1950). However, in the absence of any words expressing clear intention, whether a statute operates prospectively or retrospectively is a matter of ascertaining the legislative intent. Allord v. Henry Muhs Company, 10 N.J. Misc. 1230, Aff'd 111 N.J.L. 237 (E & A 1933). See also Sagarese v. Board of Health of the Town of Morristown, 31 N.J. Super. 526, (L.D. 1954); Terracciona v. Magee, 53 N.J. Super. 557 (Cty. Ct. 1959). More specifically, statutes generally will be held to operate prospectively, unless the purpose and intention of the legislature to give them a retrospective effect clearly appears, Cf. Hannan v. Employers' Commercial Union Insurance Co., 117 N.J. Super. 485 (L.D. 1971) or appears from a clear and fair implication. Nichols v. Board of Education of Jersey City, 9 N.J. 241, (1952), Burdett v.

Municipal Employees Pension Commission of the City of Newark, 129 N.J.L. 70 (E. & A. 1942) and Connell v. Carpenter, 9 N.J. Super. 236 (App. Div. 1950), or unless retrospective application is necessary to fulfill the legislative intent. Cf. Hannan, Supra at 489.

In the present matter, the holding in Roth Kopczynski v. the County of Camden, 2 N.J. 419, 424 (1949) is particularly relevant:

A cardinal rule in the interpretation of statutes is that words in a statute ought not to have a retrospective operation unless they are so clear strong and imperative and no other meaning can be annexed to them, or unless the intent of the Legislature cannot otherwise be satisfied." (emphasis added)

See also Alogni v. Schatzman, 57 N.J. 564, 578 (1971); Rothman v. Rothman, 65 N.J. 219, 224 (1974) and Nickell v. Gall, 49 N.J. 186, 189 (1967).

When seeking to ascertain the intent of the Legislature, factors to be considered, (apart from the actual wording), are:

- "1. The previous state of the law,
2. The circumstances leading to the enactment of the statute, and
3. The evils the statute seeks to remedy. Chambers v. Toohey, 14 N.J. Misc. 780 (Sup. Ct. 1936). The legislative intent is the "guiding star" Cf. Clarkson v. Ley, 106 N.J. 380.

The act in question, N.J.S.A. 33:1-12.39, provides as follows:

"No Class C license, as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with the operation of a licensed premises with a period of 2 years prior to the commencement date of the license period for which the renewal application is filed unless the Director, for good cause and after hearing, authorizes a further application for renewal; provided, however, that if the licensee has been deprived of the use of the licensed premises as a result of eminent domain fire or other casualty, and establishes by affidavit filed with the Director that he is making a good faith effort to resume active use of the license in connection

with the operation of the licensed premises then the period of 2 years provided for this section shall be automatically extended for an additional period of 2 years."

This statute was designed to end the practice whereby some local issuing authorities repeatedly renewed licenses without a situs for many years, (commonly referred to as pocket licenses), despite the lack of a suitable situs for the license. The statute deprived the local issuing authority of the jurisdiction to renew these licenses unless and until the Director found good cause for the period of inactivity. There was thus established a prior review by the Director which was a sine qua non to further renewal by the local issuing authority. Once the Director found that a good cause for the delay and non-activity existed, the local authority was then free to renew if it so wished.

In the statement to Assembly Bill No. 1875, (N.J.S.A. 33:1-12.39), dated June 10, 1976, the Assembly Commerce Banking and Insurance Committee stated that:

"This legislation, (N.J.S.A. 33:1-12.39), would prohibit the renewal of a Class C liquor license in the event that such license has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period, for which the renewal is filed unless such renewal is authorized by the Director of the Division of Alcoholic Beverage Control."

Similarly, the New Jersey State Senate Law Public Safety and Defense Committee in its statement to Assembly Bill No. 1875, dated November 8, 1976, stated that:

"The purpose of this bill, (N.J.S.A. 33:1-12.39), is to provide for the retirement of unused Class C alcoholic beverage licenses by prohibiting their renewal if they are not actively used for two years preceeding the renewal date."

It is clear then that the Legislative intent in this matter was to retire and restrict the number of Class C licenses in existence at the time of the passage of the bill. The bill was finally adopted by the State Senate on June 27, 1977, and was enacted into law on October 3, 1977.

If one were to accept the prospective application urged by petitioners, Colalillo and Malloy, it would result in the local issuing authorities not being able to cancel any Class C licenses until the 1980-1981 license year. The 1978-1979 license year would be the first year of inactivity. Therefore, the first year in which a local issuing authority would be bound by the dictates of a statute would be the 1980-1981 renewal license year. This clearly was not the intent of the Legislature.

I FIND and CONCLUDE that this position is totally inapposite to the Legislative intent in this matter. I FIND and CONCLUDE that the legislature intended this statute to apply to licenses which were pending for renewal in the next license year after its adoption, i.e., the 1978-1979 renewal year. Therefore, any licenses that were not being actively used since July 1, 1976, would be subject to its provisions.

It should also be noted that this interpretation is consistent with the opinion of the Director of the Division of Alcoholic Beverage Control dated April 14, 1978, (found in Bulletin 2289, dated July 27, 1978). In the aforementioned bulletin, the Director is of the opinion that:

"Any Class 'C' license which has not been used in connection with the operation of a licensed premises since July 1, 1976, becomes subject to the act this year (i.e., 1978-1979)."

Although the Director did not cite any authority for this proposition, I FIND and CONCLUDE that this executive directive was consistent with the applicable provisions of law hereinbefore cited.

In the present matter, the license was last operated in June 1976. There was no application to the Director for good cause authorization for the renewal years 1978-1979, or 1979-1980. It was not necessary to obtain good cause renewal for the 1977-1978 renewal year because the statute had not yet taken effect. (In point of fact the application to the Director for good cause relief was not filed until September of the year 1979).

I therefore FIND and CONCLUDE that N.J.S.A. 33:1-12.39 applies to all licenses which have not been used in connection with an operation of a licensed premises subsequent to July 1, 1978 and all renewals beginning with the 1978-1979 license year became subject to the provisions of the act, as well as the license here in question.

II. DOES THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGES CONTROL HAVE AUTHORITY TO GRANT GOOD CAUSE RENEWAL UNDER N.J.S.A. 33:1-12.39 "NUNC PRO TUNC."

Petitioners in the alternative, seek current good cause authorization by the Director as an application for a nunc pro tunc order by the Director, that is, they seek to have an order entered now as of the license renewal for the license years 1978-1979 and 1979-1980.

In this matter instead of filing with the Director under N.J.S.A. 33:1-12.39, for good cause renewal, petitioners first obtained approval from the local issuing authority, the Borough of Bound Brook, and filed for good cause approval with the Director some fourteen months later for the 1978-1979 renewal. It should be noted, however, that copies of the petitioners' renewal applications for both years were also filed with the Division of

Alcoholic Beverage Control and therefore the Division was always on notice of the state of petitioners' license. Petitioners now seek to correct the situation by applying to the Director for relief nunc pro tunc.

The threshold issue is whether or not the Director has the authority to issue the relief requested by the Petitioners. It has been held that:

"In the absence of some legislative restriction, administrative agencies have the inherent power to reopen or to modify and to rehear orders that have been entered...The power must be exercised reasonably and the application seeking its exercise must be made with reasonable diligence." Ruvoldt v. Nolan, 63 N.J. 171 (1973), Burlington County Evergreen Park Mental Hospital v. Cooper, 56 N.J. 579, 600 (1970).

The Director of the Division of Alcoholic Beverage Control is given wide supervisory powers in regard to the manufacture, distribution, and sale of alcoholic beverages in the State of New Jersey. N.J.S.A. 33:1-3. As such he is empowered: to make general rules and regulations, special rulings, and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages, N.J.S.A. 33:1-39; to hear appeals from the suspension or revocation of retail consumption licenses by local issuing authorities, N.J.S.A. 33:1-31; to hire and maintain suitable headquarters, and appoint deputies, employees, inspectors, experts and counsel, N.J.S.A. 33:1-4; to cancel plenary retail consumption licenses in self-initiated proceedings, Liptak v. Division of Alcoholic Beverage Control, 44 N.J. Super. 140 (App. Div. 1957); and with particular note in this matter to find good use for the renewal of plenary retail consumption licenses which have not been actively used in connection with the operation of a licensed premises within a period of two years, N.J.S.A. 33:1-12.39. The Director may promulgate such rules as relate to matters that are or may become necessary in the "comprehensive administration" of the Alcoholic Beverage Act, N.J.S.A. 33:1-39. The aforesaid indicates the broad scope of the Director's legitimate field of operation and leaves no doubt that the Director has the authority to issue a nunc pro tunc order for a license that has been improvidently granted by a local issuing authority for a prior license renewal year. The Director's broad authority to act in such a fashion has long been recognized by the courts. Cf. Brush v. Hock, 137 N.J.L. 257 (Sup. Ct. 1948).

It next must be decided whether or not the order nunc pro tunc should be entered. In the present matter, if the order is not entered, it will result in a forfeiture of the Petitioners' plenary retail consumption license. Forfeitures are not favored by the law, and are to be avoided unless absolutely compelled. Ali v. Towe, 30 N.J. Super. 19 (App. Div. 1954), see also Defeo v. Smith, 17 N.J. 183 (1955). Petitioners' plenary retail consumption license was renewed for the 1978-1979 license year and 1979-

1980 license years by the Borough of Bound Brook, even though there was not resort to the proper statutory procedure, as set forth in N.J.S.A. 33:1-12.39. The statute was designed to end the practice of issuing licenses which did not have a situs, and deprived the local issuing authorities of jurisdiction to renew licenses which have not been actively used within a two-year period, unless and until the Director found good cause as set forth in the statute. The objectors set forth the position that these municipal renewals, without the prior authorization of the Director as required by the statute, were a nullity. Such an interpretation would result in forfeiture of the petitioners' license. The Borough of Bound Brook was well aware of its responsibilities under the license, particularly in light of Bulletin No. 2289 dated July 27, 1978, which was issued by the Director of the Division of Alcoholic Beverage Control on April 14, 1978. It was the responsibility of the Borough to advise the licensee, when it discovered that there was no license situs on the license application that the licensee could not apply for automatic renewal but that the licensee must avail itself of the procedures set forth in N.J.S.A. 33:1-12.39. To hold that this licensee must be penalized because of the failure of the municipal issuing authority to advise the licensee that it could not properly renew its license would be inequitable. The authority delegated to an administrative agency should be construed as to permit the fullest accomplishment of legislative intent and the purpose of the statute in question. Hyland v. Ponzio, 159 N.J. Super. 233 (App. Div. 1978). The purpose of the present statute is not to forfeit licenses which had good cause for not being presently active but to require a preliminary "hearing" in order to ascertain whether or not there was good cause for the non-use of the license. To state, as the objectors urge, that the license should be forfeited, due to an error on the part of the local issuing authority, would be contrary to the statutory intent.

I therefore FIND and CONCLUDE that an order nunc pro tunc should be entered setting down a good cause hearing as required by N.J.S.A. 33:1-12,39 for the renewal of the petitioners' preliminary retail consumption license for good cause hearing for the license years 1978-1979 and 1979-1980.

I further FIND and CONCLUDE that the hearings on good cause for the license years 1978-79 and 1979-1980 shall be merged into one hearing.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph W. Lerner, the Director of the Division of Alcoholic Beverage Control, my Initial Decision in this matter and the record in these proceedings.

- 2. DISCIPLINARY PROCEEDINGS - LICENSEE PLEADED "NOT GUILTY" TO A CHARGE OF ALLOWING, PERMITTING AND SUFFERING SALE OF C.D.S. (MARIJUANA) UPON ITS PREMISES - MOTION TO DISMISS FOR FAILURE TO PROCEED TIMELY - GRANTED.

In the Matter of Disciplinary Proceedings against

Crossland, Inc.  
t/a Clipper J Tavern  
49 Shore Boulevard  
Keansburg, N.J. 07734

}  
S-11,876  
X-37,661-C  
}  
S-11,912  
X-37,661-B

} CONCLUSIONS

Holder of Plenary Retail Consumption License No. 1321-33-009-001 issued by the Mayor and Borough Council of the Borough of Keansburg.

}  
AND  
ORDER

Thomas A. Deakin, Esq., Attorney for Licensee.  
Anne Tan, Esq., Deputy Attorney General, Resrepresenting the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

- I -

Licensee pleads "not guilty" to charges alleging, inter alia, that, on September 6 and 13, 1978, it allowed, permitted and suffered unlawful activity pertaining to controlled dangerous substances upon its licensed premises, to wit, marijuana, and that it allowed its premises to be operated as a nuisance in consequence thereof, in violation of N.J.A.C. 13:2-23.5 and .6.

Prior to the introduction of testimony in this matter, the Deputy Attorney General representing the Division moved for an adjournment because of the unavailability of Division witnesses. It was specifically indicated that one agent was attending training classes and had not been advised of the hearing scheduled this date, May 2, 1979, and the other agent was ill and did not honor a Division subpoena to appear.

Counsel for the licensee objected to the adjournment request and cross-moved for dismissal of the charge for failure

to timely proceed. In support of its motion the licensee submitted the following arguments.

Initially, the licensee sets forth the calendar history of this matter.

- (A) December 12, 1978 - The first scheduled hearing date. An adjournment was granted at the request of the licensee's counsel. Counsel requested the adjournment by letter dated November 3, 1979, the same day he received the initial Notice of Hearing;
- (B) January 23, 1979 - The Division adjourned the matter and noticed licensee's counsel by telephone several days prior to scheduled hearing;
- (C) April 6, 1979 - Matter scheduled peremptory and the licensee appeared at the Division offices to present its defense. The Division was not prepared to proceed and the matter was adjourned over licensee's objection;
- (D) May 2, 1979 - The hearing date, sub judice, which also bore a peremptory legend.

Counsel for licensee indicated that as to the last three hearing dates he has subpoenaed witnesses and has been ready to proceed. As to this May 2, 1979 hearing date, no later than two (2) days prior thereto, he had confirmed with the Deputy-Attorney General then handling the case, that the matter was ready for trial. He had five (5) witnesses from Monmouth County present at the May 2, 1979 and April 6, 1979 hearings, and he honestly questioned whether he would be able to have them appear for a third time.

In consideration of the motions by the parties, it is a settled principle that in administrative hearings, the grant or denial of a request for continuance or adjournment is a matter within the sound discretion of the agency head. In re Darcy, 114 N.J. Super. 454, 462 (App. Div. 1971). Factors to

consider include among others, "due process" to the litigants, fundamental fairness, proper enforcement of the Alcoholic Beverage Laws and prejudice to the litigants.

An analysis of the subject proceedings indicates an unreasonable delay in the prosecution of these charges by the Division without any reasonable expectation that the Division would ever be in a position to move the matter to trial. Coupled with the Division's inability to proceed is the less-than-adequate concern afforded the licensee in adjourning the matter and the potential prejudice to the licensee caused by these delays.

When a matter is scheduled peremptory it must apply, in all fairness, to both parties. Adjournments of peremptory cases must exist in unusual unanticipated circumstances. However, to have the licensee subpoena witnesses, come to the Division, and be ready to proceed on two (2) scheduled peremptory dates, and then be advised for the first time that the Division is not ready, does not comport with my impressions of "due process" and fundamental fairness.

Therefore, while the result proffered herein will preclude a full adjudication of the charges, and possibly permit an administrative offense to remain unpunished, I nonetheless recommend to the Director that the motion for adjournment requested by the Deputy Attorney General be denied. I further recommend that the charges herein be dismissed for failure to timely prosecute, as so moved by the licensee.

- II -

S-11,912

In the second aspect of these consolidated cases, the licensee entered a plea of non vult to a Division charge alleging that, on August 23, 1978, it sold alcoholic beverages to a person, under the age of eighteen (18) years, viz., Ted D.\_\_\_\_, age fifteen (15), in violation of N.J.A.C. 13:2-23.1(a).

At the hearing, the licensee offered evidence of the circumstances of the sale for consideration by the Director in the imposition of penalty. It submitted that the minor did produce some type of I.D. as to age and appeared to be at least nineteen (19) years old. Of course, these factors do not establish a defense as set forth in N.J.S.A. 33:1-77, but were offered in mitigation. Counsel also indicated that the licensee has been in business twenty-five (25) or twenty-six (26) years and this was the first charge or complaint of any type against it.

Absent prior record, on the charge of a sale to a fifteen (15) year old minor, I recommend a suspension of license for thirty-five (35) days, with remission of seven (7) days for the plea entered, leaving a net suspension of license of twenty eight (28) days.

Any action on the licensee's request to pay a fine, in compromise, in lieu of license suspension, must be considered by the Director, Division of Alcoholic Beverage Control. Under N.J.S.A. 33:1-31, the Director has the sole authority and discretion to act on such applications, and I take no position herein, other than to set forth the licensee's statements in mitigation of penalty.

#### CONCLUSIONS AND ORDER

No Exceptions to the Hearer's Report were filed by the parties hereto pursuant to N.J.A.C. 13:2-19.6.

These two matters were consolidated for hearing. With respect to S-11,876, wherein the licensee pleaded "not guilty" to charges as set forth in the Hearer's Report, I have carefully considered the reasons upon which the Hearer grounded his recommendation that the said charges be dismissed. I am satisfied that sufficient cause exists for such action, and I shall adopt the recommendation of the Hearer as my conclusions herein.

With respect to S-11,912, wherein the licensee pleaded "non vult" to a Division charge alleging that it sold alcoholic beverages to a 15-year-old minor, I shall adopt the recommendation of the Hearer with respect to the proposed penalty, and shall enter an order suspending the subject license for thirty-five (35) days, with remission of seven (7) days for the plea entered, leaving a net suspension of license for twenty-eight (28) days.

The licensee has made application for the payment of a fine in lieu of suspension of license. In view of the fact that this charge involved a sale to a 15-year-old minor, the application for a fine is herewith denied.

Accordingly, it is, on this 29th day of May, 1980,

ORDERED that charges in No. S-11,912, Plenary Retail Consumption License No. 1321-33-009-001 issued by the Mayor and Borough Council of the Borough of Keansburg to Crossland, Inc., t/a Clipper J Tavern for premises 49 Shore Boulevard, Keansburg be and the same is hereby suspended for twenty-eight (28) days commencing 2:00 a.m. Monday, June 2, 1980 and terminating 2:00 a.m. Monday, June 30, 1980.

JOSEPH H. LERNER  
DIRECTOR

## 3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL CONCLUSIONS AND ORDER.

In the Matter of Disciplinary Proceedings against	}	S-11,786 X-47,233-D
Romano Cipolat t/a The Lighthouse Restaurant Bar & Grill 759 Farragut Place West New York, N.J.	}	SUPPLEMENTAL  CONCLUSIONS  AND  ORDER

Holder of Plenary Retail Consumption  
 License No. 0912-33-027-001 issued  
 by the Board of Commissioners of the  
Town of West New York, New Jersey.

Winne, Bante, Rizzi and Harrington, Esqs., by John D. Harrington, Esq.,  
 and John R. DeSheplo, Esq., Attorneys for Licensee.  
 Ken Nowak, Esq., Deputy-Attorney General, Appearing for Division.

## BY THE DIRECTOR:

On September 27, 1979, Conclusions and Order were entered herein revoking the subject license, effective immediately, in consequence of findings of guilt to Division charges alleging that the licensee engaged in acts of violence on three specific occasions.

Upon appeal filed to the Superior Court-Appellate Division, by Orders dated September 28, 1979 and October 12, 1979, the Director's Order of Revocation was stayed pending determination of the appeal. By Decision dated October 1, 1980, the determination of the Director was affirmed. Romano Cipolat, t/a The Lighthouse Restaurant Bar & Grill vs. Division of Alcoholic Beverage Control, (App. Div. Docket No. A-357-79), not officially reported, but noted in Bulletin 2402, Item 4. The penalty may now be reimposed.

Accordingly, it is, on this 2nd day of October, 1980,

ORDERED that Plenary Retail Consumption License No. 0912-33-027-001 issued by the Board of Commissioners of the Town of West New York to Romano Cipolat, t/a The Lighthouse Restaurant Bar & Grill, for premises 759 Farragut Place, West New York, New Jersey, be and the same is hereby revoked, effective immediately.

## 4. DISCIPLINARY PROCEEDINGS - ROMANO CIPOLAT - SECOND SUPPLEMENTAL ORDER

In the Matter of Disciplinary Proceedings against :

Romano Cipolat : SECOND SUPPLEMENTAL  
t/a The Lighthouse Restaurant :  
Bar & Grill :  
759 Farragut Place : CONCLUSIONS AND ORDER  
West New York, N. J. :  
: S-11,786

Holder of Plenary Retail Consumption License No. 0912-33-027-001 issued : X-47,233-D  
by the Board of Commissioners of the :  
Town of West New York, New Jersey. :

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Winne, Bante, Rizzi and Harrington, Esqs., by John D. Harrington, Esq.,  
and John R. DeDheplo, Esq., Attorneys for Licensee.  
Ken Nowak, Esq., Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

On September 27, 1979, Conclusions and Order were entered herein revoking the subject license, effective immediately, in consequence of findings of guilt to Division charges alleging that the licensee engaged in acts of violence on three specific occasions.

Upon appeal filed to the Superior Court - Appellate Division, by Orders dated September 28, 1979 and October 12, 1979, the Director's Order of Revocation was stayed pending determination of the appeal. By Decision dated October 1, 1980, the determination of the Director was affirmed. Romano Cipolat, t/a The Lighthouse Restaurant Bar & Grill vs. Division of Alcoholic Beverage Control, (App. Div. Docket No. A-357-79), not officially reported, but noted in Bulletin 2402 . Item 5 .

Thereafter, the licensee filed a Petition for Certification to the New Jersey Supreme Court, and the revocation was stayed pending consideration thereof. By Order dated January 22, 1981, licensee's Petition was denied, and his appeal dismissed. Re Cipolat (Supreme Court Docket Nos. C-251 and 17,777 - September Term 1980). The Order of revocation can now be reimposed.

Accordingly, it is, on this 30th day of January, 1981,

ORDERED that Plenary Retail Consumption License No. 0912-33-027-001 issued by the Board of Commissioners of the Town of West New York to Romano Cipolat, t/a The Lighthouse Restaurant Bar & Grill, for premises 759 Farragut Place, West New York, New Jersey, be and the same is hereby revoked, effectively immediately.

JOSEPH H. LERNER  
DIRECTOR

5. COURT DECISIONS - RE ROMANO CIPOLAT - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-357-79

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

Romano Cipolat  
t/a The Lighthouse  
Restaurant Bar and Grill  
759 Farragut Place  
West New York, N. J.

HOLDER OF PLENARY RETAIL CONSUMPTION  
LICENSE NO. 0912-33-027-001 ISSUED BY  
THE BOARD OF COMMISSIONERS OF THE TOWN  
OF WEST NEW YORK, NEW JERSEY.

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Argued September 22, 1980 - Decided October 1, 1980.

Before Judges Seidman and Antell.

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

John Dolan Harrington argued the cause for appellant  
(Winne, Banta, Rizzi & Harrington, attorneys; Mr. Harrington  
of counsel; Scott A. Weiner on the brief).

Kenneth I. Nowak, Deputy Attorney General, argued the cause for  
respondent, Division of Alcoholic Beverage Control (John J.  
Degnan, Attorney General of New Jersey, attorney; Erminie  
Conley, Assistant Attorney General, of counsel; Anne E. Tan,  
Deputy Attorney General, on the brief).

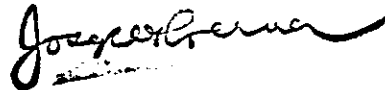
PER CURIAM

(Appeal from the Director's decision in Re: Romano Cipolat,  
Bulletin 2348, Item 1; Bulletin 2402, Item 3. Director  
affirmed. Opinion not approved for publication by Court  
Committee on Opinions).

6. STATE LICENSES - NEW APPLICATION FILED.

Malt Beverages Unlimited Corp.  
304 Connecticut Drive  
Burlington, New Jersey

Application filed June 8, 1981  
for place-to-place transfer of  
a state beverage distributor's  
license from Foot of Lexington  
Avenue, Trenton, New Jersey.



Joseph H. Lerner  
Director