

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
P.O. Box 2039
U.S. ROUTE 1-9 (SOUTHBOUND), NEWARK, N. J. 07114

BULLETIN 2284

May 22, 1978

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NEWARK INTERNATIONAL PLAZA
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May 22, 1978

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWERS IN APPLICATION - LICENSE
SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT AFTER 20 DAYS.

In the Matter of Disciplinary
Proceedings against

Theresa Gallo,
t/a The Palace Lounge
2-12 Carr Ave. & 68 Beachway
Keansburg, N.J. 07734

Holder of Plenary Retail Con-
sumption License C-28, issued
by the Municipal Council of
the Borough of Keansburg.

CONCLUSIONS
and
ORDER

Festa & Marino, Esqs., by Charles C. Festa, Esq.,
Attorneys for Licensee.
Mart Vaarsi, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

The licensee pleaded "not guilty" to charges alleging that: (1) she failed to state a change in facts in the last prior long-form application, viz., to show a change in answer from "No" to "Yes" to Question No. 27 in said long-form application, and indicate that George Gallo had an interest, directly or indirectly, in the license applied for and in the business to be conducted under said license; in violation of N.J.S.A. 33:1-25; and (2) she failed to state in answer to question No. 11 a change in facts in her last prior long-form application, viz., a change of answer from "No" to "Yes" to Question No. 28 in said long-form application, and indicate that she had agreed to permit the aforementioned George Gallo to retain a share of the profits and income derived from your licensed business; in violation of R.S. 33:1-25.

At the hearing on the charges herein, ABC Agent B testified on behalf of the Division. During the course of his testimony a number of documents were received into evidence in support of the Division's case, including:

(a) Two applications for renewal of Plenary Retail Consumption License C-28, executed solely by Theresa Gallo;

(b) A 19 page transcript of a recorded statement taken from Theresa Gallo on September 29, 1976, reflecting answers given by her to questions propounded by the agent;

(c) A 12 page transcript of a recorded statement taken from George Gallo, her husband, on the same date, likewise reflecting answers given by him to questions propounded by the agent;

(d) A rental agreement between George W. Gallo, on behalf of the Palace Lounge, and PMK Corp., to rent the restaurant portion of the lounge, unsigned by George Gallo.

(e) A listing of various monies advanced to the Palace Lounge by George Gallo, through a business entity he operates as Cross Industrial Decorators, to pay various tavern and building expenses;

(f) A telephone bill in the name of "G. Gallo, Palace Lounge and Restaurant, 2 Carr Ave., Keansburg, N.J."

(g) A copy of the 1974 joint income tax return of George and Theresa Gallo, upon which Theresa is listed as "housewife" and George as "self employed." Within the return, Schedule "C" indicates that George and Theresa engage in an activity identified as the Palace Lounge and Restaurant.

(h) A Xerox copy of a letter from a local attorney to a former partner (Rose Petrone) in the licensed business, identifying the subject of the letter as "Re: George Gallo liquor license."

From the transcript of George Gallo's responses to Agent B's questions, the following quotes are illustrative of the active participation and the exercise of dominion and control in the licensed business by George Gallo.

Q.: How did the transaction (license acquisition) take place, and where did this transaction take place?

A.: Okay. The transaction took place in William C. Lloyd's office. We severed a partnership that had been created between my wife and Mrs. Petrone. They weren't getting along...she had only been a partner for five months, and they wanted either to

buy hers (sic) out or we were to buy them out. I elected to buy them out. The amount involved was approximately five or six thousand dollars. This escapes me at the time.

Q.: Where did the five or six thousand dollars come from?

A.: A combination, it probably came from my savings and loans that I had made for relatives and family.

Q.: I now show you the rental agreement between PMK Corporation, dated July 1st, 1975, and ask you who negotiated this rental agreement between PMK Corporation?

A.: PMK Corporation went to their attorney and drew up an agreement to produce with myself. I disagreed with it, because I had prepared my own agreement. They in turn said that they would go along with whatever I had said. I had wanted 20 percent of gross proceeds. They had discussed 10. They never lived up to any part of it, and I just didn't honor it. As simple as that.

Q.: Has CID Corporation loaned the money to the Palace Lounge?

A.: CID Corporation had loaned nothing, but George Gallo, doing business as Cross Industrial, as an individual, has advanced money from another account to the Palace to support the losses that it had sustained, since I was showing them as an individual entity rather than as a conglomerate.

Q.: Are these monies which were advanced by CID recorded in the books and records of Palace Lounge?

A.: Ah, I believe they were, no, they weren't recorded in the books of the Palace Lounge, but they were recorded on the books and records of CID, which was my master financial statement, which, if you check your receipts, you will see on the disbursements.

Q.: Mr. Gallo, why doesn't your name appear on the license of the Palace Lounge?

A.: Personal, personal. I choose not to. Why doesn't (name deleted) appear on there? Same reason. He chooses not to, even though (inaudible). Maybe I just was never asked. Simple as that. Maybe I decided not to. Whatever reason, I don't choose to have it. My wife, I turned that over to her. I felt that was satisfactory, but it had to be a personal question.

From the transcript of Theresa Gallo's responses to Agent B's questions the following quotes further support a finding of joint interest in the liquor license:

Q.: The original \$5,000.00 that you borrowed from Mr. Monaco for the purchase of the premises, or the purchase of the license, excuse me, has that money since been repaid?

A.: My husband has repaid the \$5,000.00.

Q.: Your husband has repaid the \$5,000.00?

A.: Right.

Q.: About the money that was used for the premises, you stated, or isn't it a fact, that all the money that was used for the purchase from Mrs. Petrone and from the three gentlemen you mentioned earlier, Shannon Corporation, was all your husband's money?

A.: I went and borrowed.

Q.: Was all your husband's money, plus what you borrowed?

A.: Yes.

Q.: He has also or together, jointly, you purchased the license from Mrs. Petrone. Can you tell me any reason why your husband's name doesn't appear on the license application?

A.: We didn't feel it was necessary to put it on. We didn't see any sense to it, any reason for it, or against it, or anything else.

Q.: Well, why wouldn't he appear on the license?

A.: Well, why should he? Is it a necessity? I don't see any reason why it should be on.

Q.: It's your joint money involved?

A.: Right.

Theresa, George and Vincent (son) Gallo testified in defense of the charge. They denied that George operated the tavern, or that any of his money was invested in it, despite the admissions they made in their respective statements taken at Division Headquarters, on September 29, 1976.

Both husband and wife stated that they were confused by the questions in the depositions. They now assert that they assumed that the "Palace Lounge", as used in the questions, referred to the real estate, not the licensed tavern; and their answers must similarly be read in this context.

Victoria Hutchins and Rose Carfi also testified in behalf of the licensee. In essence, they stated that, based upon their observations, Theresa Coollo was the sole owner of the licensed business.

I

Preliminarily, I observe that, in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature 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); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, Bulletin 1491, Item 1 (unreported App. Div. affirmance of Director's Conclusion and Order-A-782-61).

Since there is a sharp conflict in the testimony adduced, it becomes the function of the Hearer to evaluate the testimony, after observing the demeanor of the witnesses, and giving weight to such testimony as he finds credible. It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuola v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The transcripts and statements of both husband and wife belie their assertion that they were referring to the building and land only, in responding to questions posed to them by Agent B on September 29, 1976. On the contrary, I am persuaded and find that they were referring to the entire entity and the liquor license in specific inquiries.

While none of the various items introduced into evidence is, of itself (save perhaps the transcripts of their September, 1976 statements) conclusive, the import of the sum of them creates a mosaic subject to only one valid interpretation.

George Gallo negotiated leases with prospective restaurant operators, negotiated for the purchase of a former partner's interest in the liquor license, listed the telephone in his name, and held himself out as an owner when filing his income tax return. Indeed, in their own minds, as stated on the aforesaid tax return, Theresa was a housewife and George Gallo was the business person in the family. When the tavern had expenses it could not meet, he took funds from another commercial enterprise he owned to pay the tavern's debt to keep it solvent.

Considering all of these factors, it is apparent that George Gallo was, in part, the true and beneficial owner of the license held by his wife Theresa Gallo. Furthermore "(the) very nature and characteristics of a 'front' is concealment and subterfuge. Very rarely is such proof buttressed with confessions and/or affirmative admissions. Thus the testimonial presentation must be largely circumstantial and documentary." Sharp's Lodge, Inc. v. Lakewood, Bulletin 1842, Item 1.

From the totality of the credible evidence, the conclusion is inescapable, and I so find, that George Gallo held an undisclosed interest in the business, and, to a large extent, exercised the dominion and control associated with such interest.

Applying the firmly established principles to the proceedings sub judice, I am persuaded that the charges herein have been established by a fair preponderance of the credible evidence. Hence, I recommend that the licensee be found guilty of the said charges.

II

Our laws pertaining to undisclosed interest were formulated to prevent certain classes of individuals and organizations from exercising secret interests in the liquor industry. From time-to-time, someone is ensnared who does not fall within the categories that the legislature desired to exclude from this most sensitive industry. This frequently occurs in a family situation, which is the underlying cause of the violation; not an intentional action to circumvent the statute.

Any person 18 years of age or older, who has not been convicted of a crime involving moral turpitude may exercise an interest in a license in New Jersey. The record discloses that George Gallo is not disqualified on either of these grounds. Why then did he decline to disclose his financial interest in subject license?

There was testimony that he has had a history of serious medical problems, and from which, on at least one occasion, the attending physician did not expect him to survive. He is under constant medication and cannot be termed "recovered"; at best his medical problems are "controlled" at this time. It appears implicit from the testimony that George Gallo did not wish to involve this asset within his estate, and perhaps encumber its free transferability (subject only to municipal approval) at the very time it may have been necessary, should his widow be in financial need.

Although these circumstances do not constitute a valid defense to the charges, they are grounds for mitigation in the consideration of the penalty to be imposed. Normally I would have recommended a suspension of license for its term with a

minimum service of a forty-five day suspension following Division precedent. However, I feel that a lesser suspension of a minimum of twenty days is warranted in this matter.

It is, therefore, recommended that the subject license be suspended for the balance of its term, or any renewal thereof, with leave granted for the lifting of such suspension upon the filing of a verified petition by the licensee, or a bona fide transferee of the license establishing that the unlawful situation has been corrected, which suspension, however, shall not be lifted, in any event, sooner than twenty (20) days after the commencement date of the said suspension.

Conclusions and Order

No written 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 transcripts of the testimony, the exhibits, the written summation of the licensee, and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of January, 1978,

ORDERED that Plenary Retail Consumption License C-28 issued by the Municipal Council of the Borough of Keansburg to Theresa Gallo, t/a The Palace Lounge for premises 2-12 Carr Avenue and 68 Beachway, Keansburg, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1978, effective 2:00 a.m. on Tuesday, January 17, 1978, and for the term of any renewal of said license which may be granted, with leave to the licensee or any bona fide transferee of the license, or of any renewal of the said license which may be granted, to apply to the Director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected; but, in no event shall the lifting of said suspension be sooner than twenty (20) days from the commencement of the suspension herein.

Joseph H. Lerner
Director

2. DISCIPLINARY PROCEEDINGS - FAILURE TO HAVE PROPER BOOKS OF ACCOUNT -
TWO PRIOR DISSIMILAR OFFENSES - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

R & M Lounge, Inc.
t/a Commerce Lounge
205 Commerce Street
Newark, N.J. 07102

CONCLUSIONS AND ORDER

Holder of Plenary Retail Con-
sumption License C-166, issued
by the Municipal Board of
Alcoholic Beverage Control of
the City of Newark.

Oransky, Donovan, Scaraggi & Borg, Esqs., by Michael T.
Scaraggi, Esq., Attorneys for Licensee.
Mart Vaarsi, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads not guilty to the following charge:

From on or about November 1, 1974 to date
(January 5, 1977), you failed to have and
keep a true book or books of account in
connection with operation and conduct of your
licensed premises, viz., a record of all
monies received other than in the ordinary
course of business, and a record of all monies
expended from such receipts and the names of
the persons receiving such monies and the pur-
pose for which such expenditures were made; in
violation of Rule 36 of State Regulation No. 20.

Rule 36 of State Regulation No. 20 provides that:

All licensees shall have and keep a true book
or books of account wherein there shall be
entered a record of all monies received and a re-
cord of the source of all monies received other
than in the ordinary course of business and wherein
there shall also be entered a record of all monies
expended from such receipts and the name of the
person receiving such monies and the purpose for
which such expenditures were made.

All books and records pertaining to such receipts or expenditures shall be made available for inspection by the Director of the Division of Alcoholic Beverage Control and the other issuing authority and by his or its deputies, inspectors, investigators and agents and other officers as defined by R.S. 33:1-1(p).

Russell Long, who on the dates herein mentioned had been employed as an accountant with the Division of Alcoholic Beverage Control, testified that, during the course of the subject investigation, he examined various records submitted by the licensee. These documents included numerous receipts, personal and corporate Federal income tax returns and State tax returns. During the course of the hearing, Long also examined a ledger sheet (represented by the licensee to have been prepared by its accountant) for the fiscal year commencing November 1, 1974 and ending October 31, 1975.

In essence, Long explained that he found no inaccuracies on the income, salary, disbursement or tax records. However, he was not furnished with a source ledger or document which would disclose a beginning and ending cash position. It was his opinion that the multitudinous slips and receipts were an impermissible substitute for a book of account. The ledger sheet which he examined failed to disclose a beginning and ending cash position.

Long testified that the requirement for a business operating on a cash basis (such as the subject licensee) to keep books of account"... would be somewhere to show a record of the money that was in the cash drawer at the beginning of a period, the monies that were received, a record of the monies that were received during the period, minus a record of the monies that were expended during the period, and some source of monies that were in the cash drawer at the end of the period."

Additionally, Long explained that the cash balance statements shown on the Federal income tax form 1120 for the fiscal year ending in 1974 did not rectify the omission of the cash position statement in the ledger sheet for the fiscal year period terminating on October 31, 1975.

In defense of the charge, Gervase F. Burns, who is employed by the corporate licensee as its manager, testified that he is familiar with its day-to-day business transactions.

The business pays all its bills by cash or money orders. It maintains no checking account, and receives a receipt for each cash payment. It employs the services of an accountant.

Burns kept all receipts of the business, as indicated by cash register receipts and receipted bills of expenditures, in paper bags month by month. He presented these to Long for his examination after the charge herein was filed. Long demurred and explained that he wanted them prepared in ledger form and wanted to see a cash flow from the beginning of the year. Long would accept two months as a spot check.

Burns asserted that the cash receipts as indicated by the cash register tapes and the receipted bills in each of the bags which Long refused to examine, corresponded with the figures that appeared on the ledger pages received in evidence.

Rule 36 of State Regulation No. 20 requires all licensees to keep a true book or books of account wherein there shall be entered a record of all monies received and a record of the source of all monies received other than in the ordinary course of business. Maintenance of various cash register tapes in paper bags is not an acceptable accounting practice to satisfy the Rule requirement of a book of account.

The subject rule has been consistently implemented and enforced by this Division, because of its salutary effect. The obvious purpose of the rule is to enable the Director to determine what interest anyone other than a licensee may have in a liquor-licensed establishment.

The licensee contends that its records reflected a true and accurate account of its income and expenditures. However, the testimony of Long, that the Licensee's records failed to show the beginning cash position and the source of such monies was unchallenged by the licensee.

It is apparent that the licensee adopted bookkeeping practices which were short of strict adherence to the requirements contained in the aforesaid rule. Although no intent to deceive was present, I find that there was sufficient evidence to support a finding of guilty of the charge.

The license would normally be suspended for twenty days, however, in view of the mitigating facts and circumstances herein, and the apparent lack of intent to deceive, I recommend that the license be suspended for fifteen days, to which should be added ten days by reason of two prior dissimilar violations resulting in suspensions of license by the Director for twenty-eight days, effective March 23, 1973, for

lewd and immoral activity and one-hundred and sixteen days, effective September 8, 1976, for lewd and immoral activity, prostitution and acceptance of drinks from customers by female employees, making a total net suspension of twenty-five (25) 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, the written summation filed on behalf of the Division, the written reply thereto filed by the licensee, and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of January, 1978,

ORDERED that Plenary Retail Consumption License C-166 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to R & M Lounge, Inc., t/a Commerce Lounge, for premises 205 Commerce Street, Newark, be and the same is hereby suspended for twenty-five (25) days commencing 2:00 A.M. Monday, January 23, 1978 and terminating 2:00 A.M. Friday, February 17, 1978.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - MER-DOM, INC. v. WEST NEW YORK.

#4145	}	
Mer-Dom, Inc.,		
Appellant,	}	ON APPEAL
v.		
Board of Commissioners of	}	CONCLUSIONS
the Town of West New York,		and
Respondent.		ORDER

 Nathan Blumberg, Esq., Attorney for Appellant.
 Gregory J. Castano, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellant appeals from the action of the Board of Commissioners of the Town of West New York (hereinafter Board) which, on June 15, 1977, denied appellant's application for renewal of its plenary retail consumption license C-49 for premises at 5717 Hudson Avenue, West New York. The basis of the denial is an alleged deliberate misstatement in response to a material question appearing within a required municipal form.

Appellant contends that the action of the Board was unduly harsh and that a less severe penalty, which would not result in the loss of investment and livelihood, is appropriate.

In its answer, the Board defends its action as proper.

Upon the filing of the within appeal, an Order to Show Cause was entered by the Director on July 7, 1977, why the appellant's license should not be extended pending determination of the appeal. In addition thereto, an ad interim extension of license was granted to appellant pending the return date of the Order to Show Cause and further order of the Director.

A de novo hearing on the appeal 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 resolution of June 15, 1977 states that it denies appellant's application for renewal based on the investigation and report of Police Chief Thomas Fitzpatrick and Patrolman Daniel Kelly, which findings were incorporated by reference in the reso-

lution.

The Report, which is cited as the basis for the denial herein, provides in relevant part as follows:

Gentlemen:

In regards to the consumption license C-49 which is due to be renewed "George's Tavern" of 5717 Hudson Ave. A transfer of 100% stock from Miguel A Dominguez who has left the state for approximately one year to a Libio Carcases of 108-34th Street, Union City who has been the manager of the tavern in his absence....[I] recommend that it be refused on the grounds that he (Libio Carcases) falsified his application by stating he was never arrested. I checked the name out with our record room and found that he was arrested by our police dept on 1/30/77 for 1. Receiving stolen Property and 2. Possession of Marj. under 25 Grams. I am waiting for the report from the state to check if he has any other arrests. Attached you will find a copy of his application and arrest record. When I receive the report from the state I will also send a copy to you. I have noticed that a few cases with the transfer of stock that the new stock holders do not report to my office to be checked if they have a criminal record even though it is legal to transfer stock without haveing the license transferred or renewed, but it is required by law that the stock holders be checked out and this practice can create problems in the future, as any person with a questionable background can have someone front for him.

Respectfully submitted,

Ptl. Daniel Kelly

Police Officer Daniel Kelly, in charge of the West New York License Bureau, testified in confirmation of the aforesaid report. He stated that the stock of the subject corporate licensee was acquired by Libio Carcases, who was required to complete a municipal form upon which, he alleges, Carcases falsely stated that he was never arested. In fact, Carcases was arrested on January 30, 1977 in West New York.

Edilfa Perez, the Court Clerk of the Town of West New York, testified that Carcases was arrested on January 30, 1977 on two charges, one of which was later dismissed. He pleaded guilty, on May 19, 1977, to the second charge, a disorderly person offense of possession of less than 25 grams of marijuana. He was given a conditional discharge by the municipal magistrate, pursuant to a current program which provides for the holding of the charge in abeyance for six months. At the end of that probationary period, if there are no further transgressions, the subject is discharged without any record whatsoever.

A debate ensued as to when the six months period commenced. In any event, the false answer was made on May 24, 1977, prior to the completion of the probationary period.

Libio Carcases testified through an interpreter, (he speaks no English) that he left the question "Have you ever been arrested?" blank since he was not convicted of anything. He stated he later answered "No", believing from what was explained by the lawyer defending him, that this was correct. His defense, in essence, is a mistaken belief as to his arrest status, compounded by the lack of ability to comprehend the English language.

The sole dispositive issue of this appeal is whether the evidence herein justifies the action of the Board in refusing to renew appellant's license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. The burden of proof in these cases, which involve discretion of the issuing authority, rests upon the appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957).

It is an established principle that the Director should not substitute his judgment for that of the local issuing Board or reverse the ruling, if reasonable support for it can be found in the record, Lyons Farms Tavern v. Mun. Bd. of Alc. Bev., Newark, 55 N.J. 292, 303 (1970).

It has been the procedure of this Division to institute disciplinary proceedings against licensees who have knowingly given false answers to material questions.

One of the earliest principles of this Division, first enunciated in the enabling legislation after repeal of Prohibition, and maintained unswervingly to date, is the desire to keep criminal elements out of this sensitive industry. Obviously, a question of the type which gave rise to this hearing is essential as a necessary first step in the screening process to insure the maintenance of a criminal-free liquor industry.

However, the penalty for false answers has usually been the suspension of license for a stated period, varying with the

circumstances of the particular matter. See Opinion Letter of September 10, 1937, Bulletin 205, Item 2.

To recognize the proffered defense that the language barrier was the cause, and therefore excusable, is unacceptable. To allow it, would have the effect of granting a special privilege to those few persons similarly situated, while denying it to the mass of licensees who speak or at least understand the language. It would seem reasonable, and in any event, the burden is upon the applicant to obtain proper assistance under the circumstances.

It should be borne in mind that under the circumstances that occurred here, the stockholder would not be criminally disqualified from owning or working in a licensed premises. The offense charged is classified as a disorderly person, not a crime. It would not properly have been the basis for disciplinary action, and cannot be, of itself, the basis for refusal to renew an existing license.

I find that the appellant has met the burden of establishing that the action of the Board was so unduly harsh as to be tantamount to an abuse of its discretion.

I, therefore, recommend that an order be entered reversing the action of the Board and ordering the renewal of appellant's Plenary Retail Consumption License for the 1977-78 licensing year.

Inasmuch as no disciplinary proceedings were initiated by the local issuing authority based upon the false answer, the Director is without jurisdiction to take further action herein.

The local issuing authority was correct in its desire to take action to punish the licensee for what appears to have been a willful misstatement of a material fact. I disagree only in the method selected, and its extreme effect. The Board is not precluded at this date, if it so desires, from instituting disciplinary proceedings against the licensee for the alleged false statement.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of January,
1978,

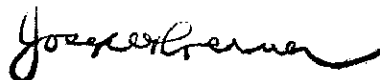
ORDERED that the action of the respondent Board of Commissioners of the Town of West New York be and the same is hereby reversed; and it is further

ORDERED that the Board of Commissioners be and the same is hereby directed to grant the renewal of appellant's plenary retail consumption license for the 1977-78 license term in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATION FILED.

Monsieur Henri Wines Ltd.
560 Sylvan Avenue
Englewood Cliffs, New Jersey
Application filed May 10, 1978
for place-to-place transfer of
its plenary wholesale license
from 200 Riser Road, Little
Ferry, New Jersey.



Joseph H. Lerner
Director