

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

BULLETIN 1927

September 4, 1970

TABLE OF CONTENTSITEM

1. COURT DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK - DIRECTOR AFFIRMED.
2. APPELLATE DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK - SUPPLEMENTAL ORDER.
3. APPELLATE DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK - SUPPLEMENTAL ORDER .
4. APPELLATE DECISIONS - RIDGEPARK OPERATING CORP. v. RIDGEFIELD PARK.
5. DISCIPLINARY PROCEEDINGS (Cliffside Park) - FAILURE TO KEEP PREMISES CLOSED DURING PROHIBITED HOURS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HINDERING INVESTIGATION - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 125 DAYS, LESS 5 FOR PLEA.
6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE DWELLING - CLAIM FOR RETURN OF JUKE BOX REJECTED ABSENT GOOD FAITH - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.
7. DISCIPLINARY PROCEEDINGS (Newark) - INDECENT MATTER (MOTION PICTURE FILMS) - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Buena) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1927

September 4, 1970

1. COURT DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK -
DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-986-68

CHARLIE'S CAPRI, INC.,
t/a CAPRI,

Appellant,

vs.

BOROUGH COUNCIL OF THE
BOROUGH OF EAST NEWARK,

Respondent.

Argued January 19, 1970 -- Decided February 6, 1970.

Before Judges Sullivan, Carton and Halpern.

On appeal from Division of Alcoholic Beverage Control.

Mr. Lewis Stein argued the cause for appellant.

Mr. Michael T. Henchy, Deputy Attorney General, argued
the cause for respondent (Mr. Arthur J. Sills,
Attorney General of New Jersey, attorney; Mr. Stephen
Skillman, Assistant Attorney General, of counsel).

PER CURIAM.

(Appeal from the Director's decision in Charlie's
Capri, Inc. v. East Newark, Bulletin 1853,
Item 3. Director affirmed. Opinion not approved
for publication by the Court committee on opinions.)

(Petition for certification to the Supreme Court of
New Jersey denied July 1, 1970 (S. Ct. C-362
Sept. Term 1969)).

2. APPELLATE DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK - SUPPLEMENTAL ORDER.

CHARLIE'S CAPRI, INC.,)	
t/a CAPRI,)	
	)	ON APPEAL
Appellant,	)	SUPPLEMENTAL
	)	ORDER
v.)	
)	
BOROUGH COUNCIL OF THE)	
BOROUGH OF EAST NEWARK,)	
)	
Respondent.)	

 Lewis Stein, Esq., Attorney for Appellant
 Joseph F. McCarthy, Esq., Attorney for Respondent

BY THE DIRECTOR:

On March 11, 1969, Conclusions and Order were entered herein suspending the license for fifteen days for permitting brawls and disturbances on the licensed premises and conducting the licensed business as a nuisance. Charlie's Capri, Inc. v. East Newark, Bulletin 1853, Item 3.

Prior to the effectuation of the 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 Director's action on February 6, 1970. Charlie's Capri, Inc. v. East Newark (App.Div. 1970), not officially reported, recorded in Bulletin 1927, Item 1.

The license is presently suspended, by order dated November 19, 1969, until 2 a.m. May 27, 1970 (Re Charlie's Capri, Inc., Bulletin 1891, Item 3).

Accordingly, it is, on this 9th day of March 1970

ORDERED that the fifteen-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of East Newark to Charlie's Capri, Inc., t/a Capri, for premises 423 No. 3rd Street, East Newark, commencing at 2 a.m. Wednesday, May 27, 1970, and terminating at 2 a.m. Thursday, June 11, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK - SUPPLEMENTAL ORDER.

CHARLIE'S CAPRI, INC.,)	
t/a CAPRI,)	
)	
Appellant,	)	ON APPEAL
	)	SUPPLEMENTAL
v.	)	ORDER
)	
BOROUGH COUNCIL OF THE BOROUGH)	
OF EAST NEWARK,)	
)	
Respondent.)	

 Lewis Stein, Esq., Attorney for Appellant
 Joseph F. McCarthy, Esq., Attorney for Respondent

BY THE DIRECTOR:

On March 9, 1970 I entered an order reimposing a fifteen-day suspension (Charlie's Capri, Inc. v. East Newark, Bulletin 1927, Item 2) heretofore imposed (Charlie's Capri, Inc. v. East Newark, Bulletin 1853, Item 3) and stayed by order of the Appellate Division of the Superior Court until the outcome of the said appeal. A petition for certification to the Supreme Court of New Jersey was filed by the appellant, and an order of the Appellate Division of the Superior Court entered on March 27, 1970 stayed my order of March 9, 1970.

The Supreme Court of New Jersey denied the petition for certification on July 1, 1970 (S. Ct. C-362 Sept. Term 1969). Thus the suspension may now be reinstated and reimposed.

Accordingly, it is, on this 14th day of July 1970,

ORDERED that the fifteen-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against plenary retail consumption license C-13 (for the 1970-71 licensing period), issued by the Borough Council of the Borough of East Newark to Charlie's Capri, Inc., t/a Capri, for premises 423 No. 3rd Street, East Newark, * commencing at 2 a.m. Tuesday, July 28, 1970, and terminating at 2 a.m. Wednesday, August 12, 1970.

RICHARD C. McDONOUGH
 DIRECTOR

* Amended order entered July 16, 1970 deferring dates of suspension for period commencing 2:00 a.m. Friday, July 17, 1970 and terminating at 2:00 a.m. Saturday, August 1, 1970.

4. APPELLATE DECISIONS - RIDGEPARK OPERATING CORP. v. RIDGEFIELD PARK.

RIDGEPARK OPERATING CORPORATION,)
)
 Appellant,) ON APPEAL
) CONCLUSIONS
 v.) AND ORDER
)
 BOARD OF COMMISSIONERS OF THE)
 VILLAGE OF RIDGEFIELD PARK,)
)
 Respondent.

 Meyner and Wiley, Esqs., by Edwin C. Landis, Jr., Esq., Attorneys
 for Appellant.
 Alberque and McGovern, Esqs., by E. Gerard McGovern, Esq.,
 Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the unanimous action of the Board of Commissioners of the Village of Ridgefield Park (hereinafter Board) which denied appellant's (hereinafter Ridgepark) application for a plenary retail consumption license for motel premises on U.S. Route 46, Ridgefield Park. The reasons for denial are stated in the resolution of April 8, 1969, which reads in pertinent part:

- "WHEREAS, the Governing Body of the Village of Ridgefield Park, after holding said hearing, does find as follows:
1. Ridgepark Operating Corporation is the applicant who applied for the liquor license but is not the owner in fee simple of the premises in question, the owner being International Host Corporation, 300 Atlantic Trust Building, Atlantic City, New Jersey.
 2. The population of the Village of Ridgefield Park by the 1960 Federal census was 12,700 people.
 3. That Sec. 3-14 of the Code of the Village of Ridgefield Park provides for the Village to be divided into 6 districts for the issuance of plenary retail consumption licenses known as Districts A, B, C, D, E, and F with in more than one plenary retail consumption license being issued in Districts A, B, C, D, E and F and not more than 2 licenses in District D or a total of 7 licenses.
 4. There already have been issued by the Village of Ridgefield Park one plenary retail consumption license for Districts A, B, C, E and two in District D, which licenses total 6 in number.
 5. That pursuant to Chapter 72 of the Laws of 1960 known as N.J.S.A. 30:1-12.14, the Village of Ridgefield Park cannot issue more than one plenary retail consumption license for each 2,000 of its population and, therefore, is limited to issuing not more than 6 licenses.

6. The testimony adduced at the hearing showed that there is a dangerous traffic problem existing at the mouth and last exit of the New Jersey Turnpike commonly known as Exit 18 immediately adjacent to and leading into U.S. Route 46, a heavily travelled 3 lane highway due to the flow of traffic from the Turnpike exit into Route 46. The junction of this ramp and Route 46 immediately abut the premises for which a plenary retail consumption license is sought.

7. At the present time vehicles using Route 46 east bound approximate 30,000 a day and those leaving the New Jersey Turnpike along the ramp which abuts Ridgepark Operating Corporation approximate 1400 hourly.

8. That as a result of a license being located at the gate lodge on the premises operated by the applicant, there would probably be an increase in traffic entering the gate lodge from Route 46 and leaving the gate lodge.

9. That in order to enter the premises sought to be licensed, the gate lodge, it would be necessary for persons operating vehicles easterly along Route 46 to make a full stop and cross the exit of the New Jersey Turnpike before reaching the gate lodge which would create a hazardous traffic condition to those vehicles using Route 46 and the ramp leading from the New Jersey Turnpike.

10. That the applicant's testimony demonstrates that if the premises were licensed it would not serve the public convenience and necessity of the residents of the Village of Ridgefield Park, but would in fact serve other commercial establishments in other towns such as Teterboro and South Hackensack and the individuals using the New Jersey Turnpike.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Village of Ridgefield Park that they hereby make the following conclusions as a result of the aforementioned facts:

1. A liquor license cannot be issued to Ridgepark Operating Corporation since it is not the owner in fee simple of the premises for which the license is sought pursuant to Sec. 3:12(b) or the Code of the Village of Ridgefield Park.

2. That in any event there are no more licenses which can be issued within the Village of Ridgefield Park for plenary retail consumption licenses under the limitation set forth in Chap. 72, Laws of 1960, N.J.S.A. 30:1-12.14.

3. That if a liquor license was issued to Ridgepark Operating Corporation there would be an increase in the amount of vehicular traffic entering the gate lodge from Route 46 which necessitates crossing the New Jersey Turnpike exit which would further complicate an already existing traffic hazard condition, result in more traffic accidents on Route 46 and the exit to the New Jersey Turnpike and further increase the danger to those motorists using the east bound lane of Route 46 and the exit of the New Jersey Turnpike.

4. That no evidence was adduced at the hearing that shows that the public convenience and necessity of the residents of the Village of Ridgefield Park will be served by the issuance of this liquor license.

For the foregoing reasons the application of Ridgepark Operating Corporation for a plenary retail consumption license in accordance with their application heretofore submitted to the Clerk of the Village of Ridgefield Park is hereby denied."

The petition of appeal alleged that the action of the

Board was erroneous for the following stated reasons:

"(a) Section 3:12(b) of the Code of the Village of Ridgefield Park is invalid in that it improperly discriminates against corporations and against tenants in favor of individuals and real estate owners, such discrimination

being without valid basis in the purposes of the alcoholic beverage control laws and the powers of municipalities to regulate the alcoholic beverage business.

(b) Applicant is exempt from the operation of N.J.S.A. 33:1-12.14 by virtue of the provisions of 33:1-12.20, as amended.

(c) The evidence does not support the conclusion of the respondent with reference to traffic hazards in that there was no evidence presented that traffic would increase.

(d) There is no requirement with regard to a 'hotel exception' license that the public convenience and necessity of the residents of the municipality in question be served.

(e) No reasonable cause exists for the denial by respondent which is clearly against the logic and effect of the presented facts and constituted an abuse of discretion."

The Board's answer denied the substantive allegations of the petition and set forth as a separate defense that "it cannot issue any more liquor licenses within the Village of Ridgefield Park for the reasons that all of the plenary retail consumption licenses have been issued as permitted under existing statute applicable rules and cases."

At the hearing held herein appellant and respondent offered certain exhibits which were admitted into evidence and submitted this matter for determination solely on the transcript of the hearing held before the Board.

Preliminarily, it should be observed that the issuance of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1. In Blanck v. Magnolia, 38 N.J. 484, 491, it was held that "The test in the establishment and issuance of liquor licenses is whether the public good requires it." Thus, it must first be determined whether there was a need and necessity for such license, i.e., the best interests of the public required it.

The liquor business is an exceptional one and the courts have always dealt with it exceptionally. X-L Liquors v. Taylor et al. 17 N.J. 444; Mazza v. Cavicchia, 15 N.J. 498 (1954).

Under the statute, municipal issuing authorities are vested with the broad measures of discretion in the control of the liquor traffic. They are authorized to adopt ordinances including taverns and package stores (R.S. 33:1-12) or limiting their number (R.S. 33:1-40). Even where the municipal governing body passes an ordinance limiting the number of taverns and package stores, it may reasonably decline to issue a license beyond a number less than the maximum prescribed in the ordinance. See Bumball v. Burnett, 115 N.J.L. 254; Po Ambo Democratic Club, Inc. v. Perth Amboy, Bulletin 1158, Item 3.

In Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960), aff'd 33 N.J. 404 (1960), the Appellate Division has this to say at p. 320:

"The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson

Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent. Cf. Cummins v. Board of Adjustment of Borough of Leonia, 39 N.J. Super. 452 (App.Div. 1956), certification denied 21 N.J. 550 (1956)."

It is well settled that the local issuing authority is vested with a sound discretion in the granting or refusing to grant licenses for the sale of intoxicating beverages, Bumball v. Burnett, supra; Zicherman v. Driscoll, 133 N.J.L. 586; Price v. Millburn, 29 N.J. Super. 103, and such discretion will not be disturbed in the absence of a showing of a clear abuse thereof. Blanck v. Magnolia, supra.

It appears from the record that the population of the Village of Ridgefield Park (1960 Federal census) is 12,700 and that the number of plenary retail consumption licenses is six.

In the instant case the Board urged that, because of Chapter 76, Laws of 1960, N.J.S.A. 33:1-12.14, it was circumscribed in granting Ridgepark's application for the issuance of a plenary retail consumption license since it cannot issue more than six plenary retail consumption licenses. The relevant part of N.J.S.A. 33:1-12.14 which was in effect at the time of the Board's action reads as follows:

"... no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than 1 for each 2,000 of its population as shown by the last then preceding Federal census"

On the other hand, Ridgepark urged as one of the grounds of appeal that it is exempt from the operation of N.J.S.A. 33:1-12.14 by virtue of the provisions of 33:1-12.20, as amended. This section provides as follows:

"Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel or motel containing 100 guest sleeping rooms or who may hereafter construct and establish a new hotel or motel containing at least 100 guest sleeping rooms."

It appears from the record that Ridgepark operates a motel consisting of one hundred guest sleeping rooms. However, there is nothing in N.J.S.A. 33:1-12.20 which compels the issuance of a new license by a municipality to a hotel or motel. The enactment is merely permissive and not mandatory. The enactment pertaining to the hotel or motel exception merely removed the operator of a 100-room hotel or motel from the State Limitation Law (33:1-12.14) as set forth above in part, subject to the reasonable discretion of the local issuing authority.

Historically, the Legislature has sought to promote temperance. It intended the Alcoholic Beverage Law to be remedial of abuses inherent in the liquor traffic and to be liberally construed. R.S. 33:1-73; Kravis v. Hock, 135 N.J.L. 259, reversed on other grounds 136 N.J.L. 161; Fanwood v. Rocco, supra. That the Legislature has sought to promote temperance is manifested

by its action in amending the State Limitation Law which originally provided that that ratio for plenary retail consumption licenses was one for each 1,000 of the municipality's population as shown by the last then preceding Federal census. Chapter 72 of the Laws of 1960 changed the ratio as to retail consumption licenses to one for each 2,000 of population and, thereafter, Chapter 170 of the Laws of 1969 changed the ratio to one for each 3,000 of population. Although this last enactment is not operative until the promulgation of the 1970 Federal census, it clearly shows that the intendment of the Legislature is to promote temperance to further restrict the issuance of licenses. This intendment is likewise manifested by the change in the hotel-motel exception increasing the requirement from fifty sleeping rooms to 100 guest sleeping rooms. R.S. 33:1-12.20, supra.

I draw an analogy between the instant case and 50 Route 46 Corp. v. East Paterson, Bulletin 1854, Item 2; Town House Motor Hotel, Inc. v. East Paterson, Bulletin 1743, Item 2; Fanwood v. Rocco, supra.

In the present status of the State Law, a municipality cannot be compelled to grant appellant's application for license. Thus I need not consider the other points raised by appellant.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the appellant pursuant to Rule 14 of State Regulation No. 15. No answering argument was filed by respondent Board.

In its exceptions and argument appellant takes issue with the Hearer's general conclusionary finding (without subsidiary findings) that "[I]n the present status of the State law, a municipality cannot be compelled to grant appellant's application for license" and with the Hearer's reliance upon the two East Paterson cases and the Fanwood v. Rocco case cited in the Hearer's report, as being analogous to the instant case. Appellant argues, correctly, that the East Paterson cases involved a municipality in which a local numerical limitation ordinance prohibited issuance of the new license sought by the applicants for motel premises, while the Fanwood v. Rocco case involved the transfer of a package store license from one premises to another and not the issuance of a new license.

Appellant further argues that none of the four reasons stated for the respondent's denial of its application is justification for the denial and therefore its action should be deemed unreasonable and it should be reversed. With this I do not agree.

Initially, it is noted that the State numerical limitation law (R.S. 33:1-12.20) does, in fact, authorize the issuance of the license in question if the applicant here operates a motel containing 100 or more guest sleeping rooms. Respondent Board in its answer filed herein asserted that applicant does not come within the exceptive provisions of R.S. 33:1-12.20, but no specific findings in this connection were made by the respondent. The only evidence in the record concerning the number of guest sleeping rooms is testimony by Charles Fetter (an officer and

general manager of appellant) that the motel has 100 "sleeping rooms." No mention was made of the number of guest sleeping rooms although Fetter also testified that, as general manager, he is at the motel "twenty-four hours a day, five to six days a week", presumably occupying at least one of the 100 sleeping rooms. No evidence was produced as to whether any other employees occupy any of the motel's sleeping rooms.

These facts are significant because the Legislature, in amending R.S. 33:1-12.20 by enactment of P.L. 1968, c. 359, for the first time inserted the word "guest" before the phrase "sleeping rooms." Prior to such amendment the term "sleeping rooms" included sleeping room occupied by employees, as well as guests, of the hotel or motel. Consequently, on the record before me, I cannot find that appellant operates a motel containing 100 or more guest sleeping rooms. Ordinarily, under these circumstances the matter would be remanded to the Hearer for the reopening of the hearing in order to receive additional evidence to clarify this point. However, in view of the findings hereinafter set forth, such action will not be taken in this instance, nor is there need to consider the attack by appellant upon (1) the validity of Sec. 3:12(b) of the Code of the Village of Ridgfield Park or (2) the findings of the Board with respect to a traffic hazard.

Although no member of respondent Board appeared at the Division hearing to elucidate the reasons for the Board's action, it is apparent from the Board's resolution of April 8, 1969 that one of such reasons was based upon a finding that the granting of the license applied for would not be in the public interest, at least with respect to the residents of Ridgfield Park, since the proposed licensed premises would primarily serve the convenience of non-residents, particularly commercial establishments of neighboring municipalities. In this connection, the record discloses that the sought for license would be utilized chiefly for the convenience of commercial businessmen staying at appellant's motel, one of the franchised establishments of the Howard Johnson chain. A small lounge area and bar would service these guests and room-service and pool-side service would also be provided. No service of alcoholic beverages would take place in connection with any restaurant operation, although an unlicensed Howard Johnson restaurant is presently operated adjacent to appellant's motel. Appellant does not intend to cater to the local residents of Ridgfield Park, but rather to the steady commercial patrons who come from the large plants in industrial areas near Ridgfield Park.

May a municipal issuing authority, in the reasonable exercise of its discretionary power, decline to issue a new plenary retail consumption license under these factual circumstances? Is such action reasonable where, as here, the applicant conducts a large motel?

In Rauoly, Inc. v. Lakewood, Bulletin 1653, Item 2, former Director Lordi, in affirming the municipal denial of an application for a plenary retail consumption license for a hotel, stated:

"There is no inherent right to a liquor license.***Nor is a bona fide hotel which meets the minimal requirements of the State limitation law or a municipal ordinance ipso jure entitled to a license merely because it is such a hotel."

Similarly, it has been held that "even though the municipality has an ordinance giving it the authority to issue hotel

licenses under R.S. 33:1-12.20, it may reasonably decline to issue any such licenses if, in the reasonable exercise of its discretion, it determines that the public interest warrants such action." Tara Bay Club v. Upper Township, Bulletin 1627, Item 1, in which the municipal denial of an application to license a proposed hotel was affirmed and in which one of the reasons for the denial was that the proposed facility would be for the benefit of transients and of residents of other communities, rather than geared to the needs of the local residents. See also Durr and McDevitt v. Belmar, Bulletin 1086, Item 1. All of these cited cases involved situations in which neither State nor local license numerical limitations barred the issuance of a license sought for a motel.

Appellant, nevertheless, argues that an applicant for a license for a motel may not be refused a license merely because the motel caters primarily to non-residents; that the public interest encompasses the convenience of the non-residents; and that no requirement of concomitant benefit to the local community may be imposed by the municipality. But a municipality which, as here, has restricted itself to the issuance of only one license in a particular area may reasonably take the position that such license should not be issued to an establishment which will utilize it only on a narrow, limited basis, only for the benefit of its out of town motel customers. The respondent Board is not stating the no hotel or motel is eligible for issuable license, only that this particular proposed use of the license would be of negligible benefit to the local community. (It is noted that many hotels and motels, in addition to catering to transients, provide extensive facilities, such as banquet rooms, public dining rooms, athletic facilities, etc., of value to the local community.) The needs of transients are to be considered of course, but not the exclusion of the overall public interest, including the consideration of local residents. Whether the Board would have reached a contrary decision if appellant conducted a motel of expanded scope, catering to a wider clientele, is a moot question which need not be explored here, particularly since the Board in its discretion may decline to issue any new license in the municipality. Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935).

Appellant further relies upon the case of Samuelian v. Ocean Township, Bulletin 985, Item 2, as precedent for its position. However, this case is factually distinguishable from the instant situation.

The applicant there sought a license for a fifty room hotel located on a large (16 acres) beach front lot. The hotel had been licensed for several prior years. A year before, the municipal issuing authority had declined a similar application for the same premises upon the basis that the building was badly in need of repairs; during the interim year the applicant has spent a considerable amount of money to repair the building; but his application was denied on the general ground that there was no need for the license. The then Director, pointedly noting that no one appeared on behalf of the municipality on the appeal hearing, found that the municipal action was erroneous, obviously considering the issuance of several prior licenses for the hotel, the implication of the prior municipal action that the lack of repairs to the hotel was the only factor precluding the grant of a license for it, the lack of other licensed premises in the area for some distance and the influx of non-permanent residents into the community, reversed the municipal action. At no time did the municipal issuing authority express any concern about "conserving" the license in question for an establishment which catered more to

local needs. I find such case distinguishable from the instant case.

I have carefully considered the entire record herein and find that the action of the respondent Board was a reasonable exercise of its discretion on the basis of the evidence before it and that, under the circumstances, I will not substitute my judgment for that of the Board. Lyons Farms Tavern, Inc. v. Newark, et als., decided by the New Jersey Supreme Court on February 2, 1970, not yet officially reported. Consequently, I conclude that appellant has not sustained the burden of establishing that the action of respondent Board was erroneous. Rule 6 of State Regulation No. 15. I will therefore affirm such action and dismiss the appeal.

Accordingly, it is on this 5th day of March, 1970

ORDERED that the action of respondent Board of Commissioners of the Village of Ridgefield Park be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP PREMISES CLOSED DURING PROHIBITED HOURS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HINDERING INVESTIGATION - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 125 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PLAY PEN, INC.
789 Palisade Avenue
Cliffside Park, N. J.

Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park.

)
) CONCLUSIONS
) AND ORDER
)
)
)
)
)
)

Krivit & Krivit, Esqs., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on Saturday, June 21, 1969, it failed to have its entire licensed premises closed during hours prohibited by municipal ordinance, viz., between 3:00 a.m. and 3:20 a.m., (2) on same date it permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20, (3) on same date it hindered the investigation by the Division agents by verbal interference by Rose Marie Marano, principal stockholder of the licensee corporation and by her husband John J. Marano, a manager of the licensed business, in violation of Rule 35 of State Regulation No. 20, and (4) in its then current license application failed to disclose its record of two previous license suspensions, in violation of R.S. 33:1-25.

Licensee has a record of two previous license suspensions by the Director for permitting lewdness and immoral activity (indecent entertainment) on the licensed premises, (1) for thirty days, commencing October 30, 1968 (Re Play Pen, Inc., Bulletins

1778, Item 5, 1805, Item 1 and 1829, Item 8), and (2) for sixty days, commencing January 20, 1969 (Re Play Pen, Inc., Bulletin 1841, Item 6), these being the subject of the fourth charge.

With respect to Charge 2 herein, reports of investigation disclose that an entertainer performed "go go" routines accompanied by bumps, grinds, posturings, gesturings and other bodily movements, in a standing position and prone on the floor of the stage, simulating and suggesting sexual intercourse and/or indecent sexual acts. The facts of the allegations in Charges 1, 3 and 4 are sufficiently set forth above.

The minimum suspension for a first offense involving indecent entertainment of the kind alleged in Charge 2 is thirty days. Re Cambar, Inc., Bulletin 1703, Item 1. Further, for a third similar offense within five years, the minimum penalty for that offense is trebled. Cf. Re Subar, Inc., Bulletin 1746, Item 3.

The license will be suspended on the first charge for fifteen days (Re Collbern, Inc., Bulletin 1735, Item 4), on the second charge, the prior record of two suspensions of license for similar violation within the past five years considered, for ninety days (Re Cambar, Inc., supra, and cf. Re Subar, Inc., supra), on the third charge for ten days (Re Triple Lake Ranch, Inc., Bulletin 1676, Item 3) and on the fourth charge for ten days (Re Chip's Bar, Inc., Bulletin 1896, Item 7), or a total of one hundred and twenty-five days, with remission of five days for the plea entered, leaving a net suspension of one hundred and twenty days.

In addition, the licensee is pointedly warned that any future violation of indecent entertainment on the licensed premises, or any other substantial violation, may well result in outright revocation of the license.

Accordingly, it is, on this 20th day of February 1970,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park to Play Pen, Inc., for premises 789 Palisade Ave., Cliffside Park, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 3:00 a.m. Monday, March 2, 1970, and terminating at 3:00 a.m. Tuesday, June 30, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE DWELLING - CLAIM FOR RETURN OF JUKE BOX REJECTED ABSENT GOOD FAITH - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 12,205
June 4, 1969 of a quantity of)	
alcoholic beverages, a juke box	)	ON HEARING
and \$3.55 in cash in a dwelling on	)	CONCLUSIONS
the White Horse Pike and Lucas	)	AND ORDER
Avenue, Borough of Chesilhurst, County)	
of Camden and State of New Jersey.)	

 Philadelphia Vendors, Inc. by Frank Harmon, Secretary-Treasurer,
 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 to determine whether 45 containers of alcoholic beverages, one juke box and \$3.55 in cash inclusive of two "marked" one-dollar bills, as set forth in a schedule attached hereto, made part hereof and marked Schedule "A", seized on June 4, 1969 in a dwelling on White Horse Pike and Lucas Avenue, in the Borough of Chesilhurst, Camden County, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises. At the said hearing Frank Harmon appeared on behalf of Philadelphia Vendors, Inc. which sought the return of the seized juke box. No claim was entered for the return of the alcoholic beverages or the seized cash.

The file of this Division, which was admitted into evidence with the consent of the claimant herein, contained the affidavit of mailing, affidavit of publication, inventory, the two "marked" one-dollar bills; the chemist's report and the record of the "marked" bills.

The said file, which included reports of ABC agents and other documents established the following: ABC agents arrived in the vicinity of the aforesaid premises at about 9:00 P.M. on June 4, 1969. Agent C entered the building through a rear door, proceeded to the dining room area of the one-story masonry building and was greeted by Mrs. Mary Presha, the operator of the alleged speakeasy who asked him, "What do you want to drink?" He ordered a bottle of beer for himself and alcoholic beverages for Mrs. Presha and another patron.

Mrs. Presha proceeded to the bedroom area where she obtained a quart bottle of Canadian Club Whiskey and beer. The agent handed her two one-dollar bills, the serial numbers of which had been previously recorded and she accepted payment for the drinks in the sum of \$1.40.

At approximately 9:40 p.m. the other ABC agents entered the speakeasy premises, identified themselves to Mrs. Presha, apprised her of the violation and placed her under arrest.

Thereupon, seizure was made of the property identified in Schedule "A". Mrs. Presha was charged with the sale and possession, with intent to sell, alcoholic beverages without a license, in violation of R.S. 33:1-2 and R.S. 33:1-50, and was released for arraignment at the Chesilhurst Borough Municipal Court.

A sample of Agent C's beer was analyzed by the Division chemist; his report dated June 19, 1969, certified by the Director, discloses that upon analysis, the said sample was an alcoholic beverage, fit for beverage purposes, with alcohol by content of 4.28%.

The Division records do not disclose any license or permit having been issued to either Mrs. Presha or for anyone at the aforementioned dwelling authorizing the sale of alcoholic beverages.

Since there was no permit or license authorizing the sale of alcoholic beverages to any person or for the premises in question, the alcoholic beverages are illicit because they were intended for sale without a license. Said alcoholic beverages, the juke box and the cash, referred to 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. 11,597, Bulletin 1679, Item 7.

Frank Harmon, the secretary and treasurer of Philadelphia Vendors, Inc. testified in support of its claim for the return of the seized juke box. He could not produce any indicia of ownership stating that he thought it was unnecessary to establish title to the said juke box. He was given leave to send such evidence of ownership within a week after the date of the hearing.

Up to the date of this report, a period of two months after the date of the hearing, the said claimant has failed to supply this Division with such evidence.

He testified, further, that actually it was his brother who made arrangements for the installation and service of the said juke box at these premises. The juke box was to be placed in the recreation building adjoining a motel facility.

The arrangement, as he understood it, was that this claimant was to receive 50% of all monies collected from the operation of this juke box.

He admitted that no background investigation was made of Mrs. Presha to determine whether or not she had ever been engaged in unlawful liquor activity, nor was any inquiry made with any police authorities with respect thereto.

As noted hereinbefore, the claimant has not presented any proof of ownership of the said juke box. Furthermore, its failure to make even the barest background investigation of the persons to whom this machine was rented indicates a lack of good faith. In order for a claimant to obtain the return of said property, it must furnish proof of ownership and must show that it acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. State Regulation No. 28; R.S. 33:1-66. In view of the aforementioned, it is recommended that the application of the claimant, Philadelphia Vendors, Inc. for the return of the juke box be denied and that an Order be entered forfeiting the same together with the cash and the alcoholic beverages. Seizure Case No. 12,092, Bulletin 1856, Item 3.

Conclusions and Order

No exceptions to the Hearer's Report were taken by the claimant herein pursuant to Rule 4 of State Regulation No. 28.

After carefully considering all of the facts herein and the Hearer's Report, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 18th day of February, 1970

DETERMINED and ORDERED that the claim of Philadelphia Vendors, Inc. for the return of a juke box seized herein be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the seized cash in the sum of \$3.55 and the juke box constitute unlawful property and the same be and are hereby forfeited pursuant to the provisions of R.S. 33:1-66 to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages be and the same are hereby forfeited 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"

- 45 - containers of alcoholic beverages
- 1 - juke box
- \$3.55 - cash

7. DISCIPLINARY PROCEEDINGS - INDECENT MATTER (MOTION PICTURE FILMS) - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

NEW HURRICANE BAR (A CORP.))
457-459 Broad St. & 67 Orange St.)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-653 (for the 1969-70 licensing period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)

Friedman and D'Alessandro, Esqs., by Kalman Friedman, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on February 7, 13, 18 and 21, 1970, on its licensed premises, it variously possessed, and permitted the sale, offer of sale and distribution of reels of indecent motion picture films, in violation of Rules 5 and 17 of State Regulation No. 20.

Absent prior record, the license will be suspended for ninety days, with remission of five days for the plea entered, leaving a net suspension of eighty-five days. Re Sal-Ruby Corporation, Bulletin 1522, Item 7; Re The Bird Cage, Inc., Bulletin 1775, Item 1.

Accordingly, it is, on this 10th day of July, 1970,

ORDERED that Plenary Retail Consumption License C-653 (as renewed for the 1970-71 licensing period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to New Hurricane Bar (A Corp.) for premises 457-459 Broad Street and 67 Orange Street, Newark, be and the same is hereby suspended for eighty-five (85) days, commencing at 2:00 a.m. Monday, August 3, 1970 and terminating at 2:00 a.m. Tuesday, October 27, 1970.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Orlando Panico)
t/a Panico's Bar & Restaurant)
North Blvd. and Auburn St.)
Buena)
PO Landisville, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-1 (for 1969-70 and 1970-71 licensing periods), issued by the Borough Council of the Borough of Buena.)

-----)
Licensee, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on Sunday, May 3, 1970, he sold twelve bottles of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

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 Glazer & King, Bulletin 1906, Item 10.

Accordingly, it is, on this 8th day of July 1970,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Buena to Orlando Panico, t/a Panico's Bar & Restaurant, for premises North Blvd. and Auburn St., Buena, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, July 21, 1970, and terminating at 3:00 a.m. Friday, July 31, 1970.

