

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

BULLETIN 2141

April 2, 1974

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

BULLETIN 2141

April 2, 1974

1. APPELLATE DECISIONS - HUTCHINS, ET ALS. v. NEWARK.

Frank Hutchins, et als.,	)	
	)	
Appellants,	)	
v.	)	
	)	On Appeal
Municipal Board of Alcoholic	)	
Beverage Control of the City	)	CONCLUSIONS
of Newark, and Rose Prunty,	)	and ORDER
t/a Little Nate's Tavern,	)	
	)	
Respondents.	)	

-----

Ms. Golden E. Johnson, Esq., Attorney for Appellants  
Donald E. King, Esq., by John C. Pidgeon, Esq., Attorney for  
Respondent Board  
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for  
Respondent Prunty

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which on June 26, 1973 granted an application by Rose Prunty, t/a Little Nate's Tavern, holder of a plenary retail consumption license, for a place-to-place transfer of her license from premises 369-371 Elizabeth Avenue to 415-417 Elizabeth Avenue, Newark.

The petition of appeal contended that the Board acted arbitrarily because it did not consider appellant's objections to the transfer, and that the notice to residents in the area required to be posted on the premises was not done adequately. In consequence, the said residents were not properly noticed of the application and their objections thus were not fully marshalled.

The Board denied all of the contentions of appellants and declared that its action was taken after full hearing and upon full consideration of the application. It determined that it acted in the best public interest in granting the said application.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded all of the parties to introduce evidence and cross-examine witnesses. In addition, pursuant to Rule 8 of the said Regulation, transcripts of the hearings before the Board on May 14 and June 18, 1973, were introduced into evidence.

Two witnesses were called in the proceeding -- one by appellants and one by the Board. Appellants introduced the testimony of Newark City Councilman Sharpe James who stated that, following the meeting of the Board, it received a petition in objection to the transfer signed by about six hundred persons. While he had the highest respect for respondent Rose Prunty, his objection stemmed from the deplorable record of the subject license, Little Nate's, before that license was transferred to her. Additionally, the appellant tenants associations, the neighborhood councils and the governing body of the City of Newark are in process of up-grading the area and the inclusion of another license would be a negative influence. Admitting that Prunty intended to operate a "family-type restaurant", he nevertheless doubted the ability of any tavern owner to maintain any restaurant that would not degenerate into a typical tavern. He cited examples when such has happened.

The Chairman of the Board, James H. Slaughter, testified that respondent Prunty's application was of great concern to the Board and its deliberations covered a five-week period. While the Board was aware of the tremendous sentiment opposing the grant of transfer, it was mindful of the loss of the licensed premises because of the highway construction, in consequence of which Miss Prunty had the right to apply for a transfer.

The proposed transfer was to a building to be erected on a lot presently vacant, and the new premises would be operated primarily as a restaurant. He and the other members of the Board unanimously considered that the grant of Prunty's application would be in the best interest of the City.

The legal principle applicable to this matter has long been established in Fanwood v. Rocco, 33 N.J. 404, 414 (1960), wherein the court stated:

"... The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable...."

There is no allegation or evidence to indicate that the Board was improperly motivated in arriving at its determination. To the contrary, from the testimony of Board Chairman Slaughter, the Board, after long deliberation, arrived at an unpopular decision fully cognizant that to do otherwise would not be in the best interests of the community.

Since the Board's action in matters of this kind is discretionary, appellants, to prevail on appeal, must show manifest error or clear abuse of discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955). Neither manifest error nor abuse of discretion by the Board is apparent. Accordingly I find that appellants have failed to meet their burden of establishing that the action of the Board was erroneous and should be reversed as required by Rule 6 of State Regulation No. 15.

It is therefore recommended that the action of the Board be affirmed and the appeal be dismissed. However, the license should be delivered to respondent Prunty only upon the Board's approval of the building to be erected in accordance with the plans filed therefor.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 5th day of February 1974,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Robert E. Bower  
Director

## 2. APPELLATE DECISIONS - ANFER, INC. v. HARRISON.

Anfer, Inc., t/a Night & )  
Day Lounge, )

Appellant, )  
v. )

On Appeal

Town Council of the Town )  
of Harrison, )  
Respondent. )

CONCLUSIONS and ORDER

Robert J. Jerome, Esq., Attorney for Appellant  
Walter Michaelson, Esq., by Walter R. Kennedy, Esq., Attorney  
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Town Council of the Town of Harrison (hereinafter Council) which on September 15, 1973, revoked appellant's plenary retail consumption license after finding appellant guilty of charges alleging that on September 2, 1973, it permitted acts of violence and a brawl on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

This appeal was based solely on transcript of the testimony taken before the Council by stipulation of the parties hereto, pursuant to Rules 6 and 8 of State Regulation No. 15.

The alleged violation occurred during a period following the Director's order staying the Council's order of revocation on July 25, 1973, which said revocation was appealed to this Division. Thereafter, by Conclusions and Order of the Director entered on November 16, 1973, the action of the Council initially revoking appellant's license was affirmed. Anfer, Inc. v. Harrison, Bulletin , Item .

Capsulating the testimony of the several witnesses who testified before the Council, it is apparent that on the date as set forth in the subject charge two patrons in the licensed premises were shot. The perpetrator, who was not immediately thereafter apprehended, and other patrons fled the premises along with two female employees who apparently took one of the victims to the hospital. The other victim, a female who had been shot in the foot by a stray bullet and was taken to the hospital by her companion, was not seriously wounded. Her companion, an off-duty policeman, notified the local police.

The principals of the corporate licensee had not been present during the incident, nor did immediate notice to one of them by the police cause their response. No effective cooperation by the licensee or its employees in providing any explanation of the incident was given to the authorities. Police recovered spent bullets from the wall and the foot of the female victim. This Division has been advised that, subsequent to the hearing before the Council, the principal victim of the shooting died.

In any event, it is noted that appellant's license has been initially revoked, as above stated, which revocation has been affirmed by the Director. Anfer, Inc. v. Harrison, supra. The time for further appeal thereof has expired.

Although a determination of the second or subsequent revocation action by the Council would be moot, it is recommended that, for record purposes, the action of the Council in revoking appellant's plenary retail consumption license be affirmed and the appeal herein be dismissed.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony 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 February 1974,

ORDERED that the action of the respondent Town Council of the Town of Harrison in revoking appellant's Plenary Retail Consumption License C-12, be and the same is hereby affirmed and the appeal filed herein be and the same is hereby dismissed.

Robert E. Bower  
Director

3. APPELLATE DECISIONS - STEFANONI ET AL. v. WRIGHTSTOWN - APPEAL DISMISSED  
ON NO APPEARANCE - PRIOR 5-DAY SUSPENSION REINSTATED.

Leon J. Stefanoni & Joseph  
Stefanoni, t/a Zackey's Shack,

Appellants,

v.

Borough Council of the Borough  
of Wrightstown,

Respondent.

O R D E R

James Logan, Jr., Esq., by Fred R. Ball, Esq., Attorney for  
Appellants

Parker, McCay and Criscuolo, Esqs., by Robert W. Criscuolo, Esq.,  
Attorneys for Respondent

BY THE DIRECTOR:

Appellants appeal from the action of respondent Borough Council of the Borough of Wrightstown, which by resolution dated December 13, 1972 suspended appellants plenary retail consumption license for five days, effective January 1, 1973 for premises w/s Fort Dix Road, Wrightstown, after appellants pleaded non vult to a charge alleging the sale to a minor in its licensed premises on January 23, 1972.

The respondent answered: (1) that it had not been served with a petition as provided by State Regulation No. 15; (2) that the appellants entered a plea of non vult; and (3) that the penalty imposed was reasonable on the basis of the facts and circumstances set forth in the said adopted resolution.

A supplemental petition of appeal was then filed by the appellants on January 23, 1973, wherein appellants alleged that the Director denied appellants' application for the imposition of a fine in compromise in lieu of suspension. A supplemental answer was filed by the respondent wherein it defends that the said appeal appears to be "an appeal from the refusal of the Director to compromise the penalty and the Borough Council has no jurisdiction in the premises." It also sets forth as a second defense that the penalty imposed by the respondent was reasonable under the facts before it.

An order was entered on January 23, 1973 by the Director staying the original order of suspension pending the determination of the appeal. When the matter came on for hearing on the

adjourned date, February 28, 1973, no one appeared on behalf of the appellants hereto nor was any explanation made for such failure to appear.

It also appears that the supplemental petition of appeal does not set forth any valid grounds which are cognizable on such appeal. Under all of the facts and circumstances herein, I shall enter an order dismissing the appeal, vacating my order staying the said suspension, and reimposing the penalty heretofore imposed and stayed by my order.

Accordingly, it is, on this 7th day of February 1974,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated January 23, 1973 staying the respondent's order of suspension pending the determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Wrightstown to Leon J. Stefanoni & Joseph Stefanoni, t/a Zackey's Shack for premises w/s Fort Dix Road, Wrightstown, be and the same is hereby suspended for five (5) days, commencing 2:00 a.m. on Monday, February 18, 1974 and terminating 2:00 a.m. on Saturday, February 23, 1974.

Robert E. Bower  
Director



4. APPELLATE DECISIONS - RIP TIDE, INC. v. BEACH HAVEN - APPEAL DISMISSED  
AT REQUEST OF COUNSEL.

Rip Tide, Inc., t/a Rip	)	
Tide, Inc.,	)	
	)	
Appellant,	)	On Appeal
v.	)	
Borough Council of the	)	CONCLUSIONS and ORDER
Borough of Beach Haven,	)	
	)	
Respondent.	)	
-----	)	

Saputelli & Saputelli, Esqs., by Gregory D. Saputelli, Esq.,  
Attorneys for Appellant  
Berry, Summerill, Rinck & Berry, Esqs., by Joseph Privetera,  
Esq., Attorneys for Respondent Borough  
Reiners and Davis, Esqs., by M. Jefferson Davis, Esq., Attorneys  
for Objectors

BY THE DIRECTOR:

This is an appeal from action of respondent Board of Commissioners of the Borough of Beach Haven (hereinafter Board) which adopted a resolution on August 27, 1973, denying appellant's application for place-to-place transfer of its plenary retail consumption license from premises 513 Dock Road to premises situated at 9th Street and Bay Avenue, Beach Haven.

Appellant's petition of appeal contended that the Board's action was erroneous in that its determination was not based upon any expert testimony or upon any expertise in the matter of traffic or parking congestion and, further, that the Board made its conclusion upon irrelevant facts or information.

The Board denied appellant's contentions and contended that the members of the Board are familiar with local conditions and local circumstances in the municipality upon which they predicated a clear objective determination, unanimously adopted, denying appellant's application for transfer.

The hearing in this Division was de novo pursuant to Rule 6 of State Regulation No. 15. While full opportunity was afforded all parties to introduce evidence and present witnesses, counsel for the Board offered transcript of the testimony taken before the Board in lieu of further testimony and in accordance with Rule 8 of State Regulation No. 15. Additionally, as the offered transcript referred to certain documents, plans, letters, petitions and the like, such items as listed by reference in the transcript of the hearing before the Board were accepted into evidence in accordance with the above regulation.

The adopted resolution of the Board, complained of by appellant, cited eight reasons as the basis of the denial. Without citing each of these reasons in full, an abstract of all of them reveals a concern over high traffic density on the streets adjoining the proposed licensed premises, the inherent traffic and parking problems presently existing, the adjacency of the municipal "little league baseball" field, the proximity of a nearby elementary school, and the lack of clarity of appellant's proposals.

From all of the testimony elicited by all parties, it appeared that the Board had no substantial objection to the transfer of appellant's license to the excellent restaurant it operates at the proposed location, but appellant did not confine the limits of the proposed licensed premises to the restaurant alone. The application encompassed several other areas in the total structure owned by appellant, including porches, ice cream shop, storage areas and the like. The extent of such enlarged licensed premises, if granted, would in the view of the Board cause the objections raised in its answer. It was apparent that appellant had over-reached in its proposals for enlargement, giving rise to the Board's objection. In short, had appellant applied for transfer of the license to include its restaurant alone, the Board would have approved such transfer.

Upon the above factual premise being crystalized at the hearing in this Division, and counsel for appellant being mindful of the principles laid down in Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292 (1970), it was thereupon suggested that appellant reapply for the transfer, limiting the proposed licensed premises to its restaurant only. Such suggestion was apparently followed for, thereupon, counsel for appellant requested the dismissal of its appeal.

Absent objection by the Board, I shall entertain an order dismissing the said appeal.

Accordingly, it is, on this 8th day of February 1974,

ORDERED that the appeal herein be and the same is hereby dismissed.

Robert E. Bower,  
Director.

## 5. APPELLATE DECISIONS - FOX &amp; HOUNDS, INC. v. ROSELLE PARK.

Fox & Hounds, Inc., t/a	)	
Hook, Line & Sinker,	)	
	)	
Appellant;	)	On Appeal
v.	)	
	)	CONCLUSIONS and ORDER
Borough Council of the	)	
Borough of Roselle Park,	)	
	)	
Respondent.	)	
-----	)	

Blanchi and Colasanti, Esqs., by Angelo R. Bianchi, Esq.,  
Attorneys for Appellant  
Sheldon and Freda, Esqs., by Victor J. Freda, Esq.,  
Attorneys for Respondent

## BY THE DIRECTOR:

Appellant appealed from action of respondent Borough Council of the Borough of Roselle Park (hereinafter Council) which on June 28, 1973 attached the following condition (c) to renewal of appellant's plenary retail consumption license:

"(c) The licensees referred to herein shall be required to provide adequately lighted off-street parking for their patrons. The parking provided shall be along Westfield Avenue and in close proximity to the places of business of the respective licensees. The Chief of Police, Building Inspector, Borough Engineer, Traffic Safety Officer, and Fire Chief shall designate within 30 days of the dated of this directive the number of parking spaces required for each of the designated licensees, said number to be based upon the maximum capacity of each establishment as designated under the ordinances of the Borough of Roselle Park, the National Fire Code, and the Standard Building Code of New Jersey.

The rental, leasing, or purchasing of parking facilities and the plans therefor shall be submitted in writing to the Chairman of the License and Transportation Committee, Borough of Roselle Park, for review and approval. The designated licensees must comply with the terms of these provisions on or before October 1, 1973."

Appellant contends that the imposition of such condition was unreasonable and constituted an abuse of discretion. It further alleges that the condition imposes an impossibility of performance, hence is capricious and arbitrary. Other than the entry of an appearance on its behalf, no answer was filed by respondent Council as required by Rule 4 of State Regulation No. 15.

Upon scheduling of the matter for de novo hearing in this Division appellant had noticed respondent of its intention to rely upon a prepared statement of facts and requested that the issue in the matter be resolved directly by the Director. The Division thereupon afforded respondent Council full opportunity to present timely objections to appellant's offer. The Council did not submit any objections thereto. Thus the issue will be resolved upon appellant's prepared statement of facts and the supportive argument in its memorandum submitted in support of its position.

Initially it is noted that N.J.S.A. 33:1-32 provides that:

"Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner [now Director], may impose any condition .... to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter ...." (underscore added)

There is no record, nor has Council offered any, that the conditions imposed were first approved as is statutorily required. Preliminary approval is a concomitant basis for the imposition of license conditions. Cf. Rockleigh Field Club, Inc. v. Rockleigh, Bulletin 1665, Item 4.

Furthermore, it appears that, within the factual context upon which the condition was imposed, appellant could not perform the mandate of the Council. Off-street parking, as required by the said condition, is unavailable save for a parcel of land owned by the municipality. Effort was made by appellant to purchase or lease such municipal land but such efforts were aborted by the total disinterest of the Council. As appellant has noted in its brief, "... compliance with this condition rests in the final analysis upon several extraneous and uncontrollable factors rather than on any action which appellant is capable of taking."

Appellant cites the doctrine stated in Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (1947) which imposes upon the Director the responsibility to review actions of issuing authorities with respect to the issuance and renewal of liquor licenses.

It may be further observed that an issuing authority

may impose any condition or conditions to the issuance of a license deemed necessary and proper to accomplish the objects of the Alcoholic Beverage Law. Lubliner v. Paterson, 33 N.J. 428 (1960).

The Director of this Division has from its outset reviewed the validity of conditions imposed by such authorities. Eleuteri v. Trenton, Bulletin 141, Item 9; Coventry v. Eatontown and Cameron, Bulletin 413, Item 13; Borko v. Mansfield, Bulletin 1894, Item 3; Papp v. Trenton, Bulletin 1039, Item 1. Such determinations considered the reasonableness of the conditions so imposed and, where reasonable, were affirmed. Marinaccio v. Asbury Park, Bulletin 2009, Item 2. Similarly, if the conditions were unreasonable, the action of the issuing authority was set aside. Alanwood Holding Co. v. Atlantic City et als., Bulletin 1963, Item 1. Cf. West End Grocery Co., Inc. v. Highlands et al., Bulletin 1806, Item 2; cf. Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App.Div. 1958).

With the foregoing principles as a basis, it is apparent that, under the factual situation outlined, the condition imposed by the Council was unreasonable. Thus appellant has met its burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is, on this 15th day of February 1974,

ORDERED that the action of respondent Borough Council of the Borough of Roselle Park in attaching condition (c) to appellant's plenary retail consumption license is hereby reversed; said special condition is hereby disapproved and vacated, and the Council is hereby directed to grant renewal of appellant's license for the 1973-74 license period without the aforesaid condition (c) imposed thereon, and in accordance with the application filed therefor.

Robert E. Bower,  
Director.

6. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER - REINSTATEMENT OF  
SUSPENSIONS FOLLOWING AFFIRMING APPEAL.

S-9208; X-48,773-A	)	
In the Matter of Disciplinary	)	
Proceedings against	)	
Lewis Lo Presti	)	
Box 149, Mt. Hermon Road	)	
Hope Township, N.J.,	)	
Holder of Unlimited Solicitor's	)	
Permit (No. 3257 for the 1969-70	)	
license period, No. 1247 for the	)	
1972-73 license period and No. 516	)	
for the 1973-74 license period)	)	
issued by the Director of the	)	SUPPLEMENTAL
Division of Alcoholic Beverage Control	)	ORDER
and	)	
S-9209; X-48,227-A	)	
Allamuchy Liquors, Inc.	)	
t/a Allamuchy Liquors	)	
Main Road	)	
Allamuchy, N.J.,	)	
Holder of Plenary Retail Distribution	)	
License D-1, issued by the Township	)	
Committee of the Township of Allamuchy.	)	
- - - - -	)	
Malcolm H. Greenberg, Esq., Attorney for Licensee and Permittee	)	
David S. Piltzer, Esq., Appearing for Division	)	

BY THE DIRECTOR:

On April 6, 1973 Conclusions and Order were entered herein suspending the Unlimited Solicitor's Permit issued to Lewis Lo Presti for twenty days, after he was found guilty of charges alleging that from 1969 to the present he had an interest in the business conducted under the plenary retail distribution license issued to Allamuchy Liquors, Inc., and was either employed by it or was connected therewith in a business capacity, all of which were violative of Rule 7 of State Regulation No. 14.

In the said order, the Director also suspended the plenary retail distribution license issued to Allamuchy Liquors, Inc., for the balance of its term, i.e., June 30, 1973, commencing April 19, 1973, based upon charges that it failed to reveal the indirect

interest of Lewis Lo Presti in its business; that it permitted Lewis Lo Presti, an unlimited solicitor's permittee, to have a business connection with it; and it aided and abetted the said Lo Presti to exercise the privileges of the license, in violation of N.J.S.A. 33:1-52.

The order further gave leave to the licensee or any bona fide transferee of the licensee to apply for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than thirty days from the commencement of the suspension therein. Re Lo Presti and Allamuchy Liquors, Inc., Bulletin 2100, Item 6.

Upon appeal filed, an order was entered by the Appellate Division of the Superior Court staying the said suspension pending the determination of the appeal. On December 26, 1973, the said court affirmed the action of the Director. Re Lo Presti and Allamuchy Liquors, Inc., (App. Div. 1972-Docket A-2215-72) not officially reported, recorded in Bulletin , Item . The suspension may now be reimposed.

On February 4, 1974, Lewis Lo Presti requested an opportunity to pay a fine in compromise in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. A similar request had heretofore been made and denied by me. No facts were presented which would warrant approval thereof. Accordingly, the said request is denied. Furthermore, it is noted that the issue of penalties therein imposed has been raised and fully resolved by the Appellate Division, in support of the penalties heretofore imposed.

It further appears that the unlawful situation has not been corrected to date.

Accordingly, it is, on this 13th day of February 1974,

ORDERED that the Unlimited Solicitor's Permit, No. 516, issued by the Division of Alcoholic Beverage Control to Lewis Lo Presti, Box 149, Mt. Hermon Road, Hope Township, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. on Tuesday, February 26, 1974, and terminating on Monday, March 18, 1974; and it is further

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Allamuchy to Allamuchy Liquors, Inc., t/a Allamuchy Liquors, for premises Main Road, Allamuchy, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1974, commencing 2:00 a.m. on Tuesday, February 26, 1974, with leave to the licensee,

or any bona fide transferee of the licensee, 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, sooner than thirty (30) days from the commencement of the suspension herein.

ROBERT E. BOWER  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO TWO MINORS - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Warrenville Tavern Corporation )  
t/a Warrenville Tavern & Inn )  
17 Mt. Bethel Road & Mountain Blvd. )  
Warren, New Jersey, )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption )  
License C-2, issued by the Township )  
Committee of the Township of Warren. )

-----  
John Pidgeon, Esq., Attorney for Licensee  
David S. Piltzer, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleaded not guilty to a charge alleging that on December 8, 1973, it sold alcoholic beverages to two minors, both age 16, in violation of Rule 1 of State Regulation No. 20.

The Division presented its case by introducing the testimony of ABC agents G and S, with supportive testimony of the minors Richard --- and Alan ---. From all of the testimony it appeared that the ABC agents witnessed the sales of alcoholic beverages to the minors on the date charged herein, ascertained their ages, identified themselves and apprised the bartender of the violation.

On behalf of the licensee, the bartender testified that the sales to the minors had been predicated upon a prior service on that day, at which time the minors had been asked for identification and had displayed false drivers' licenses. A declaration slip signed with the same names as appeared on the false drivers' licenses and dated the day prior to the date of the charge was introduced into evidence. The bartender admitted, however, that the sale to the minors was not based upon the alleged prior written representation.

The sole stockholder of the corporate licensee, Julius Rubinetti, described the procedures used in checking apparent minors. While the declaration slips in evidence were obtained by him, he had no recollection of the signing or of the later sales.

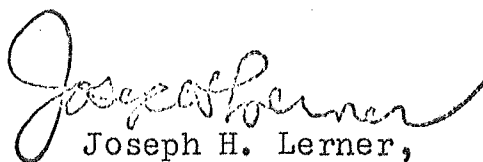


The sales to the minors being uncontroverted, the witness, on behalf of the licensee, after partial hearing, withdrew its plea of not guilty and entered a plea of non vult. It urged in mitigation that the agents admitted seeing other minors or apparent minors being checked at the same time that sales to the named minors occurred and, further, that the minor Alan --- admitted a previous attempt to purchase alcoholic beverages when he was denied service. Hence it was urged that, as overall caution in the sales to apparent minors was followed, the instant sales were accidental and not due to an unlawful intent of the licensee.

Absent prior record, the license will be suspended for thirty-five days, with no remission for the plea entered after partial hearing.

Accordingly, it is, on this 20th day of March 1974,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Warren to Warrentville Tavern Corporation, t/a Warrentville Tavern & Inn, for premises 17 Mt. Bethel Road & Mountain Blvd., Warren, be and the same is hereby suspended for thirty-five (35) days, commencing 2 a.m. Wednesday, April 3, 1974, and terminating 2 a.m. Wednesday, May 8, 1974.

  
Joseph H. Lerner,  
Acting Director.