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

BULLETIN 2058

August 22, 1972

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - GACH v. IRVINGTON.

Irene Gach, t/a Fred's Tavern, Appellant, v. Municipal Council of the Town of Irvington, Respondent.	On Appeal CONCLUSIONS and ORDER

Simandl, Leff, Kraemer & Waldor, Esqs., by Robert H. Waldor, Esq., Attorneys for Appellant
Samuel J. Zucker, Esq., by Herman W. Kurtz, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Respondent Municipal Council (acting as the Alcoholic Beverage Control Board) of the Town of Irvington (Council) by resolution dated December 14, 1971, suspended appellant's plenary retail consumption license issued for premises 138 - 19th Avenue, Irvington, for a period of fourteen days, commencing on Monday, January 3, 1972, after finding appellant guilty of a charge alleging that on September 25, 1971, at about 2:05 a.m., she permitted her licensed premises "to be and remain open in violation of Section 3-3(a) of the Irvington Town Code." The pertinent section of the said ordinance sets forth that no licensed premises shall be open between the hours of 2:00 a.m. and 7:00 a.m. on weekdays, with certain exceptions not applicable to this said license.

Upon the filing of the appeal, an order was entered by the Director on January 3, 1972 staying the Council's order of suspension pending the determination of this appeal.

Appellant alleges that the action of the Council was erroneous because it was (a) against the weight of the evidence; (b) was contrary to the law; (c) the applicable ordinance was unconstitutional and unenforceable in that it is vague in its application; (d) that the Board's action was arbitrary and capricious; and (e) the penalty was excessive.

The answer of the Council denies the substantive allegations of the petition and sets forth as separate defenses that its determination was based upon the testimony and exhibits adduced at the hearing before it, and that its finding was based

upon the testimony which disclosed that the licensed premises were open during the prohibited hours as set forth in the applicable local ordinance.

The matter was presented for determination upon the transcript of the proceedings held before the Council supplemented by testimony adduced from the parties herein at the de novo appeal hearing, pursuant to Rule 6 of State Regulation No. 15.

The transcripts reflect the following: Police officers Robert A. Wills and Raymond J. Giampino, assigned to a radio patrol car gave the following account: At the date and time charged herein, they were cruising in the radio patrol car in the vicinity of the licensed premises. When they drove past the premises they noted that the lights were on, both inside and outside the premises and, upon checking their watches, ascertained that it was 2:05 a.m. They immediately contacted headquarters and informed the desk officer that they were leaving the patrol car. Thereupon, they entered the tavern through the front door, which was unlocked and observed that there were twelve patrons in the tavern and two persons behind the bar. Six of the patrons were seated at the bar and each of them had a drink in front of him.

Upon confronting the appellant with the fact that the premises were open after hours limited by the ordinance, the appellant stated that she was just about to close. They then asked her for her license. She stated that she was unable to remove the license from the wall; they went behind the bar and copied certain information from the license. They thereupon returned to headquarters where they made the report and then resumed their regular activities.

Under vigorous cross examination, the officers insisted that when they first approached the tavern at 2:05 a.m. the neon lights on the outside were on as well as the lights in the inside. However, as they were about to enter the tavern some of the neon lights on the outside were dimmed. They were certain, however, that when they entered the premises there were twelve patrons, six of whom were seated at the bar with alcoholic beverages in front of them on the bar.

Sergeant Vito Rizzo supplemented the testimony of the police officers as follows: He was working on the midnight shift and advised the two officers to keep a special watch in this area and particularly at these premises because there had been an incident involving a fight earlier that evening. He told them specifically to check the tavern to "make sure it closed on time."

When the officers reported by radio at 2:05 a.m. that these premises were still open the same was noted in the police log which was admitted into evidence. When they called in he checked his watch and it accurately reflected the time stated by the police officers. Shortly after the police officers returned to headquarters the appellant's son, Fred Gach, accompanied by a bartender-employee, Michael Ertzberger, entered headquarters and wanted to ascertain the names of the officers who entered the premises that evening. The witness informed him that he had sent them down to the premises and that the entry in his log reflected the time as 2:05 a.m. He also told them the nature of the charge that would be preferred against appellant.

The appellant, her son and the bartender Ertzberger, all testified in defense of this charge.

Both at the hearing before the Council and at this appeal de novo hearing they all insisted that the officers actually entered the premises at 1:55 a.m. rather than 2:05 a.m. Mrs. Irene Gach contended that the officers never told her why they entered the premises or what the charges were. She insisted that the only thing they asked for was her license and she did not know what she was specifically charged with until she received a letter from the Council embodying the said charge.

Although she did not know why the police officers entered or made the request for her license she did, nevertheless, look at the clock to see what time the officers actually entered the premises. In fact, she said she looked at both clocks in the tavern. She was then asked:

"Q Why did you look at the two clocks to determine what time it was?

A Because I know it was the right time.

Q Couldn't you depend on one of them?

A No. I depend on the two of them to make sure."

She also insisted that the lights were out. However, she admitted that at the time the police officers arrived there were five patrons in the premises.

Fred Gach, the son of the appellant, also testified that he was certain that it was 1:55 a.m. when the police officers entered the premises. When the police officers spoke to his mother she was behind the bar and he was standing at the juke box. The only thing he heard was the police officers ask his mother for the license but he did not hear them inform her of the nature of the violation and why it was necessary for them to take the information from the license.

His recollection was that there were about four or five patrons in the premises at that time. He further testified that he went to police headquarters to find out the reason for the visit by the police but was unable to get that information; the first time he knew of the nature of the alleged violation was when the letter was received from the Council.

Michael Ertzberger who was employed at the date and time charged herein as a bartender, stated that when the police entered the premises he was in the process of making a telephone call for a taxicab. However, when he saw them enter he did not complete his call. He insisted that he was not tending or serving any of the patrons and had given them a "last call about twenty to two, quarter to two." He then asked the officers what violation they were charged with and "We got no response."

On cross examination, he stated that when the police officers arrived there were only two patrons at the bar and that there were five or six patrons in the tavern. They left when the officers left.

I

Appellant challenges the constitutionality of the ordinance on the ground that it is "vague in its application." My examination of the ordinance satisfies me that it is clear and definite. Furthermore, the Division lacks jurisdiction to entertain a challenge to the validity of an ordinance. An ordinance must be accepted in this Division as valid on its face. Suits to challenge the validity of an ordinance must be brought in a court of competent jurisdiction. Blanck v. Magnolia, 73 N.J. Super. 306 (App. Div. 1962), reversed on other grounds 38 N.J. 484 (1962); P.J. Mullins bar, Inc. v. Paterson, Bulletin 1968, Item 1; Board of Com'rs of the Town of Phillipsburg v. Burnett, 125 N.J.L. 157. This contention lacks merit.

II

Appellant next contends that the action of the Council was not based upon the credible evidence presented, was unreasonable and capricious. These proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the Council was required to establish its case by a fair preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Bev. Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 503 (1956). In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1946); Gallo v. Gallo, 66 N.J. Super 1 (App. Div. 1961).

I have carefully examined and analyzed the testimony of the witnesses and observed their demeanor on the witness stand, I am persuaded that the testimony of the police officers was forthright, believable and truly reflected the situation that existed at the time. Obviously, they had reason to note the exact time before entering the tavern and that time was noted on the police log which was admitted into evidence. Thus, their testimony fortified by the empiric evidence of the police record, and further supported by the testimony of Sergeant Rizzo generates no doubt in my mind that they entered the tavern at the time stated by them.

On the other hand, I do not believe the testimony of the appellant or her witnesses because they admit that they did not even know what violation they presumably were guilty of and so there was no reason for them to look at the clock. It is further incredible to me that, as they testified, the police never notified them of the violation for which they were charged when they confronted the appellant.

I am also persuaded that there were patrons in the tavern during the prohibited hours which, thus, constitutes a clear violation of the ordinance. This ordinance enjoins a licensee from permitting its licensed premises to be "open during the above prohibited hours (between the hours of 2:00 a.m. and 7:00 a.m.)."

These ordinances have uniformly been interpreted to mean that if there be anyone (of the public), found on the said premises, it shall be deemed a violation of the said ordinance. As used in this ordinance, the closing-of-premises provisions means that all members of the public must be excluded. Cf. Mama Ventura, Inc. v. Voorhees, Bulletin 1498, Item 1; Town House, Inc. v. Montclair, Bulletin 792, Item 3; Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3. The then-Commissioner Hock in Town House, Inc. v. Montclair, supra in construing a similar ordinance emphasized that it is meant that all members of the public must be excluded; "keeping open (which is the same as not being closed) requires only proof that the licensee continues to entertain the public." In re Zenda, Bulletin 271, Item 5; Re Casarico, Bulletin 268, Item 1.

The burden of establishing that the Council acted erroneously and in an abuse of its discretion is upon the appellant. The ultimate test in these matters is one of reasonableness on the part of the Council. Or, to put it another way: could the members of the Council, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. Apparently the Council felt that the believable evidence established the truth of the charge. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502; Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

Furthermore, I find that there is no evidence to show any improper motivation on the part of the Council or that it acted capriciously in reaching its determination.

My examination of the facts and the applicable law generates no doubt whatsoever that the charge was established by a preponderance of the believable evidence. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Council's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

III

Appellant finally contends that the penalty imposed was excessive. The measure or extent of a penalty to be imposed in disciplinary proceedings rests within the sound discretion of the issuing authority, and will not be disturbed on appeal unless the evidence clearly shows an abuse of discretion. Schwartz v. Paterson, Bulletin 1577, Item 2; Bacus v. Guttenberg, Bulletin 1332, Item 4.

The Legislature has invested the issuing authority with power to suspend or revoke licenses after hearing for certain enumerated violations including violations of the law or local regulations. N.J.S.A. 33:1-31.

The power of the Director to reduce or modify a penalty imposed by the local issuing authority will be sparingly exercised and then only with the greatest caution. Sventy & Wilson v. Point Pleasant Beach, Bulletin 1930, Item 1; Pom Bon v. Cliffside Park, Bulletin 1897, Item 1.

I find that the penalty imposed herein is consistent with precedential penalties imposed by this Division for such license offense and, therefore, find that this contention lacks merit.

It is, accordingly, recommended that an order be entered affirming the Council's action, dismissing the appeal, vacating the order staying the Council's order of suspension pending the determination of this appeal, and fixing the effective dates for the suspension of license heretofore imposed by the Council, and stayed by the said order.

Conclusions and Order

No 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 transcripts of the testimony, the argument of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 19th day of June 1972,

ORDERED that the action of respondent Municipal Council of the Town of Irvington be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated January 3, 1972, staying respondent's order of suspension pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that any renewal that may be granted of Plenary Retail Consumption License C-27, for premises 138 Nineteenth Avenue, Irvington, shall be and the same is hereby suspended for fourteen (14) days, commencing at 2 a.m. Wednesday, July 5, 1972, and terminating at 2 a.m. Wednesday, July 19, 1972.

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - KOZLOW v. ORANGE.

David Kozlow, t/a Dave's Glass Bar, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Orange, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Saul Cohen, Esq., Attorney for Appellant
Martin G. Picillo, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Orange (Board) whereby on August 5, 1971, it suspended appellant's plenary retail consumption license for ten days, effective September 7, 1971, after finding appellant guilty of

allowing, permitting and suffering a brawl, act of violence and disturbance, in violation of Rule 5 of State Regulation No. 20.

Appellant alleges that the action of the Board was erroneous and against the weight of the evidence; the appellant was not afforded an opportunity to present its complete defense; and the acts, if any, alleged to have been permitted were without the consent or authority of the appellant, who therefore, was not bound by the said acts.

The Board denies the allegations of appellant and avers that the weight of the evidence presented justified the Board's findings; the appellant was afforded full opportunity to present its case; and the appellant, its agents, servants and employees are bound by the acts of the parties involved.

Upon the filing of this appeal an order was entered on August 26, 1971, staying the Board's order of suspension pending further order of the Director of this Division. N.J.S.A. 33:1-31.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to present evidence and cross-examine witnesses. Thus the allegation that appellant was denied the opportunity to present its complete defense lacks merit, since appellant has now been given a full opportunity to be heard herein. Re Jersey City Tavern Owners Association et al v. Jersey City et al., Bulletin 1622, Item 2; Cino v. Driscoll, 130 N.J.L. 535, 539 (Sup. Ct. 1943); Nordco v. State, 43 N.J. Super. 277, 287.

On behalf of the Board, Emma Wells testified that she is employed at the licensed premises and arrived at 6:00 p.m. on the evening of April 10, 1971. David Valentine, manager and bartender, was already on duty.

Sometime between 8:00 and 9:00 p.m. an unknown male adult appeared in the doorway and began speaking profanities. Valentine asked him to stop. He did stop momentarily and thereafter continued. Valentine left his position behind the bar and proceeded toward the culprit. Before Valentine could reach him, a patron, Clarence Everett, warned Valentine that the man had a knife. Valentine paused and the unknown profaner departed.

Valentine conversed briefly with Everett; Everett walked toward the telephone booth as Valentine returned behind the bar. As he returned, she noticed that he was carrying a gun.

She stated that she had no idea how Valentine acquired the gun; at no time did she see a knife; the culprit had not been served any alcoholic beverages; the police arrived shortly after the incident; she had no idea who had summoned the police; and no events of a disruptive nature, apart from those described, took place on the premises.

Rocco Romeo, a police officer of the City of Orange, testified that he arrived at the premises in the company of Officer Racaniello, at approximately 8:45 p.m. He had been dispatched there by radio communication to investigate the matter herein. He spoke first to Everett and thereafter observed Miss Wells to be visibly distraught and on the verge of tears.

Valentine denied having a gun in his possession, whereupon Officer Racaniello proceeded behind the bar, searched Valentine and removed a gun from his pocket. Miss Wells advised him that she had had a brief altercation with Valentine and Everett had interceded.

He concluded that he and Officer Racaniello were on the premises approximately for about ten minutes, and he saw no violence or disturbance.

David Valentine testified on behalf of the appellant that he had been employed on the premises as bartender for ten years and as manager for the past four years.

On the evening of April 10, 1971, there were fifteen or twenty patrons present when the unidentified male appeared in the doorway and began speaking profanely in a normal conversational tone. After his admonition to refrain from the abusive language had gone unheeded he proceeded from behind the bar toward the doorway. Everett warned "He's got a knife." Thereupon Valentine noticed that the man had his hand in his pocket and as the man departed an object fell from his pocket. Everett picked up the object, remarked that it was a gun and gave the gun to Valentine. He then asked Everett to call the police and they arrived shortly thereafter. The officers spoke to Everett and then Officer Racaniello came behind the bar to remove the gun from Valentine's pocket.

He concluded that as he started to put the gun into a drawer behind the bar, Miss Wells objected strongly and he then placed it in his pocket. The entire incident consumed three or four minutes.

In rebuttal, Miss Wells testified that she was not nervous, upset or on the verge of crying; she did not have an argument with Valentine and she had no conversation with Officer Romeo.

In order for the appellant to prevail in the instant matter it must appear that the evidence did not preponderate in support of the determination of the Board. Feldman v. Irvington, Bulletin 1969, Item 2.

Within the context of our regulation a brawl is a clamorous or tumultuous quarrel in a public place to the disturbance of the public peace. A disturbance is an interruption of a state of peace and quiet; a public commotion synonymous with brawl. Snug Tavern Inc. v. Orange, Bulletin 1425, Item 1.

"Violence" is defined as: "Unjust or unwarranted exercise of force usually with the accompaniment of vehemence, outrage or fury." Black's Law Dictionary, 4th Edition, 1968.

Applying the above definitions to the evidence presented at this de novo hearing I find that the conduct described does not come within the prohibited activity. The testimony of the main witness for the Board, Miss Wells, indicates no conduct which would justify the determination of the Board. The testimony of Officer Romeo accepted as true, nonetheless, fails to support the findings.

I, therefore, find that the evidence presented does not preponderate in support of a determination that the appellant allowed, permitted or suffered a brawl, act of violence or disturbance in or upon the licensed premises. Thus, the appellant has sustained the burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15. I, accordingly, recommend that an order be entered reversing the action of respondent Board and dismissing the charge herein.

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 transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of June, 1972,

ORDERED that the action of respondent be and the same is hereby reversed, and the said charge be and the same is hereby dismissed.

ROBERT E. BOWER
DIRECTOR

3. RENEWAL APPLICATION - STATE BEVERAGE DISTRIBUTOR'S LICENSE - RENEWAL GRANTED.

In the Matter of an Application for Transfer of State Beverage Distributor's License No. SBD-106 from

Arthur M. Credico
936-938 South Elmora Avenue
Elizabeth, N. J.,

to

Circle Beverages, a New Jersey Corporation
929 South Elmora Avenue
Elizabeth, N. J.

CONCLUSIONS

Russell H. Hulsizer, Esq., Attorney for Applicant

BY THE DIRECTOR:

On May 25, 1972, Circle Beverages, a New Jersey Corporation, filed an application for a person-to-person and place-to-place transfer of a State Beverage Distributor's license held by Arthur M. Credico to Circle Beverages, a New Jersey Corporation, and from premises 936-938 South Elmora Avenue, Elizabeth, to 929 South Elmora Avenue, Elizabeth.

A written objection to the said transfer was filed and a hearing was duly set thereon. The objector, Patrick J. McWeeney, sets forth that he is the operator of a tavern at 548 Edgar Road, Elizabeth, which is within fifty feet of the premises to which the said license is proposed to be transferred and that said proposed premises are within fifty feet of a school.

Neither the objector nor any other person appeared at the hearing to testify with respect to the said objection.

Peter J. Dugett testified that he is president of the corporate applicant, that the new premises are located directly across the street from the present premises of the transferor, and that the distance from the said property to the front entrance of the school is 436 and that the measurement from the entrance of the proposed premises to the side entrance of the school is 359 feet. These measurements were confirmed and corroborated by ABC agents on June 8, 1972.

The applicant, through its president, states that it intends to sell warm beer and soda and does not contemplate making any deliveries at the present time.

After considering the testimony herein, I am persuaded that the objection to the approval of this application is without merit and is contrary to the fact. Re Buchanan, Bulletin 1548, Item 5. Indeed, a written objection without supportive testimony at this hearing is sterile and has no probative value.

The applicant is permitted to sell only warm beer in quantities of not less than 144 fluid ounces.

The premises to which this license is sought to be transferred is directly across the street from the present premises. The transferor has conducted his business at the present premises for the past five years and there has been no complaint with respect to his lawful operation.

Accordingly, the pending application is approved and the appropriate endorsement on the license certificate may be made upon compliance by the applicant with all procedural requirements.

ROBERT E. BOWER
Dated: June 19, 1972 DIRECTOR

4. DISCIPLINARY PROCEEDINGS - POSSESSION OF NARCOTICS - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

E.W.A. Company (A N.J. Corp.) t/a Marshall's Lounge 871 Broadway Newark, N. J.,) CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-213, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Goldman, Goldman and Caprio, Esqs., by Nicholas E. Caprio, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On April 27, 1971, you allowed, permitted and suffered the unlawful possession of a narcotic drug, viz., Cannabis Sativa (Marihuana) as defined by R.S. 24:21-2 (formerly R.S. 24:18-2) in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20."

A search of the licensed premises conducted by Division agents on April 27, 1971, disclosed a small amount (2.7524 grams) of marihuana located in a paper bag which was found inside of a coffee mug. The mug was located in a cardboard box containing five other coffee mugs, on a shelf in the kitchen. Nothing else relevant thereto was found by the agents on the licensed premises.

The corporate licensee's principal stockholder and operator of the business conducted by it, testified that, after he purchased the business in 1967, he did a minimum of remodelling in the barroom, did not remodel the kitchen at all and was completely unaware of the aforesaid substance contained in the coffee mug.

In deciding this matter, I observe that the licensee is charged with violating Rule 4 of State Regulation No. 20. The pertinent part of Rule 4 of State Regulation No. 20 as then constituted reads, as follows:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any ... unlawful possession of or any unlawful activity pertaining to narcotic drugs as defined by R.S. 24:18-2 or barbiturate, amphetamine, barbital, hypnotic or somnifacient drugs, tranquilizers or any prescription legend drug, in any form, which is not a narcotic drug within the meaning of R.S. 24:18-2...."

At the time the above rule was enacted, the Uniform Narcotic Drug Law (former N.J.S.A. 24:18-1 et seq.) was in effect in New Jersey, and Section 2 of that Law (former N.J.S.A. 24:18-2) defined narcotic drugs as including "coca leaves, opium, marihuana and every substance not chemically distinguishable from them." In 1970 the Uniform Narcotic Drug Law was repealed and in its place the Legislature substituted the Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.; L. 1970, c.226). Under the Controlled Dangerous Substances Act marihuana has been excluded from the definition of a narcotic drug. See N.J.S.A. 24:21-2.

The Controlled Dangerous Substances Act was the final expression of a wide-ranging reform in the narcotic drug laws of this State. Its adoption was preceded by a prolonged legislative investigation and hearings over a period of many years, which included numerous reports filed by the Narcotic Drug Study Commission.

It is readily apparent that the Legislature deliberately and intentionally removed marihuana from the narcotic drug classification and accorded to its use and possession a different treatment. Thus, under Section 20 of the Act (N.J.S.A. 24:21-20), the crime of possession of 25 grams or less of marihuana was downgraded to a disorderly person offense.

I find that inasmuch as marihuana is no longer defined as a "narcotic" under N.J.S.A. 24:21-2, it therefore follows that the allegation of possession of a "narcotic drug, viz., Cannabis Sativa (marihuana)" as contained in the charge under consideration must necessarily fail.

Additionally, it is noted that Rule 4 of State Regulation No. 20 was revised for the purpose of deleting all reference to the former statute N.J.S.A. 24:18-2 and, in its stead, inserted reference to the current enactment promulgated by the Legislature, N.J.S.A. 24:21-1, et seq. (Controlled Dangerous Substances Act). The amended rule was not effective until April 6, 1972.

Inasmuch as the legislative fiat manifested in the aforementioned enactment promulgated by that body overrides any conflicting rule or regulation promulgated by the Division, I find that the Division's case has not been established. I, therefore, recommend that the charge herein be dismissed.

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 and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of June 1972,

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

ROBERT E. BOWER
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION TO PAY FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings)
against)
Kuz-Zin Kafe, A Corporation)
t/a Kuz-Zin Kafe) CONCLUSIONS
28-30 E. Monroe Street and
Paulsboro, N.J.) ORDER
Holder of Plenary Retail Consumption)
License C-15 issued by the Mayor and
Council of the Borough of Paulsboro)

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Samuel G. DeSimone, Esq. Attorney for the Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 11, 1972, it sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for ten days with remission of five days for the plea entered, leaving a net suspension of five days. Re Plancey, Bulletin 2042, Item 9.

However, the licensee has made application for the imposition of a fine, in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $200.00 in lieu of suspension.

Accordingly, it is, on this 21st. day of June, 1972

ORDERED that the payment of a fine in the amount of $200.00 by the licensee is hereby accepted in lieu of the suspension of license for five days.

ROBERT E. BOWER
DIRECTOR

6. RENEWAL APPLICATION - STATE BEVERAGE DISTRIBUTOR'S LICENSE - RENEWAL GRANTED.

In the Matter of an Application for Renewal of State Beverage Distributor's License SBD-90 (for 1972-73 license period), issued by the State Director of the Division of Alcoholic Beverage Control to

Edward Kabot and Muriel Kabot
t/a Home Beverage Service
80 West Forest Avenue
Englewood, N. J.

CONCLUSIONS

Licensee, Pro se.

BY THE DIRECTOR:

The licensees filed an application for the renewal of their State Beverage Distributor's License at premises 80 West Forest Avenue, Englewood for the 1972-1973 licensing period.

A written objection to the issuance thereof having been filed by a resident of Englewood, a hearing was held thereon in this Division pursuant to Rule 12 of State Regulation No. 1.

The letter addressed to the Division set forth, in substance, that there was a sufficient number of distributors in the municipality; that there are many children in the area and it has an adverse effect upon traffic conditions.

No one appeared at the hearing to object to the said application.

At the hearing, the applicant, Edward Kabot, testified that he has held a license upwards of 20 years; that he has received no complaints in connection with the operation of the license; and that he does not know of any reason why the license should not be renewed.

The licensee understood that, if the application for the renewal of the license were to be favorably acted upon, it would be renewed subject to the special condition that no sales may be made to retail licensees.

The decision as to whether or not an application for the renewal of a state beverage distributor's license should be granted rests solely within the discretion of the State Director. Objections to such renewal must be reasonable and based upon valid legal grounds. I have determined that the filed objection was not supported by sworn testimony and was not sufficiently meritorious to warrant a denial of the application.

Accordingly, the pending application for the issuance of the State Beverage Distributor's License for the licensing year 1972-1973 is hereby granted subject to the special condition that no sales may be made to retail licensees, and upon compliance by the applicant with all procedural requirements.

Dated: June 21, 1972

Robert E. Bower,
Director

7. DISCIPLINARY PROCEEDINGS - VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION TO PAY FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

Inocente Moreno
t/a Recreo Bar
5114 Hudson Avenue
West New York, N.J.

Holder of Plenary Retail Consumption License C-63 issued by the Board of Commissioners of the Town of West New York

CONCLUSIONS and ORDER

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Alan C. Antonucci, Esq. Attorney for Licensee
Peter E. Rhatican, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 28, 1972, he sold alcoholic beverages, during prohibited hours, for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license would normally be suspended for fifteen days with remission of five days for the plea entered, leaving a net suspension of ten days. Re Ryglicki, Bulletin 2046, Item 6.

However, the licensee has made application for the imposition of a fine, in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $400.00 in lieu of suspension.

Accordingly, it is, on this 22nd day of June, 1972

ORDERED that the payment of a fine in the amount of $400.00 by the licensee is hereby accepted in lieu of the suspension of license for ten days.

Robert E. Bower
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION TO PAY FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

Beverly Package Store, Inc.
301 Broad Street
Beverly, N.J.

Holder of Plenary Retail Distribution License D-1 issued by the Common Council of the City of Beverly

CONCLUSIONS and ORDER

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 3, 1972, it sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for ten days with remission of five days for the plea entered, leaving a net suspension of five days. Re Plancey, Bulletin 2042, Item 9.

However, the licensee has made application for the imposition of a fine, in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $200.00 in lieu of suspension.

Accordingly, it is on this 22nd day of June, 1972

ORDERED that the payment of a fine in the amount of $200.00 by the licensee is hereby accepted in lieu of the suspension of license for five days.

ROBERT E. BOWER
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 7 FOR PLEA.

In the Matter of Disciplinary Proceedings against Alexis Mugil t/a Crown Point Inn 1102 Crown Point Road, Verga West Deptford Township PO Westville RFD, N. J., Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Deptford.	CONCLUSIONS and ORDER

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 4, 1972 he possessed four bottles of alcoholic beverages the labels of which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a prior record of suspensions by the Director for (1) twenty days effective May 16, 1967 for similar violation and (2) for twenty days effective June 10, 1969 for sale to minors (Re Mugil, Bulletin 1739, Item 7; Bulletin 1867, Item 5).

Prior record for dissimilar violation within past five years considered, the license will be suspended for twenty-five days (Re Jones, Shute & Williams, Bulletin 2029, Item 14), to which will be added ten days by reason of the similar violation occurring within the past five years (Re Falcaro's Restaurant Inc., Bulletin 2005, Item 8), making a total of thirty-five days, with remission of seven days for the plea entered, leaving a net suspension of twenty-eight days.

Accordingly, it is, on this 22nd day of June 1972,

ORDERED that any renewal that may be granted of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Deptford to Alexis Mugil, t/a Crown Point Inn, for premises 1102 Crown Point Road, Verga, West Deptford Township, be and the same is hereby suspended for twenty-eight (28) days, commencing at 2 a.m. Friday, July 7, 1972, and terminating at 2 a.m. Friday, August 4, 1972.

Robert E. Bower
Director