Director

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

BULLETIN 1924 August 18, 1970

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - PANDA INN, INC. v. TOWNSHIP OF LAKEWOOD.

Panda Inn, Inc.,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Township Committee of the Township of Lakewood,	)	
Respondent.	)	

Steinberg & Steele, Esqs., by Morton C. Steinberg, Esq., Attorneys for Appellant
No Appearance on behalf of Respondent Township Committee
Novins & Novins, Esqs., by Terrence P. Farley, Esq., Attorneys for Objectors
Lawrence E. Bathgate, II, Esq., Attorney for Transferor

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the failure of respondent Township Committee of the Township of Lakewood (hereinafter Committee) due to lack of quorum at its regularly scheduled meeting to act upon an application filed by appellant for a person-to-person and place-to-place transfer of a plenary retail consumption license from 121 Club Inc. (a corp.) located at 118 East 4th Street, to Panda Inn, Inc. located at 1757 Madison Avenue, Lakewood. This is in effect a denial of the said application. Bielefeldt v. Asbury Park, Bulletin 1844, Item 1.

In its answer respondent Committee asserts that the Committee consists of five members. One member thereof absented himself from the meeting because he is a tavern owner, and two withdrew from the meeting because of possible conflict of interest. The answer concluded with a request that the Division "hear and determine the objections of this appeal, de novo."

The Committee was not represented at the hearing before the Division.

The objectors (who were represented at the within hearing by counsel) asserted in their answer generally that the requested transfer is not in the public interest; there is no public need; a family-type restaurant with a large take-out business is not a good location for a plenary retail consumption license; that there are sufficient other outlets within a half-mile radius; that the transfer would leave the present area inadequately serviced; that no Chinese restaurant in the area possesses a liquor license, thus eliminating the question of financial or competitive need; that in September 1967 the Committee had denied transfer of a license to another party; and, finally, that on August 8, 1968 the Committee granted a "package goods store" license on the west side of State Highway 9 because of its unique situs.

The appeal was heard de novo with full opportunity for counsel to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15.

Prior to taking testimony the parties agreed that the officers of the corporate appellant were under no statutory disability to become engaged in the liquor industry; that the application for transfer and the advertising thereof were in proper form; that one of the three objectors (The Cabana Club) had withdrawn its objection; that the two remaining objectors (Village Package Store and Lloyd's Liquors) operate package goods outlets; that appellant operated the only Chinese restaurant in Lakewood; that it has been in business for sixteen years and enjoys a "high moral reputation".

On behalf of appellant, Donald Safran (who has been a licensed real estate broker in Lakewood for nineteen years) testified that he is familiar with the character of the particular area involved as well as the Lakewood municipality and its environs. The particular area involved is "completely commercial". This was confirmed by my examination of a series of photographs received in evidence.

The license to be transferred is now located on East 4th Street (at a building destroyed by fire) as shown on the urban renewal map (marked in evidence R-2); is located in a different area of town; is located in an area which is slated for urban renewal. One of the objectors (Lloyd's) is two hundred twenty-five feet distant from the location of the Panda Inn, and the other objector (Village Package Store) is three-tenths of a mile distant therefrom. Madison Avenue (Route 9) is a very heavily trafficked two-lane concrete highway in the area where appellant is located. The roadway has shoulders and no sidewalks.

The witness further stated that the building wherein appellant conducts its restaurant business bears the distinctive characteristic of a Chinese restaurant and bears no similarity to a package liquor store; that there is a total of five restaurants in Lakewood which serve liquor. The Cricket (a restaurant serving liquor), which is located in the immediate area of appellant's restaurant, is located in Howell Township, Monmouth County. There are one restaurant and three package stores (including the two objectors) within a distance of three-tenths of a mile from Panda Inn.

Finally, the witness testified that in the last ten years, and particularly in the last five or six years, there has been a rapid population growth in the area, considerable apartment construction, a variety of businesses, and stores and shopping centers.

On cross examination the witness asserted that there are several hotels in the general area which contain a restaurant and a bar. However, in the main they attract patronage from among the guests. Additionally there are four or five taverns in Lakewood where a cold sandwich may be obtained.

In his opinion a liquor license would increase appellant's business; however, it would not add to the traffic congestion. The provisions for ingress and egress are sufficient to provide for any anticipated expansion of business.

Thomas L. LaPointe (Township Manager), who was subpoenaed to testify by appellant, testified that the population of Lakewood increased from approximately 16,000 in 1960 to 25,000 in 1970 and that the projected population for 1980 should be 45,000.

The 121 Club lies within the urban renewal development area which has received governmental approval. The intention is to acquire property by condemnation and then to resell it for redevelopment.

Concerning the business houses now located within the area, the witness testified:

> "They will have a choice. Of course, we can buy everything out, all of the commercial enterprises will be bought out, and then they will be demolished, and they will have first choice to come back into the area as a commercial enterprise because we will have a certain area in the renewal area that will be designated as commercial. Or they will have the privilege of receiving relocation grants."

Pak Yin Wong testified that he and his wife are the owners of Panda Inn, Inc. The total area of the plot upon which the restaurant building is located is two hundred feet frontage by two hundred ten feet in depth. This includes a plot recently acquired for parking purposes measuring one hundred feet by two hundred ten feet.

A copy of a plan and layout filed with the application was received in evidence (R-15). Wong intends to install an eighteen-foot long Polynesian bar. Although the license contains a broad package privilege, the bar will be used mainly for the convenience of the patrons of the restaurant and not primarily for the sale of package goods.

On cross examination Wong testified that approximately twenty to twenty-five percent. of his business is take-out. He would not agree to restrict the sale of liquor for on-premises consumption and not to sell package goods.

The objectors did not call any witnesses.

It is apparent that the Committee had no desire to rule on the merits of the transfer, and expressed its desire that the Division rule on the merits thereof de novo. Inasmuch as the issuing authority made it evident that it did not desire to express an opinion herein, it therefore follows that the Director is not being requested to affirm or reverse a ruling of the issuing authority.

Preliminarily I note that, except for the two objectors (who operate package goods stores), there was no expression of public opposition to the transfer of license.

It is my view that the transfer of the retail consumption license in conjunction with the operation of a family-type Chinese restaurant at that particular site would not be adverse to the public interest. Upon considering all of the testimony concerning the location of the existing licenses in the area, I am satisfied that the proposed transfer would not create an undue concentration of licenses in the area. In arriving at that conclusion I am mindful that the transfer is to a location where alcoholic beverages will be dispensed as an adjunct to the restaurant business and that the business will not be operated primarily as a tavern or package goods business.

Further, it is understandable why a licensee who is compelled to vacate an area due to urban redevelopment would desire to protect his investment by attempting to transfer his license instead of speculating on returning to the area of redevelopment. It must be realized that there is no guaranty as to the time within which the redevelopment will be completed and the licensee allowed to return. There is no guaranty of the amount of money the licensee may be obligated to expend for the purchase of a suitable location or the rent he may be obligated to pay therefor. In short, for an individual in business the future would be too uncertain, and to restrain him from transferring under those circumstances would deprive him of fair consideration.

In Lakewood v. Brandt, 38 N.J. Super. 462 (App.Div. 1955), the court said:

> "... An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer...."

After carefully considering all of the facts and circumstances herein, I recommend that an order be entered directing the Committee to grant appellant's application for transfer of license.

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

Accordingly, it is, on this 24th day of June 1970,

ORDERED that respondent transfer the license to appellant in accordance with the application heretofore made.

RICHARD C. McDONOUGH
DIRECTOR

2. PETITION PROCEEDINGS - DISCRIMINATION AGAINST WHOLESALERS - DISTILLERS ORDERED TO SUPPLY WHOLESALERS.

Kasser Distillers Products Corp.	)	
Petitioner,	)	On Petition
v.	)	CONCLUSIONS and ORDER
Glenmore Distilleries Co., a Delaware Corporation,	)	
Respondent.	)	

John A. Yacovelle, Jr., Esq., Attorney for Petitioner
Fox, Yanoff and Fox, Esqs., by Leo Yanoff, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Petitioner (Kasser) a licensed wholesaler of alcoholic beverages in New Jersey, seeks to compel respondent (Glenmore) to sell its products to Kasser claiming such right under the provisions of R.S. 33:1-93.6, et seq. (L. 1956, ch. 59). Kasser contends that on or about October 1, 1964, it entered into an agreement with Glenmore whereby it was appointed a New Jersey distributor of certain nationally advertised brands of alcoholic beverages of Glenmore. On or about February 24, 1967, respondent notified Kasser by letter that its distributorship under the aforesaid agreement would be terminated, effective April 1, 1967, and that Glenmore intended to appoint Gateway Distributors, Inc. as the exclusive distributor of its products in New Jersey, effective on that date.

On or about April 14, 1967, Kasser submitted a purchase order to Glenmore for five hundred cases of quarts of Old Thompson Blended Whiskey. Glenmore refused to fill the order, and informed Kasser that it would continue to refuse to fill any further orders of Kasser.

Kasser further alleges that it was, at all times, able to pay for the merchandise, and that the termination of its distributorship, and Glenmore's refusal to sell to petitioner, are discriminatory within the meaning of Chapter 59 of the Laws of 1956 contained in R.S. 33:1-93.6. It seeks a determination by the Director that the aforesaid refusal is discriminatory and an order directing Glenmore to complete the sale in accordance with the order placed by Kasser.

In its answer Glenmore denies that its refusal to sell to Kasser was discriminatory and in violation of the aforesaid act. It sets up, as a special defense, that its products are distributed by a number of wholesalers; that it decided to reduce the number of distributors, of which Kasser was one; that under the terms of the contract between petitioner and respondent Glenmore retained the right to terminate the distributorship on thirty days notice. It further asserts that in 1966 Kasser became a distributor for a producer and importer of alcoholic beverages whose line was directly competitive with Glenmore's line; that Kasser sales of Glenmore's products thereafter diminished markedly; that Kasser was not fulfilling its function in promoting the Glenmore line; that Glenmore made a "business decision" in terminating Kasser's authorization under the aforementioned agreement.

It was stipulated at the outset of the plenary hearing herein that Old Thompson Blended Whiskey as well as the other Glenmore products distributed by Kasser are nationally advertised brands of alcoholic beverages, and that Kasser has the present ability to pay for such merchandise as it may order.

The record also shows that Kasser is a duly licensed wholesaler in the State of New Jersey and was an authorized distributor of Glenmore's products until the termination occasioned by Glenmore on April 1, 1967.

An order was entered herein by the Director on June 8, 1967, after a hearing on the return date of an order to show cause, requiring Glenmore to sell alcoholic beverages to Kasser on terms usually and normally required by Glenmore until the final determination of this matter and the further order of the Director.

It should be noted that this Hearer's report was delayed because of the pendency of similar actions involving substantially the same questions of law and fact in the Appellate Division of the Superior Court. These actions have been decided by the Appellate Division in favor of the petitioner-respondents. See American B.D. Co. v. House of Seagrams, Inc. and National Wine & Liquor Co. v. House of Seagrams, Inc.; Joeli Wine Distributors, Inc. v. Browne-Vintners Company; Flagstaff Liquor Co. v. Browne-Vintners Company (App. Div. 1969), 107 N.J. Super. 264, reprinted in Bulletin 1885, Items 1, 2 and 3. Certification was granted by the Supreme Court. However, no decision has as yet been rendered on the appeals by the Supreme Court.

Raymond H. Kasser (president) testified in support of the petition and corroborated the factual allegations set forth therein. He stated that Kasser was listed in the complete New Jersey Wholesale Price List of alcoholic beverages, effective April 1, 1967, as a distributor of the Glenmore line and specifically of Old Thompson Whiskey. He asserted that the removal of this line by Glenmore has harmed the stature and standing of his organization and that Kasser will be damaged by reason of its inability to supply these products. He admitted that in June 1966 Kasser became a distributor of Schenley products and, following such acquisition, it increased its sales force from eighteen at the beginning of 1965 to approximately fifty-five in May 1967. In addition, Kasser acquired 60,000 square feet of warehouse space from a wholly owned subsidiary of Schenley Distillers.

As to the percentage of sales of Glenmore products as compared to Kasser's total volume of sales, he testified that, while Kasser's gross had increased, sales of Glenmore products had decreased in 1966. He explained that the decline was attributable to (1) a reduction from 86 to 80 proof in Old Thompson Blended Whiskey without a reduction in price, thus reducing to the buyer the value of that product, the largest single seller in the line; (2) the fact that Glenmore removed from the State the direct representative and missionary man who had been in New Jersey for many years. His removal in the summer of 1966 resulted in the loss of sales placed through him; (3) adding Gateway Distributors as a new distributor in the last three months of 1966 so that Glenmore's sales in New Jersey were spread over two distributors instead of Kasser as theretofore; and (4) that Glenmore did not advertise in New Jersey newspapers in 1966 and did not make an appropriation for such advertising although it had promised Kasser it would do so.

Glenmore produced no witnesses on its behalf to support its defense that its action in discontinuing Kasser as a distributor of its products was based upon a "business decision". Rather, it relied solely on the testimony of Kasser in support of its defense.

Glenmore initially argues that, by its termination of Kasser's distributorship in the manner permitted under its contractual agreement with Kasser, Kasser was no longer an authorized distributor of its products and, therefore, had no standing to obtain relief herein. It points to the 1966 amendment to the statute and asserts that the protection of the statute is available only to "duly licensed wholesalers of alcoholic beverages who are authorized by such...distillers... to sell such nationally advertised brands in New Jersey."

The term "authorized" is an amendment to the prior act and must be read within the context of the statute in order to determine its true meaning. If we were to consider the word "authorized" in its literal sense, without reference to the statutory intent, it would mean that the protection of the statute extends only to those with whom the distiller wishes to deal. Implied in this construction is the argument that, if the distiller authorizes dealings, it may also withdraw authorization. Under this construction, a distiller or producer might withdraw authorization to a wholesaler to deal in its products and could thereafter refuse to sell to the wholesaler. Thus the wholesaler would never be entitled to a determination by the Director on the issue of discrimination because the wholesaler would, upon removal of authorization, cease to be a party entitled to the protection of the statute. It follows, therefore, that the withdrawal of such authorization must inevitably result in a dismissal of any petition since, by the time the matter is set for hearing, the petitioner has been effectively de-authorized.

In the interpretation of statutes, the legislative will is the all-important and controlling factor. Indeed, it has been frequently stated, in effect, that the intention of the Legislature constitutes the law. Accordingly, the primary rule of construction of statutes is to ascertain and declare the intention of the Legislature and carry such intention into effect to the fullest degree. A construction adopted should not be such as to nullify, destroy or defeat the intention of the Legislature. 50 Am. Jur. <u>Statutes</u>, sec. 223.

In construing the word "authorized" within the historical context of the prior act and the present applicable statute, it will be noted that in the interpretation of the prior statute there was a conflict in interpretation between the majority and minority of the Supreme Court in Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N.J. 444 (1958). In that matter Justice Francis in his concurring opinion (at p. 458) expressed a minority view "that all wholesalers duly licensed by the Director of Alcoholic Beverage Control have an equal right to purchase the products of distillers operating in New Jersey, and that if they have the financial capacity to pay therefor, they cannot be refused arbitrarily. *Prima facie* all wholesalers must be treated on a parity, and *prima facie* the distillers cannot limit the number with whom they will deal."

The majority view, however, disagreed with this construction and held that the statute did not apply to all wholesalers but only to those with whom the supplier was dealing; and that the Director has the authority to determine whether a refusal by the distiller to sell to such wholesaler was arbitrary or not.

A fair and reasonable construction of the statute would be to restrict the right of a distiller or producer to limit its applicability to those wholesalers who were authorized as of the date of the enactment of the amendment, or who are thereafter invested with such authorization. The contention by Glenmore that the word "authorized" should be construed to mean that a withdrawal of authorization could operate to deny wholesalers the protection against discrimination intended by the statute was specifically rejected by the Director as being contrary to the manifest intent of the said statute. Joeli Wine Distributors, Inc. v. Browne-Vintners Company, Bulletin 1845, Item 1; aff'd *supra*.

The court supported this interpretation in American B.D. Co. v. House of Seagrams, Inc., *supra* (107 N.J. Super. at p. 266) stating:

> "The Director held that although the original statutory prohibition against discrimination in sales of nationally advertised brands of alcoholic beverages to wholesalers, N.J.S.A. 33:1-93.1, applied to all wholesalers, the 1966 amendment to the statute restricted its applicability to wholesalers then or thereafter authorized by importers, distillers or rectifiers to handle their products. (All parties to the appeal agree that this interpretation is correct.) The Director also held that a proper application of the amendment prohibited the termination of business dealings in nationally advertised brands with any such wholesaler who had the ability to pay." (Emphasis supplied)

I find that Kasser was a duly authorized distributor of Glenmore's nationally advertised brands of alcoholic beverages within the meaning of the 1966 statute and, further, that the contract under which it originally obtained such authorization cannot be operative in or control the determination of whether or not Glenmore discriminated in its termination of Kasser as a distributor of its nationally advertised brands of alcoholic beverages.

Nevertheless, Glenmore asserts that Kasser disparaged the sale of its products in 1966 by exclusively marketing the Schenley products and neglecting the sale of Glenmore's products. In its memorandum in summation it argues:

> "We suggest that it will be found that petitioner sought to aggressively market the Schenley products and pursued the sales by drastic price cutting, a policy which it did not extend to Glenmore products. Under the circumstances, one need neither affirmative testimony, nor expert testimony, to come to the conclusion that the mere fact that Respondent has refused to continue to do business with Petitioner does not constitute discrimination."

If, in fact, this allegation were established, Glenmore would have had the right to terminate the said distributorship. However, Glenmore did not produce any witnesses or evidence, as noted hereinabove, to support or document this contention.

I am satisfied that the reasons set forth by Kasser adequately explain the decline in sales of Glenmore's products. I further find that Kasser did not disparage Glenmore's products or show any unfair preferment in sales efforts or engage in improper or proscribed trade practices. We thus reach the critical issue whether, in the absence thereof, Glenmore has discriminated against Kasser within the meaning of the statute as amended.

In considering this matter, the court stated in American B.D. Co. v. House of Seagrams, Inc., supra. (107 N.J. Super. at p. 267):

> "In Canada Dry Giner Ale, Inc. v. F. & A. Distrib. Co., 28 N.J. 444 (1958), decided under the original statute, it was held that a distiller's initial decision to reduce its number of wholesalers within the State did not of itself contravene the statute, and might not be arbitrary if the distiller showed that the selection of certain wholesalers to the exclusion of others was made on the basis of a standard reasonably related to the legitimate business goal sought to be achieved and not conducive to the evils which the act was designed to prevent. The standard, said the court, must be of such a tangible or objective nature as will enable the Director to determine from the proofs whether its application to the wholesalers in question is reasonable.
>
> "The 1966 amendment restricted the Director's scope of inquiry to a determination of whether or not the refusal to sell was 'discriminatory'. N.J.S.A. 33:1-93.7. It seems clear that the Legislature, after limiting the class of wholesalers to whom the statute was applicable, extended the prohibition of the statute so as to bar any discrimination as to wholesalers in the protected class.

> "The Director's interpretation gives a clear and workable formula for application and has the virtue of taking the Division of Alcoholic Beverage Control out of the difficult position of evaluating and determining what is or is not a legitimate business judgment based on tangible and objective standards with all of the problems that such a determination entails."

In the matter sub judice, since we find that Kasser was an authorized distributor of Glenmore's nationally advertised brands of alcoholic beverages and had the present ability to pay therefor, the question whether a business decision or judgment formed the basis for Glenmore's refusal to continue Kasser as one of its distributors becomes irrelevant.

My review of the record herein leads me to the same conclusion as the court reached in American B.D. Co. that, even if "discrimination" had a meaning other than that given to it in that matter, Glenmore has failed to demonstrate that its decision to eliminate Kasser was made on the basis of any judgment or objective standards reasonably related to legitimate business goals and not conducive to the evils which the act seeks to prevent.

Under all of the facts and circumstances herein, it is recommended that an order be entered determining that the action of Glenmore is discriminatory, and directing Glenmore to sell its nationally advertised brands of alcoholic beverages to Kasser on terms usually and normally required by Glenmore; and that in the event Glenmore refuses to comply with the terms of the said order, a further order be entered in accordance with the provisions of R.S. 33:1-93.9.

CONCLUSIONS AND ORDER

No exceptions to the Hearer's report were filed pursuant to Rule 5 of State Regulation No. 15A.

It should be noted that on June 1, 1970, the New Jersey Supreme Court affirmed the action of the Appellate Division of the Superior Court in American B.D. Co. v. House of Seagrams, Inc. and National Wine & Liquor Co. v. House of Seagrams, Inc.; Joeli Wine Distributors, Inc. v. Browne-Vintners Company; Flagstaff Liquor Co. v. Browne-Vintners Company, 56 N.J. 164 (1970). These actions involved substantially the same questions of law and fact and support the conclusion reached by the Hearer.

Having carefully considered all the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 22nd day of June, 1970,

ORDERED that respondent Glenmore Distilleries Co. sell and continue to sell to petitioner Kasser Distillers Products Corp. all its nationally advertised brands of alcoholic beverage products distributed in New Jersey on terms usually and normally required by the said respondent.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - MONTAUK BAR v. PASSAIC - ORDER.

Montauk Bar (a corporation),)
t/a Montauk Bar,)
Appellant,) On Appeal
v.)
) O R D E R
Municipal Board of Alcoholic)
Beverage Control of the City)
of Passaic,)
Respondent.

- - - - - - - - - - - - - - - - -

Hammer & Hammer, Esqs., by David H. Hammer, Esq., Attorneys for Appellant
August C. Michaelis, Esq., by William P. Schey, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent on June 23, 1969 of its application for renewal of its plenary retail consumption license for premises 248-250 Madison Street, Passaic.

At the time of hearing and before testimony was taken, the attorney for respondent moved for a reversal of its action herein. It was stipulated by both counsel for appellant and respondent that the said reversal shall be made without prejudice to any future rights of respondent in any action it may take with respect to the licensee on any matter, both before and after the date herein. Good reason appearing therefor, I shall grant the request.

Accordingly, it is, on this 23rd day of June 1970,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is hereby directed to renew appellant's plenary retail consumption license for the 1969-70 licensing period in accordance with the application filed therefor.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - PERMITTING LEWD AND IMMORAL ACTIVITY - FOUL LANGUAGE - SALE TO MINORS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against White Arrow Tavern Corp. 92 Orange Street Newark, N. J. Holder of Plenary Retail Consumption License C-650 (for the 1969-70 and 1970-71 licensing periods), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS and ORDER

Licensee, by John J. Zaccone, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on February 21 and 28, 1970, it permitted lewdness and immoral activity (indecent conduct by apparent male homosexual patrons), in violation of Rule 5 of State Regulation No. 20, (2) on February 21 and 28, 1970, it permitted foul language by a bartender and patrons, in violation of Rule 5 of State Regulation No. 20, (3) on February 28, 1970, it sold alcoholic beverages to two minors, ages 17 and 19, in violation of Rule 1 of State Regulation No. 20, and (4) on February 28, 1970 it sold a 4/5 quart bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended on the first charge for forty-five days (Re Ceil's Ltd., Bulletin 1916, Item 7), on the second charge for ten days (Re Wisniewski, Bulletin 1812, Item 8), on the third charge for twenty days (Re Kriss and Ward, Bulletin 1538, Item 3), and on the fourth charge for fifteen days (Re Glazer and King, Bulletin 1906, Item 10), or a total of ninety days, with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 30th day of June 1970,

ORDERED that Plenary Retail Consumption License C-650 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to White Arrow Tavern Corp., for premises 92 Orange Street, Newark, be and the same is hereby suspended for eighty-five (85) days, commencing at 2:00 a.m. Monday, July 6, 1970, and terminating at 2:00 a.m. Tuesday, September 29, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against Ceil's Ltd. t/a Ceil's Saratoga 203-205 South New York Avenue Atlantic City, N. J. Holder of Plenary Retail Consumption License C-102 (for the 1969-70 period) and C-129 (for the 1970-71 period), issued by the Board of Commissioners of the City of Atlantic City.	SUPPLEMENTAL ORDER

Blatt, Blatt & Consalvo, Esqs., by Martin L. Blatt, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

On May 20, 1970 an order was entered herein suspending the license for forty-five days effective June 2, 1970, for the balance of its term and continuing on any renewal license that may be granted until July 17, 1970, after finding licensee guilty of allowing, permitting and suffering immoral activity and indecent and obscene conduct by male and female customers and/or patrons in and upon its licensed premises. Re Ceil's Ltd., Bulletin 1916, Item 7.

Prior to the effectuation of the suspension, upon appeal filed the Appellate Division of the Superior Court granted a temporary stay on May 29, 1970 of the operation of the suspension. On June 16, 1970 the said court denied the motion for further stay pending the appeal. The suspension may now be reimposed.

Accordingly, it is, on this 24th day of June 1970,

ORDERED that the forty-five-day suspension be reinstated against Plenary Retail Consumption License C-129, issued by the Board of Commissioners of the City of Atlantic City to Ceil's Ltd., t/a Ceil's Saratoga, for premises 203-205 South New York Avenue, Atlantic City,*commencing at 7 a.m. Tuesday, July 7, 1970, and terminating at 7 a.m. Friday, August 21, 1970.

RICHARD C. McDONOUGH
DIRECTOR

* Note: By order dated August 6, 1970, suspension was reinstated, to commence 7 a.m. Tuesday, August 25, 1970, and terminate at 7 a.m. Friday, October 9, 1970, upon dismissal on July 30, 1970 of complaint and dissolution of stay granted by the United States District Court for the District of New Jersey.

6. DISCIPLINARY PROCEEDINGS - GAMBLING (FOOTBALL POOL) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Blue Diamond Inn, Inc. 129 Monmouth Street Red Bank, N. J. Holder of Plenary Retail Consumption License C-20, issued by the Mayor and Council of the Borough of Red Bank.	CONCLUSIONS and ORDER

Edward F. Zampella, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) and (2) it permitted gambling (conduct of a football pool) on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a prior record of suspension of license by the municipal issuing authority for ten days, effective July 7, 1969, for sale to minors.

The license will be suspended for fifteen days (Re Jule's Bar, Inc., Bulletin 1752, Item 5), to which will be added five days by reason of record of suspension of license for dissimilar violation within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 24th day of June 1970,

ORDERED that Plenary Retail Consumption License C-20, issued by the Mayor and Council of the Borough of Red Bank to Blue Diamond Inn, Inc., for premises 129 Monmouth Street, Red Bank, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2:00 a.m. Monday, June 29, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, July 14, 1970.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Carl Ferrigno t/a Blue Point Tavern 508-510 Summit Avenue Jersey City, N. J. Holder of Plenary Retail Consumption License C-399, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS and ORDER

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

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on February 11, 1970, he sold a pint bottle of Scotch whisky for off-premises consumption during prohibited hours, 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 Promell Corp., Bulletin 1902, Item 4.

Accordingly, it is, on this 24th day of June 1970,

ORDERED that Plenary Retail Consumption License C-399, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Carl Ferrigno, t/a Blue Point Tavern, for premises 508-510 Summit Ave., Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2:00 a.m. Monday, June 29, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Thursday, July 9, 1970.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - FALSE INFORMATION IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
Louis E. Mazurczyk t/a Lutz's Bar 1905 Willow Avenue Weehawken, N. J.	))	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Weehawken.	))	

Myles Daitzman, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

> "In your application filed with the Township Committee of the Township of Weehawken and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 9 which asks: 'Will the applicant or anyone else conduct any business other than the sale of alcoholic beverages on the premises sought to be licensed?'; whereas in truth and fact you were conducting and thereafter continued to conduct on the licensed premises a business other than the sale of alcoholic beverages, viz., a business of offering for sale and selling men's and women's apparel, radios, vacuum cleaners, tape decks, dishes, toys and sundry other items; such false answer, statement, evasion and suppression being in violation of R.S. 33:1-25."

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Joe D's Blue Moon, Inc., Bulletin 1234, Item 1.

Accordingly, it is, on this 24th day of June 1970,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Weehawken to Louis E. Mazurczyk, t/a Lutz's Bar, for premises 1905 Willow Avenue, Weehawken, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2:00 a.m. Monday, June 29, 1970; and it is further

ORDERED that any renewal license shall be and the same is hereby suspended until 2:00 a.m. Saturday, July 4, 1970.

Richard C. McDonough

Richard C. McDonough
Director