

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

BULLETIN 1983

July 1, 1971

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

BULLETIN 1983

July 1, 1971

1. APPELLATE DECISIONS - JAMES PATERSON v. KEARNY.

JAMES PATERSON	)	
t/a PARIS LIQUORS,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
TOWN COUNCIL OF THE TOWN	)	
OF KEARNY,	)	
	)	
Respondent.	)	

-----  
Law & Froelich, Esqs., Attorneys for Appellant; Charles H. Landesman, Esq., of Counsel  
Paul J. McCurrie, Esq., Attorney for Respondent Town Council  
Lum, Biunno & Tompkins, Esqs., by William L'E. Wertheimer, Esq., Attorneys for Objector.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Town Council of the Town of Kearny (hereinafter Council) which by resolution dated June 24, 1970 denied appellant's application for a place-to-place transfer of his plenary retail distribution license from premises 403 Kearny Avenue to premises 429 Kearny Avenue, Kearny.

In his petition of appeal appellant alleges that the action of the Council was erroneous because:

"(a) it constituted an abuse of discretion on the part of the Mayor and Council of the Town of Kearny;

(b) it found that approval of appellant's application would constitute an undue concentration of licenses and would be detrimental to the public health, safety and welfare of the community because there would be two retail consumption licenses and two retail distribution licenses within a distance of 564 feet."

The Council and an objector both filed answers in support of the said action resulting in the resolution of the Council, wherein they set forth by reference, the reasons for the Council's action as embodied in the subject resolution, which in pertinent part reads as follows:

"The argument raised by the sole objector was that the entrance of the premises to which the license was to be transferred was within 400 feet of the entrance to another Plenary Retail Distribution License in violation of the municipal ordinance. The proofs, however, showed that

the shortest distance a pedestrian would properly walk from entrance to entrance was South from 429 Kearny Avenue to the crosswalk at Grove Street, thence East across the crosswalk thence North to 426 1/2 Kearny Avenue and that this distance consisted of approximately 564 feet. However, the proofs also showed that within this distance existed two additional Plenary Retail Consumption licenses; to wit, a license owned by the Town Hall Tavern on the West side of Kearny Avenue, and a license owned by Reilly's Tavern on the East side. Approval of this license transfer, therefore, would result in two Retail Consumption licenses and two Retail Distribution licenses within the aforesaid distance of 564 feet, and the Council being of the opinion that four licenses within this limited area constitutes an undue concentration of licenses and would be detrimental to the public health, safety, and welfare of the community; and all facts being considered, the transfer should be disapproved.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Kearny in the County of Hudson that the application of James Paterson to transfer the Plenary Retail Distribution License No. D-20 from 403 Kearny Avenue to 429 Kearny Avenue be and it is hereby disapproved for the reasons above stated."

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

Appellant testified that he operates a liquor store at 403 Kearny Avenue and has conducted the same for some years; that he recently bought a small supermarket at 429 Kearny Avenue, and it was his desire to move the license from the present liquor store to the new supermarket. A survey was introduced into evidence on which is reflected the appellant's present and proposed locations and the locations of the intervening licenses. That survey indicated that the appellant planned to move his license northwardly along Kearny Avenue on the same side, a distance of three hundred seventy-one feet. Kearny Avenue is forty-eight feet wide. The proposed location is diagonally opposite two liquor licenses which exist side by side.

Miss Loretta Conlon, a representative of the office of the Town Clerk, testified as to the number of licensed premises in the municipality and particularly on Kearny Avenue. From her testimony, it was obvious that there is an undue concentration of licenses on Kearny Avenue. There are twenty-four liquor licenses located thereon, of which thirteen are plenary retail distribution licenses. Kearny Avenue is three miles long.

An objector, Francis P. McMenemie, testified that he obtained a petition of signatories against the transfer. The petition was accepted into evidence.

The burden of establishing that the action of the Council in rejecting the application to transfer was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right

to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance within the sound discretion of the issuing authority. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App.Div. 1954). A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject of course, to review by this Division in the event of abuse thereof. Passarella v. Atlantic City, et als., 1 N.J. Super. 313 (App.Div. 1949); Blanck v. Magnolia, 38 N.J. 484 (1962). The action of the municipal issuing authority may not be reversed by the Director unless he finds the act to have been clearly against the logic and effect of presented facts. Hudson-Bergen County Retail Liquor Stores Association et al. v. Hoboken, et al., 135 N.J.L. 502 (1949).

The resolution which set forth the conclusions of the Council indicates that the Council made a careful analysis of the area, the number of licenses present, the effect on the public such transfer would have and ultimately determined that such transfer would work to the detriment of the community. Certainly such conclusion would not be an abuse of discretion particularly with conclusions resulting from a full and complete hearing, and fair consideration of the facts.

In evaluating the action of the Council, the view of the Supreme Court as expressed in Ward v. Scott, 16 N.J. 16 (1954) is particularly applicable:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people are undoubtedly best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for, as Justice Holmes has properly admonished 'Universal distrust creates universal incompetence'. Graham v. United States, 231 U.S. 474, 480 (1913)."

The Director is governed by the principle that the action of a local issuing authority will not be disturbed if properly based. In Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970) the court stated:

"Once a municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

The Council has, in my opinion, understood its full responsibility, has acted circumspectly and in the reasonable exercise of its discretion in rejecting the application for transfer.

Appellant asserts that the Council found, in its resolution, the proposed location and that of an existing plenary retail distribution license were five hundred and sixty-four feet apart, despite being diagonally across the street from one another. Section 2 (b) of the local ordinance provides:

"No plenary retail distribution license shall be transferred to another premises or granted to a premises within a distance of four hundred feet from an existing licensed premises covered by a plenary retail distribution license."

The ordinance lends no key to the method of measurement anticipated by its framers. R.S. 33:1-76 which also carries a distance limitation to church or school has within it no guide to method of measurement. Hence the courts have supplied one. That guide is the shortest distance measured in the normal way that pedestrians would properly walk from the nearest entrance of the licensed premises to nearest entrance of the proposed licensed premises. Cf. Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control et als. 53 N.J. Super. 271 (App.Div. 1958). The problem of measurement has been a vexing one over the years. The word "properly" in both statute and ordinance is a clue toward measurement. In providing that the measurement be made in the normal way that a pedestrian would properly walk, the statute contemplates a reasonable, sensible method. A pedestrian walking properly would not go across lots or through backyards, or trespass on private property. Nor would he be a jaywalker and cross streets on the diagonal. His walking would be confined to the public thoroughfare, and he would cross streets at the crosswalks. Aldarelli v. Asbury Park, Bulletin 186, Item 12.

Appellant has failed to sustain the burden of establishing that the action of the Council was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

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

#### Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant, and answers to the said exceptions, with supportive argument, were jointly filed by the attorneys for the Council and the objector.

I have fully analyzed and considered the exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report, the written exceptions filed thereto and the answers to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the action of respondent Town Council of the Town of Kearny be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH  
DIRECTOR

2. APPELLATE DECISIONS - MARTER v. BURLINGTON.

Oliver Marter, )  
 Appellant, )  
 v. )  
 Common Council of the City )  
 of Burlington, )  
 Respondent. )

On Appeal

CONCLUSIONS  
and  
ORDER

- - - - - )  
 Hartman, Schlesinger, Manuel & Schlosser, Esqs., by Francis J. Hartman,  
 Esq., Attorneys for Appellant  
 Alexander Denbo, Esq., by Maurice Denbo, Esq., Attorneys 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 Common Council of the City of Burlington (hereinafter Council) whereby it denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail distribution license from Ignatius V. Camarda to appellant and from premises 243 High Street, Burlington to 707 High Street, Burlington.

Appellant alleges, in his petition of appeal, that the action of the Council was erroneous in that the reasons stated by the Council for denial of the application for transfer had no bearing on the welfare of the citizens of the community or the welfare of the students of Burlington City High School.

More specifically, he alleges that parking would not be adversely affected by the proposed transfer since any retail business located in the site would create similar parking hazards to those involved in a retail liquor distribution licensed facility. Further, student welfare would not be adversely affected since there are already retail liquor outlets in the vicinity of the High School.

Thus, the act of the Council was "arbitrary, capricious, unreasonable and not supported by the facts."

The Council in its answer, denied that its act was erroneous, and states that its action was taken after fair consideration of all the facts before it.

At the conclusion of the hearing held before the Council on October 6, 1970, it adopted, by a vote of eight to two, with two absentees, a resolution, the pertinent part of which reads:

"(1) Common Council is concerned with the welfare of the citizens and especially the students of Burlington City High School, where the proposed transfer would take place. The proposed store is in the close proximity to the Burlington City High School, and the school is used in the evenings and weekends for basketball, wrestling and other sporting events and affairs.

(2) Parking on High Street in that area is very hazardous and a liquor store at this location would add to the traffic control problem.

(3) There is also located in the same general area Kowal's Liquor Store which serves the residents of the City and immediate area."

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

The testimony and exhibits established that the proposed site is located thirty-seven feet from the intersection of High Street and 2nd Street, Burlington, with provision for eighteen off-street parking spaces, and with egress and ingress to both streets. It was further established that the distance from the proposed main entrance to the nearest entrance to the Burlington High School or any church was considerably in excess of two-hundred feet. See R.S. 33:1-76.

High Street is a busy commercial main thoroughfare, and its intersecting street 2nd Street is a busy street, congested by traffic going to and from the Burlington High School between 7:45 a.m. and 8:30 a.m., and 3:10 p.m. and 3:40 p.m., and on evenings when certain functions take place at the High School.

It was further established that there presently exist at least four liquor licensed premises in the vicinity of the High School. The proposed site, evidenced by a site location plan, is an attractive building which would enhance the area not only aesthetically but also as a tax ratable, and that the applicant personally is highly regarded in the community.

Richard Gober testified on behalf of the appellant that he is twenty-four years of age, has lived in Burlington for seventeen years, has been in the real estate business for twenty months and is presently sales manager of James Realty Company, Burlington. He stated that the intersection of High and 2nd Streets, is quite congested and that High Street is a main connecting road between Mount Holly, County seat of Burlington County, and Burlington. High Street is also the major connection with New Jersey Highway 130, some eight hundred feet north of the proposed site. The property on which the proposed site will be located is presently owned by a local real estate firm, and James Realty is participating in the proposed sale of the property.

In his opinion, from personal observation, the proposed transfer would cause no parking or traffic problem.

On cross examination he indicated that the intersection of Morris Avenue and High Street, immediately north of the proposed site is a congested intersection. The access road carrying traffic from 2nd Street to the High School grounds is a dead-end street.

James Isaia testified on behalf of the appellant that he is the broker-owner of James Realty Company, and has operated that business for eleven years. In addition to corroborating the testimony of the prior witness, he further testified that parking is permitted on one side of High Street only in the area in question; at least one of the presently existing liquor establishments is closer to the High School than the proposed site; traffic in the area is generally congested during every basketball activity at the High School; and there is no direct access to the rear door of the proposed site from the High School.

Oliver Marter, appellant testified that he will live in an apartment on the second floor of the proposed site.

Robert Dotti testified on behalf of the Council that he has been superintendent of schools of Burlington City for four years and has been associated with this system continuously since 1944. The access street off 2nd Street is the only entrance to school property with the exception of a parking area also abutting 2nd Street. This parking area is used in the daytime by students, faculty and school buses and is also available evenings for athletic events, adult school and other activities.

He maintained that traffic congestion and parking area problems arise because the parking facilities off-street are limited, making it necessary for students to use on-street parking. The school buses which enter to discharge and pick up students also add to the parking problem. There is a considerable increase in the intensity of traffic from 7:45 a.m. until 8:30 a.m., at lunch time, and at 3:10 p.m. There have been several near-accidents at the intersection of the access road and 2nd Street.

With respect to the school's concern regarding the availability of intoxicating beverages in this area, he testified that during his tenure as principal of the High School for twelve years he had personal knowledge of several instances in which intoxicated persons have caused disturbances at athletic events; and students have admitted on several occasions leaving affairs or activities at the High School, acquiring and consuming alcoholic beverages and returning to school to cause disruptions. "... when these things were brought to our attention the students would be ... brought into my office and questioned and they would admit where they got the liquor from...."

On cross examination he noted that there were four instances during the 1969-70 basketball season involving incidents of alcoholic beverages, resulting in disciplinary action against the students.

Finally he asserted that "...the big objection is the accessibility of the liquor store to our activities where people at half-times or between J.V. or varsity games can go down there ... get something and come back;" and that there already exist a number of outlets for this purpose in close proximity to the school.

Reverend Richard W. Jones testified that he represents the Tabernacle Baptist Church which has a membership of approximately three hundred, located on 2nd Street, south of the High School property. His congregation meets frequently during evening hours and when meeting dates coincide with athletic activities at the High School, they encounter considerable parking and traffic problems. He further testified that beer cans and debris are often found on their lawns and abutting streets after athletic activities at the High School. He concluded that he does not personally oppose the transfer but is authorized to object on behalf of the Board of Deacons of the church.

The burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, et als, Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director who may reverse its action in the

event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. 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."

And further in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the applicable principle (at p.23):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

I have carefully considered the points raised on appeal. I am satisfied that the Council considered carefully the objections of the Board of Education. It appears that the Council, in arriving at its decision, considered the concern of the Board of Education the additional liquor outlet in this locality. The number of licensed premises to be permitted in any particular area has been held to be a matter entrusted to the sound discretion of the local issuing authority. Hollywood Liquors & Groceries, Inc. v. Matawan, Bulletin 1599, Item 2.

Appellant's contention that no additional traffic hazard will arise from the granting of this transfer appears to have been fully considered by the Council and at this de novo hearing. I am satisfied that the Council arrived at a reasonable conclusion after considering all the circumstances.

The Director's function on an appeal of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion, and if so, to affirm irrespective of his personal view. Joa v. Pine Beach, Bulletin 1592, Item 3.

In conclusion, it may be stated that in matters involving transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest". Lublinter v. Paterson, 33 N.J. 428, p.446 (1960). As indicated hereinabove, the Director is governed by the principle that, where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be

sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, Super. 306 (App. Div. 1960). In the recent case of Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

The Council has in my opinion understood its full responsibility, and has acted circumspectly and in the reasonable exercise of its discretion in denying the transfer. I do not find the objections of sufficient merit and thus conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous or in abuse of its discretion. Rule 6 of State Regulation No. 15.

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

#### 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 recommendation of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of April 1971,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough  
Director

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE IN VIOLATION OF LOCAL ORDINANCE DISMISSED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

Bessie Leshner  
t/a Hi Step  
2366 Broadway  
Camden, N.J.

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

No appearance for Licensee Francis P. Meehan, Jr., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Charges were preferred against the licensee, as follows:

- "1. On Sunday, August 16, 1970, at about 11:40 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., twenty-four twelve ounce cans of Schmidts beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- "2. On Sunday, August 16, 1970, at about 11:40 A.M., you directly or indirectly, sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises; in violation of Section 5A of an Ordinance adopted by the City Council of the City of Camden on December 27, 1934, as amended and supplemented January 25, 1968."

It appears that after several adjournments were granted, each at the request of the licensee, this matter was set down for hearing on December 10, 1970, peremptorily. The licensee having failed to appear on the date set, the hearing was held and proof was presented ex parte.

At the request of the attorney for the Division, Charge 2 was withdrawn and the hearing proceeded on Charge 1.

Agent G testified that, pursuant to specific assignment, accompanied by agent P, he arrived at the immediate vicinity of the

licensed premises on Sunday, August 16, 1970, at approximately 11:20 a.m. At approximately 11:40 a.m. he observed a car containing three males park in front of the tavern. One of the males (identified as Glen Hoover) left the car and proceeded to an alleyway and to the side entrance of the tavern, knocked on the door and was admitted therein. Upon leaving the car he was not carrying any packages. The agent then observed Hoover exit from the alleyway carrying a bag. Upon confronting Hoover he ascertained that the bag contained four six-packs of cold beer. Returning to the side door of the tavern, the agents and Hoover were admitted in the tavern by a Philip Dalton who was employed by the licensee as a part-time bartender.

Agent P's testimony was corroborative of the testimony elicited from agent G.

I conclude that the Division has established the truth of Charge 1 by a fair preponderance of the evidence and recommend that the licensee be found guilty of said charge. I further recommend that Charge 2 be dismissed.

The licensee has no prior record of suspension of license. It is, accordingly, recommended that the license be suspended for fifteen days, Re De Stefano Liquors, Inc., Bulletin 1950, Item 12.

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

Accordingly, it is, on this 29th day of April 1971,

ORDERED that Plenary Retail Consumption License C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Bessie Leshner, t/a Hi Step, for premises 2366 Broadway, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, May 17, 1971, and terminating at 2:00 a.m. Tuesday, June 1, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWD AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

Ted Mil, Inc.  
t/a Ted DuBois Gaslight  
411 White Horse Pike  
Lindenwold, N. J.,

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*[Handwritten signatures and initials]*  
2049/1

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Lindenwold.

Tencza, Feinstein & Manfre, Esqs., by Miles Feinstein, Esq.,  
Francis P. Meehan, Jr., Esq., Appearing for Licensee  
Attorneys for Licensee

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday night, July 25 into Sunday morning, July 26 and on Saturday night August 22 into Sunday morning, August 23, 1970, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered a male person to perform for the entertainment of your customers and patrons on your licensed premises in a lewd, indecent and immoral manner, use and engage in foul, filthy and obscene language and conduct, and sing songs, recite stories and utter words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

The factual complex was established through the testimony of three ABC agents who were specifically assigned to investigate an allegation of a lewd show on the licensed premises.

The licensed premises were characterized as having the appearance of a night club, it containing two bars, a service area containing tables and chairs, a dance floor and a bandstand.

One of the agents entered the licensed premises alone on Saturday, July 25, 1970 at 11:10 p.m. He observed a male, identified as Lenny Ross, perform his act on the dance floor. The other two agents entered the licensed premises on Saturday, August 22 at approximately 11:35 p.m. and observed Ross also perform his act on the dance floor from approximately 1:30 a.m. on Sunday, August 23 and for its entire duration until approximately 2:50 a.m.

The agents described Lenny Ross as a comedian whose act

consisted mainly of one line gags, sometimes accompanied with motions, interspersed with songs and imitations of well known singers.

I find that the gags, in which profuse use of gutter language was employed and in which reference to sex acts and behavior (normal and perverted) often accompanied by indecent actions and gesturings were violative of the rule cited in the charge. No useful purpose would be served by repeating in this report the language and actions specifically delineated by the agents in their testimony.

It is noteworthy that Ross, upon being confronted by one of the agents said "Sure the show is dirty. What do you want me to do, clean it up? That's what the patrons want."

Additionally, Ted DuBois, who manages the licensed premises, upon being confronted by the agents during their last visit, admitted that the performance was "dirty".

The licensee offered no evidence in defense of the charge.

My consideration of the totality of the evidence, buttressed by the legal precedents pertaining thereto (Re Jeanne's Enterprises, Inc., Bulletin 1621, Item 1, wherein the Division was affirmed, Jeanne's Enterprises, Inc. v. State of New Jersey, Department of Law and Public Safety, 93 N.J. Super. 230 (App.Div. 1966), affirmed 48 N.J. 359 (1966)) leads to the conclusion that the charge has been established by a fair preponderance of the credible evidence, indeed, uncontradicted evidence.

Accordingly, I recommend that the licensee be found guilty of said charge.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for sixty days. Re Jeanne's Enterprises, Inc., Bulletin 1422, Item 2; Re 500 Cafe, Inc., Bulletin 1584, Item 2.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the exceptions filed thereto which I find lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 29th day of April 1971,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Lindenwold to Ted-Mil, Inc., t/a Ted DuBois Gaslight, for premises 411 White Horse Pike, Lindenwold, be and the same is hereby suspended for the balance of its term, commencing at 3:00 a.m. Monday, May 17, 1971; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Friday, July 16, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

B. P. T. Amble Inn (Corp.) )  
 721 Avenue A )  
 Bayonne, N.J. )

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption License C-126, issued by the Municipal Council of the City of Bayonne. )

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Licensee, by Robert Warnock, President, Pro se.  
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, February 20, 1971 it sold six twelve-ounce cans of Schaefer beer 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 for the plea entered leaving a net suspension of ten days. Re Burke, Bulletin 1950, Item 13.

Licensee has made application for the imposition of a fine in lieu of suspension in accordance with provisions of Chapter 9 of the Laws of 1971. However, the licensee has produced inadequate records for favorable consideration of the said application. Therefore, the said application is hereby denied.

Accordingly, it is on this 29th day of April, 1971,

ORDERED that Plenary Retail Consumption License C-126 issued by the Municipal Council of the City of Bayonne to B.P.T. Amble Inn (Corp.) for premises 721 Avenue A, Bayonne be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, May 17, 1971, and terminating at 2:00 a.m. Thursday, May 27, 1971.

RICHARD C. McDONOUGH  
 DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary Proceedings against )

CONVERST CUTTINO )  
t/a Springwood Bar & Grill )  
26 Valley Street )  
Union Township (Union County) )  
PO Vaux Hall, N. J. )

ORDER

Holder of Plenary Retail Consumption License C-43, issued by the Township Committee of the Township of Union. )

-----)  
Kein, Pollatschek & Iacopino, Esqs., by Julius R. Pollatschek, Esq., Attorneys for Licensee.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On April 7, 1971 Conclusions and Order were entered herein suspending the subject license for forty-five days effective April 21, 1971, upon licensee's plea of non vult to charges alleging that (1) he possessed an alcoholic beverage in a bottle which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20, and (2) in application for current license he failed to disclose a prior suspension, in violation of R.S. 33:1-25. Re Cuttino, Bulletin 1974, Item 7.

Prior to the effectuation of said suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971 licensee has made application for the imposition of a fine in lieu of said suspension. Good cause appearing,

It is, on this 12th day of May 1971,

ORDERED that the suspension heretofore imposed upon Plenary Retail Consumption License C-43, issued by the Township Committee of the Township of Union to Converst Cuttino, t/a Springwood Bar & Grill, for premises 26 Valley Street, Union Township, for forty-five days effective April 21, 1971, be and the same is hereby stayed until entry of a further order herein.

RICHARD C. McDONOUGH  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE IN VIOLATION OF RULE 1 OF REGULATION NO. 38 - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against )

Carlos Matos and Miquel Colon )  
t/a Mike & Carlo's Tavern )  
324 Grove Street )  
Jersey City, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-207, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )  
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Licensee, Pro se  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on Friday, November 13, 1970 they sold (1) mixed drinks of alcoholic beverages to a minor, age 18, in violation of Rule 1 of State Regulation No. 20, and (2) twelve cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license would normally be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Zoltanski and Zoltanski, Bulletin 1819, Item 9.

However, the licensees have 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 licensees to pay a fine of \$1,000 in lieu of the suspension.

Accordingly, it is, on this 17th day of May 1971,

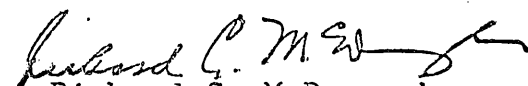
ORDERED that the payment of \$1,000 fine by the licensees is hereby accepted in lieu of a suspension of license for twenty-five days.

RICHARD C. McDONOUGH  
DIRECTOR

8. STATE LICENSES - NEW APPLICATIONS FILED.

Royal Liquor Distributors, Inc., 2900 East State St. Extension, Hamilton Township, N. J.  
Application filed July 1, 1971 for place-to-place transfer of Plenary Wholesale License W-62 from 300 Cedar Lane, Hamilton Township, N. J.

Hutchinson Imports, 2900 East State Street Extension, Hamilton Twp., N.J.  
Application filed July 1, 1971 for place-to-place transfer of Plenary Wholesale License W-75 from 300 Cedar Lane, Hamilton Township, N. J.

  
Richard C. McDonough  
Director