

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

BULLETIN 2275

January 3, 1978

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STATE OF NEW JERSEY
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BULLETIN 2275

January 3, 1978

1. COURT DECISIONS - SILVERTON BAR & LIQUORS, INC. v. DOVER TOWNSHIP, ET AL.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3278-75

SILVERTON BAR & LIQUORS, INC.,
t/a Silverton Hub,

Appellant,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF DOVER AND SILVERTON INVESTORS, INC.

Respondents.

Submitted March 22, 1977 - Decided April 5, 1977

Before Judges Lynch, Milmed and Antell

On appeal from order of State of New Jersey, Department of
Law and Public Safety, Division of Alcoholic Beverage
Control

Messrs. Paschon & Feurey, attorneys for appellant
(Mr. Abraham M. Bielory, on the brief)

Messrs. Campbell and Sachs, attorneys for respondents
(Mr. Gary S. Beninson, on the brief)

Mr. William F. Hyland, Attorney General of New Jersey,
attorney for Division of Alcoholic Beverage Control,
filed a statement in lieu of brief

Mr. Raymond A. Hayser, Director of Law, Dover Township
Law Department, attorney for respondent Township Committee,
filed a statement in lieu of brief

PER CURIAM

(Appeal from the Director's decision in Re Silverton Bar &
Liquors, Inc. v. Dover Township, et al., Bulletin 2233, Item
4. Director affirmed. Opinion not approved for publication
by the Court Committee on Opinions).

2. APPELLATE DECISIONS - S. LUIGI'S RESTAURANT OF WILDWOOD, A NEW JERSEY CORPORATION V. WILDWOOD ET AL.

S. Luigi's Restaurant of Wildwood, A New Jersey Corporation,	:	ON APPEAL
	:	
Appellant,	:	CONCLUSIONS
	:	AND
v.	:	ORDER
	:	
Board of Commissioners of the City of Wildwood and the First United Methodist Church,	:	
	:	
Respondents.	:	
.....	:	
Kay, Corino & Dwyer, Esqs., by Louis C. Dwyer, Jr. Esq., Attorneys for Appellant.		
George M. James, Esq., by Bruce M. Gorman, Esq., Attorneys for Respondent Board.		
Way, Way & Goodkin, Esqs., by Richard T. Doodkin, Esq., Attorney for Objector Church.		

BY THE DIRECTOR:

The Hearer has filed the following report herein:
HEARER'S REPORT

This is an appeal from the action of the Board of Commissioners of the City of Wildwood (hereinafter Board) which, on April 21, 1977 denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-51, from Maria Scarlata to appellant, and from premises 528 West Montgomery Avenue to 4119 Pacific Avenue, Wildwood.

The aforesaid resolution of the Board referred solely to the aspects of the place-to-place transfer in setting forth its reason for denial. As set forth therein, the Board, determined that the appellant transfer would contravene the 200 foot minimum distance requirement set forth in N.J.S.A. 33:1-76. The respondent Church, as an objector, would not provide any waiver under the statute and opposes the transfer.

In its petition of appeal, appellant contends that the Board is in error for the reason that, the distance between the front entrance of the church and the proposed entrance of the new location is in excess of two hundred feet, not less than that number as the Board found. The Board had denied the application for the place-to-place transfer on the finding that the distance statute (N.J.S.A. 33:1-76) would prohibit approval of such transfer.

A de novo appeal was heard in this Division with full opportunity afforded all of the parties to introduce evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

Appellant introduced the testimony of a surveyor, George A. Hamburg, Jr. and the objector Church introduced the testimony of surveyor Melvin C. Herman. Their testimony was not in conflict to any substantial degree. Both surveyors show the distance from the existing doorway sidewalk line

of the proposed premises on Pacific Street, to a point in the sidewalk line at the nearby church entrance of the First United Methodist Church of Wildwood on the opposite side of Pacific Street, to be no more than 138 feet.

Luigi Scarlata, the principal owner of the corporate stock of appellant corporation, testified that he had opened a restaurant at the proposed location in 1973.

Shortly after the opening, he had contemplated altering the premises so that the principal doorway would be at the rear of the building adjacent to the parking lot. At one point he made a request of the Church to waive the statutory distance limitation, but received no affirmative response.

The one single difference in the distance projections as expressed by the two surveyors is the measurement of distance at a sidewalk point beginning opposite the doorway of the Church to a similar point on the sidewalk opposite the proposed doorway of appellant's premises. Appellant's surveyor measured that distance to be 201.04 feet, and the survey of the respondent calculated the same distance to be 201.76 feet.

Had there not been the existing front doorway to the proposed premises, the new proposed doorway adjacent to the parking lot, would have been some twenty inches beyond the prohibited minimum. However, a photograph offered into evidence clearly reveals the existing principal entrance to the restaurant at the corner of the building facing Pacific and Roberts Streets. That doorway, obviously a principal one, is but a mere 138.4 feet from the Church. Its closure is a blatant attempt to extend the entrance to avoid the distance limitation.

At the time that an application for transfer was filed, the principal entrance was located at the front of the building at the intersection of Pacific and Roberts Streets, upon which it fronts. Following such application, Scarlata altered a rear entrance off Pacific Street, which is in proximity to the parking area, and designated such entrance as the principal one. By altering such doorway, the total distance between points on the sidewalk adjacent to such proposed rear entrance and the front doorway of the Church is 201.74 feet.

Reverend Robert Hughes and President Linwood Filer, Jr., both of the nearby Church, testified in support of the objections of the church membership to the approval of the license transfer. Both admitted their objections, as well as that of the membership at large, were based upon moral tenets.

The issue herein is narrowed to the simple question: May the distance between the Church entrance and the proposed site be measured past an existing doorway intended to be closed for ingress and used for emergency purposes only?

The mode of measurement has been long since resolved by the court in Presbyterian Church, etc. v. Div. of Alcoholic Beverage Control, 53 N.J. Super 271 (App. Div. 1958). The court established that the proper measure between subject premises is along the sidewalk as a person would normally walk. A diagram of the respective locations of the nearby Church and Temple to the proposed location reveals that no distances into the premises were calculated in the measure of distance.

Most nearly analagous and dispositive of to the instant situation is Karam, et al. v. Alcoholic Beverage Control, et al, 102 N.J. Super 291, 298: (App. Div. 1968) wherein the court stated:

"In our view, it is an impermissible evasion of the ordinance to build a physical obstruction on licensed premises for no other purpose than to make it impossible for a pedestrian-patron to effect normal entrance to the building via the nearest sidewalk--and this solely in order to inflate the walking distance to the nearest licensed premises above the ordinance minimum." (Emphasis included).

It is apparent and obvious that the blatant attempt by the appellant to alter the distance minimums, by the intent to characterize the front door as an emergency door and debar entrance to the establishment from the street, would be just as impermissible herein, as in the Karam, case, supra. See also. Colalillo and Malloy v. Bound Brook, Bulletin Item _____.

Appellant's contention that the entrance modification is justified, and thus, not controlled by the Karam case, supra holding, is without merit. I find the longstanding use of the existing entrance, the lack of any reasonable justification to debar patron entrance from this desirable corner entrance, and the previous unsuccessful attempts to obtain Church waiver, all support the conclusion that the proposed changes are not for a functionally legitimate purpose; but rather, solely to evade the provisions of N.J.S.A. 33:1-76.

Whenever an issuing authority has exercised its discretion, the Director accepts such determination unless unreasonable or illegally grounded. Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970); Fanwood v. Rocco, 33 N.J. 404 (1960). Even where there is an honest difference of opinion in the exercise of discretion for or against the transfer, the action in approving or denying the transfer should not be disturbed. Paul v. Brass Rail Liquor, 31 N.J. Super. 211 (App. Div. 1954).

It is therefore concluded that, the appellant has failed to sustain its burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Board be affirmed, and the appeal herein be dismissed.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the appellant and the objector, First United Methodist Church, pursuant to Rule 14 of State Regulation No. 15.

The appellant argues that a legitimate functional purpose prevails to warrant closure of the existing main corner entrance.

This argument had been previously advanced in the written memorandums submitted in summation by the appellant, and is identical to the issue considered in the Hearer's Report. I find this Exception has been correctly resolved in the Hearer's Report, and is lacking in merit.

The Exception proffered by the First United Methodist Church, advances a measurement interpretation difference. This issue is moot because I have determined that the proper computation of distance measurements must be from the existing entrance of the premises, which distance is clearly within 200 feet of the Church. I, therefore, reject the Exception submitted by the said objector.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summations of the parties, the Hearer's Report and the written Exceptions filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of September, 1977,

ORDERED that the action of the respondent Board of Commissioners of the City of Wildwood be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR SIMILAR VIOLATION -
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary
Proceedings against

Cramp's Liquor Store, Inc.
t/a Cramp's Liquor Store
2422 U.S. Route 130
Edgewater Park
P.O. Beverly, N.J.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Distribution :
License D-1, issued by the Township :
Committee of Edgewater Park. :
..... :
John S. Conroy, III, Esq., Attorney for Licensee :
Mart Vaarsi, Esq., Appearing for Division :

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads not guilty to the following charge:

On February 4, 1977, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a person under the age of eighteen (18) years, viz., Michael M---, age 14; in violation of Rule 1 of State Regulation No. 20.

After establishing the age of the minor Michael M---, age 14, by direct testimony, ABC Agent K testified that, on February 4, 1977, at approximately 8:35 p.m. he commenced an investigation at the licensee's premises, accompanied by ABC Agent C. He observed four youthful-looking males crossing the parking lot, from the vantage point of their vehicle which was parked in a location to afford a clear, unobstructed view of the store's public entrance.

Observing two of the boys enter the licensed premises, K exited the car and followed them. Pretending to be perusing the stock in order to make a purchase, he overheard them discuss which items to purchase, the cost, etc. After being in the store a few minutes, one of the youths, later identified as Andrew B---, also a minor, departed. K followed the remaining youth, Michael M---, for a few minutes more, then, not wishing to arouse suspicion, he too departed. He remained immediately outside the entrance door where he observed the interior through the plate glass windows.

Agent C then entered the premises for a minute or two to view the youth closely, exited, and returned to his point of observation in their automobile.

Agent K observed Michael M--- purchase a quantity of alcoholic beverages without being asked to provide identification, depart and rejoin his three companions in the parking lot. Agent K followed them

and was joined by Agent C. The two agents stopped the boys for questioning and upon determining that they were below minimum age, detained them.

The agents took the four boys into the premises where Agent K, accompanied by Michael M---, confronted the sales clerk, Stubbs, and apprised him of the violation just committed.

Agent C corroborated K's testimony. Although he did not see the sale from his vantage point, he stated that he saw Michael M--- and Andrew B--- enter empty-handed and Michael M--- depart a short time later carrying two paper bags. These bags were found to contain the alcoholic beverages which form the basis of this charge against licensee.

The corporate licensee produced its stockholders, John and Hilda Cramp; William Stubbs, the sales clerk who is alleged to have sold the alcoholic beverages to the juvenile; Herbert Lokan, a delivery driver on duty that evening; and Ernest Traenkner, a Detective Sergeant with the local police department, to testify in its defense of the charge.

Its defense is predicated upon the following points: (a) equitable estoppel against the Division's charges because the local Magistrate found Stubbs not guilty of the charge of a sale to a minor; (b) adverse weather conditions, causing condensation to form on the windows, which reduced vision; (c) two sun shades left in a down position which reduced interior vision at the point Agent K testified he was standing; (d) empty boxes piled shoulder-high in an "L" around the cashier's area obstructing vision; and lastly, (e) an outright denial of the sale.

I find no merit in appellants allegation that a finding of not guilty in the municipal court precludes further action before this Division upon the same factual matrix.

The municipal court proceeding, being criminal in nature, requires establishing guilt "beyond a reasonable doubt". An administrative proceeding in this division which is civil in nature merely requires a finding based upon "a fair preponderance of the credible evidence" only. The party charged with the offense at the municipal court hearing was the sales clerk, Stubbs; here the charge is directed against the license. The doctrine of collateral estoppel is not, therefore, applicable.

It is important to state the basic principle that no testimony need be believed in these cases but, rather, the Hearer must credit as much or as little as he finds reliable. 7 Wigmore Evidence, Sec. 2100 (1940); Greenleaf Evidence, Sec. 201 (16th Ed. 1899).

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, 554-55 (1954); Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508, 511 (Sup. Ct. 1943).

Using the above principles as a guide, I am persuaded that the testimony of the licensee's witnesses was not credible. They differed on the placement and location of the sun shades and would proffer that, during the deepest part of winter in the night, said shades were kept in

a drawn (down) position. Furthermore, only one person was "skilled" to operate their retraction mechanism, which, it is claimed, was quite difficult.

On the other hand, I am more impressed with, and find credible, the testimony of the ABC Agents. They established to my satisfaction (a) that a sale to a minor was made; (b) it was witnessed by an ABC Agent through the plate glass window; and (c) his vision was not impaired by condensation, sun shades, packing boxes or snacks and tobacco displays, as licensee's witnesses testified would have to be the case.

I have carefully evaluated the testimony presented before me at the hearing, as well as the documents in support thereof entered into evidence, and find that the charge has been established by a fair preponderance of the credible evidence.

I recommend that the license be suspended for fifty (50) days for the sale of alcoholic beverages to a fourteen year old, and an additional ten (10) days for a prior similar violation occurring within the past five years, making a total suspension of license of sixty days.

Conclusions and Order

Written Exceptions to the Hearer's Report with supportive argument were filed by the licensee, and written Answers thereto were filed on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

In its Exceptions, the licensee argues that the proofs adduced were incorrectly evaluated by the Hearer and, in toto, fail to establish proof of the charge by a preponderance of the evidence. It also asserts that the Division is precluded from finding a sale to a minor, sub judice, by virtue of a finding of not guilty in Municipal Court proceedings against the licensee's employee.

I find that ample proof exists to support the recommended finding by the Hearer of guilt of the charge alleged.

There has been direct testimony that four persons, subsequently identified as juveniles, approached the subject premises and that two of them entered the store without packages. These juveniles were overheard discussing an alcoholic beverage purchase within the licensed premises. One juvenile was ultimately observed standing at the checkout counter with a large quantity of beer and wine, produce currency and depart the premises with two brown paper bags. This juvenile joined the other three at the left side of the licensed premises. All were detained by Division agents who found alcoholic beverages in the brown bags.

I further find that the testimony establishes that the nearest liquor store is approximately three miles from the licensee's premises. The proffers of testimony by the licensee concerning physical locations and visibility impediments seek to rebut direct testimony

and overt facts with subjective hypotheticals. The direct and circumstantial evidence clearly preponderates in support of the charge that a sale of alcoholic beverages to a minor took place in the said licensed premises. No alleged statements at police headquarters diminish such finding. Thus, I find this Exception to be lacking in merit.

As to the other Exception advanced, a finding of not guilty in a municipal court proceeding pursuant to N.J.S.A. 33:1-77, does not constitute a mandatory determination of the factual issue of a sale to minor in a disciplinary proceeding instituted in this Division.

Division disciplinary proceedings are civil in nature, and violations charged therein need only be proven by a preponderance of the credible evidence. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). A higher quantum of proof is required in a criminal proceeding in the municipal court wherein guilt must be established beyond a reasonable doubt. Thus, it is well settled that an acquittal in criminal proceedings does not foreclose a finding of guilt in an administrative disciplinary proceeding. In re Pennica, 36 N.J. 401 (1962); In re Darcy, 114 N.J. Super. 454 (App. Div. 1971).

Having carefully considered the transcripts of the testimony, the exhibits, the Hearer's Report, the written Exceptions to said Report and the written Answers to the said Exceptions filed thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of September, 1977,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of Edgewater Park to Cramp's Liquor Store, Inc., t/a Cramp's Liquor Store for premises 2422 U.S. Route 130, Edgewater Park, P.O. Beverly, New Jersey, be and the same is hereby suspended for sixty (60) days, commencing 10:00 p.m. Thursday, September 29, 1977 and terminating 10:00 p.m. Monday, November 28, 1977.

Joseph H. Lerner
Director

4. OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTION LICENSE - TRANSFER APPLICATION DENIED.

In the Matter of Objections to the Transfer of State Beverage Distribution License SBD-47 from

Lincolt Distributors, Inc. Brookdale Shopping Center Newman Springs Road Lincroft, New Jersey

to

D and D Beverages, Inc. 145 Stelton Road Piscataway, New Jersey

CONCLUSIONS AND ORDER

Chester A. Just, Esq., Attorney for Applicant Clinton R. Chalkley, Objector, Pro se

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On May 2, 1977, D and D Beverages, Inc. filed an application for a person-to-person and place-to-place transfer of State Beverage Distribution License No. 47 from Lincolt Distributors, Inc. to D and D Beverages, Inc., and from premises at Brookdale Shopping Center, Newman Springs Road, Lincroft to 145 Stelton Road, Piscataway, New Jersey.

Written objections to the granting of the application for the said transfers were filed and a hearing duly held thereon. These objections may be summarized as follows:

- (1) There are four beer distributors at present in the area in which the applicant seeks to operate.
(2) The present licensees in this area have maintained an orderly market in the face of adverse conditions because they are well-experienced and of substantial continuous duration.
(3) The grant of the transfer would be contrary to the public interest.

At the hearing held herein, Chester A. Just, Esq., appeared for and in place of the officers of the corporate licensee. He stated that the applicant owns a building in which the licensed premises would be located. Such premises would consist of a store approximately eighteen feet by forty feet, and in the rear, a storage-warehouse addition about forty feet by seventy feet. He averred that the applicant has purchased a truck for anticipated use in the business and has arranged for an advertising program. He believed that the distribution of "exotic" beer brands was presently being planned.

A number of SBD and retail distribution licensees entered objections to the application, one of whom testified at the hearing. Clinton R. Chalkley, owner of a SBD licensed business located approximately a mile from the proposed premises, stated that the area is more than adequately served by the existing licensees, and the intrusion of the applicant would dissipate the already marginal business of all of them.

Further, he indicated that applicant's action was not in good faith, in that, the principal owner of the corporate applicant, while purportedly interested in purchasing Chalkley's license, did secure much information by which his business could be hurt, including identity of customers and source of beer supplies.

The transfer of a liquor license, whether state or municipal, from person-to-person or place-to-place, is not a privilege inherent in the license. Re Maccia, Bulletin 1401, Item 5. The test in the transfer of licenses is whether there is a need and necessity for such transfer and whether such transfer would serve the public interest. Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970); Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428 (1960); Tp. Committee of Lakewood v. Brandt, 38 N.J. Super 462 (App. Div. 1955).

Absent any testimony from the corporate officers of the applicant, reliance must be placed upon the oral explanation of its counsel. From such it may be determined that the principal purpose of the license would be to operate a retail sales outlet at the premises, augmented by the use of a recently acquired truck. No state-wide program of distribution of any specific brands of beer was delineated. The license at its present location appeared to be inactive, as no explanation of its present use was offered.

The five written objectors emphasized the present service to the public in the area and the lack of need or necessity for an additional license to serve the public interest.

Many years ago the Director stated that "[it] has been consistently held that the objections of retail licensees carry little weight since, obviously, they are registered for the sole purpose of preserving their own economic status." Re Jiannantino, Bulletin 1246, Item 9. As was pointed out in Re Walkiewica, Bulletin 1172, Item 5, "State Beverage Distributor licensees offer little, if any, competition to retail distribution and consumption licensees even in the same area in which distribution and consumption licensees are located. State Beverage Distributor licensees deliver throughout the State and, as a rule, do not conduct a retail business (over the counter) of any substance." (Emphasis added)

The present case is analagous in certain aspects to the circumstances presented in Re Saxon, Bulletin 1237, Item 7, where the Director held:

"However, in the present case Saxon Distributing Co. has not operated under its license since March 1, 1958, and it has not transferred its customers to the applicants. Thus, in effect, the applicants are seeking to establish a new business for the sale of unchilled beer in Bergen County, which now has nineteen State Beverage Distributor licensees. Under these circumstances, it does not appear that there is need or necessity for an additional SBD license in the area where the applicants intend to operate."

In applying the appropriate standards to such applications, the Director recently noted in Re Calabrese, Bulletin 2196, Item 5:

"The transfer sought herein would be of no demonstrable value to the applicant, nor would it serve the public interest, because the applicant admittedly has not obtained any distribution franchises with which to engage in operations."

The present applicant presented no evidence of any franchise or distribution arrangements with any malt beverage brewing companies.

It is well settled that the Director has the discretionary authority to grant or deny the issuance, renewal or transfer of SBD licenses based upon the public need and necessity, and the good faith of the applicant. Re Mystic, Bulletin 1833, Item 3.

In sum, it is apparent that, (1) the applicant plans only a limited retail use of the license; (2) has no viable source of product available for distribution; (3) the area is adequately served by existing licensees; and (4) public need or necessity does not require the applicant's license transferred to the proposed location.

Accordingly, I recommend that the application be denied.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the applicant, D & D Beverages, Inc., to the recommended denial of its application for a person-to-person and place-to-place transfer of State Beverage Distribution License No. 47.

In its Exceptions, appellant asserts error in the nature of and evidential weight ascribed to certain testimony submitted by objectors to the application. It also argues that the Hearer's findings are against the weight of the evidence adduced.

I am satisfied that the appropriate procedure was followed in the processing of and hearing on this application in this Division. The applicant was specifically advised, by letter of May 26, 1977, that an objection had been filed to its application and a hearing would be held on June 22, 1977, in accordance with Rules 8 and 10 of State Regulation No. 6.

Thus, the applicant's claim that the Hearer considered "secret objections" is without basis in fact. It could have ascertained all objections by review of the Division's file. The testimony at the hearing by one of the objectors was representative of all other written objections received by this Division, and was considered in that light.

The applicant has the burden of establishing that "...there is public need (for the grant or transfer of a SBD license) and whether such license will be in the public interest." Mauriello v. Driscoll, 135 N.J.L. 220, 221 (Sup. Ct. 1947).

The applicant failed to attend the hearing, but the Hearer still afforded its counsel the opportunity to advance the applicant's position. An objector was sworn and did testify in opposition to the grant of the application. The Hearer correctly evaluated the testimony and applied the appropriate legal principles and criteria.

Thus, I find the Exceptions to be lacking in merit.

Having carefully considered the transcript of the testimony, the Hearer's Report, and the Exceptions filed by the applicant thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of September, 1977,

ORDERED that the application of D & D Beverages, Inc. for transfer of State Beverage Distribution License No. 47, issued by the Director of the Division of Alcoholic Beverage Control, from Lincolt Distributor, Inc. and to premises 145 Stelton Road, Piscataway, be and the same is hereby denied.

JOSEPH H. LERNER
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - FRONT - EMPLOYMENT OF CRIMINALLY DISQUALIFIED PERSON - NO TRUE BOOK OF ACCOUNT - LICENSE SUSPENDED FOR BALANCE OF TERM OR UNTIL UNLAWFUL SITUATION CORRECTED NOT LESS THAN 96 DAYS.

In the Matter of Disciplinary Proceedings against
 Ann Hayek
 t/a Gigi
 415 Totowa Avenue
 Paterson, N.J. 07502
 Holder of Plenary Retail Consumption License C-67, issued by the Municipal Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS
and
ORDER

Anthony F. DeMarco, Esq., Attorney for Licensee.
Mart Vaarsi, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

At the commencement of the hearing in the consolidated proceedings in this Division, the licensee changed her not guilty plea to non vult to charges alleging that, (1) on divers dates subsequent to October 25, 1976, she purchased alcoholic beverages from other than the holder of a New Jersey manufacturer's or wholesaler's license; in violation of Rule 15 of State Regulation No. 20; (2) she permitted George Hayek, a criminally disqualified person and not listed on her license application, to exercise an interest in the license; in violation of N.J.S.A. 33:1-25; (3) she employed a criminally disqualified person, to wit, George Hayek; in violation of Rule 13 of State Regulation No. 20; and (4) she failed to maintain and keep true books of account; in violation of Rule 36 of State Regulation No. 20.

In connection with the aforesaid, it was stipulated by the Deputy Attorney General appearing on behalf of the Division, with the acknowledgement of licensee's counsel, that the suspension to be imposed would be one hundred and twenty (120) days on the charges herein, with remission of twenty-four (24) days for the plea entered, leaving a net suspension of ninety-six (96) days.

Accordingly, it is, on this 12th day of September 1977,

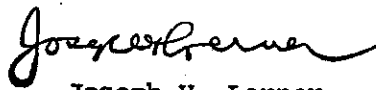
ORDERED that Plenary Retail Consumption License C-67, issued by the Municipal Board of Alcoholic Beverage Control for the City of Paterson to Ann Hayek, t/a Gigi, for premises 415 Totowa Avenue, Paterson, be and the same is hereby suspended for the balance of its term; viz., midnight, June 30, 1978, effective 3:00 a.m. on Tuesday, September 20, 1977, and for the term of any renewal of said license which may be granted, with leave to the licensee or any bona fide transferee of the license, or of any renewal of said license which may be granted, to apply to the Director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected; but, in no event shall the lifting of the suspension be sooner than ninety-six (96) days from the commencement of the suspension herein.

JOSEPH H. LERNER
DIRECTOR

6. STATE LICENSES - NEW APPLICATIONS FILED.

Julius Wile Sons & Co., Inc.
560 Sylvan Avenue
Englewood Cliffs, New Jersey
Application filed December 29, 1977
for person-to-person transfer of
Plenary Wholesale License W-83 from
The Fleischmann Distilling Corporation.

Julius Wile Sons & Co., Inc.
Docks Corner Road
Dayton, New Jersey
Application filed December 29, 1977
for person-to-person transfer of
Rectifier and Blender License R-5
from The Fleischmann Distilling Corporation.


Joseph H. Lerner
Director