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

BULLETIN 2239 November 4, 1976

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ITEM

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

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1. APPELLATE DECISIONS - WEINER v. WOODBRIDGE ET ALS.

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| Sidney Weiner t/a Economy Wine and Liquors, | . | |
| Appellant, | . | On Appeal |
| v. | . | CONCLUSIONS AND ORDER |
| Mayor and Council of the Township of Woodbridge, Curley's Corral, Inc. t/a Sir Jaminson's and Mandica III (A New Jersey Corporation), | . | |
| Respondents. | . | |

Williams and Flynn, Esqs., by James B. Flynn, Esq., Attorneys for Appellant
Dato, Kracht and Silverman, Esqs., by Robert F. Dato, Esq., Attorneys for Respondent, Township
Weissberger and Linett, Esqs., by Herbert W. Weissberger, Esq., Attorneys for Respondent, Mandica III

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Mayor and Council of the Township of Woodbridge (hereinafter Council) which, on April 20, 1976 adopted a resolution granting a person-to-person transfer of Plenary Retail Consumption License C-5, from Curley's Corral, Inc. t/a Sir Jamison's to respondent Mandica III (A New Jersey Corporation). In its said resolution, the Council expressly relieved the transferee from the obligation to provide off-street parking for its customers.

The thrust of this appeal is that the Director of this Division, on August 23, 1971, approved a place-to-place transfer of the subject license to its present location, but special conditioned such approval to the imposition of two requirements, namely; that the licensee provide adequate off-street parking; and that the premises be used as a restaurant.

A de novo appeal was held in this Division, pursuant to Rule 6 of State Regulation No. 15 wherein the parties were afforded full opportunity to introduce evidence and to cross-examine witnesses. However, neither respondents offered evidence,

relying upon their legal argument relating to the long record and history of the subject license. Appellant testified and introduced the testimony of an expert witness who had previously been called and whose testimony in the 1971 appeal will be hereinabove referred to.

The essential facts and the record are uncontroverted. In summary, only one set of uncontroverted facts need be referred to, and that is, at the time the special conditions relating to parking were attached to the approval of the place-to-place transfer in 1971, the then transferee (now transferor to present respondent) had arranged for the use of a lot immediately adjacent to the premises which the appellant states would hold thirty to forty cars. For reasons presently unclear, that lot is no longer available to the Mandica and no cars are parked upon it.

Appellant contends that the special conditions as attached to the subject license were viable at the time they were imposed, and, since that date there have been no area changes which would have lessened, such requirements. Supporting that contention, appellant relied upon the testimony of Saul Schachter, an expert in the field of commercial realty, who opined that the off-street parking requirement is more necessary today than it was in 1971; that, without a good off-street parking program, the business life of all of the small merchants on Main Street, in the vicinity of the subject premises, would be drawing to a close. He believes that no business can long exist if accommodations for the parking customers are not provided.

Both respondents follow an identical path toward the conclusion that if appellant's logic were carried to its natural conclusion, the Mandica's license would be susceptible to momentary termination upon the cessation of parking facilities. Such fragile cord upon which to suspend a license privilege is neither logical nor legally butressed.

The respondent, Mandica III, concedes that off-street parking is necessary in the conduct of any business and, although it will endeavor to provide its patrons with that convenience, it rejects the notion that unless it does so, its license should fall. By such requirement, its license is then at the mercy of the two surrounding owners of available plots.

The issue herein may be narrowed to the single question: Did the Council act arbitrarily or unreasonably in failing to exact the parking-requirement condition in its approval of the person-to-person transfer of the subject license. The legal principle pertinent requires that the burden of proof in all cases which involve discretionary matters, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super 84 (App. Div. 1957); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

The imposition of special conditions upon a license by the Director of this Division stems from its earliest days. Coventry v. Eatontown et al, Bulletin 413, Item 13; Gallner v. Bridgeton, Bulletin 435, Item 7. As the Court has recently held:

> "The Director's authority to impose a special condition is implicit in his power to '...make all findings, rulings, decisions and orders as may be right and proper and consonant....' with the statutory scheme of regulation. N.J.S.A. 33:1-38...."

Moon Star, Inc. v. Jersey City, Superior Court, Appellant Div. Unreported A-621-73, June 10, 1975, Bulletin 2192, Item 1.

The purpose of special conditions generally is to mold the license to fit the circumstances surrounding its use. Cf. A's Inn, Inc. v. Deal, Bulletin 2139, Item 3.

The record in the instant matter indicates that, subsequent to 1971, the subject license was renewed without the special conditions imposed by the Director. Nonetheless, the operation of appellant's premises did not result in any catastrophe or situation that demanded immediate correction. Hence, the Council, when called upon the grant the transfer without the conditions initially imposed, did so, mindful of its right at any renewal application to reimpose whatever special conditions was then, in its circumspect judgment, required.

Special conditions attached to a license need only be reasonable to obtain approval by the Director of this Division. Marinaccio v. Asbury Park, Bulletin 2009, Item 2; Alanwood Holding Co. v. Atlantic City et als, Bulletin 1963, Item 1; Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958). Conversly, if no special conditions need be attached, in the judgment of the local issuing authority and such judgment appears reasonable, the action will be affirmed. See N.J.S.A. 33:1-22; Cf. Gauntt v. Paulsboro, Bulletin 2187, Item 2; Alice G. Townsend, Inc. v. Orange, Bulletin 2186, Item 3.

A plenary retail license is limited in its term to one year. N.J.S.A. 33:1-26. Each of such licenses must be applied for prior to July 1st of every year. Should an issuing authority determine that it would not be in the best interests of the public for the license to be renewed, it may reject the application; in the reasonable exercise of its initial jurisdiction. Bayonne v. B & L Tavern et al, (App. Div. 1963, not officially reported, reprinted in Bulletin 1509, Item 1, Aff'd., 42 N.J. 131 (1964).

In the original appeal of this matter (Weiner v. Woodbridge, Bulletin 2003, Item 2), the record reveals that the then respondent, Curley's Inc., had obtained a lease for a vacant lot alongside its proposed site. That lease had a term of three years. Nowhere in the Director's Conclusion in that matter was there any reference to the continuum of such lease as being a concomitant part of the license privilege. For the purpose of approving the then place-to-place transfer, the special condition that off-street parking be available was imposed. If after the passage of almost five years, the Council does not consider the immediate need to impose such special condition upon the license, the Director may likewise consider the need for such requirement no longer exists.

As the adequacy of off-street parking is a fluid situation in any given area, it is not without reason that the Council may hereafter be required to come to grips with it. For the moment, there may be no immediate problem.

Accordingly, I find that the appellant has failed to meet the burden imposed upon him by Rule 6 of State Regulation No. 15, requiring that he show the action of the Council to be erroneous and require reversal. Contrarily, I find that the Council has, after due deliberation, concluded that the special conditions initially imposed upon the license, are no longer required. Other than the expression of appellant, another licensee situated next door to respondent's premises, there was no neighborhood sentiment expressing opposition to the subject transfer. Compare: Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44 (1975).

Thus, it is recommended that the action of the Council be affirmed, and the appeal herein be dismissed.

## Conclusions and Order

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

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

Accordingly, it is, on this 27th day of August 1976,

ORDERED that the action of the Mayor and Council of the Township of Woodbridge be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner
Director

2. APPELLATE DECISIONS - LAWSON-FLOYD ENTERPRISES v. JERSEY CITY.

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| Lawson-Lloyd Enterprises t/a Sonny's 418 Club, | ) | |
| Appellant, | ) | On Appeal |
| v. | ) | CONCLUSIONS AND ORDER |
| Municipal Board of Alcoholic Beverage Control of the City of Jersey City, | ) | |
| Respondent. | ) | |

Abrams & Wofsy, Esqs., by Arthur J. Abrams, Esq., Attorneys for Appellant
Dennis L. McGill, Esq., by Bernard Abrams, 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 the Municipal Board of Alcoholic Beverage Control for the City of Jersey City (hereinafter Board) which, on April 2, 1976, suspended appellant's Plenary Retail Consumption License C-261 for premises 418 Jackson Avenue, Jersey City, upon a guilty finding of a charge alleging that on July 18, 1975, it permitted certain controlled dangerous substances, i.e. cocaine, on the licensed premises; in violation of Rule 4 of State Regulation No. 20. Appellant's license was thereupon suspended for sixty days, the effective dates of which was stayed by Order of the Director of this Division on April 23, 1976, pending the determination of this appeal.

The Board produced the testimony of Jersey City Police Detective Donald Nagle who has been a member of the narcotic squad for nine years. He related that on July 18, 1975 at about three p.m. he, in the company of three other detectives and a uniformed patrolman, entered appellant's premises as a raiding party subsequent to receiving information from a police informant. Upon arrival, he rushed toward the men's lavatory adjacent to which he observed the bartender standing upon something, apparently secreting an object in shelves over a door. He investigated and found five bags, which was later determined to contain some 47.23 grams of cocaine, a controlled dangerous substance. Shortly thereafter, a search was made of a patron who possessed an additional amount of the drug. The "street" value of all of the drugs discovered exceeded $15,000.00.

A further search of the premises revealed a supply room adjacent to the rear kitchen where, on a table, in open view, were ten pieces of aluminum foil about two inches by two inches, which Nagle said is sued to wrap drugs. Plastic spoons, similarly used, were found nearby. At no time during the raid was the sole corporate stockholder of the licensee present.

Police Detective Peter Mathus testified that he, too, was part of the raiding party on July 18, 1975 and observed Detective Nagle obtain a bag which contained drugs from some shelf or aperture above a doorway, which had apparently been placed there by the bartender.

Appellant's manager, William R. Still and a once part-time bartender, who was on duty at the time of the raid, Herman E. Merritt, gave the following account; on the day of the raid, they were both engaged in putting a recently-arrived shipment of cases of whiskey, wines and similar beverages into the storage cabinet, when the police arrived. Neither one was near the shelf where the narcotics were found, although the shelf was located near the alcove which contains the storage closet. The shelf where the drugs were discovered has not been used in years, and the paraphernalia on them had been forgotten. Anyone going into the men's room could have reached the shelves.

The storage room in the rear was not used by the management, but rather by a host of persons who rented the establishment for the purpose of holding parties. Such persons had free reign of the kitchen area as well as of the cartons of aluminum foil and plastic utensils which were kept there.

The owner of all of the capital stock of appellant corporation, Lawson A. Worthy, III, testified that his manager has been with him and the predecessor operator of the premises for many years, and is a trusted employee. Under no circumstances would the possession of narcotic drugs be tolerated; to the contrary, the business developed by the appellant was such that drugs or drug users would negate the fine reputation thus far developed.

In adjudicating matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 A C.J.S. Evidence, Sec. 1042.

In arriving at a determination herein, I find the Detective's testimony persuasive and convincing relative to the discovery of the narcotic drugs. The quantity and value of such drugs, i.e. $15,000 was far in excess of any insignificant amount that may have conceivably been planted in the premises by someone eager to harm the licensee.

From the evidence presented, it is manifest that the licensee, through its employee permitted and suffered the narcotic drug to be within the licensed premises. Those drugs, coupled with the tinfoil square discovered in the rear storage area, give rise to an inescapable conclusion and I so find, that these narcotic drugs were permitted on the premises.

It is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their employment on licensed premises. Kravis v. Hock, 137 N.J.L. 252 (1948); In re Schneider, 12 N.J. Super 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

Violations committed by an agent becomes the responsibility of the licensee and does not depend upon his personal knowledge or participation. It has been held that the licensee is not relieved even if the employee violates his express instructions. Greenbrier, Inc. v. Hock 14 N.J. Super 393 (App. Div. 1951).

It is concluded and I find that a fair evaluation of the evidence and the legal principles applicable thereto, clearly and reasonably preponderate in favor of the finding of guilt by the Board. I, therefore, recommend that the action of the Board be affirmed, the appeal be dismissed, and the penalty heretofore imposed by the Board be reimposed.

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

Accordingly, it is, on this 27th day of August 1976,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed; and it is further

ORDERED that the Order of April 23, 1976, staying the respondent's order of suspension pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-261 issued by the said Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Lawson-Lloyd Enterprises t/a Sonny's 418 Club, for premises 418 Jackson Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days commencing at 2:00 a.m. on Thursday, September 9, 1976 and terminating at 2:00 a.m. on Monday, November 8, 1976.

Joseph H. Lerner
Director

3. DISCIPLINARY PROCEEDINGS - FRONT - FRAUD - IMPROPER BOOKS - PRIOR DISSIMILAR RECORD - HEARING EX PARTE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT AFTER 115 DAYS.

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| In the Matter of Disciplinary Proceedings against<br><br>Big Eddie's Bar & Tavern, Inc.<br>t/a Big Eddie's Bar & Tavern<br>316-14th Avenue<br>Newark, N.J.,<br><br>Holder of Plenary Retail Consumption License C-514, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. | CONCLUSIONS and ORDER |

Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The following charges were preferred against licensee pursuant to N.J.S.A. 33:1-31 and Rule 36 of State Regulation No. 20: (1) that, in its short-form application for its plenary retail consumption license, filed with the Municipal Board of Alcoholic Beverage Control and dated June 30, 1975, it failed to reveal one Sellie Richardson held a direct or indirect interest in the stock of the corporate licensee; and (2) that one Sellie Richardson had an interest in the business conducted under the aforesaid license; and(3) it permitted Sellie Richardson to derive a share of the income of the licensed business; and (4) it permitted Sellie Richardson to exercise the rights and privileges of a licensee; also, (5) it failed to keep proper books of account; and (6) it permitted Sellie Richardson to have a beneficial interest in the licensed premises when Richardson was disqualified from holding any interest in the alcoholic beverage industry in that he had been convicted of a crime by reason of which he was prohibited from such connection.

The aforesaid charges were served upon the licensee by certified mail on May 27, 1976, with return receipt requested, which receipt was received in this Division, indicating a delivery of the charges and notice to respond as of May 28, 1976. Further notice was sent by certified mail notifying both the licensee and one Edward Rodriguez, a principal stockholder, of the time and place for hearing.

At the hearing held in this Division, held ex parte, no one appeared on behalf of the licensee, Sellie Richardson or Edward Rodriguez. The Division's records reveal that an application had been made for a person-to-person transfer of the subject license from the named licensee herein, Big Eddie's Bar & Tavern, Inc., of which Sellie Richardson was the only stockholder, to Michael Vernon Corporation. This application having been denied by the Board of Alcoholic Beverage Control of the City of Newark, was the subject to an appeal taken to the Director of this Division. This appeal has been heard in this Division, and the Hearer's report is presently pending.

ABC Agent TS testified that he had been assigned to investigate the licensed premises and the licensee and, in consequence of that investigation, spoke to one Edward Rodriguez, one of the two stock-holders of the corporate licensee (the wife of Rodriguez being the remaining stockholder) and ascertains that he had sold all of his, and his wife's, interest in the license and premises to Sellie Richardson three months before, and that he had no further interest in the subject.

Agent TS visited the licensed premises and spoke to Sellie Richardson, who admitted that he had purchased the licensed premises but that the transfer of the license to him had not then been completed. When asked to produce the books and records of the licensed premises, he admitted he kept none; the only books extant were two paper covered notebooks which Agent TS found on the back bar. These notebooks, along with copies of the application for license, the application for transfer, contract of sale from Big Eddie's to Michael Vernon Corporation and the arrest and conviction record of Sellie Richardson were admitted into evidence.

Division Accountant, Russell Long, testified that the notebooks discovered in the licensed premises do not, in any way, constitute adequate books and records of a licensed business. They were hopelessly inadequate to reflect the expenditures or income of the premises, nor did they reflect the purchases made of beverage stock.

An examination of the criminal record sheets of Sellie Richardson revealed that he was convicted on February 20, 1973, of a charge alleging he overdrew his checking account; in violation of N.J.S.A. 2A-111-15, which resulted in a sentence of 364 days in the Bergen County Jail; the sentence was suspended and he was released on probation for two years.

He was also convicted in the Essex County Court on September 10, 1975 of a charge alleging that he overdrew his checking account in violation of N.J.S.A. 2A-111-15. This resulted in a suspended sentence of twelve months in the Essex County Correctional Center, and placed on probation for one year. Both convictions involved crimes which contain the element of moral turpitude.

A further examination of the contract of sale of subject licensed premises, indicated that the transfer of the license was a condition upon which the exercise of control of the licensed business would be based. Despite such provision of the contract, Rodriquez had, by his own admission, delivered up possession and control to Richardson immediately upon the execution of that contract.

Upon the evidence adduced, the proofs preponderate in favor of the Division and against the licensee with respect to each of the charges. I, therefore, find the licensee guilty as charged.

The licensee has a prior record of payment of a fine to the Director in lieu of suspension of license for ten days, on March 23, 1973 in consequence of a non vult plea to a charge alleging an after-hours sale.

The license will be suspended on the charges 1, 2,3, 4 and 6 for ninety days, and on charge 5 for twenty days, to which will be added five days by reason of the prior suspension for a dissimilar offense, making a total of one hundred and fifteen days. However, since the unlawful situation has not been corrected to date, the license will be suspended for the balance of its term and any renewal thereof which may be granted, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the said suspension whenever the unlawful situation has been corrected, but such lifting of the suspension shall not be granted, in any event, sooner than one hundred and fifteen days from the commencement of the suspension herein.

Accordingly, it is on this 3rd day of September, 1976

ORDERED that Plenary Retail Consumption License, C-514, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Big Eddie's Bar & Tavern, Inc., t/a Big Eddie's Bar and Tavern, for premises 316-14th Avenue, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1977, effective 2:00 a.m. Thursday, September 9, 1976, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected, but, in no event, sooner than one hundred and fifteen (115) days from the date of the commencement of the suspension herein.

Joseph H. Lerner
Director

4. APPLICATION FOR WAIVER FOR CLUB LICENSE - APPLICATION DENIED.

In the Matter of the Application of the

Black American Democratic Club
660 Artesian Street
Trenton, N.J.

Applicant,

For a waiver of requirements for Club License, pursuant to State Regulation No. 7.

CONCLUSIONS and ORDER

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Blackburn, Carmichael & Blackburn, Esqs., by Lemuel H. Blackburn, Jr.,Esq., Attorneys for Applicant

BY THE DIRECTOR:

Hearer's Report

The Hearer has filed the following report herein:

A hearing was held in this Division on behalf of Black American Democratic Club, a non-profit organization, for the purpose of obtaining a waiver of certain requirements for a 'Club License' from the Director, pursuant to the provisions of State Regulation No. 7.

At the outset of the hearing, certain instruments and documents pertaining to the applicant Club were admitted into evidence, including some of which were previously furnished by way of correspondence with the Division. Among those furnished this Division were:

(a) Copy of Certificatinn of Incorporation and Amendment of the subject Club dated April 9, 1976

(b) Certificate of predecessor Club (Intellect Club) dated September 11, 1975

(c) Amendment of above certificate to show change of name to present name, dated February 8, 1976

(d) Constitution and By-Laws of Subject Club

(e) Membership Roster - Marked as Exhibit "B"

(f) Copy of Deed from Rubino to Jackson for 660 Artisian St., Trenton, Marked as Exhibit "C"

(g) Resolution of City Council of Trenton, March 7, 1974, with newspaper clipping attached, marked "Exhibit E"

(h) Copy of letter to Clyde Jackson from Richard Coffee, Chairman of Mercer County Democratic Party

(i) Copy of sample 'Application for Membership' of subject Club

(j) Income and Expense Summary from 9/3/75 to 4/15/76 of Club - prepared by John M. Toth, Accountant

(k) Lease between Clyde's Lounge, Inc. and Club, from June 1, 1976 to May 31, 1977

(l) Photostatic copy of applicable pages of income-cash receipt ledger

(m) Photostatic copies of minutes of Club from Sept. 30, 1975 through May 3, 1976.

Club President, Alvin Bowens, testified with respect to the proffered documents, adding as explanation of the letter of Richard Coffee, Mercer County Democratic Chairman (h-above), that the Clubhouse at 660 Artesian Avenue, Trenton, is the area headquarters of the Carter for President Association, which is the only other organization using the club facilities.

He asserted that, although Clyde Jackson, who had initially purchased the realty in which the Club is located, is a member, he is but one member among sixty-seven. The club is not a property of Jackson, and administers itself independently of Jackson. Upon being shown an item in the financial summary (j-above), he could not recall the names of the persons to whom the Club was indebted.

Clyde R. Jackson testified that he was formerly the president of the Club, particularly when its name was changed from the "Intellect Club" to its present name. He admitted that he holds, along with his wife, all of the capital stock of "Clyde's Lounge Inc." a corporation to which he conveyed the realty shortly after its acquisition.

He explained that the Club and he have entered into a lease and a check for the first month rental (exhibited at the hearing by Bowens) will be presented to him upon obtaining the required second signature. He admitted that there is no financial connection between the Club and Mercer County Democratic Committee. However, it is anticipated that the Carter for President Committee may defray expenses for the use of the Clubhouse. He acknowledged that the indebtedness of the club in the amount of $1,323.00 includes an amount

of $1,200.00 due to him and his wife, principally representing the value of the Club furnishings.

Rule 5 of State Regulation No. 7 provides, inter alia, that, if a club has not been in continuous existence for three years, or had exclusive use of its clubhouse for that period, it might obtain the Director's approval for a club-license application if such club establishes that "....said unit, chapter or member club has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at least three (3) years continuously immediately prior to submission of the application for a license".

The thrust of this application to the Director for his approval is the connection with this subject Club and the Mercer County Democratic Committee, as evidenced by Mercer County Chairman Coffee's letter (h-above) made a part of this record.

The letter of Mercer County Democratic Chairman Coffee to the subject Club does not offer nor is it intended to offer such support upon which an application for a club license can be approved. The graciousness of this letter relates exclusively to the common goal of the betterment of the Party in the County. In no manner can the letter be interpreted as establishing that the subject Club is a "unit,chapter or member club...duly credentialed..." within the purview of the Regulation.

Additionally, official notice may be taken that the Mercer County Democratic Committee, constituted and existing under the laws of New Jersey is not a "national or state order" as is required under the Rule (although the County Committee is an integral part of the Democratic State Organization).

Lastly, both President Bowens and Jackson clearly admit that there is no fiscal connection between the subject Club and the Mercer Democratic County Committee.

As is the plain intendment of the Regulation, exceptions from the requirement of continuous existence for three years is made in connection with member clubs of national or state organizations primarily to insure fiscal stability as well as parental control over the novice unit. In this present instance, there is no such supervision that could stem from the Mercer County Democratic Committee or any other parent body. Thus, the requirements of the Regulation have not been met. Cf. Nichols Park, Inc. v. Monroe, Bulletin 2175, Item 3; Re Commodore Club, Bulletin 2165, Item 1;Rehling v. South Orange, Bulletin 2104, Item 1.

It is, accordingly, recommended that the application of Black American Democratic Club for a waiver of its Club license application requirements be denied.

Conclusions and Order

No written Exceptions to the Hearer's report were filed (see Rule 5 of State Regulation No. 7 ).

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

Accordingly, it is, on this 8th day of September 1976,

ORDERED that the application of Black American Democratic Club of 660 Artesian Street, Trenton, for a waiver of certain requirements for a 'Club License' from the Director pursuant to the provisions of State Regulation No. 7 be and the same is hereby denied.

Joseph H. Lerner
Director