

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2362

August 5, 1980

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1. APPELLATE DECISIONS - RUDDY AND BROWSKI v. BELMAR.

Frederick Ruddy & Charles Browksi :
t/a The Little Red Barn, :

Appellant, :

vs. :

Board of Commissioners of the :
Borough of Belmar, :

Respondent. :
-----:

CONCLUSIONS

AND

ORDER

H. Alton Neff, Esq., Attorney for Appellant.
Harold Feinberg, Esq., Attorney for Respondent.

Initial Decision Below

Hon. J. Roger Persichilli, Administrative Law Judge

Dated: October 23, 1979 - Received: October 24, 1979

BY THE DIRECTOR:

Written Exceptions to the Initial Decision Below were submitted by the appellant and written replies were filed thereto by respondent, pursuant to N.J.A.C. 13:2-17.14.

Appellant's Exceptions reiterate those arguments advanced at the hearing below, and they have been adequately resolved in the Initial Decision. Thus, I find them to be without merit.

I provide the following comments to one aspect of appellant's Exceptions, to wit, that the Administrative Law Judge failed to draw the proper inference with respect to the minor's testimony that the alcoholic beverages were purchased for \$9.00.

The offense in question is not that of a sale below the Minimum Consumer Resale Price. N.J.A.C. 13:2-33.1, but rather that of a "sale" to a minor. N.J.A.C. 13:2-23.1. Within that context, proof of the exact value exchanged in return for alcoholic beverages is not a required element of proof of such a "sale". See N.J.S.A. 33:1-1(w).

With respect to the matter of credibility, and within the framework of the proofs offered in defense, specifically the cash register tapes, the finding of "approximately \$9.00" is detrimental to the position set forth by the appellant. It is one which I will not disturb in light of the record before me. Absent more sufficient corroborative proofs, I am not persuaded by the contention that, because an alleged illegal sale of alcoholic beverages is not recorded on a cash register tape, the

transgression did not take place. In fact, a \$9.00 transaction is revealed on the register tape (Exhibit P-1, #1967) for date in question. Also revealed are several "no sale" (\$0.00) transactions. The alleged \$9.95 purchase on September 28 of another patron presented as appellant's witness, also does not appear on Exhibit P-1. The evidence is, at best, speculative. The appellant has failed to meet the burden of establishing that the assessment of credibility and findings necessarily attendant to the action below were erroneous. N.J.A.C. 13:2-17.6.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Initial Decision Below, the written Exceptions of appellant and the written Answer submitted thereto, I concur in the basic findings and conclusions of the Administrative Law Judge and adopt them as my conclusions herein.

I note, however, that the effective date of the imposition of sanction rests in the discretion of the issuing authority or the Director. N.J.S.A. 33:1-1.

Accordingly, it is, on this 6th day of December, 1979

ORDERED that the action of the Board of Commissioners of the Borough of Belmar be and is hereby affirmed and the appeal be and is hereby dismissed; and it is further

ORDERED that my order of staying the suspension pending this appeal be and the same is hereby vacated; and it is further

ORDERED that the Plenary Retail Distribution License No. 1306-44-012-001 issued by the Board of Commissioners of the Borough of Belmar to Frederick Ruddy and Charles Browksi, t/a The Little Red Barn for premises 1506 "F" (now Main) Street, Belmar New Jersey, be and is hereby suspended for a period of twenty (20) days commencing 2:00 a.m. Thursday, January 3, 1980 and terminating 2:00 a.m. Wednesday, January 23, 1980.

JOSEPH H. LERNER
DIRECTOR

Appellant contends that the decision of the Board of Commissioners was:

- (1) unreasonable, arbitrary and capricious;
- (2) against the weight of the evidence; and
- (3) was based upon a mistake of fact.

Appellant also alleges that the Board "failed to ascribe the proper weight to the evidence submitted to it" and additionally maintains that the penalty imposed by the Board was too severe. The Board, in its Answer, denies the foregoing allegations and states that the "Respondent, through its Board of Commissioners, the issuing authority, heard all witnesses for both appellant and complaining parties, and determined that appellant's agent, servant and employee had made the sale in question to the named minor in violation of the law."

The parties, by mutual consent, elected to rest upon the transcribed record of the proceeding before the Board of Commissioners. N.J.A.C. 13:2-17.8 The appellant produced Mr. Ruddy for further examination. Mr. Ruddy amplified a portion of his prior testimony before the Board which related to the daily cash register roll tape maintained in his package store. The thrust of this testimony was simply that the tape did not show any sales for \$9.00, during the time in question, on September 28, 1978. This proof purportedly conflicted with the minor's statement to the police that he purchased a case of Michelob from The Little Red Barn for \$9.00 on September 28, 1978. Counsel also attempted to establish a conflict in the minor's identification of the clerk who supposedly sold him the beer. He represented that the minor's statement to the police described the person who sold the beer "as five-foot-ten inches tall, black hair, 150 pounds and glasses." Mr. Ruddy is approximately five-ten, 220 pounds, has light brown hair and does not wear glasses. The remainder of counsel's examination explored the possibility that the minor purchased the beer from another package store owner located approximately 300 feet from appellant's store. The other package store owner was said to more closely resemble the minor's description of the clerk than did Mr. Ruddy.

The issue before the Board of Commissioners, as herein, is whether the licensee-appellant permitted the sale of an alcoholic beverage contrary to N.J.A.C. 13:2-23.1(a) which states that:

"No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of 18 years, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises."

At the hearing before the Board of Commissioners, the minor testified that he purchased one case of Michelob beer on September 28, 1978 at approximately 4:00 at The Little Red Barn. He described the exterior and interior of the package store, identified its location, and testified that he was not questioned about his age or required to give proof of same at the time of purchase. He was seventeen at the time and gave his date of birth as March 23, 1961. When questioned whether he knew the man who sold him the beer he replied "I can't honestly be sure." Counsel pursued the question and inquired whether the minor "would know him if you saw him again." He replied "Possibly. Its a long time, I can't really be sure." When asked if he could identify the person from those present in the hearing room, he identified Mr. Ruddy in the following manner "It could possible be that man on the end." The ensuing questions and answers on this point are noteworthy:

"Q. And can you tell us whether or not from your recollection if that's the man?

A. I can't be sure.

Q. There is some question in your mind that that's specifically the gentleman?

A. Yes.

Q. Is there any question in your mind at all that the purchase was in the Little Red Barn?

A. No, sir.

Q. There is no question in your mind at all that you were not requested to provide proof?

A. No, sir."

The minor's statement taken at Belmar Police Headquarters, S-2 in evidence before the Board of Commissioners, is consistent with the minor's testimony. He described the clerk as "5' 10" white male 150 lbs. black hair possibly glasses hair was short." He stated that he personally paid for the beer, and in reply to the question of "How much?" he replied "Nine Dollars?"

On cross-examination the minor stated that he left the store around 4:00 or 4:30. He also indicated the purchase price of the beer was around \$9.00 or very close to it. When showed his police statement, he confirmed a \$9.00 purchase price.

The testimony of Officers Joseph J. Bryne, Jr. and George L. Winters and four minors establish that the minors were apprehended on the evening of September 29, 1978 at Inlet Terrace consuming Michelob beer. In varying degrees, their testimony served to corroborate the issue before the Board of Commissioners.

In defense of the charge, testimony was given by Stan Campbell, a National Cash Register employee, Frederick Ruddy, a partner in The Little Red Barn, and Raymond Bokelman, a customer.

Mr. Bokelman testified that he, almost as a religious activity, stopped daily at The Little Red Barn between the hours of 5:00 and 5:30 to purchase exactly three eighth-packs of Miller beer and a pack of Kools cigarettes at a purchase price of \$9.95. This testimony purported to establish a time frame for a \$9.95 sale which allegedly occurred between the hours of 5:00 and 5:30 p.m. Presumably, one might then work backwards on the tape to locate a \$9.00 sale, between the hours of 4:00 and 4:30 to substantiate or report the minor's statement. Even assuming this testimony to be relevant to the basic issue of this case, there are several major problems: (1) the witness could not swear to whether he patronized the licensed premises on September 28, 1978, but indicated it was his normal procedure and routine and, therefore, he assumed he arrived at the time and date in question; and (2) the register tape for September 28, 1978 does not depict a sale for \$9.95.

Mr. Campbell, a personal acquaintance of Mr. Ruddy, testified that he checked the NCR machine in question sometime early in 1978 and it was in running order at that time. He also testified that the subject tape came from an NCR register of the type found in Mr. Ruddy's establishment. This testimony was of no value in establishing whether the machine was operating properly on the day in question, nor did it establish that the tape was from The Little Red Barn's register. Furthermore, his service call was not an official service call while on duty or in the normal course of his NCR employment.

Mr. Ruddy denied that he sold beer to the minor on September 28, 1978.

Based upon a thorough review of the entire record, which includes the transcript of proceedings before the Board, dated January 23, 1979, the exhibits received in evidence, and the testimony of Mr. Ruddy in this de novo hearing, I FIND that:

1. Appellant is the holder of Plenary Retail Consumption, License No. 1306-44-012-001 for premises located at 1506 "F" (now Main) Street, Belmar, New Jersey.

2. On March 19, 1979, the Board of Commissioners of the Borough of Belmar, after full hearing, found the appellant guilty of the sale of alcoholic beverages to a minor, under the age of eighteen (18) years, at retail for consumption off the licensed premises in violation of N.J.A.C. 13:2-23.1. It imposed a suspension period of twenty (20) days.

3. Between the hours of 4:00 and 4:30 p.m. on September 28, 1978, a seventeen year old minor entered the licensed premises and ordered a case of Michelob beer, purchased said beer for approximately \$9.00 from the clerk, and left the premises with one case of Michelob beer.

4. The Board's finding of Appellant's guilt in this matter was supported by a preponderance of competent evidence.

5. The penalty imposed by the Board in this matter is not arbitrary or a result of manifest error and does not represent or constitute an abuse of its discretion.

Appellant's broad allegations in this appeal necessitate some comment. Unquestionably, the primary responsibility to enforce the law pertaining to retail licenses rests with the municipality (N.J.S.A. 33:1-24) which has the power to conduct disciplinary proceedings to suspend or revoke retail licenses (N.J.S.A. 33:1-31). While violation of the Alcoholic Beverage law may be criminally prosecuted, disciplinary proceedings are civil in nature. Therefore, guilt beyond a reasonable doubt need not be proved, but only by a preponderance of the believable evidence. And where there is sufficient competent evidence to support a determination, the courts will not disturb it (Benedetti v. Board of Commissioners of the City of Trenton, 35 N.J. Super. 30 (App. Div. 1955)).

The generally accepted gauge of administrative factual finality is whether the factual findings are supported by "substantial evidence" (Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956)) which has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477, 71 Sup. Ct. 456, 459 (1951)). The choice of accepting or rejecting the testimony of witnesses rests with the administrative agency and where that choice is reasonably made it is conclusive on appeal (Pilon v. Board of Alcoholic Beverage Control of the City of Paterson, 112 N.J. Super. 436 (App. Div. 1970)).

The minor testified that he purchased the beer at The Little Red Barn. His statement to the police also identified the Little Red Barn as the offending package store. His testimony on this point is unequivocal. Appellant sought to attack his credibility on various fronts. Without question, there was confusion on the identity of the clerk who sold him the beer. The record fails to establish, with certainty, the person who consummated the sale. The minor never indicated, with any degree of certainty, that he could positively identify the clerk. While this aspect of the case may be viewed as a weak point, it does not detract from the overall credibility of the minor or the ultimate findings herein. It is not unreasonable to perceive of a minor, engaged in an unlawful activity, to be less concerned with the height, weight and general appearance of a clerk at a package store, than with his stealth-like purchase and immediate departure.

I find the defenses which relate to the tape and the prospect of mistaken identity unconvincing in relationship to the affirmative testimony in support of the Board's findings. In an effort to establish that the tape does not depict a \$9.00 sale at the time in question (although it does depict a \$9.00 sale), I find the \$9.00 purchase price to represent an approximation and not a finite figure. Appellant relies upon the fact that he refreshed the

minor's recollection by showing him a copy of his police statement, whereupon the minor affirmed the \$9.00 figure. However, this statement clearly reflects a reply with a question mark - "Nine Dollars?" Furthermore, assuming arguendo that appellant established this point, the ultimate finding is simply that a sale of \$9.00 is not recorded. I cannot ipso facto conclude that the minor lied. Such a conclusion is no more or less valid than one which presumes that the sale was never recorded. Obviously, the inferences are varied. Accordingly, even if the testimony of Messrs. Campbell and Bokelman were evaluated in its most favorable context, the same conclusion will result.

The appellant also urged that the penalty imposed by the Board was too severe. It is settled law that the extent of any penalty imposed for violation of the Alcoholic Beverage law or the regulations promulgated thereunder, rests within the sound discretion of the adjudicating authority. See Benedetti, supra; Mitchell v. Cavicchia, 29 N.J. Super. 11 (App. Div. 1953) There is nothing in the record to suggest that the twenty (20) day suspension period was too severe.

The decision of the local issuing authority should not be reversed unless the local issuing authority clearly abused its discretion in a "case of manifest error, clearly unreasonable action or some more untoward impropriety." Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598, 600 (App. Div. 1955); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957)

Thus, I CONCLUDE that the decision of the issuing authority was based upon a preponderance of substantial and believable evidence. I find no credible evidence to support a contrary conclusion. The appellant has not sustained the burden of proof imposed by N.J.A.C. 13:2-17.6.

Accordingly, the action of the Board is AFFIRMED and it is HEREBY ORDERED that Plenary Retail Distribution License No. 1306-44-012-001 issued by the Board of Commissioners of the Borough of Belmar to Frederick Ruddy and Charles Browski, trading as The Little Red Barn for the premises 1506 "F" (now Main) Street, Belmar, New Jersey, be suspended for a period of twenty (20) days commencing January 2, 1980 at 8 a.m., prevailing time.

This decision cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify, or reverse during the forty-five (45) day period. N.J.S.A.
52:14B-10

2. APPELLATE DECISIONS - 280 VALLEY BOULEVARD CORP. v. WOOD-RIDGE.

280 Valley Boulevard Corp.,	:	
a N.J. Corporation, t/a	:	
Hy's Wines & Liquors,	:	CONCLUSIONS
	:	
Appellant,	:	AND
	:	
vs.	:	ORDER
	:	
Municipal Council of the Borough	:	
of Wood-Ridge,	:	
	:	
Respondent.	:	

Richard C. Gernert, Esq., Attorney for Appellant.
Murray Ludmer, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: October 25, 1979 - Received: October 30, 1979

BY THE DIRECTOR:

No Exceptions were filed to the Initial Decision (a copy of which is attached hereto and made a part hereof), pursuant to N.J.A.C. 13:2-17.14.

Having considered the entire record herein including the transcript of the testimony and the Initial Decision, I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein.

In the Initial Decision, it is stated "that no where in the Administrative Code or the New Jersey Statutes Annotated is there a provision, with regard to such violation, permitting a local municipal council to impose a monetary fine..." In fact, and stating it affirmatively, no municipal issuing authority is statutorily authorized to impose a fine with respect to any violation of the Alcoholic Beverage Law or the Rules and Regulations of this Division. That is solely vested in the Director by virtue of N.J.S.A. 33:1-31 which states as follows:

"The director may, in his discretion and subject to rules and regulations, accept from any licensee an offer, in compromise, in such amount as may in the discretion of the director be proper under the circumstances in lieu of any suspension of any license by the director or any other issuing authority..." (emphasis supplied).

Recently, several local issuing authorities have imposed monetary fines in violation of the cited statute. This should serve notice to the local issuing authorities that such practice is solely within the discretion of the Director.

I also agree with the comment in the Initial Decision that the suspension to become effective two days from the date of the order of suspension is an insufficient period of time within which to afford the appellant a reasonable opportunity to perfect its appeal.

Accordingly, it is, on this 11th day of December, 1979,

ORDERED that the action of the respondent Municipal Council of the Borough of Wood-Ridge in finding the appellant guilty of the charge herein be and the same is hereby affirmed, and the appeal is hereby dismissed; and it is further

ORDERED that the monetary penalty heretofore imposed of \$750.00 be and the same is hereby reversed; and it is further

ORDERED that my Order, dated May 25, 1979, staying the respondent's order of suspension pending the determination of the appeal be and is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License No. 0269-44-005-002 issued by the Municipal Council of the Borough of Wood-Ridge to 280 Valley Boulevard Corp., t/a Hy's Wines and Liquors for premises 280 Valley Boulevard, Wood-Ridge be and the same is hereby suspended for fifteen (15) days commencing 2:00 a.m. Wednesday, January 2, 1980 and terminating 2:00 a.m. Thursday, January 17, 1980.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

In the Matter of:)
 280 VALLEY BOULEVARD CORP.)
 t/a HY'S WINES AND LIQUORS)
 v. MUNICIPAL COUNCIL OF THE)
 BOROUGH OF WOODBRIDGE)

INITIAL DECISION
 OAL DKT. NO. ABC 2851-79

Appearances:

Richard C. Gernert, Esq., Attorney for Appellant
 Murray Ludmer, Esq., Attorney for Respondent

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is an appeal from the action of the Municipal Council of the Borough of Woodbridge which by Resolution and Order dated May 24, 1979 suspended Appellant's Plenary Retail Consumption License No. 0269-44-005-002 for the premises at 280 Valley Boulevard, Woodbridge, New Jersey. Said revocation was to become effective May 25, 1979. Upon the filing on May 24, 1979 of the Petition of Appeal, the Director of the Alcoholic Beverage Control granted a Stay of the Order of Suspension pending the determination of this appeal.

Appellant's appeal contends that the action of the Council was arbitrary, capricious, prejudicial and ultra vires and inconsistent with the good faith administration of justice. The Council, in its answers, indicated that the Appellant received timely notice of the charges against it and that a full preliminary hearing was held on May 23, 1979, at which time testimony was taken. The Appellant has full opportunity to cross examine witnesses and present evidence. The Council therefore contends that there is more than sufficient competent evidence in the records to support its resolution and asks that the license suspension be affirmed.

This matter was submitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and the matter was heard before the Honorable Gerald I. Jarrett, Administrative Law Judge, on October 3, 1979 at the Bergen County Courthouse.

The parties stipulated that a sale occurred by a representative of Hy's to a Matthew Chiciak, a minor. There was testimony from Ptl. Banca of the Borough of Woodbridge Police Department that on April 23, 1979, while on patrol he observed Mr. Chiciak exiting Hy's Liquors with a six pack of beer. He stated that he had stopped Mr. Chiciak approximately a week prior with regard to a motor vehicle incident and determined that he was only 17 years of age. He stated that when he observed him exit the premises of Hy's Liquors he approached him as he was getting into his vehicle, asked for his drivers license, which was produced, and from which he was able to ascertain that the individual was only 17 years of age. He said that he then placed the individual under arrest for possession of alcoholic beverage and that the individual admitted purchasing beer from Hy's Liquors. He testified that he then requested a backup and Sergeant Sole responded and assisted in the investigation of the matter.

The youth at some point was taken back to the store at which time he pointed to a Mark Galperin, an employee of Hy's Liquors and identified him as the individual who sold him the liquor.

Sergeant Sole testified that he was the backup unit involved in this particular incident and that he responded to Hy's Liquors and observed the young man, later indentified as Mr. Chiciak, with Ptl. Banca and that he also observed a six pack of beer in their possession. He testified that he then entered the premises of Hy's Liquors, advised Mr. Mark Galperin that he had sold beer to a minor and that Mr. Galperin went to the front of the store, saw the juvenile and admitted making the sale to said minor.

Sergeant Sole stated that at a later time Mr. Galperin advised him that he had a signed statement from the juvenile that he was of age. He testified, in addition, that Mr. Galperin admitted to him that the place was crowded, that he had carded other individuals in the store and must have overlooked the individual. Sergeant Sole stated that prior to this incident he had never had an occasion to deal with the juvenile in question and that he could not determine the juvenile's age based on his observations due to the individual having a slight growth of hair on his face at the time.

The State rested its case and Mr. Galperin testified on behalf of the Appellant. He stated that he is the father of the two owners of Hy's Liquor and that he, on occasion, has assisted with the operation of the store and is familiar with the business

operations of the premises. He testified that he knew of an I.D. statement of Mr. Chiciak stating that he was over the age of 18 and that said statement was kept in a drawer directly under the cash register.

He testified that the license had never been suspended or had any sanctions taken against it prior to this incident. He stated that the store was ordered closed within 24 hours of the Borough hearing, just prior to the Memorial Day holiday and that he knew of no other incidents where a licensed premise was ordered closed on such a short notice within the Borough.

Mr. Galperin testified that a Jan's Deli, which is located approximately two blocks away from their establishment, had two violations for sales to minors as well as employing an under aged clerk who made sales of alcoholic beverages and that they were given ample opportunity to conclude their business operation before they were compelled to close.

Under cross examination Mr. Galperin admitted that he had not seen the signed statement of Mr. Chiciak until a few days after the incident.

Matthew Chiciak testified that he had in fact bought the beer in question on the date that he was arrested. At the time of his arrest he was 17 years old, five feet nine inches tall and weighed approximately 143 pounds. He stated that he had bought beer at the premises on prior occasions and acknowledged that he had signed an I.D. slip in December stating that he was over 18 years old. He testified that he had bought beer at other establishments in the Borough as well as outside the Borough and had never been questioned with regard to his age except by Hy's Liquors. He stated that he had bought beer at the age of 16 at Jan's Liquors and has had his beard for approximately one and a half to two years.

Mr. Chiciak testified that in December of 1978 he was carded by Bert Levine, an employee of Hy's Liquors, at which time he produced his fishing license and library card and signed a slip verifying his age. Mr. Chiciak stated that Mark Galperin was the individual who sold him the beer in question, that this was the first occasion he had ever purchased beer from Mark and that when he made the purchase there were approximately four other persons in the store.

Under cross examination Mr. Chiciak stated that Mr. Levine informed him that he normally did not take fishing licenses and therefore had him sign the I.D. form. He stated that Mark was not present when he originally went to the store but that he has known Mark for the past year.

Bert Levine testified that Mr. Chiciak purchased beer from him on December 22, 1978 and identified what was marked A-1 in evidence, a sale of alcoholic beverage to minors affidavit signed by Mr. Chiciak. Mr. Levine testified that he remembers Mr. Chiciak from conversations he had with him leading up to his purchase of alcohol on December 22, 1978. He stated that he always kidded Mr. Chiciak about his appearance and said that he felt Mr. Chiciak resembled a basketball player named Havlicek.

Mr. Levine stated that he was suprised that Mr. Chiciak was arrested because he honestly believed that he was of age. Under cross examination he said that he spoke to the Chief of Police who informed him of what I.D. to accept. He stated that it is not common practice for him to accept fishing licenses but since Mr. Chiciak looked of age to him and he had talked to him on prior occasions and seen him in the company of individuals who he knew to be of age he felt after receiving the I.D. slip signed by Mr. Chiciak that he was in fact of age.

Bruce Galperin, President of 280 Valley Boulevard Corp., testified that his father funded the business and advised him in the managing of same. He testified that he keeps the forms of age verification to protect himself against sales to minors as well as to use as a scare tactic against individuals who might be under age.

Under cross examination he testified that he would not endanger his father's financial interest in the corporation and depending upon the circumstances would lie to protect his father. He testified that he felt that the age verification slip, marked A-1 in evidence, freed him from liability and he stated that he never knowingly sold alcohol to anyone under the age of 17.

Mark Galperin testified that he made the sale to the minor, Matthew Chiciak. He stated that he felt that the form of age verification was to ascertain the true age of an individual. He stated that he had not worked much in the liquor store but that he had seen Mr. Chiciak make purchases on prior occasions from Bert Levine. He stated that the normal policy of the store is that if an individual is in doubt as to the age of a purchaser he is to request identification and also have him sign an age verification slip.

Under cross examination he testified that he first saw the age verification slip with regard to this particular individual after the alleged incident and that he has seen a sale to the said minor approximately one to one and a half weeks prior to the incident and stated that knowing the store policy and how close Mr. Levine checked I.D.'s he felt that either Mr. Levine had already verified the individuals age or he had obtained the age verification slip from the individual. He testified that he would

only sell to an individual who he is 75% positive is of age and who will sign an age verification slip and that if the individual did not fall within that area he would refuse to make the sale. He testified that he did not ask for proof of age on this particular occasion and in fact that he relied on the prior sales to the minor as true age verification.

The witnesses who were present and testified with regard to both sides were credible, sincere and honest and striving to be fair in their testimony. After having observed all the witnesses closely and after having considered the entire record, including the testimony and exhibits submitted into evidence, together with arguments of counsel, the Court makes the following findings of fact:

1. That on April 23, 1979 a sale was made by Mark Galperin to Matthew Chiciak, a minor.
2. That on December 22, 1978 Matthew Chiciak misrepresented his age to induce the sale of alcoholic beverage to him by signing an alcoholic beverage age verification slip and presenting same to Bert Levine.
3. That 280 Valley Boulevard Corp. t/a Hy's Wines and Liquor, are the owners of Plenary Retail Consumption License No. 0269-44-005-002.
4. That on April 24, 1979 Matthew Chiciak did not sign an age verification slip in the presence of Mark Galperin nor was Mark Galperin aware of or had ever seen the age verification slip signed by Mr. Chiciak on December 22, 1978.
5. That on May 23, 1979 the Municipal Council, Borough of Woodbridge, by way of Resolution, suspended Appellant's liquor license for 15 days effective May 25, 1979 and imposed a fine of \$750.00.
6. That there was only a two day period between the action of the Municipal Council and the imposition of the stated penalty.

The ownership of an alcoholic beverage license is a privilege and not a right and should be protected as such. The decision of the Municipal Council should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. It is clear that the Appellant did make a sale to a minor on the date in question and that said minor at said time did not submit to the agent of the licensee a signed statement to induce the sale of the alcoholic beverage. It is also clear that the agent of the licensee was not aware of such a signed statement at the time he made the sale. Therefore I must find Petitioner in violation of N.J.A.C. 13:2-23.1. However, though I have upheld the Municipal

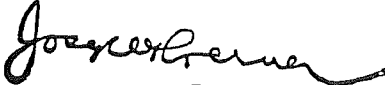
Council, Borough of Woodbridge with regard to their finding of fact I must reverse that portion of the penalty imposing the fine of \$750.00. I reverse said portion and find that no where in the New Jersey Administrative Code or the New Jersey Statutes Annotated is there a provision, with regard to such violation, permitting a local municipal council to impose a monetary fine. Second, I find that the Municipal Council of the Borough of Woodbridge was arbitrary and capricious with regard to the time period between the finding of Petitioner's guilt and the imposition of said penalty. N.J.A.C. 13:2-17.3 permits an Appellant 30 days after the service or mailing of a notice by the municipal issuing authority of the action they are appealing within which to file their appeal. The Municipal Council of the Borough of Woodbridge did not extend to the Appellant a suitable period of time within which to file their appeal. However this in no way changes the amount of time imposed by the Municipal Council of the Borough of Woodbridge and I find that said suspension period was not excessive in light of the violation.

Accordingly, IT IS HEREBY ORDERED that the suspension of the license of the 280 Valley Boulevard Corporation t/a Hy's Wines and Liquors, by the Municipal Council of the Borough of Woodbridge BE AFFIRMED and that the monetary penalty of \$750.00 imposed by the Municipal Council of the Borough of Woodbridge BE DISMISSED.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

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 Joseph H. Lerner
 Director