

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

BULLETIN 2413

October 2, 1981

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - TOWNE TAP ROOM, INC., A NEW JERSEY CORPORATION v. IRVINGTON.
2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF THE MAGFRA, INC.
3. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 2413

October 2, 1981

1. APPELLATE DECISIONS - TOWNE TAP ROOM, INC., A NEW JERSEY CORPORATION v. IRVINGTON.

#4408	:	
Towne Tap Room, Inc., A New Jersey :	:	ON APPEAL
Corporation, t/a Towne Tap Room, :	:	CONCLUSIONS
	:	AND ORDER
Appellant,	:	
v.	:	
Municipal Council of the Town :	:	
of Irvington,	:	
Respondent.	:	

-----  
Benjamin A. Stanziale, Esq., Attorney appearing for Appellant.  
Henry Rzemieniewski, Esq., by Salvatore Muscato, Esq., appearing for Respondent.

Initial Decision Below

Dated: June 7, 1980 - Received: June 10, 1980

BY THE DIRECTOR:

No written exceptions to the Initial Decision below were filed by the parties hereto pursuant to N.J.A.C. 13:2-17.6.

Having carefully considered the entire record herein including the transcript of the testimony, the exhibits and the Initial Decision, I concur in the findings and conclusions of the Administrative Law Judge and adopt ~~her~~ recommendations, except that I reject the recommendation with respect to penalty.

The Administrative Law Judge concludes that the licensee was clearly guilty of the charge alleging the violation of the local ordinance which prohibits the sale and service of alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. on weekdays. However, she also finds the licensee guilty of the second charge which alleges that the licensee failed to keep a list in a form prescribed by the Director of this Division containing the names and addresses and required information with respect to all persons currently employed, which list shall be available for inspection. She asserts, however, that there the licensee was in "technical" violation. I disagree with that conclusion insofar as the violation is characterized as a technical violation, for it was, indeed, a clear violation of the subject ordinance.

Judge Stanford concludes that "in the absence of any pattern or history of violations, coupled with the openness evidenced by Mr. Lamberti in inviting the officers in", the 15 day suspension heretofore imposed by the respondent "could be considered manifestly excessive". She, therefore, recommends that the suspension period be reduced to 10 days.

It is well settled that the quantum of penalty to be imposed in disciplinary proceedings rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify such penalty should be sparingly exercised and only with the greatest caution. Harrison Wine and Liquor Co., Bulletin 1296, Item 2; Mitchell v. Cavicchia, 29 N. J. Super 11 (App. Div. 1953); Popola v. Newark, Bulletin 2071, Item 2. The authority of the Director to reduce the said penalty on appeal is confined to cases where the suspension is manifestly unreasonable. Sventy and Wilson v. Point Pleasant Beach, Bulletin 1930, Item 1; Guesche, Inc. v. Union City, Bulletin 2072, Item 5. Moreover, the total penalty imposed herein on both charges is consistent with, and, in fact, less than precedential penalty imposed by this Division for such offenses. Gach v. Irvington, Bulletin 2058, Item 1.

I am persuaded and find, based on the facts and circumstances herein that the penalty imposed by the respondent was not manifestly unreasonable or unfair. Therefore, I shall reimpose the suspension of 15 days.

Accordingly, it is, on this 15th day of July, 1980,

ORDERED that the action of the respondent Municipal Council of the Town of Irvington be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License No. 0709-33-080- 001 issued by the Municipal Council of the Town of Irvington to Towne Tap Room, Inc., a New Jersey Corporation, t/a Towne Tap Room for premises 850-52 18th Avenue, Irvington be and the same is hereby suspended for fifteen (15) days commencing 2:00 a.m. July 28, 1980 and terminating 2:00 a.m. Tuesday, August 12, 1980.

TOWNE TAP ROOM, INC., A	:	
NEW JERSEY CORPORATION	:	<u>INITIAL DECISION</u>
t/a TOWNE TAP ROOM	:	
850-852 18th Avenue	:	O.A.L. DKT. # A.B.C. 5184-79
Irvington, New Jersey 07111	:	
v.	:	Agency Dkt. # 4408
	:	Municipal Reference #7462
MUNICIPAL COUNCIL, ACTING AS	:	
THE ALCOHOL BEVERAGE CONTROL	:	
OF THE TOWN OF	:	
IRVINGTON, NEW JERSEY	:	

## APPEARANCES:

Salvatore Muscato, Esq., Assistant Town  
Attorney for the Town of Irvington, Respondent

Benjamin A. Stanziale, Attorney for Petitioner

BEFORE THE HONORABLE GENEVA STANFORD, A.L.J.:

This is an appeal from the action of the Municipal Council of the Town of Irvington (hereinafter Council) which by Resolution and Order of September 25, 1979, adjudged petitioner, Towne Tap, Inc., guilty of violating section 3-3(a) of the Irvington Town Code, and also violation of N.J.A.C. 13:2-23.13 (a) (3) and (b).

As a result of the aforementioned finding, the Board ordered the suspension of petitioner's Plenary Retail Consumption License #0709-33-080-001, for a period of 15 days commencing October 14, 1979 at 2:00 a.m.

Upon the filing of the Petition of Appeal, October 10, 1979, the Director of the Division of Alcoholic Beverage Control granted a stay of the Order of Suspension pending determination of this Appeal.

The subject ordinance 3-3(a) provides as follows:

"No person shall sell or serve any alcoholic beverages between the hours of 2:A.M. and

7:00 A.M. on weekdays and between 2:00 A.M. and 12:00 Noon on Sundays; and no place or establishment licensed under the provisions of sections 33:1-1 to 33:1-96 of the Revised Statutes and any amendments thereof and supplements thereto shall be open during the above prohibited hours; except, that restaurants, drug-stores and establishments where the principal business is other than the sale of alcoholic beverages may remain open during the above prohibited hours for such other purposes only; and, except further, that on New Year's Eve, the licensees may remain open an additional three hours from 2:00 A.M. to 5:00 A.M. The hours herein mentioned refer to Eastern War Time, Standard Time, or Daylight Saving Time, whichever time shall be then in effect and shall apply hereto."

The charge alleges petitioner was open after hours July 23, 1979, to wit 2:17 a.m.

As violation of N.J.A.C. 13:2-23.13(a) (3) and (b) it was charged the petitioner failed to name one William Cerami on the list of all persons currently employed.

On October 12, 1979, the Director of Alcoholic Beverage Control signed an Order staying the Order of Suspension pending the determination of the Appeal.

The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A hearing was held on February 14, 1980, memorandum of law filed March 15, 1980 and the case closed March 31, 1980.

The petitioner contended the actions of the Board were erroneous and should be reversed in that as to the first charge:

1. Although open, no drinks, alcoholic or otherwise were being served, and employees were in the process of completing assigned cleaning tasks.
2. As to the second charge, petitioner in fact possessed an employee list, which was available July 23, 1979 which listed all employees, and further, that William Cerami was in fact not an employee, but a "trainee" and did not become an employee until August 4, 1979.

Sgt. Nathan Silverman testified while on routine patrol duty on the 10:30 p.m. to 7:00 a.m. shift on July 23, 1979, in the company of Officer Donald McDougall, the officers were travelling west from the Garden State Parkway toward Styvesant Avenue. In approaching the premises at 850 18th Avenue, Irvington, he suddenly perceived a flash of light emanating from the premises and discerned the curtains at the windows open and close. He was met on the sidewalk by the owner, William Lamberti, who inquired as to what was happening and invited him into the establishment.

The time according to the witness was approximately 2:20 a.m. Inside, the Bar although dimly lit, he observed approximately 10 persons in close proximity to the front door. Some were standing, and some seated at the bar with glasses in their hands. Drinking glasses were on the bar. Behind the bar was one William Cerami. The petitioner persistently inquiring as to "what's going on" became loud and boisterous insisting he was simply having a little get-together and unlike others not involved in any gambling or prostitution on the premises, stating he considered the officers harassing him. The Sergeant ordered everybody to finish their drinks and leave, requesting no information from the persons as to their identities.

Observing Cerami behind the bar apparently cleaning glasses, the Sergeant requested the licensee to produce both his plenary license and the list of employees. Mr. Lamberti according to the witness, reached behind the bar and retrieved from a brown envelope the requisite form. The form however, was completely blank. Mr. Lamberti's explanation being he had forgotten to fill it out. He was present at the bar approximately 20 minutes before leaving.

Under cross-examination, Sgt. Silverman testified he did not solicit names of persons present because the situation in his estimation, did not call for it at the time. Further, he felt no need to inquire as to the purpose of their presence, since he adjudged they were there to drink, conceding, however, he neither asked nor had knowledge of the contents of the glasses.

Questioned as to what Lamberti meant by a "get-together", Sgt. Silverman responded, he assumed the phrase meant "party" - but conceded there was neither food, women or music playing, all indications of a festive gathering.

He further did not inquire as to whether or not Cerami was working there nor did Cerami state he was an employee.

Presented with a full list of employees on Form E-141-A (A-1 in evidence) the Sergeant denied it represented the same form displayed to him July 23, 1979, and insisted the form he saw was devoid of any entries.

Regarding the question of the time involved, the Sergeant stated he did not request a call of time on the radio, but relied on his time piece. The time in bringing the patrol car to a halt, exiting the vehicle and entering the bar consumed approximately 15-20 seconds. Although initially setting a 2:20 a.m. time of entry, R-1, the Sergeant's report reflected the time as being 2:17 a.m.

Officer Donald McDougall, the accompanying patrolman, testified on behalf of the respondent. The officer corroborated the time of entry into the establishment, the number of persons present, the existence of drinking glasses in the hands of persons and the submission of a blank employee list. He recalled the presence of Mr. Cerami behind the bar. The report additionally indicated the presence of approximately 8-12 persons toward the front of the bar nearest the entrance. The number of persons differed from the estimated 10 persons testified to by Sgt. Silverman. He corroborated however, the presence of William Cerami behind the bar, and the total absence of any entries on the employee list form.

He recollected additionally a discussion ensued regarding the employee list, wherein Mr. Lamberti indicated he had not had the time to fill out the document.

The corroboration of the existence of the discussion served to refute Mr. Lamberti's later, if not denial, vague recollection of its occurrence.

Mr. Lamberti testified in his own behalf. Mr. Lamberti, owner-manager, testified at the time of the officers approach, the large electrical neon sign with 2 green spotlights and the advertising beer signs in the window had been switched off.

The closing up process usually began about 1:30 with actual closing around 2:45. 2:17 a.m. on July 23, was in reality Monday morning. Present on the premises after the last call for drinks were six people, Mr. Lamberti, Jim Fuzzari, John Laverato, owner of the Appian Way, a restaurant in Orange and his two chefs, each were there for a purpose distinct from patron.

Mr. Cerami who was to commence part-time employment within a week, remained on the premises to learn the close up procedure of washing and putting up glasses, washing down the bar and bringing up the beer. He had not, however, served as a bartender during the course of the evening.

Mr. Fuzzari, an employee of Mr. Lamberti's and manager of his small restaurant in the vicinity of the tavern had arrived to bring the receipts from Lamberti's Italian Hot Dog establishment.

John Laverato, a close friend, habitually stopped by on Sunday nights. In that his own establishment was closed on

Monday, a habit developed whereby after closing of the Tavern all would go to breakfast. At the time the officers entered the premises, Mr. Laverato was simply waiting with his chefs for Lamberti to finish the cleaning chores so they could leave together.

Just prior to 2:00 a.m. in preparation for closing it was his habit to put the lights off, open the draperies and turn the jukebox off.

At the point the officers entered, the registers were rung out, empty drawers were opened and tapes were out of the register. No drinks were on the bar and stools had been turned upside down resting on the bar.

Mr. Lamberti distinctly recalled when the officers pulled up to the Bar, visible through the opened curtains, either a flashlight or a spotlight on the car drew his attention to the parking vehicle.

Concerned there may have been an altercation outside the bar, he inquired of the officers what the problem was and invited them in. Because of the officers hostile attitude, curt instructions "let's get them all out of here", Lamberti flew off the handle protectively "why are you busting my chops, there's no gambling or prostitution here. It's a clean joint".

When the license and list of employees were requested, he gave the officer what he thought was or mistook to be A-1. The document Form E-141-A offered into evidence, bore a full compliment of names of employees, addresses, ages, and date of employment including Lamberti's and Cerami dating from 1971. The document indicated Cerami commenced employment August 1979. He had however, been dismissed in December 1979.

In lieu of testimony by Arthur Poe, Certified Public Accountant for Towne Tap, previously resolved at pre-conference, Lamberti offered the payroll sheet from the accountant's records indicating William Cerami an employee of Towne Tap from August 4, 1979 to December 15, 1979, and an accompanying signed letter by Arthur Poe establishing the payroll sheet reflected appropriate state and federal deductions.

The accountant's statement, while tending to establish the non-employee status of William Cerami on July 23, 1979, did not negate the absence of bonified employees list on the date in question.

Cross-examination going to the production of the employee list elicited the following:

Q I show you this A-1 for Identification.  
Did you have this sheet and show it to Sgt.  
Silverman and Officer McDougall on July 23?

A I thought I did.



Q I didn't ask you that. I asked you if this was the sheet that you showed them?

A I thought I did.

Q Do you recall the conversation between you and Sgt. Silverman insofar as the question as to why the sheet was void of any names or information?

A Vaguely. I was very upset that night. I get very high-strung, very upset sometimes when a situation like this is arising.

Q I'm going to repeat.

A Yes, sir.

Q Do you recall the conversation between you and Sgt. Silverman insofar as --

A Vaguely.

Q -- a blank list or sheet of paper supposedly to list the names of employees? Do you recall that?

A Vaguely.

Q Do you know what your answer was to him?

A I don't recall exactly. I said I was very high-strung, very nervous in this situation. I became very high-strung like I do in a lot of situations.

Q Did you show him a paper with the names of the employees that you had that particular day?

A I thought I did.

Q May I interpret what you just said by saying that this was not the paper?

A No, you may not.

at pg. 102,103

In responding the petitioner evidenced no evasiveness, but reflected sincerity of what he actually believed. At no time did he equivocate or become non responsive.

James Fuzzari testified he had been employed both as manager of Lamberti's Italian Hot Dog and more recently as bartender at Towne Tap. Both incorporated under Towne Tap, Inc. He corroborated the reasons for his presence at Towne Tap, the purpose being to bring receipts from Lamberti's Italian Hot Dog store.

He recalled Cerami's presence at approximately 11:45 p.m. seated at, and not behind the bar, having a few drinks with customers. Last call for drinks to his recollection occurred approximately 1:30 a.m. At the officers instructions to leave, he had exited the premises immediately. He heard no discussions regarding an employee list.

Nathan Silverman was recalled as a rebuttal witness to rebutt the position of the bar stools. He unequivocally stated the bar stools were where they belonged, on the floor and not atop the bar as stated by the licensee.

Cross-examination addressed a completely different indicia of the "closed" reference, the condition of the lighting. Sgt. Silverman conceded - neon signs on the front of the bar were off - as were the lights over the tavern.

No redirect examination ensued and the parties rested.

After having observed all the witnesses, and having considered the entire record, including the testimony and exhibits submitted in evidence, together with the arguments of counsel, the Court makes the following findings of fact:

1. Towne Tap Room, Inc., a New Jersey Corporation, t/a Towne Tap Room, is a tavern located at 850-852 18th Avenue, Irvington, New Jersey.
2. Towne Tap Room is a holder of Plenary Retail Consumption License #0709-33-080-001.
3. On July 23, 1979, the appellant was charged with being open after hours in violation of Section 3-3(a) of the Irvington Town Code.
4. Petitioner was also charged with failure to name one William Cerami on the list of all persons currently employed in the licensed premises in violation of N.J.A.C. 13:2-23.13(a) (3) and (b).
5. The ordinance pertaining to display of current certification application and list of employees reads:

(A), no licensee shall conduct a licensed business unless: (1), current license certificate is at all times conspicuously displayed on the licensed premises in such plain view as to be easily read by all persons visiting such premises; (2), a photostatic or other true copy of the application for the current license as well as the last filing long form application (if current application is the short form) is kept on the licensed premises; (3), a list in form prescribed by the Director of the Division of Alcoholic Beverage Control containing the names and addresses of and required information with respect to all persons currently employed on retail licensed premises is kept on the licensed premises. (B), such application copy and such list shall be available for inspection by the Director, his deputies, inspectors and investigators and by any officer defined by N.J.S.A. 33:1-1(p)."

6. As a result of the aforementioned charges, and a hearing before the Municipal Council acting as the Alcoholic Beverage Control Board of the Town of Irvington, a suspension for a period of 15 days was imposed upon petitioners Plenary Retail Consumption License #0709-33-080-001, commencing October 14, 1979 at 2:00 a.m.

7. Sgt. Nathan Silverman and Officer Donald McDougall, on tour of duty the early morning hours of July 23, 1978 perceived a flash of light emanating from Towne Tap Bar.

8. The time was approximately 2:17 a.m.

9. Exiting the patrol car, they were met on the sidewalk by the owner-manager William Lamberti, who invited them in.

10. Entering the premises they encountered over five persons in the establishment with glasses in their hands.

11. Sgt. Silverman ordered everyone out and requested a list of employees and a production of the license.

12. William Cerami was behind the bar apparently cleaning glasses.

13. The official form produced for inspection was void of names, the owners William Lamberti or William Cerami.
14. The list was retrieved from a brown envelope behind the bar during the process of a heated discussion between Sgt. Silverman and William Cerami.
15. A completed list of employees from 1971 was produced at hearing on appeal.
16. The payroll record of the accountant, Arthur Poe, set the date of commencement of employment for William Cerami as August 4, 1979.
17. Mr. Lamberti maintained William Cerami on July 23, 1979, was a "trainee" and not an employee.
18. No liquor was evident on the bar, the juke box was not playing, advertising lights and overhead lights had been turned off.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed.

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 (1954). Gallo v. Gallo, 66 N.J. Super. (App. Div. 1960).

I have had an opportunity to observe the demeanor of the witnesses as they testified at this plenary de-novo hearing and to evaluate and assess such testimony. I am persuaded that the version given by the officers represents a more factual account of what occurred.

The applicable ordinance requires that licensed premises, shall be closed between 2 a.m. and 7 a.m.

In construing a similar ordinance, it has been held that "closing" means "that all members of the public must be excluded." Moreover, even closing and locking the doors and shutters, is not sufficient. Patrons, or all members of the public must be off the premises. Re Casarico, Bulletin 268, Item I. The applicable ordinance states if:

"there be anyone found on said premises, other than the licensee and regular employees, it shall be deemed a violation of the said ordinance. As used in this ordinance, the

closing-of-premises provision means that all members of the public must be excluded. Cf. Mama Ventura, Inc. v. Voorhees, Bulletin 1498, Item 1. See Town House, Inc. v. Montclair, Bulletin 792, Item 3; Re Casarico, Bulletin 268, Item 1; Oliver Twist Pub and Lounge v. North Bergen, 1869/3, Richards v. Bayonne, 61 N.J.L. 496."

It is clear that, by the testimony of appellant's witnesses, at least five of the six persons on the premises were not regular employees. It thus became the duty and the responsibility of appellant to see to it that these persons left the premises, as required by the ordinance. Licensees are required to adhere strictly to the provisions of the local ordinance and to clear out the patrons and close the place on time (and this includes friends of the licensee). Patronage that is worthwhile will understand and will hold no grudge if told to leave at the closing hour.

The licensee contends that to construe the ordinance to exclude all members of the public is tantamount to a "prohibition" rather than a "regulation". See R.5 33:1-40. Similar argument was dismissed in Richards v. Bayonne, *supra*, where the court said that such a regulation poses only a partial restriction and does not amount to a total prohibition. Cf. Slaates v. Washington, 100 N.J.L. 605. Thorne v. Kearny, 100 N.J.L. 228.

Ordinances of course must receive a reasonable interpretation. Circumstances may exist in a given case where, because of suddenly arising emergent situations, it would be unreasonable to fasten responsibility on a licensee. An alleged employee bringing store receipts, or friends waiting would not fall within the definition of a "suddenly arising emergent situation".

In the instant case, therefore, a clear violation of the ordinance is disclosed for which the licensee should be held accountable.

Indeed, by the testimonies of all of the licensee's witnesses, including that of Mr. Lamberti, the entry of the officers and the presence of the individuals on the premises, not employees was after the hour of 2:00 a.m.

Regarding N.J.A.C. 13:2-23.13(a) (3) and (b) pertaining to an available list of employees the licensee's own testimony, as recited herein did not explicitly deny he did not provide the officers with the requisite completed list.

Although failure to provide a list to include William Cerami as employee was specifically detailed in the charges, no list in fact was presented for inspection. The language of the ordinance specifies at (3):

"...a list in form prescribed by the Director of the Division of Alcoholic Beverage Control containing the names and addresses of required information with respect to all persons currently employed available for inspection."

Licensee attempted to argue the status of Cerami was analogous to or determination of the charge of "failure to produce an employee list. Licensee argued the count went solely to the issue of Cerami's status. The argument is spurious.

Whether or not Cerami was or was not an employee does not obviate the total non-existence of the employee list. The fact the list was "available" does not mean it was produced nor negate the non-production on July 23, 1979.

I therefore CONCLUDE the licensee was in technical violation of N.J.A.C. 13:2-23(a) (3).

I further CONCLUDE in light of the absence of any pattern or history of violations, coupled with the openness evidenced by Mr. Lamberti in inviting the officers in, mitigating the presumption of any covert activity, 15 days suspension could be considered manifestly excessive.

Therefore, I CONCLUDE that the license of Towne Tap, be suspended for a period of 10 days for the July 23, 1979 violations.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE  
MATTER OF THE PETITION OF THE MAGFRA, INC.

In the Matter of the Petition of	:	
The Magfra, Inc.	:	OAL DOCKET NO. ABC 750-79
Holder of Plenary Retail Con-	:	
sumption License No. 2009-32-050-001	:	CONCLUSIONS
issued by the Municipal Board of	:	and
Alcoholic Beverage Control of the	:	ORDER
City of Linden.	:	

-----  
Harry B. Kotler, Esq., Attorney for Petitioner.

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: June 2, 1980 — Received: June 4, 1980

BY THE DIRECTOR:

No written exceptions to the Initial Decision were filed in connection with the petition filed pursuant to N.J.S.A. 33:1-12.39.

On December 5, 1979, I entered Conclusions and Order remanding the subject petition back to the Office of Administrative Law for hearing, after the Administrative Law Judge improperly dismissed same. The within Initial Decision represents the factual development established at the remand.

Having carefully considered the entire record herein, including the transcript of the testimony and exhibits, I concur in the findings and recommendation of the Administrative Law Judge and adopt same as my conclusions herein.

Because the hearing process referable to this petition was extended as heretofore noted, the within petition shall be amended to include a request for authorization for the 1980-81 license term. This will result in the third extension granted under N.J.S.A. 33:1-12.39. No further extensions will be granted.

Accordingly, it is, on this 17th day of July, 1980,

ORDERED that the Municipal Board of Alcoholic Beverage Control of the City of Linden be and the same is hereby authorized to consider the application of the Magfra, Inc. for renewal of its Plenary Retail Consumption License for the 1979-80, nunc pro tunc, and 1980-81 license terms, and, in the exercise of its discretion, to grant or deny such applications. If renewal is granted for the 1980-81 license term, such action shall be made expressly subject to the special condition that said license must become operational during the 1980-81 license term.





Mr. Malgeri testified that he had an interest in the license at 426 North Wood Avenue in Linden and that said license had been active for approximately 44 years. That at the time his lease expired on the premises he was evicted by the landlord. He then sold the license to Frances Stango who in turn sold same to the Magfra, Inc., whose stock is owned by Robert Downs. Robert Downs is a friend of his and the two of them had agreed to enter into a partnership where Mr. Downs would operate a tavern and he a restaurant somewhere in the City of Linden. He, after being solicited by Mr. Downs, contacted several real estate agents and subsequently spoke to a Mrs. Guedes of the Van Horn & Dolan Real Estate Service about renting the property located at 414 North Wood Avenue. A tentatively contractual arrangement and offer was made for the premises and same was negotiated for approximately six to eight weeks prior to the negotiations collapsing. Upon said deal terminating, Mr. Leo Menkin approached him and made an offer which he communicated to Mr. Downs with regard to the purchase of the license.

Since that time Mr. Menkin has made a deposit and exhibited the fact that he has a facility available for the license.

N.J.S.A. 33:1-12.39 permits license renewal applications based upon good cause being shown and there being reasonable expectation that the license will be made active within the near future and that good faith has been shown that all efforts to make license active have been done.

I find as a fact that Petitioner acted in good faith since obtaining the license. He contacted several realtors and also approached the prior landlord in his attempt to locate a suitable facility and make the license active. After considerable search and failure in locating a suitable facility, he entered into a contractual agreement with an individual who has the financial capabilities of purchasing the license as well as a facility in which to house same.

I also find that the Petitioner acted in good faith by having prepared a blueprint of the floor plan layout for the facility located at 414 North Wood Avenue prior to the offer being rescinded.

Therefore I CONCLUDE that there was substantial evidence in the record before me to support and justify the renewal of the liquor License No. 2009-32-050-001 located in the City of Linden. Accordingly, it is hereby recommended that the renewal of the liquor license be granted.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOSEPH H. LERNER**, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with 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.

3. STATE LICENSES - NEW APPLICATIONS FILED.

Aurora Wine Distributors, Inc.  
495 North 5th Street  
Newark, New Jersey  
Application filed September 23, 1981  
for limited wholesale license.

Franche Comte Ltd.  
12-55 Old Hook Road  
Emerson, New Jersey  
Application filed September 28, 1981  
for place-to-place transfer of a wine  
wholesale license from 428 Old Hook Road,  
Emerson, New Jersey.

The F. & M. Schaefer Brewing Co.  
100 Morris Avenue  
Springfield, New Jersey  
Application filed September 30, 1981  
for place-to-place transfer of a limited  
wholesale license from Newark International  
Plaza, Routes 1-9 Southbound, Newark,  
New Jersey.



Joseph H. Lerner  
Director