

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX - CN-087
TRENTON, NEW JERSEY 08625-0087

BULLETIN 2448

December 31, 1986

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
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RICHARD J. HUGHES JUSTICE COMPLEX - CN-087
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December 31, 1986

1. CLARIFICATION OF NOTICE TO WHOLESALERS AND DISTRIBUTORS AS APPEARED IN BULLETIN 2447, ITEM 3 (OCTOBER 20, 1986) ADVISING THAT DELIVERY OF ALCOHOLIC BEVERAGE ORDERS TO AREAS CONTROLLED OR DESIGNATED BY A RETAIL LICENSEE BUT WHICH ARE NOT PART OF THE RETAIL LICENSED PREMISES IS PROHIBITED - EXCEPTION IN CERTAIN LIMITED SITUATIONS.

Following publication of the notice in the last bulletin, Bulletin 2447, Item 3 (October 20, 1986), a situation was brought to the attention of the Director whereby the retail licensed premises is located in a portion of a larger premises (such as a supermarket) and there is only a single loading dock which must serve both the licensed retail premises and the unlicensed other business. Although the wholesaler might be able to bring the alcoholic beverages from the loading dock and through the unlicensed premises to the licensed premises, liability insurance restrictions may prevent the wholesaler's delivery person from doing so.

In such situation, or in a similar set of circumstances, the previous notice is modified to the extent that a retail licensee, having a common loading dock or receiving area which is away from and not a part of the licensed premises, may accept deliveries of alcoholic beverages at the common loading dock or receiving area, *provided* such product is accepted by the retail licensee or one of its employees (who is listed on the E-141-A form), and *provided further* that immediately thereafter the retail licensee or its employee transports the product to the licensed premises. If the size of the delivery is such that the transporting cannot be done in one trip or load, the transporting may be accomplished in multiple loads so long as such transporting is continuous and there is no storage or leaving of the product at the loading dock or in the receiving area for any period beyond that necessary to complete the transporting of the multiple loads to the licensed premises.

2. NOTICE: SUBSCRIPTIONS FOR 1987 A.B.C. BULLETINS.

The Alcoholic Beverage Control Bulletins are published on an as needed basis throughout the calendar year. Subscriptions are \$25.00 per year and subscribers receive all copies of the bulletin published for that calendar year. To begin or renew a subscription, subscribers should send their check or money order for \$25.00, payable to the Division of A.B.C., along with their name and full

mailing address to: Division of Alcoholic Beverage Control (Attention: ABC Bulletin Subscription Service), Richard J. Hughes Justice Complex, CN-087, Trenton, NJ 08625-0087.

Subscribers who are government officials and are ordering in an official capacity, please include title and jurisdiction. A voucher may also be utilized for payment.

3. FINAL ORDER IN PROCEEDINGS BROUGHT PURSUANT TO N.J.S.A. 33:1-93.6 ET SEQ. BY SEVERAL PLENARY WHOLESALERS AGAINST PREMIERE WINE MERCHANTS, INC., AND REMY MARTIN.

The following is the Final Order issued by the Director following a settlement in the discrimination proceedings brought pursuant to N.J.S.A. 33:1-93.6 et seq. The basis for the filing of the petitions is set forth in the order:

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

JOSEPH H. REINFELD, INC., MAJESTIC WINES & SPIRITS, INC., FLAGSTAFF LIQUOR CO., AND BANNER LIQUOR CO., Petitioners,

ABC Docket Nos. 11-83-295, 11-83-298, and 11-83-300 (consolidated) (Petition Proceedings under N.J.S.A. 39:1-93.6)

vs.

PREMIERE WINE MERCHANTS, INC., REMY MARTIN AMERIQUE, INC., and E. REMY MARTIN & CO., Respondents

FINAL ORDER DIRECTING RESPONDENTS TO RETAIN PETITIONERS AS AUTHORIZED DISTRIBUTORS OF REMY MARTIN V.S.O.P. AND V.S. COGNACS, DISMISSING PETITIONS AS TO OTHER PRODUCTS AND GRANTING CERTAIN OTHER RELIEF

REITMAN INDUSTRIES, Petitioner,

vs.

PREMIERE WINE MERCHANTS, INC., REMY MARTIN AMERIQUE, INC., and E. REMY MARTIN & CO., Respondents

F. & A. DISTRIBUTING CO., GILLHAUS)
BEVERAGE CO., INC. and MERCHANTS WINE)
& LIQUOR CO.,)
Petitioners,)
vs.)
PREMIERE WINE MERCHANTS, INC.,)
REMY MARTIN AMERIQUE, INC.,)
and E. REMY MARTIN & CO.,)
Respondents)

Sidney Berg, Esq., Attorney for Petitioners, Joseph H. Reinfeld, Inc., et al.
 Lowenstein, Sandler, Brochin, Kohl, Fisher, Boylan & Meanor, Esqs. (Theodore V. Wells, Jr., Esq. and David B. Zabel, Esqs.), Attorneys for Petitioner, Reitman Industries
 D'Alessandro, Sussman, Jacovino & Mahoney, Esqs. (Edward G. D'Alessandro, Esq.), Attorneys for Petitioners, F. & A. Distributing Co., et al.
 Greenstone and Sokol, Esqs. (Kenneth H. Mack, Esq.), Attorneys for Respondents
 Parker Auspitz Neesemann & Delehanty P.C. (Jack C. Auspitz, Esq.), of New York, New York, Of Counsel for Respondents

BY THE DIRECTOR:

Each of the petitioners in this consolidated matter filed verified petitions with the Director of the Division of Alcoholic Beverage Control pursuant to *N.J.S.A. 33:1-93.6 et seq.*, and *N.J.A.C. 13:2-18.1 et seq.*, alleging that petitioners had for many years been duly licensed wholesalers and authorized by respondents to sell Remy Martin cognacs and certain other products, all of which products petitioners asserted were "nationally advertised brands", and that respondents had attempted to or intended to reassign the distribution of such Remy Martin cognacs and other products to a single New Jersey Plenary Wholesale Licensee or a house of related licensees, thereby terminating the authorization to petitioners to sell such products. The said petitions asserted that such reassignment was discriminatory to petitioners and violated *N.J.S.A. 33:1-93.6 et seq.* Respondents denied that petitioners were authorized by them to sell the Remy Martin cognacs and other products, but asserted that petitioners were merely agents of importers and only were authorized by such importers, and not by respondents, to sell the products. Respondents further denied that all of the products, except Remy Martin V.S.O.P. cognac, were "nationally advertised brands" within the meaning of *N.J.S.A. 33:1-93.6 et seq.*

Upon the filing of the petitions, the Director consolidated the three petitions and entered an order for interlocutory relief pursuant to *N.J.A.C. 13:2-18.7*, directing respondents to continue selling the Remy Martin cognacs and other products to the petitioners pending the final determination in these matters. Respondents have continued to sell such products to petitioners, but have not heretofore filed brand registrations pursuant to *N.J.S.A. 33:1-2* and *N.J.A.C. 13:2-33.1 et seq.* authorizing petitioners to sell such products.

No question was raised in the proceedings as to the ability of the petitioners to pay for such products as ordered.

Extensive discovery was undertaken by the parties in this matter and the matter was called for hearing on July 10, 1986, at which time and before which hearing a settlement agreement was reached among the parties, the terms of which agreement will terminate these proceedings and are embodied in this final order and approved by the Director.

Accordingly, it is, on this 30th day of December, 1986, ORDERED that:

1. Respondents, Premiere Wine Merchants, Inc.; Remy Martin Amerique, Inc.; and E. Remy Martin & Co.; shall timely and without discrimination complete the sale of any and all Remy Martin V.S.O.P. Cognac and Remy Martin V.S. Cognac, which two products the parties agree are "nationally advertised brands" for purposes of these proceedings, ordered by any of the within petitioners, Joseph H. Reinfeld, Inc.; Majestic Wines & Spirits, Inc.; Flagstaff Liquor Co.; Banner Liquor Co.; Reitman Industries; F. & A. Distributing Co.; Gillhaus Beverage Co., Inc.; and Merchants Wine & Liquor Co.; or by Baxter Warehouse Corp.; and such petitioners shall timely pay for all ordered merchandise in accordance with the usual terms of sale of the respondents; and in such sales respondents shall not act contrary to the provisions of *N.J.S.A. 33:1-93.6 et seq.*, and *N.J.A.C. 13:2-18.1 et seq.*, but any such sales shall be made on equal terms as those with any other wholesalers to whom said cognacs might be sold in the State of New Jersey.

2. The petitions as to Remy Martin Centaure Napoleon Royal Cognac and Remy Martin Louis XIII Cognac are dismissed without prejudice; respondents, however, shall continue selling the said products to the petitioners named in paragraph 1, above, as authorized wholesalers of such products, but without prejudice to any future rights of any parties arising from a change in the law or interpretation thereof, or for any other reason.

3. The petition of petitioners, F. & A. Distributing Co.; Gillhaus Beverage Co., Inc.; and Merchants Wine & Liquor Co., as to Krug Champagne, is dismissed with prejudice.

4. Respondent, Premiere Wine Merchants, Inc., shall, within 20 days of the date of this Order, amend Brand Registrations No. 1727 (Remy Martin Louis XIII Cognac), No. 1729 (Remy Martin V.S.O.P. Cognac), No. 1730 (Remy Martin V.S.O.P. Special Reserve Cognac), No. 1731 (Remy Martin V.S. Cognac), No. 23705 (Remy Martin XO Cognac), and No. 27166 (Remy Martin Napoleon Cognac) to add as authorized wholesaler/distributors of those brands and products the petitioners named in paragraph one, above. Brand Registration No. 1726 (Remy Martin Centaure Napoleon Royal Cognac) shall also be amended to include petitioners as necessary.

5. This order will terminate all matters in dispute arising out of the facts alleged in the petitions filed herein, and no further action arising out of said facts, including any action for damages, will be brought against any party by another party.

6. All outstanding motions filed by any party to these proceedings are hereby dismissed. No costs shall be assessed against any party.

s/John F. Vassallo, Jr.
JOHN F. VASSALLO, JR.
Director

4. NOTICE REGARDING SUBSCRIPTIONS FOR REVISIONS AND UPDATES TO THE ALCOHOLIC BEVERAGE CONTROL HANDBOOK FOR RETAIL LICENSEES - EXTENSION OF 1986 SUBSCRIPTIONS TO COVER 1987.

When the *Alcoholic Beverage Control Handbook for Retail Licensees* was published in the fall of 1985, subscriptions were accepted for revisions and updates to be issued during the calendar year 1986 at a cost of \$6.00 with an anticipation of two revisions and updates being issued. Because the substantial revisions to A.B.C. Regulations that were anticipated to occur during 1986 did not materialize during the year, only one revision and update was published on June 30, 1986.

Consequently, the 1986 subscriptions for the revisions and updates to the *Handbook* are being extended to cover the next revision and update that will be published. When that revision and update is published, it will include a subscription application for future revisions and updates after the next one. All current subscribers will receive such application form.

Licensees and other interested parties who have not subscribed to the revisions and updates may still do so by sending a check or money order for \$6.00 for each subscription to the Division of Alcoholic Beverage Control (Attention: Handbook Revision Service), Richard J. Hughes Justice Complex, CN-087, Trenton, NJ 08625-0087. Upon receipt of the subscription order, the revision issued on June 30, 1986, will immediately be sent to the subscriber and the next revision will be sent when published.

Additional copies of the *Handbook* are also still available at the cost of \$5.00 if picked up at the Division's office in Trenton, or for \$7.00 if requested by mail.

5. STATE LICENSE TRANSACTIONS - OCTOBER 20, 1986 TO DATE.

LICENSE TYPE:	LICENSE #:	STATUS:
Transportation License Land Link Transportation Inc 807 Ocean Rd Point Pleasant, NJ 08742	3401-20-441-001	New license iss. eff: 10/16/86
Transportation License Inter Metro Freight Inc. Bldg 160 River Terminal Development Kearny, NJ 07032 From: 1 Central Avenue Mt Laurel, NJ	3401-20-199-002	Place to Place Transfer iss. eff: 10/21/86
Plenary Wholesale License Deinhard & Partners Inc. 274 County Road Tenafly, NJ 07670	3401-23-442-001	New license iss. eff: 10/20/86
Annual State Permit Lackawanna Liquors, Inc. NJ Transit RR Terminal Hoboken, NJ 07030	3401-14-443-001	New license iss. eff: 10/27/86
Plenary Retail Transit License Buccaneer III Inc. #583809 Belmar Marina Hwy #35 Belmar, NJ 07753	3401-13-444-001	New license iss. eff: 10/27/86
Plenary Wholesale license Distillerie Stock USA Ltd 58-58 Laurel Holl Blvd Woodside, NY 11377	3401-23-445-001	New license iss. eff: 10/27/86
Transportation license Blue Eagle Express, Inc. 12 Commerce Drive Cranford, NJ 07016	3401-20-446-001	New license iss. eff: 10/27/86
Public Warehouse Hubert Opici & Rose Opici Donald Lozzi & Linda Opici Lozzi 62 Fifth Avenue Hawthorne, NJ 07506	3401-28-447-001	New license iss. eff: 10/30/86
Annual State Permit G McG Inc. 429 South Broad Street Trenton, NJ 08607	3401-14-448-001	New license iss. eff: 10/30/86
Plenary Wholesale license Formoso Imports, Inc. 580 Leesville Avenue Rahway, NJ 07065 From: 190 Regina Ave Rahway, NJ 07065	3401-23-230-002	Place to Place Transfer iss. eff: 10/31/86
Public Warehouse ACCEM Warehouse, Inc. 63-69 Hook Rd Bayonne, NJ 07002	3401-28-449-001	New license iss. eff: 11/6/86
The Kristen Distributing, Co 219-313 First Street Elizabeth, NJ 07207	3400-25-104-003	Place to Place Transfer iss. eff: 11/6/86

LICENSE TYPE:	LICENSE #:	STATUS:
Annual State Permit Highlawn, Inc. Eagle Rock Reservation West Orange, NJ 07052	3401-14-450-001	New license iss. eff: 11/10/86
Public Warehouse Metro Warehouse & Dist. Co., Inc. 580 Leesville Avenue Rahway, NJ 07065	3401-28-451-001	New license iss. eff: 11/12/86
Transportation license Metro Warehouse & Dist. Co., Inc. 580 Leesville Avenue Rahway, NJ 07065	3401-20-452-001	New license iss. eff: 11/12/86
Annual State Permit Wall Street Station, Inc. Station Square Court and Stuyvesant Avenues Lyndhurst, NJ 07071	3401-14-453-001	New license iss. eff: 11/13/86
Farm Winery Miriam Summerskill RD 2 Harlingen Road Belle Mead, NJ 08502	3401-22-454-001	New license iss. eff: 11/17/86
Wine Wholesale Cora, Inc. 929 Banta Place Ridgefield, NJ 07657	3401-28-455-001	New license iss. eff: 11/21/86
Public Warehouse L & J World Distributors, Inc. 100 Central Avenue Bldg #20 Kearny, NJ 07032	3401-28-456-001	New license iss. eff: 11/25/86
Transportation license Central Division, Inc. 635-J Pressley Rd P.O. Box 34303 Charlotte, NC 28234	3401-20-458-001	New license iss. eff: 12/9/86
Cynthia Hurley 1 Bridge Plaza Fort Lee, NJ 07024	3401-25-459-001	New license iss. eff: 12/10/86
Public Warehouse Cheetah Transfer Ltd 395 Allwood Rd Clifton, NJ 07012	3401-28-460-001	New license iss. eff: 12/10/86
Limited Wholesale license Heritage Vintners Imports, Inc. 3 Brookside Avenue New Brunswick, NJ	3401-25-424-002	Expansion of Premises, iss. eff: 12/19/86
Public Warehouse Superior Warehouse Corp 1600 US HWY One Box 647 Linden, NJ 07036	3401-18-461-001	New license iss. eff: 12/19/86
Transportation license Natural Beverages Inc T/A Bob Bolus Trucking RD 3 Box 638 Moscow, PA 18444	3401-20-463-001	New license iss. eff: 12/19/86
Public Warehouse	3400-28-973-005	Corporate

6. DISCIPLINARY PROCEEDINGS (CITY OF TRENTON) - TRENTON COUNCILMAN POSSESSING AN "UNDISCLOSED INTEREST" IN RETAIL LICENSE, FAILURE TO MAINTAIN TRUE BOOKS, AND IMPROPER LICENSE RENEWALS IN VIOLATION OF N.J.S.A. 33:1-20 - PLENARY RETAIL CONSUMPTION LICENSE REVOKED.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF DISCIPLINARY)	FINAL CONCLUSIONS SUSTAINING
PROCEEDINGS AGAINST:)	GUILT TO CHARGES AND FINAL
334 NORTH BROAD CORPORATION)	ORDER REVOKING LICENSE.
t/a THE BASEMENT, a/k/a FITZ')	OAL DKT. NO. ABC 5883-85
225 NORTH WARREN STREET)	
TRENTON, NEW JERSEY)	AGENCY DKT. NO. S-14,965
	H-07484-044
HOLDER OF PLENARY RETAIL)	
CONSUMPTION LICENSE NO.)	
1111-33-039-003 ISSUED BY)	
THE CITY COUNCIL OF TRENTON)	

Nancy Mahony, Esq., Law Assistant, Representing the Division

Kevin M. Wolfe, Esq., Representing the Licensee

INITIAL DECISION

HONORABLE WILLIAM B. PALLERIA, ADMINISTRATIVE LAW JUDGE

Decided: July 10, 1986

Received: July 10, 1986

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were submitted on behalf of either party as is otherwise permitted pursuant to N.J.A.C. 13:2-19.6. The time provided to render a Final Decision in this matter was extended to September 2, 1986 by operation of N.J.A.C. 1:1-4.1.

The Licensee was charged with the following four alleged violations: (1) failed to disclose in the 1984-85 license application the interest of Howard D. Fitzgerald in the license or business conducted in violation of N.J.S.A. 33:1-25; (2) aided and abetted Howard D. Fitzgerald to exercise the rights and privileges of the license contrary to N.J.S.A. 33:1-26 and in violation of N.J.S.A. 33:1-52; (3) failed to disclose in the 1984-85 license application that Howard D. Fitzgerald held an interest in the corporate license in violation of N.J.S.A. 33:1-25; and (4) failed to have and keep true books of account in connection with the operation and conduct of the licensed premises in violation of N.J.A.C. 13:2-23.32.

In addition, the Division alleged that the 1984-85 and 1985-86 license renewals should be declared void from the date of their issuance because Howard D. Fitzgerald had an interest in the license while he was a councilman in Trenton and as such was a member of the issuing authority, which is prohibited by N.J.S.A. 33:1-20.

Upon the entry of a plea of not guilty to the referenced charges, the file was forwarded to the Office of Administrative Law for a hearing. After review of all the evidence, the Administrative Law Judge found the Licensee guilty of all of the charges. The Administrative Law Judge thereafter concluded that all of the violations, taken together, warranted revocation. He further determined that since a member of the issuing authority had an undisclosed interest in the license, the license should be declared null and void, because that authority had no jurisdiction to issue a license in which a member had an interest. N.J.S.A. 33:1-20.

I accept the basic factual findings and conclusions of law of the Administrative Law Judge as my own herein and adopt same. The recommended penalty, which I herein adopt, appears to be the only proper remedy in such case in view of the undisclosed interest of a member of the local issuing authority. N.J.S.A. 33:1-20. The history of continuing violations accrued by this license while an interest in same was held by a member of the issuing authority and the improbable ability to correct such violative conduct necessitates the revocation of this license. Cf., In the Matter of Holly Golf and Country Club, Bulletin 2442, Item #7; aff'd per curiam (App. Div. A-5546-83T6, 1985) (unreported).

Accordingly, it is on this 2nd day of September, 1986,

ORDERED that Plenary Retail Consumption License No. 1111-33-039-003 issued by the City Council of the City of Trenton to 335 North Broad Corporation, t/a The Basement, a/k/a Fitz', in an inactive status, be and the same is hereby revoked effective immediately.


JOHN F. VASSALLO, JR.
DIRECTOR

APPENDIX: INITIAL DECISION BELOW



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 5883-85

AGENCY DKT. NO. S-14,965

H-07484-044

DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,

Petitioner,

v.

334 NORTH BROAD CORPORATION

T/A THE BASEMENT, A/K/A FITZ',

Respondent.

Nancy Mahony, Law Assistant, for petitioner (W. Cary Edwards, Attorney General of
New Jersey, attorney)

Kevin M. Wolfe, Esq., for respondent

Record Closed: May 26, 1986

Decided: July 10, 1986

BEFORE WILLIAM B. PALLERIA, ALJ:

STATEMENT OF THE CASE

The Director of the Division of Alcoholic Beverage Control (Division) seeks the revocation of Plenary Retail Consumption License No. 1111-33-039-003 formerly located at 225 North Warren Street, Trenton. As the basis for its proposed revocation, the Division contends by way of amended complaint that the corporate licensee:

- (a) Failed to disclose in the 1984-85 license application the interest of Howard D. Fitzgerald in the license or business conducted in violation of N.J.S.A. 33:1-25.

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- (b) Aided and abetted Howard D. Fitzgerald to exercise the rights and privileges of the license contrary to N.J.S.A. 33:1-26 and in violation of N.J.S.A. 33:1-52.
- (c) Failed to disclose in the 1984-85 license application that Howard D. Fitzgerald held an interest in the corporate license in violation of N.J.S.A. 33:1-25.
- (d) Failed to have and keep true books of account in connection with the operation and conduct of the licensed premises in violation of N.J.A.C. 13:2-23.32.

In addition, the Division alleges that the 1984-85 and 1985-86 renewal licenses should be declared void from the date of their issuance because Howard D. Fitzgerald had an interest in the license while he was a councilman in Trenton (a member of the issuing authority) which is prohibited by N.J.S.A. 33:1-20.

Respondent does not dispute a large portion of the facts offered by the Division. The licensee simply contends firstly that Mr. Fitzgerald's association with the premises, business, license and corporate principal does not constitute a prohibited undisclosed interest and, therefore, the complaint should be dismissed. Secondly, the licensee suggests, alternatively, that even if there was a prohibited undisclosed interest, the violation was a technical one and the person who was undisclosed was not disqualified from holding a plenary retail consumption license. Therefore, the penalty should be something less than license revocation.

PROCEDURAL HISTORY

In February 1985, the initial complaint and Order to Show Cause was issued by the Division (Exhibit C-1). On September 19, 1985, the matter was transmitted to the Office of Administrative Law (OAL) for consideration as a contested case in accordance with N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 11, 1985, at which time the matter was scheduled for hearing on January 27, 1986. Based upon representation of counsel that the matter was settled, the January 27, 1986 hearing date was adjourned and subsequently rescheduled for March 26, 1986. On the March 26, 1986 hearing date an amended complaint (Exhibit C-2) was executed and thus the parties requested and were granted a further adjournment. A

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supplemental prehearing conference was conducted on that date at which time a compulsory discovery schedule and a peremptory hearing date of April 23, 1986 were established. The hearing in the matter was conducted on April 23 and April 29, 1986. At the close of hearing, the parties requested and were granted an additional period to prepare and file post-hearing submissions. The record closed as scheduled on May 26, 1986.

FACTS

The bulk of the evidence presented in this matter consists of joint exhibits, a listing of which is appended hereto. In addition, a series of exhibits were provided by petitioner, the authenticity and accuracy of which are uncontroverted. They are also listed in the attached appendix as Exhibits P-1 through P-8. The testimony provided both by witnesses for the Division and the licensee do not conflict in any material part. While each of the parties may wish to give greater or lesser weight to a particular fact or suggest an interpretation thereof different from the other, the material and relevant facts are vitrually uncontroverted. Thus, based upon the testimony and evidence submitted, I make the following findings of fact:

Mr. Joseph Finn, has resided at 4383 Garfield Lane, Trevoese, Pennsylvania for 19 years. Between 1950 and 1971, he was a member of the United States Air Force from which he retired. In 1971 he became employed as a counsellor for the Bucks County Intermediate Unit from which he retired in April 1985. In 1984 Mr. Finn was also actively campaigning for the Assembly seat in Pennsylvania's 18th Legislative District. In addition, he was Eastern Division President of the United Affiliated Beverage Association, an organization of urban liquor retailers.

The 334 North Broad Coporation is a corporation authorized to do business in the State of New Jersey. It was formed in 1978 by Mr. Finn who has been and continues to be the only recorded stockholder and corporate officer (Exhibit J-2). The initial capital outlay for the corporation was a \$10,000 investment by Mr. Finn and the assumption of approximately \$48,000 in outstanding mortgages in a tavern located at 334 Broad Street, Trenton. The corporation thus acquired the present liquor license, the tavern and its contents at 334 North Board Street, Trenton.

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Mr. Finn actively operated the tavern at this location until 1981, when the building and its contents, including the records of the business were destroyed by fire. The liquor license was renewed for 1982-83 and 1983-84, however, it was not applied to any location.

In late 1983 or early 1984, Mr. Finn became aware that the license would not be renewed again unless he activated it, that is, located it at a site and did business under the license. In order to do that, a commercial location was sought. Mr. Finn contacted Mr. Howard Fitzgerald, a friend of 25 or 30 years. Mr. Fitzgerald lived in Trenton and was then and remained at all times relevant to this proceeding, a Trenton City Councilman. In February 1984, Mr. Fitzgerald entered into a contract to purchase a vacant building at 225 North Warren Street from the Trenton Neighborhood Family Health Center, Inc. (Exhibit J-22). The contract calls for a closing date of April 15, 1984.

On April 2, 1984, the respondent corporation, by Mr. Finn, applied for a place-to-place transfer of the liquor license to the 225 North Warren Street location (Exhibit J-9). Thus, at least as early as April 2, 1984, Mr. Finn had discussed and negotiated with Mr. Fitzgerald the placement of the liquor license at the 225 North Warren Street address. On May 14, 1984 respondent filed a renewal application for the 1984-85 license (Exhibit J-1) at the North Warren Street location. It was not until May 30, 1984 that the title to the Warren Street building ultimately passed to Mr. Fitzgerald (Exhibit J-3).

By lease, dated April 15, 1984, Mr. Fitzgerald leased the first level of the 225 North Warren Street property to the 334 North Broad Corporation for five years, beginning on May 1, 1984 for a monthly rent of \$2,094. Although the lease was to extend over a five-year period, the licensee ceased operations at the location on October 7, 1985.

The 1984 transfer and renewal application (Exhibits J-9 and J-1 respectively) were completed in the handwriting of Trenton City Police Detective Edward Franks. Detective Franks completed the applications as he understood the information, then turned the document over to Mr. Finn who was instructed to review the application to assure that the answers were correct. Mr. Finn did so and then executed the documents on behalf of the 334 North Broad Corporation. The place-to-place transfer application is dated April 2, 1984 and the renewal application is dated May 14, 1984. At page two of both applications, the only trade name referred to is the "The Basement." At page 5 of both applications question number 2 requests the names, title and municipality of any

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person who holds a beneficial interest in the license or any person named in the application who is a member of a license issuing authority. This question was not answered on either form. At page 7 of both applications, question number 1 asks if any person other than the applicant has any direct or indirect interest in the license applied for. This question is answered in the negative. Question number 3 on page 11 of each application also requests the corporate applicant to provide complete information on all officers as well as the manager or other individual responsible for the business to be conducted at the licensed premises. Mr. Finn is the only person listed on both applications. Mr. Fitzgerald's name is located once on each of the applications and that is at page 3 where the lessor of the premises is identified.

The 1985-86 renewal application for the 334 North Board Corporation dated May 30, 1985, is a short form one-page questionnaire. It requires the applicant to certify the accuracy of the information contained in the 1984-85 application. If the answer is wrong or a change in the circumstances requires that the response be different from the original, the applicant is required to file a corrected answer. On the May 1985 renewal application, Mr. Finn checked all answers affirmatively, thus adopting the accuracy of the 1984-85 application.

In or about mid-1984 Mr. Fitzgerald and Mr. Finn became principals in a commercial venture the object of which was to place a shopping mall at the intersection of Brunswick Avenue and North Broad Street across from the Battle Monument Park in Trenton. The venture project called "One Monument Square" was to be funded, in part, by a \$15,000 loan to Messrs. Fitzgerald and Finn from James Harmon, a Philadelphia investor. The money was provided to Finn and Fitzgerald who, in turn executed a promisory note to Harmon. The money was deposited into the personal checking account of Mr. Fitzgerald and during the months of April through September 1984, the expenses of the licensee and Mr. Fitzgerald were paid out of that account. In addition, on May 1, 1984, a \$3,500 check was drawn on the account payable to the City of Trenton. The check was tendered to the City as an option payment for the vacant land on North Broad Street, the proposed site of One Monument Square.

On September 12, 1984, the 334 North Broad Corporation opened a corporate checking account at the Catitol State Bank (Exhibit J-7). The signature card for the withdrawal of funds reflects Mr. Finn and Mr. Fitzgerald to be the corporate president and vice-president, respectively, and both authorized signators. The corporate resolution

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attached to the signature card is dated September 5, 1984 and reflects Mr. Fitzgerald as treasurer of the 334 North Broad Corporation.

It is conceded that, at some point during the early phase of the start-up period for the business at 225 North Warren Street, Mr. Fitzgerald was hired to manage the operation of the tavern. Cancelled checks dating from mid-April reflect payments from Mr. Fitzgerald's personal checking account to various suppliers and contractors which correspond with expenses on the books of the 334 North Broad Corporation. In addition, it is agreed that Mr. Fitzgerald managed the premises for Mr. Finn for an agreed upon salary of \$200 weekly.

It is also uncontroverted that during the actual course of the lease (April 1984 to October 1985) Mr. Fitzgerald did not receive the \$2,084 monthly rental nor the weekly \$200 manager's salary. Mr. Finn explained that the renovations necessary to comply with the Trenton building regulations were substantially greater than Mr. Finn and Mr. Fitzgerald first thought and therefore, all of the receipts and investment funds were used for the additional and initially unanticipated renovations. It is conceded, therefore, that Mr. Fitzgerald managed the premises at 225 North Warren Street for over a year without compensation and leased the same premises to the licensee without receiving rent for the same period.

On September 11, 1984, Inspector Baron Van Liew of the Alcoholic Beverage Control Enforcement Bureau visited the licensed premises. He observed a four foot square sign on the outside of the building reading, "Fitz." Shortly after identifying himself to the barmaid, Mr. Finn and Mr. Fitzgerald arrived at the premises. Mr. Fitzgerald was identified at that time as the manager and Mr. Finn the licensee. Inspector Van Liew testified that both Mr. Fitzgerald and Mr. Finn were cooperative and provided the information requested. The documents provided by Messrs. Fitzgerald and Finn included the book of account (a copy which has been marked as Exhibit J-6). It reflects the receipts and expenditures for the corporation between approximately April 1984 and September 23, 1984. It does not reflect the source or amount of the original investment monies used to acquire the license in 1978. Nor does it reflect the source or amount of investment monies used to renovate and supply the North Warren Street tavern.

It is also uncontested that in August of 1985 the 334 North Broad Corporation made application to the Division of Alcoholic Beverage Control for a special permit to

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conduct a social affair on August 31 and September 1, 1985 outdoors (Exhibit J-12A). The application is on behalf of the 334 North Broad Street Corporation and is signed by Mr. Fitzgerald as the manager. At or about the same time Mr. Fitzgerald filed an application for a catering permit with the Division of Alcoholic Beverage Control. The application sought a special permit to serve alcoholic beverages off of the premises of the 334 North Broad Street Corporation on September 5 through 8, 1985. Again Mr. Fitzgerald executed the application as the authorized signator of the licensee and as the person to whom the permit should be sent.

The petitioner also provided certified copies of the minutes of the meetings of the City Council of Trenton on June 21, 1984 (Exhibit J-11) and June 6, 1985 (Exhibit J-10). It was at these meetings that the City Council voted the adoption of resolution to grant the Division of Alcoholic Beverages annual licenses to the 334 North Broad Street Corporation. The minutes reflect that Mr. Fitzgerald abstained from the vote on the 334 North Broad Street Corporation license in 1984 and was absent from the vote at the 1985 meeting.

The license in question has been inactive since approximately October 1985 (Exhibit J-27) and on February 13, 1986 the North Warren Street property was sold to the City of Trenton (Exhibit J-29).

DISCUSSION

Counts I and III

The above counts of the amended complaint charge Mr. Finn as the sole principal of the 334 North Broad Street Corporation with:

Failing to disclose in the 1984-1985 license application the interest of Howard Fitzgerald in the licensed premises.

I note that Counts I and III charge virtually the same conduct. Although there was testimony and documentary evidence presented concerning the 1985-86 license application, the original and amended complaint (Exhibits C-1 and C-2) do not specifically charge a falsification or misrepresentation therein. The 1984-85 place-to-place transfer

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application (Exhibit J-9) and the renewal application (Exhibit J-1) reflect virtually identical responses to questions concerning ownership or beneficial interest, managerial status, and trade name.

On page 2 of the applications, the licensee is asked to provide all trade names or other names under which the licensee will be doing business. Both applications do not reveal that the licensed premises was being or was about to be operated under the trade name "Fitz." While Mr. Finn, both in testimony and affidavit reflects that the use of the name "Fitz" would, in his view, enhance the business of the tavern, and that a sign was placed over the tavern reflecting the location to be "Fitz," this was not revealed in the license application.

Question 2 at page 5 of each application requires the applicant to provide the name, title, and municipality of any person named in the application or any person who has a beneficial interest in the license who is a member of a license issuing authority. Mr. Fitzgerald's name, title, and municipality were not provided in either application even though he was named on page 3 as the lessor of the premises and, at the time, he was a councilman in the city of Trenton. Thus, Mr. Finn and the 334 North Broad Street Corporation did not properly answer the question. However, the question remains concerning the licensee's obligation to reveal the name of Mr. Fitzgerald, not only due to his status as a listed lessor, but also because of his "interest" in the premises and license. The resolution of this question also bears upon the alleged omission at question number 1 of page 7 of the application. There the applicant is required to list any individual who has a direct or indirect interest in the license applied for. Thus the question is whether Mr. Fitzgerald's involvement in the business of the licensee is sufficient to constitute either a beneficial interest or a direct or indirect interest. The Appellate Division treated the concepts of "interest" in Packard-Bamberger etc. v. Borough Council of Oakland, 87 N.J. Super. 92, 94 (App. Div. 1965). Quoting the 1964 New Jersey Supreme Court case of Grand Union Company v. Sils, 43 N.J. 390, the court guides us in interpreting the terms in the Alcohol Beverage Control Act as follows:

The purpose underlying the legislative use of the of the phrase 'beneficial interest,' a phrase which appears throughout the law (Montana Catholic Missions v. Missoula County, 200 U.S. 118, 127-128, 26 S. Ct. 197, 50 L. Ed. 398, 402 (1906); In re Roger's Estate, 15 N.J. Super. 189, 206 (Essex Cty. Ct. 1951); In re Armistead, 362 Mo. 960, 245 S.W. 2d 145, 148 (1952)), seems clear enough; it, along with the comparable phrase 'directly or indirectly interested,' was

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contained in the original Control Act (L. 1933, c. 436, pp. 1193, 1205) and was intended to include ownership interests in the broad or equitable sense rather than in the narrow or technical sense. That certain marginal situations may present close questions for determination does not indicate that the statutory language is too uncertain. State v. Hudson County News Co., supra, 35 N.J. (284), at pp. 297-298. It is worthy of note that the many references to beneficial and direct or indirect interests which appear in the regulations or application forms issued by the Division of Alcoholic Beverage Control have long been applied administratively without any significant difficulty." (at pp. 408-409; emphasis added)

Although the Appellate Division in Packard-Bamberger refused to extend the concept of beneficial interest to a contract vendee in a multiple license holder situation until actual transfer of the license, the terms, "beneficial" and "indirect interest" have been expansively applied to ownership interest in the broadest equitable sense.

CONCLUSION

Counts I and III

I CONCLUDE that the following evidence reflects Mr. Fitzgerald's indirect and beneficial interest in the license and business conducted thereunder:

- (a) The placement of the "Fitz" sign on the exterior of the licensed premises.
- (b) The comingling of the personal and corporate funds in Mr. Fitzgerald's checking account.
- (c) The use of the comingled funds to pay personal bills of Mr. Fitzgerald out of Mr. Fitzgerald's personal checking account and corresponding entries into the corporate business ledgers.
- (d) The use of comingled funds to pay for renovations of the licensed premises.
- (e) The use of corporate funds to pay for an option to purchase land to be used for the creation of a mall by Messers. Fitzgerald and Finn known as One Monument Square.

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- (f) The joint execution of a promisory note to Mr. Harmon by Messers. Finn and Fitzgerald for \$15,000 which was used, at least in part, for renovating and supplying the license location.
- (g) Mr. Finn's relinquishment of the daily management of the licensed premises to Mr. Fitzgerald.
- (h) Mr. Fitzgerald's application on behalf of the license for two special permits in August and September 1985.
- (i) The continuous non-payment of the agreed upon rental of \$2,084 monthly from the 334 North Broad Street Corporation to Mr. Fitzgerald.
- (j) The continuous non-payment of the \$200 per week salary from the 334 North Broad Street Corporation to Mr. Fitzgerald.
- (k) The identification of Mr. Fitzgerald as treasurer of the 334 North Broad Street Corporation on the checking account of the 334 North Broad Street Corporation at Capitol State Bank.
- (l) Mr. Finn's admission at paragraph 12 of Exhibit J-21 and his concession in testimony that he delegated the daily operation of the business to Mr. Fitzgerald.

Thus, I conclude further that the 1984-85 place-to-place transfer application and license renewal applications were false, evasive, and misleading in not naming Mr. Fitzgerald and providing the particular details requested at page 5 question 2, page 7, question 1, and page 11, instruction 3.

Although counts I and III refer to the 1984-85 applications sufficient evidence was introduced to conclude that the 1985-86 renewal questionnaire was similarly deficient.

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DISCUSSIONCount 2

The director of the Division of Alcoholic Beverage Control charges that the corporation vis-a-vis Mr. Finn aided and abetted Mr. Fitzgerald to exercise the rights and privileges of the plenary retail consumption license contrary to N.J.S.A. 33:1-26 in violation of N.J.S.A. 33:1-52. In effect, the director charges that Mr. Finn farmed-out the corporate license to Mr. Fitzgerald. The proofs are overwhelming and virtually uncontradicted that the day-to-day control of the affairs of the licensed premises rested in Mr. Fitzgerald. He paid the bills, signed the checks, kept the books, obtained special permit, and generally managed the entire business for Mr. Finn who was unable to do so because of other obligations. In fact, the only act directly attributable to Mr. Finn concerning the licensed premises is the execution of the Alcoholic Beverage Control applications. In addition, the sign on the face of the building reading "Fitz" was intended to and did hold out to the public that Mr. Fitzgerald held a possessory interest in the tavern.

As properly pointed out by petitioner, Mannies Cigarette Service v. Aidan Corporation, 4 N.J.A.R. 197, 206 and cases cited therein (La Chow v. Alpen, 130 N.J. Eq. 588 (Ch. 1942); In re: Marra, A.B.C. Bulletin No. 222, Item 2; In re: Businessmen's Associates, A.B.C. Bulletin No. 318, Item 6, clearly explains that a liquor license . . . is not amendable to a "farm out" agreement whereby supervision and control thereof is granted to an individual other than the licensee.

In the present matter the licensee is a corporation fully owned by Mr. Finn who, at the time in question, had a full time job in Pennsylvania and was running for an Assembly seat from his home district. Admittedly, he didn't have the time to devote to the daily operation of the licensed premises.

CONCLUSIONCount 2

From the evidence presented the conclusion is inescapable that between April of 1984 and October of 1985 Mr. Fitzgerald exercised virtually unfettered dominion and control over the conduct of the licensed premises sufficient to constitute the exercise of the rights and privileges of the corporate licensee. It is equally apparent and I

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CONCLUDE that Mr. Fitzgerald exercised that dominion and control of the licensed premises with the full knowledge and consent of the licensee.

DISCUSSION

Count IV

In relevant part N.J.A.C. 13:2-23.32 provides:

All licensees shall have and keep a true book or books of account in the English language wherein there shall be entered a record of all moneys invested in the licensed business and the source of all such investments, for an unlimited period of time, all moneys received and a record of the source of all moneys received other than in the ordinary course of business, for a five year period... (emphasis supplied)

The book of account for the 334 North Broad Street Corporation (Exhibit J-6) begins with an expenditure page which reflects the payment of expenses, some of which appear to be dated as early as April 1984. Nowhere in the book of account has the corporation set forth:

- (a) the amount of investment money
- (b) the source of investment money or
- (c) the source of moneys received other than in the ordinary course of business.

Although Messrs. Fitzgerald and Finn testified at hearing and Mr. Finn provided a sworn affidavit concerning the amounts of the investment moneys and their source, the book of account fails to reflect the entries. Mr. Finn has explained that the records which reflected the fiscal basis for the acquisition of the license and premises in 1978 were destroyed by fire. Although such an explanation accounts for the nonexistence of the original documents, copies of the documents surely could have been obtained or the books of account properly reconstructed to reflect the sources and amounts of the original investment.

Additionally, although Messrs. Finn and Fitzgerald have provided an explanation for the source and amount of the funds used to renovate and supply the North Warren Street location, neither the book of account nor supporting documents properly reflect the

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particulars of the transaction. Indeed, even at the hearing in this matter no documentary proof was offered by the licensee to rebut the evidence of nondisclosure. The ledger sheets provided by the licensee reflect that the business' expenditures were far an excess of ordinary income for several weeks including the week ending June 24, 1984, when the expenditures were over \$10,000 and the receipts totalled approximately \$900. It was also Mr. Fitzgerald's testimony that a person who wished to remain anonymous loaned him \$10,000 to renovate the 225 North Warren Street property, although it is unclear whether the licensed premises was the direct beneficiary of any or all of this sum.

The petitioner correctly cites the case of In The Matter of Spilled, Inc., A.B.C. Bulletin No. 2262, Item 3 at 15, (1977) in support of its position that a licensee's books of account must truly reflect the totality of the business operation." I also note that In The Matter of White Oaks Liquor Shoppe, Inc., A.B.C. Bulletin No. 2210, Item 3 (1975) supports the proposition that unintentional failure to maintain true and complete books of account is sufficient to find a violation of N.J.A.C. 13:2-23.32. However, the Director therein considered the lack of intention as a factor in mitigation of penalty.

CONCLUSION

Count IV

I CONCLUDE, upon a review of all of the exhibits and the testimony of the witnesses as reflected in the above findings that the 334 North Broad Street Corporation failed to keep true books of account in connection with the operation of the licensed premises. I CONCLUDE that the licensee failed to show a record of all monies recieved and the source of monies recieved other than in the ordinary course of business—specifically the original 1978 investment funds, the funds received from Mr. Harmon and the monies received by a yet undisclosed person which were used for renovations to the North Warren Street location. I also conclude that the book of account does not record all monies expended from such receipts and the monies of the persons receiving such monies including those renewal fees paid for the April 1984 place-to-place transfer application and the 1984-85 license renewal application.

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DISCUSSIONCount 5

The final count of the amended complaint charges that the license applications for the years 1984-85 and 1985-86 were improvidently renewed by the Council of the City of Trenton because Mr. Fitzgerald held an interest in the business while a member of the license issuing authority. The petitioner urges that the relationship between the licensee and Mr. Fitzgerald required the license application to be processed directly through the State Division of Alcoholic Beverage Control and that such a failure violates N.J.S.A. 33:1-20. That statute provides, in relevant part:

No license other than a club license shall be issued under this chapter by any issuing authority to any member thereof or to any corporation, . . . in which any member thereof is interested directly or indirectly; but in any such case application for such license may be made by such a member, corporation, organization, or association directly to the director who is hereby authorized to issue such a license, subject to rules and regulations, upon the same terms and conditions and for the same fee as other licenses of the same class are issued or are issuable by the said governing board or body. . . . (emphasis supplied)

The petitioner suggests that a violation of this statutory provision should result in a voiding of the subject license ab initio.

The issue presented in this count is not whether Mr. Fitzgerald was a city councilman at the time in question but rather whether the involvement he had with the license was sufficient to constitute a direct or indirect interest therein. It is undisputed that Howard Fitzgerald was a member of the Trenton City Council when the 1984-85 and 1985-86 license renewals for the subject premises were considered and approved. The minutes of the meeting at which the approvals occurred reflect that on one of the dates Mr. Fitzgerald was absent and on the other he abstained from the vote. It is uncontroverted also that Mr. Fitzgerald was the manager of the licensed premises and unilaterally controlled the day-to-day affairs of the business during the time in question. Although respondent's brief asserts that Mr. Fitzgerald did not acquire the North Warren Street property until May 30, 1984, it is evident that he and Mr. Finn were integrally involved in the evolution of the license and the acquisition of the premises. The book of account for the licensee reflects expenditures attributable to the licensed premises in April of 1984.

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Blanck v. Magnolia, 38 N.J. 484 (1962), recites that the obvious underlying purpose of N.J.S.A. 33:1-20 is not only to eliminate favoritism but also the appearance of favoritism which might detract from the public's perception of impartiality in the supervision and control of the liquor industry. It is also clear from the court's observation at page 494, that the Alcoholic Beverage Control Law should be liberally construed to remedy abuses inherent in liquor traffic. In that regard, the interpretation of the concept of "interest" for purposes of the application of N.J.S.A. 33:1-20 has been extended even to a remote association between a council member and an objector to a license. See Paitakis v. New Brunswick City Council, 126 N.J. Super. 233 (App. Div. 1974) and De Lotto, Papendick and McGeary v. West Paterson Borough, A.B.C. Bulletin No. 1154, Item 2 (1957).

CONCLUSION

Count V

Considering the lessor-lessee relationship between Mr. Fitzgerald and the licensee, the fact that Mr. Fitzgerald was employed and acted as the manager of the licensed premises to the point where it has been established that Mr. Finn delegated all authority for the operation of the licensed premises to Mr. Fitzgerald sufficient to constitute a "farm out," I CONCLUDE that Mr. Fitzgerald had a sufficient interest in the 334 North Broad Street Corporation, the license issued thereto and the business transacted thereunder to require the license applications to be made directly to the Director of the Division of the Alcoholic Beverage Control. I CONCLUDE further that the licensee's failure to follow the statutory mandate renders the renewal licenses granted by the City of Trenton void for the 1984-85 and 1985-86 years.

SANCTION

The petitioner has proved by a preponderance of the credible evidence that:

- (a) in the 1984-85 license applications, the licensee failed to disclose the interest of Mr. Fitzgerald in the license and business conducted thereunder;
- (b) the licensee unlawfully delegated the rights and privileges of the license to Mr. Fitzgerald;

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- (c) in the 1984-85 license applications the licensee failed to disclose and falsely and inaccurately responded to questions concerning the interest of Mr. Fitzgerald in the corporate licensee;
- (d) the licensee failed to maintain a true book of account for the operation and conduct of the licensed premises by:
 - 1. not recording all monies received,
 - 2. failing to record the source of all monies received other than in the ordinary course of business, and
 - 3. failing to record the expenditures and to whom the monies were paid; and
- (e) the undisclosed interest of Mr. Fitzgerald in the Alcoholic Beverage Control license and the operation of the business thereunder, required the 1984-85 and 1985-86 license renewals to be considered by the Director of the Division of the Alcoholic Beverage Control and thus were improvidently issued and void at initio.

The factors offered in aggravation of penalty include:

- (1) the multiple violations herein sustained against the licensee,
- (2) the virtual assignment of the license and its rights and privileges to an undisclosed principal; and
- (3) in reliance upon the case of In The Matter of Holly Golf and Country Club (App. Div., A-5546-83T6) 1985, the implausability of corrective action thus requiring revocation; and
- (4) the ultra vires renewal of the license for two years.

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In mitigation of penalty the record reflects:

- (a) no prior licensing violations against the parties,
- (b) the extent of cooperation by the parties in providing information to the investigator, and
- (c) the undisclosed party (Mr. Fitzgerald) was not statutorily disqualified from holding a plenary retail consumption license.

The case at bar does not involve simply the nondisclosure of an otherwise eligible person. It presents a series of statutory and regulatory violations which evidence the licensee's disregard for the fundamental principals of the licensing process. The omissions and misstatements in the renewal and transfer applications, particularly the omission of Mr. Fitzgerald's name from the section of the applications requiring the enumeration of one named in the applications who is a member of the issuing authority, are glaring. In addition, the absence of clearly required investment amounts and sources in the book of account for the licensee and the integral involvement of a member of the issuing authority in the conduct of the licensed premises dissuades me from exclusive reliance upon the penalty comment at page 60 of the Alcoholic Beverage Control Handbook for retail licensees (Appendix A, Respondent's Brief). There the handbook suggests that license revocation will generally not result as a penalty for failing to properly disclose the interest of a person in the license, where the nondisclosed party is not disqualified from holding an interest. Here, there is substantially more than inadvertent nondisclosure of an otherwise qualified person. Thus, while nondisclosure taken alone might not result in revocation, nondisclosure combined with the other violations surely enhances the probability.

I CONCLUDE that the corporate licensee (334 North Broad Street Corporation) its principal (Mr. Finn) the undisclosed member of the issuing authority (Mr. Fitzgerald) and their common association (One Monument Square) are so intertwined in a long term investment venture that remedial or corrective actions would be difficult if not impossible. Based upon this, and, as a result of the multiplicity of violations, I CONCLUDE that the license should be declared null and void as improvidently granted by the City of Trenton and revoked for the substantive regulatory violations sustained herein.

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ORDER

I, therefore, **ORDER** that the charges against the licensee are sustained on all counts and that Plenary Retail Consumption License #1111-33-039-003 heretofore improvidently issued by the Trenton City Council is declared null and void and REVOKED.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR.**, who by law is empowered to make a final decision in this matter. However, if John F. Vassallo, Jr., 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** my Initial Decision with **JOHN F. VASSALLO, JR.**, for consideration.

PUBLICATION OF BULLETIN 2448 IS HEREBY DIRECTED THIS
31ST DAY OF DECEMBER, 1986.



JOHN F. VASSALLO, JR.
DIRECTOR