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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1976 May 27, 1971

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1976 May 27, 1971

1. COURT DECISIONS - RE JERSEY SHORE MOTOR LODGE, INC.,-DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2140-69

JERSEY SHORE MOTOR LODGE, INC.
t/a HOLIDAY INN OF HAZLET, and
RARITAN MOTEL CORPORATION,
t/a HOLIDAY INN OF HAZLET,

Appellants,

v.

RICHARD C. McDONOUGH, Director,
DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY,

Respondent.

Argued April 26, 1971 -- Decided May 3, 1971.

Before Judges Goldmann, Leonard and Fritz.

On appeal from the Division of Alcoholic Beverage Control, Department of Law and Public Safety.

Mr. William J. Walsh argued the cause for appellant Jersey Shore Motor Lodge, Inc. (Mr. Frank W. Walsh, Jr., attorney).

Mr. David S. Piltzer, Deputy Attorney General, argued the cause for respondent (Mr. George F. Kugler, Jr., Attorney General, attorney; Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. Bertram P. Goltz, Jr., Deputy Attorney General, on the brief).

PER CURIAM

(Appeal from decision in re Raritan Motel, Inc., t/a Holiday Inn of Hazlet, Bulletin 1922, Item 3. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - STASH AND ED ELIZABETH SERVICE, INC. v. ELIZABETH.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2373-69

STASH AND ED ELIZABETH AVENUE, INC., t/a STASH AND ED,

Appellant,

v.

CITY COUNCIL OF THE CITY OF ELIZABETH,

Respondent.

Argued April 20, 1971 -- Decided May 4, 1971.

Before Judges Kilkenny, Halpern and Lane.

On appeal from Division of Alcoholic Beverage Control.

Mr. John T. Glennon argued the cause for appellant (Messrs. Weiner, Weiner & Glennon, attorneys).

Mr. John R. Weigel argued the cause for respondent City of Elizabeth (Mr. Edward W. McGrath, City Attorney, attorney).

Mr. George F. Kugler, Jr., Attorney General of New Jersey, by Mr. Stephen Skillman, Assistant Attorney General, filed a statement in lieu of brief for the Division of Alcoholic Beverage Control.

PER CURIAM

(Appeal from decision in Stash and Ed Elizabeth Avenue, Inc., t/a Stash and Ed, Bulletin 1938, Item 7 and Bulletin 1934, Item 1. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions.)

3. APPELLATE DECISIONS - HUDSON BERGEN PACKAGE STORES ASSOCIATION v. GARFIELD ET AL.

HUDSON-BERGEN PACKAGE STORES ASSOCIATION, Appellant, v. MAYOR AND COUNCIL OF THE CITY OF GARFIELD, and DORIS E. JONES, INC., t/a SCHOTT'S TAVERN. Respondents.	ON APPEAL CONCLUSIONS AND ORDER

Samuel J. Davidson, Esq., Attorney for Appellant.
Ralph W. Chandless, Esq., Attorney for Respondents Council and Doris E. Jones, Inc.,

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the City of Garfield (hereinafter Council) whereby it granted the application for renewal of plenary retail consumption license #C-22 for the 1970-71 licensing period to Doris E. Jones, Inc., t/a Schott's Tavern (hereinafter Jones) for premises 7 Monroe Street, Garfield.

In its petition of appeal appellant alleges that the action of respondent was erroneous and an abuse of its discretion for reasons which may be summarized as follows:

(a) Jones had no right to use of or possession of the premises proposed in the license application.

(b) The designation of the address 7 Monroe Street, Garfield, New Jersey in the license application constitutes the suppression of a material fact in violation of N.J.S.A. 33:1-25.

(c) The license was abandoned by reason of non-use.

(d) Public need and necessity does not mandate the renewal of the license.

The appellant therefore seeks to have the action of the Council reversed or in the alternative that charges be preferred by this Division against Jones for a revocation of its license based upon the facts contained in the petition. It should be noted at this point that the sought-after action of reversal would have the effect of nullifying such action, and any action herein which seeks revocation could not be entertained in these proceedings. Guice v. Paterson, Bulletin 1573, Item 1.

Council filed no answer in this matter. However, Jones pro se timely filed a letter denying the substance of the allegations. It was stipulated by the attorneys for appellant and Council that the letter of Jones would be considered also as the answer of Council and that the attorney for the Council would represent Jones at the hearing.

The answer submitted by Jones sets forth substantially the following:

It admits that Jones has no right to ownership or possession of the premises 7 Monroe Street, Garfield.

It denies the allegations of suppression of a material fact.

It denies intentional abandonment of the licensed premises 7 Monroe Street, Garfield and denies abandonment of the license as a non-user.

It denies that public need and necessity does not mandate the renewal of the license.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. At the hearing, the facts essential to the adjudication of this matter were stipulated by the attorneys for the respective parties.

The record discloses that Jones for some years prior to 1967 was the holder of Plenary Retail Consumption License C-22 and the owner of the premises 7 Monroe Street, Garfield, New Jersey. On January 15, 1967 a fire occurred which caused the premises to be rendered unusable. Thereafter Jones lost the said premises through foreclosure and the title is presently held by one Gingold. Jones has had no legal title or right to the use of the premises since that time.

Since that time, Jones has made yearly applications for renewal of the license and has paid the full license fee for each renewal. The record further indicates that the Council was fully aware at the time of each renewal that Jones did not have the right to possession or use of the premises 7 Monroe Street, Garfield, which appears on the renewal application as the location of the premises to be licensed.

The record further discloses that Jones made two applications for transfer of the license (1969 & 1970) both of which were denied by the Council. The 1969 transfer was opposed by the appellant herein and the 1970 transfer was denied by the Council because the "Council felt that they wanted the land for park purposes." It further appears that Jones has experienced serious financial difficulties as a result of the 1967 fire and intends to file a new application for transfer pending the favorable outcome of this appeal.

In considering the instant appeal, it is well to restate the applicable legal principles.

The decision as to whether or not a license shall be issued rests within the sound discretion of the local issuing authority in the first instance. Blanck v. Magnolia 38 N.J. 484; Fiory v. Ridgewood, Bulletin 1932, Item 1 and cases cited therein.

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its action and if so, to affirm irrespective of his personal views. Somerset County Tavern Owners v. Bridgewater, Bulletin 1653, Item 1.

The appellant argues that the licensed premises as stated in the application for renewal, being an address to which Jones had no legal right of use or possession, constitutes suppression of a material fact in violation of N.J.S.A. 33:1-25, and is therefore cause for the revocation of a license. Giving full credit to all of the attendant circumstances disclosed by the record any misstatement made in the original application does not appear to have been motivated by any desire to mislead the Council. Benmar v. Paterson, Bulletin 921, Item 1. See also Sears & Roebuck v. Absecon et al., Bulletin 185, Item 10.

The test appears to be whether the misstatement was intentional and substantial. As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. This does not mean that its provisions need not be complied with. However, the rule is to be applied rationally and with fair recognition of the fact that justice is always the pole-star. O'Hara & Yuttal v. West Orange et al., Bulletin 1483, Item 2. I am satisfied that the statement in the application with reference to the premises to be licensed, under the circumstances, was not made to mislead the Council but rather was made with the full knowledge and consent of Council.

Appellant further argues that Jones abandoned the license by reason of non-use. Generally, mere non-use will not of itself void a license. However, a municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period unless convincing evidence in explanation and justification of non-user is adduced. Fiory, supra. The matter must be decided in the first instance by the local issuing authority. Re Tarantola, Bulletin 570, Item 5.

I am satisfied that there was sufficient evidence in explanation and justification before the Council, considering its knowledge of the fire which caused Jones to terminate operation and its knowledge of the financial loss which derived therefrom. Further, Council was aware of the attempts made by Jones to negotiate a transfer of this license on at least two occasions. This, coupled with the full disclosure of the aforesaid misstatement, indicate the type of situation wherein no false representation existed.

Appellant further cites Essex County Retail Liquor Stores Assn. v. Newark, et als., Bulletin 1440, Item 1 and Robinson v. Glassboro, et al, Bulletin 1441, Item 1 in support of its contention that an applicant for a liquor license must have possession, right of possession or interest in the premises sought to be licensed. Both cases refer to the application by a proposed transferee of a license and take the position that such transfer should be to available premises. In the instant case, an application is made for the renewal of a license which the Council has already renewed on two occasions with full knowledge of the situation regarding the location as described in the application, and therefore does not fall within the intendment of the cited cases.

Where it appears that at the time renewal of a license is sought the licensee had neither legal nor equitable interest in the premises, the license will be declared void. Czubak v. Franklin, et al, Bulletin 1808, Item 3. It stands uncontradicted that the licensee in the instant matter had neither legal nor equitable interest in the premises to be licensed. Nevertheless it is quite apparent that the equities in the matter are more favorable

to the respondent than to the appellant. Rallo's Bar v. West Orange, Bulletin 1914, Item 1. It should be underscored that the instant matter involves the application for a renewal and not the revocation or cancellation of a license. It should further be remembered that Jones' application and fees were regularly accepted by respondent and it further appears that Jones, having suffered considerable financial loss, has made diligent attempts to transfer the license. Indeed the record indicates that presently an application for transfer awaits only the outcome of this appeal.

I therefore find that, to the degree that Council acted in granting a renewal of this license, it did so in the reasonable exercise of its sound discretion. I therefore recommend that the action of Council be affirmed. I further find that the applicable legal principle set down in Czubak, supra, may not be ignored.

Since fairness is the touchstone of the administrative process, it appears reasonable to offer Jones a fair opportunity within a limited time to obtain suitable premises. Re Rallo, supra.

It is therefore recommended that an order be entered affirming the action of the Council and directing it to grant the application for renewal expressly subject to the following conditions:

(a) The license, renewed, not be issued, but shall remain in the custody and control of respondent Council.

(b) The licensee be given three months from the date of the Director's order herein in which to complete the transfer of said license to a suitable premises.

(c) If the said transfer is not granted within the above stated time period or any extension of time thereof granted by the Council or the Division, the said license shall be cancelled. Re Rallo, supra.

Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by the appellant, pursuant to Rule 14 of State Regulation No. 15. Appellant argues that the respondent Jones in its several applications for license renewal suppressed the fact that it no longer had possession of the licensed premises and that such suppression is cause for revocation of the license. It further argues that respondent Council abused its discretion by granting renewal of the license notwithstanding the fact that there was prolonged non-user of the license and, additionally, that as a matter of law the license should not have have been renewed in view of the lack of a possessory interest in the licensed premises by the licensee. In connection with the latter point it is noted that Division records disclose that respondent Jones' license was renewed without any special condition by resolution of the Council dated June 25, 1970.

Initially it should be noted that the instant proceeding is a review of the grant of a renewal of license rather than a disciplinary proceeding to suspend or revoke the license. Consequently the fact that there may be grounds for disciplinary action against the licensee for suppressing material facts in its application or applications does not of itself mandate a reversal

of the municipal action. Such disciplinary proceedings may be instituted by either the municipal issuing authority or this Division independently of the renewal proceeding.

I also find that the action of respondent Council was not unreasonable so far as the non-user question is involved herein. The cases cited by appellant hold that the period during which a municipal issuing authority may renew a license, the privileges of which have not been exercised, is within the sound discretion of such authority. Re Tarantola, Bulletin 570, Item 5. The three-year period of non-user here is not unduly excessive under the factual circumstances outlined by the Hearer. See Lethe, Inc. v. North Bergen, Bulletin 1537, Item 2.

The final point raised by appellant deals with lack of possession of the licensed premises, which fact is admitted by all the parties herein. The Division has held that a complete absence by the applicant of some right to possession of the premises sought to be licensed would deprive the issuing authority of jurisdiction to renew the license. Terlizzi v. Union City, Bulletin 860, Item 2. See also Kleinberg v. Newark, Bulletin 1049, Item 1. The reasons for requiring possession of licensed premises by a licensee are set forth in detail in Re Haneman, Bulletin 449, Item 4. They are predicated basically upon the proposition that the licensee must be in sufficient control of the licensed premises to be in a position to prevent violations of the Alcoholic Beverage Law and Regulations adopted pursuant thereto. Since he is responsible for what takes place on his licensed premises, he must "be able to exercise sufficient control to prevent violations, to put a stop to improper conduct, and to govern his people and his place." Re Haneman, ibid.

This principle was first enunciated in Procoli v. Trenton, Bulletin 28, Item 6, a case in which the Division affirmed the denial by a municipal issuing authority of an application for a new plenary retail consumption license. The appeal from such action was dismissed upon the basis that the appellant, during the pendency of the appeal, had lost possession of the premises sought to be licensed. This case was followed in many subsequent Division decisions, including license renewal denials, although no question apparently was raised with respect to the possibility of approving renewal applications subject to the special condition that the license would not actually be issued or effective unless and until the applicant obtained requisite possessory interest in the premises in question. Cf. Rallo v. West Orange, supra. Such condition would have presumably prevented the lack-of-control situation described in detail in Haneman, supra, and yet not have resulted in needless loss of existing licenses, particularly in municipalities in which the State quota of issuable licenses under R.S. 33:1-12.13 et seq. is exceeded.

After careful consideration, it is my opinion that appropriate relief may be granted herein by permitting the renewal of respondent Jones' license subject to the special condition that it shall not be issued or effective unless and until Jones or its transferee shall have possession of the licensed premises and said premises are in such condition as is deemed by respondent Council to be suitable for operation under the license, provided, however, that this would not preclude the license upon appropriate future transfer or renewal application from being made effective at such time for the sole purpose of permitting transfer or renewal thereof. To the extent that this action differs from prior Division decisions, such decisions are hereby deemed overruled.

Under the circumstances, I will accept the Hearer's recommendations as hereinabove modified.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the action of respondent Mayor and Council of the City of Garfield be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed, subject to the imposition herewith on the renewal of the plenary retail consumption license of respondent Doris E. Jones, Inc. of the following special conditions:

That the said license shall not be issued or effective unless and until

(1) Doris E. Jones, Inc. or its transferee shall have possession of the licensed premises and said licensed premises are in such condition as is deemed by respondent Council to be suitable for operation under the license, or

(2) The license is transferred to other suitable premises approved by respondent Council.

RICHARD C. McDONOUGH
DIRECTOR

4. APPELLATE DECISIONS - CHEWS LANDING TAVERN, INC. v. GLOUCESTER.

CHEWS LANDING TAVERN, INC., and GEORGE W. MATTEO, SR., Appellants, v. TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GLOUCESTER, and CHEWS LANDING HOTEL, INC., Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

John A. DeFalco, Esq., Attorney for Appellants.
Moss, Thatcher & Moss, Esqs., by Frank W. Thatcher, Esq., Attorneys for Respondent Township Committee.
Wilinski, Coruzzi & Suski, Esqs., by Robert Wilinski, Esq., Attorneys for Respondent Chews Landing Hotel, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants appeal from the action of respondent Township Committee of the Township of Gloucester (hereinafter Committee) which on February 3, 1971 by a 2-2 vote with one abstention in effect denied appellants' application for a person-to-person transfer of its plenary retail consumption license from respondent Chews Landing Hotel, Inc. to appellant Chews Landing Tavern, Inc. for premises on Old Black Horse Pike, Township of Gloucester.

Appellants allege that the action of the Committee was erroneous for the following reasons: (a) the application was in all respects valid and proper; (b) applicants were fully qualified; (c) the action of the Committee was politically motivated.

The Committee in its answer admits the jurisdictional facts, that appellants are in all respects qualified as holder of a plenary retail consumption license, and denies that its action herein was politically motivated. The Committee sets forth as the basis for its denial that "it was contrary to the best interests of the Township for an individual to own interest in a Plenary Retail Consumption License and a Plenary Retail Distribution License."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, at which hearing the following facts were established by stipulation of the parties herein and testimony adduced therein.

George W. Matteo, Sr. (principal stockholder of the corporate appellant) has been the principal stockholder of Glendora Liquors, Inc. (holder of a plenary retail distribution license in the community for approximately six years up to and including the present.) On January 20, 1971 he made application to the municipal issuing authority for the transfer which forms the basis for this appeal. At a meeting of the Committee on February 3, 1971 the application was denied by a vote of 2-2, with one abstention. He was advised by the members casting the negative vote that they did so because they did not have sufficient information upon which to render a decision. Appellants intend to operate the license at their present location.

It was stipulated by the parties hereto that appellants qualified in all respects as a bona fide licensee.

Joseph F. Menna (councilman and former mayor of the Township of Gloucester) voted against the application because he had heard that Matteo might possibly transfer this license to a new location at a later date. He described Chews hotel as an historical landmark in the community and expressed his concern that this landmark might be permitted to deteriorate to a state of disrepair as a result of the proposed transfer. Further, he indicated his concern with respect to one person owning two licenses in the township notwithstanding an opinion of the Township Counsel that there existed no statutory or regulatory prohibition in this regard. Lastly, he made reference to a "moratorium" issued by the Committee to the effect that the Committee would take no action on any important matters during the pendency of an official investigation then in progress with respect to the Township Committee. He concluded that the moratorium was issued with respect to zoning matters and that the instant transfer involved no zoning questions.

James D. Koolistra (Committee member) cast a negative vote and gave as his reasons inadequate information with respect to the transfer and adherence to the moratorium referred to by Menna which he described as a "moratorium in principle" issued as the result of an official investigation hereinabove referred to. He had no objection to Matteo having an interest in two licenses but was concerned for the future of this historical landmark.

There is no statutory or regulatory prohibition with respect to beneficial interest in two alcoholic beverage retail

licenses by a party providing that party is otherwise qualified. Indeed, R.S. 33:1-12.31 expressly permits a beneficial interest in not more than two retail licenses. The statute is silent with respect to the types of retail licenses, and it must therefore be assumed that the statute permits the holdings proposed herein. Furthermore, the Committee has no established policy with respect to the beneficial interest in more than one license in that municipality. It was established that the "moratorium in principle" was never formally accepted by the Committee and therefore appears to constitute no more than a gratuitous act of conscience on the part of Councilmen Menna and Koolistra individually. This inference is further bolstered by the affirmative votes of two other committee members. Additionally, the testimony is to the effect that this moratorium was primarily with respect to zoning matters, which obviously are not germane to the instant matter.

The argument that an historic landmark might be adversely affected by this transfer is admittedly the result of hearsay and has no basis in fact. Appellant Matteo testified that his present intention is to operate the license at its present location and, no evidence having been shown to the contrary, it must be assumed that the licensed premises will be conducted properly and in full compliance with the rules and regulations of this Division.

It is apparent that the dispositive point of inquiry is whether or not the Committee had acted reasonably under the circumstances. "...the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based." Bivona v. Hock, 5 N.J. Super. 118, 120 (App.Div. 1949). "The transfer of a liquor license, whether person-to-person or place-to-place, or both, is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed.... On the other hand, where it appears that the denial was unreasonable, arbitrary or capricious, the action will be reversed." K.J.P. Corporation v. Passaic, Bulletin 1906, Item 2; Tompkins v. Seaside Heights, Bulletin 1398, Item 1.

I conclude that appellants have sustained the burden of establishing that the action of the Committee was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Accordingly, it is recommended that the action of the Committee be reversed, and that it be directed to transfer the license in accordance with the application heretofore filed.

Conclusions and Order

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

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

Accordingly, it is, on this 14th day of April 1971,

ORDERED that the action of respondent Township Committee be reversed, and the Committee is directed to transfer the license in accordance with the application filed by appellant Chews Landing Tavern, Inc.

RICHARD C. McDONOUGH
DIRECTOR

5. APPELLATE DECISIONS - P. J. MULLINS BAR, INC. v. PATERSON - SUPPLEMENTAL ORDER.

P. J. MULLINS BAR, INC., Appellant,	)	
v.	)	ON APPEAL SUPPLEMENTAL ORDER
BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent.	)	

Iannaccone and Rapkin, Esqs., by Fred A. Iannaccone, Esq., Attorneys for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On March 1, 1971, I entered Conclusions and Order herein affirming the suspension by respondent of appellant's plenary retail consumption license for forty days for sale during prohibited hours and for failure to keep the licensed premises closed, both in violation of local ordinances. P. J. Mullins Bar, Inc. v. Paterson, Bulletin 1968, Item 1.

Prior to the effectuation of the order of suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On March 22, 1971, the appeal was dismissed by consent of the parties herein. The suspension may now be reimposed.

Accordingly, it is, on this 8th day of April 1971,

ORDERED that the forty-day suspension heretofore imposed and stayed during the pendency of the proceedings on appeal be reinstated against Plenary Retail Consumption License C-298, issued by the Board of Alcoholic Beverage Control for the City of Paterson to P. J. Mullins Bar, Inc., for premises 591 East 31st Street, Paterson, commencing at 3:00 a.m. Thursday, April 22, 1971 and terminating at 3:00 a.m. Tuesday, June 1, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against	)	
ALBERT F. MERRIWEATHER, ADM. EST. OF GLADYS M. HOUSTON t/a Merri-Corner Club 930 Main Avenue Passaic, N. J.	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-5, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.	)	

John S. Wolchko, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On January 20, 1971, Conclusionsand Order were entered in this matter suspending the license of the licensee for ten days, commencing February 8, 1971 after the licensee pleaded non vult to a charge of selling alcoholic beverages during prohibited hours. Re Merriweather, Bulletin 1958, Item 10. On February 3, 1971, the aforesaid suspension was stayed to consider an application made by the licensee for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $400 in lieu of the suspension.

Accordingly, it is, on this 8th day of April 1971,

ORDERED that the order entered in this matter on January 20, 1971, suspending the license in question for ten days is hereby rescinded and the payment of a $400 fine by the licensee is hereby accepted in lieu of such suspension.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGE NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against	)
ADMIRAL BENBOW INN, INC. t/a Admiral Benbow Inn 2 Jackson Street Highlands, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of Highlands.	)

Licensee, by Agnes Wiesing, Secretary-Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on January 26, 1971 it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Swartswood Lodge, Inc., Bulletin 1935, Item 5. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $235.00 in lieu of the suspension.

Accordingly, it is, on this 8th day of April 1971,

ORDERED that the payment of a $235.00 fine by the licensee is hereby accepted in lieu of a suspension of license of five days.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against	)	
FRIVOLOUS SAL, INC. 445 Grand Avenue Palisades Park, N. J.	)	SUPPLEMENTAL ORDER.
Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Palisades Park.	)	

Diamond, Diamond & Afflito, Esqs., by Michael K. Diamond, Esq., Attorneys for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On January 27, 1971, Conclusions and Order were entered in this matter suspending the license of the licensee for ten days commencing February 15, 1971 after the licensee pleaded non vult to a "refill" charge. Re Frivolous Sal, Inc., Bulletin 1960, Item 12. On February 3, 1971, the aforesaid suspension was stayed to consider an application made by the licensee for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $1,550 in lieu of the suspension.

Accordingly, it is, on this 8th day of April 1971,

ORDERED that the order entered in this matter on January 27, 1971, suspending the license in question for ten days is hereby rescinded and the payment of a $1,550 fine by the licensee is hereby accepted in lieu of such suspension.

RICHARD C. McDONOUGH
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
SHUFFLE INN INCORPORATION 386 Johnson Avenue Jersey City, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-273, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)

Licensee, by John Szupiny, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, October 25, 1970 it sold six cans of beer and a half-pint bottle of liqueur for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Joy-Ken Corp., Bulletin 1940, Item 10.

Accordingly, it is, on this 8th day of April 1971,

ORDERED that Plenary Retail Consumption License C-273, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Shuffle Inn Incorporation, for premises 386 Johnston Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, April 19, 1971, and terminating at 2 a.m. Thursday, April 29, 1971.

RICHARD C. McDONOUGH
DIRECTOR

10. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #333)
In the Matter of a Petition to Lift)
the Automatic Suspension of Plenary)
Retail Consumption License C-13,) On Petition
issued by the Borough Council of)
the Borough of East Newark to) ORDER
)
Dorothy Schwertfeger)
t/a Cimarron Lounge)
423 North 3rd Street
East Newark, N. J.)

Licensee, Pro se

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on April 12, 1971, petitioner was fined $15 in the East Newark Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on March 26, 1971, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of the proceedings the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are presently pending in this Division against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by the petitioner after the disciplinary proceedings have been decided. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Rusin, Bulletin 1904, Item 9.

Accordingly, it is, on this 22nd day of April 1971,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

Richard C. McDonough
Director