

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

BULLETIN 2318

April 10, 1979

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April 10, 1979

1. APPELLATE DECISIONS - ROMANO AND JACCARINO v. CLIFFSIDE PARK.

Dennis Romano and John Jaccarino,	:	
	:	
Appellants,	:	ON APPEAL
	:	
vs.	:	CONCLUSIONS
	:	AND
The Mayor and Council of the	:	ORDER
Borough of Cliffside Park,	:	
	:	
Respondent	:	
.		
Paul M. Cecere, Esq., Attorney for Appellant.		
Liebowitz, Krafte & Liebowitz, Esqs., by Joseph A. Clark, Jr., Esq.,		
Attorneys for Respondent.		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the Borough of Cliffside Park (Council) which on July 17, 1978, denied appellants' application for a place-to-place transfer of their plenary retail consumption license (which had not been in active use) to premises 452 Palisade Avenue, Cliffside Park.

Appellants allege in their Petition of Appeal that the action of the Council was erroneous in that under the facts therein, it was unreasonable, arbitrary and capricious.

In its Answer, the Council denies that its action was erroneous.

The appeal was heard de novo, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

The proposed transfer site is presently occupied by a Veterans of Foreign Wars (V.F.W.) post, which is the holder of a club license.

The Council produced several witnesses at the hearing de novo who articulated the reasons upon which it based its denial of the subject transfer.

Edward Filipowicz, Chief of Police of the respondent-Borough, who possessed abundant knowledge of the general area of the proposed transfer situs, testified that Palisade Avenue, which runs north and south and is a county road, contains a mix of stores, homes, two apartment buildings, an American Legion Post and an Armenian Club in the immediate area in question. Parking is available on a limited basis. No parking is allowed on either side of Edgewater Road, which intersects Palisade Avenue, a short distance north of the proposed situs.

There is parking permitted on either side of Clark Terrace, which terminates into Palisade Avenue, in the immediate area of the proposed situs, and also on Park Avenue which intersects Palisade Avenue to the south of the situs.

On cross-examination, the Chief conceded that parking is available on streets which run parallel with Palisade Avenue, limited however by driveways to homes. In particular, limited parking is available on Gorge Road, which is located one block to the east of Palisade Avenue.

On continued direct examination, Chief Filipowicz testified that the American Legion building is used to conduct bingo games on Sunday nights and, occasionally, a dance. A problem then arises with parking, resulting in the issuance of parking summons.

Based upon his investigation, the Chief recommended a denial of the transfer because it would serve to increase the severity of the parking problem.

On re-cross-examination, the Chief classified Palisade Avenue as a commercial street. The traffic is more congested during the day than at nighttime.

Isabelle Mener, who has resided at 437 Palisade Avenue, Cliffside Park for the past 25 years, testified that parking in the vicinity of her home and at the V.F.W. Club house (the proposed transfer situs) is inadequate. Parking conditions have worsened over a period of years. Parking and traffic conditions worsen when the American Legion sponsors special activities. Parking conditions are slightly better during the day than at nighttime. It was her opinion that the addition of "another public liquor license" would intensify the parking and traffic problems.

On cross-examination Mener explained that the V.F.W. members and the patrons of bingo games conducted by it park on the streets.

Alexander G. Phillian, a resident of Cliffside Park for 38 years next testified in behalf of respondent. He has held various offices and committee posts with the local American Legion, and he testified that various social functions are held at the Post's headquarters during the course of the year, and bingo games are sponsored weekly. Numerous parking tickets have been issued to patrons of these affairs by the local and the County police. The witness expressed an opinion that the addition of the subject license would worsen the present inadequate parking facilities.

On cross-examination, Phillian conceded that no one objected to the renewal of the American Legion Post's liquor license based upon traffic congestion or lack of parking facilities. He presumed that the patrons of the various functions found parking. Only a few individuals stated that they could not attend a function due to lack of parking. The Post has held a plenary retail consumption license since the year 1972. Prior thereto, it held a club license.

Armen Babamian, who owns and resides in a one family dwelling at 439 Palisade Avenue, Cliffside Park, testified for respondent that the residents of the ten or eleven homes south of his home have difficulty parking near their homes upon returning from work. He has observed patrons of American Legion bingo games arrive in cabs. He opined that the addition of a consumption license would add to the traffic problems.

Dennis Romano, one of the appellants herein, testified that the license, which was inactive at the time it was transferred to him and his partner slightly over a year prior. Their petition to the Director of the Division of Alcoholic

Beverage Control to authorize further application for renewal of an inactive license, pursuant to N.J.S.A. 33:1-12.39, was approved. After being denied their application to transfer the license to Anderson Avenue (the other main county thoroughfare), they investigated other prospective transfer sites and then decided upon the subject site.

Romano explained that they intended to operate a "neighborhood pub". Hamburgers and steak sandwiches would be served. They would provide tables to seat 30 patrons where food and drink would be served. The bar would accommodate ten stools. Onstreet parking is available on George Road, which runs parallel with Palisade Avenue, as well as the various side streets in the immediate vicinity of the proposed situs. During the past year he found no other place wherein to locate the license.

On cross-examination, the witness testified that, during the period of time he was investigating the subject premises, he parked there "quite a few times".

Upon questioning by this Hearer, Romano explained that the front room would contain a bar with 10 stools and a standing capacity of 10 patrons; the rear room would contain tables for 30 patrons.

The business would mainly be a nighttime business.

Anthony Callea, who is the owner of the building involved herein, and who has been a member of the V.F.W. for a number of years, testified in support of appellants that the V.F.W. has a roster of over 120 members. The club conducts numerous activities which draw many people and its bar is open every other night. When the American Legion and the V.F.W. hold affairs together, the congestion is unbearable and, in his opinion, the parking situation would be eased by the elimination of a the V.F.W. club and the transfer of the subject license to the proposed location. Cars are parked on Palisade Avenue, on George Road and on the side streets.

Preliminarily, I observe that the transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary and unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Bomwell v. Newark, Bulletin 1639, Item 1.

The instant case is comparable to and governed by the case of Bivona v. Hock et al., 5 N.J. Super. 118 (App. Div. 1949). As the court pointed out in that case:

...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." Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940).

In order to arrive at a fair determination herein, I have examined the reasons advanced by the Council in denying the transfer. In essence, those reasons were the density of traffic on Palisade Avenue and the limited parking facilities in the vicinity of the proposed transfer site.

Although I find that the Council's attempt to ameliorate those conditions is laudable, it cannot do so at the expense of an individual or entity which seeks to conduct a legitimate business at a location which is already in use by a lawful enterprise and presently contributes to the traffic density and parking problems. It cannot be denied that the V.F.W. (the holder of a club license), in the conduct of its various activities, has an impact upon those conditions expressed. May a municipality dictate that a building should lie fallow upon its being vacated by its present tenant, in order to ameliorate a traffic and parking problem? I think not, regardless of whether the prospective enterprise is a liquor establishment or some other lawful business. It is unquestioned that there are businesses, other than that proposed by the appellants, which would intensify to a greater extent the problems sought to be alleviated by the Council.

My evaluation of the entire record herein, leads to the conclusion that the manner of resolving a traffic problem adopted by the Council was unfounded on the record. I further find that the action of the Council was unreasonable and arbitrary.

For the reasons stated, I conclude that the appellants have sustained the burden imposed upon them pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15). It is, therefore, recommended that the Council's action be reversed, and that an order be entered directing the Council to grant the application for transfer, in accordance with the application filed therefor, subject to the condition that occupancy be limited to sixty patrons at any one time.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.6.

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

Accordingly, it is, on this 12th day of January, 1979,

ORDERED that the action of the Mayor and Council of the Borough of Cliffside Park be and the same is hereby reversed; and it is further

ORDERED that the Council be and is hereby directed to grant the transfer in accordance with the application filed therefor, subject to the imposition of a special condition that occupancy be limited to sixty patrons at any one time.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - FLORIDA GROVE BAR & GRILL, A NEW JERSEY CORPORATION v. WOODBRIDGE.

Florida Grove Bar & Grill, A New Jersey Corporation, Appellant, vs. Municipal Council of the Township of Woodbridge, Respondent.	} } }	ON APPEAL CONCLUSIONS AND ORDER
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 R. Joseph Ferenczi, Esq., Attorney for Appellant.
 Joel B. Gottlieb, Esq., by Robert Dato, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent, Municipal Council of the Township of Woodbridge, (Council), which, on April 18, 1978, denied appellants' application for a person-to-person transfer of Plenary Retail Consumption License No. 1225-33-043-001, for premises 363 Florida Grove Road, Woodbridge Township, from Land S. Tavern, Inc. to itself.

The Council, in its Resolution, bases its determination upon their finding that:

1. Applicant failed to accurately respond to Question No. 33.
2. One of the persons interested in the application as a matter of fact was convicted of a crime.

Question No. 33, Part I of the application asks whether or not the applicant, or any person mentioned in the application as having a beneficial interest in the license applied for or the business to be conducted under said license, has ever been convicted of a crime. The corporate stockholders responded: "no".

Part II asks to state details, (if "yes") of each conviction, giving the name of the person convicted, date, nature of crime, court, sentence, etc. This second part was left blank by

appellant.

The appellant alleges, in its Petition of Appeal, that the action of the respondent was erroneous; that the applicant did accurately respond to Question 33, and that neither stockholder was ever convicted of a crime involving moral turpitude. The Council, in its Answer, denies the substantive allegations contained in the Petition of Appeal.

A de novo hearing was held in this Division, pursuant to N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

From the documents admitted into evidence on behalf of respondent (no witnesses were presented), it is evident that the Council's decision was predicated upon a February 8, 1978 memo from the Criminal Investigation Section of the Woodbridge Police Department and the rap sheet attached.

The memo states in pertinent part:

Fingerprint returns revealed that Stephen G. Futo had been arrested in Perth Amboy on 7/10/38 for Disorderly Conduct. Charge withdrawn. On 7/8/76, he was arrested in Manalapan Township for Threat to take a life, Entering w/o Breaking, Trespassing and Loud and Abusive Language. This charge was returned from Monmouth County Court to Local Magnistrate for dismissal.

Fingerprint cards revealed Elizabeth Sandor Futo was arrested in Perth Amboy on 8/31/35 for carrying a concealed weapon (revolver). She was reprimanded and given a suspended sentence. On 12/27/35 she was arrested for Assault & Battery.

Posted \$300.00 peace bond.

Copies of fingerprint cards and rap sheets attached. (Emphasis Added).

A perusal of the rap sheets clearly shows that Stephen Futo was accused of using foul language and threat to take a life, by a civilian. Futo in turn, brought similar charges against this individual. When tempers cooled, both parties withdrew their respective complaints.

Elizabeth Sandor Futo's rap sheet was not attached. No certified copy of conviction or other proofs were produced by the Township establishing that she had ever been found guilty (or pleaded guilty) of any crime whatsoever, much less one involving moral turpitude as required by N.J.S.A. 33:1-25, in order to disqualify an applicant.

Elizabeth Futo testified that she did, on a prank in 1935, when she was 19, take an unloaded revolver from her home and exhibited it to her girlfriend, never removing it from her purse. The girls later exchanged angry words and the other girl reported it to the police.

A few days later, her father was summoned to Police Headquarters and she accompanied him. A brief discussion ensued and they went home. She recalls that she was not arrested and did not appear before any magistrate in Perth Amboy (where they resided) or judge in New Brunswick, the County seat.

Since that time, she has married, is a mother, and served as a foster mother on at least ten occasions. She is a past President of the Hungarian Reform Church, served as County Committeewoman, and, in general, involved in civic and religious activities.

The determination made by the Council is based upon hearsay, and in general, does not support any finding that Mrs. Futo was ever indicted, much less convicted of any crime.

I therefore, find that the appellant has sustained the burden imposed upon it under N.J.A.C. 13:2-17.6 of establishing that the action of the Council was erroneous and should be reversed.

It is, therefore, recommended that an order be entered reversing the action of the Municipal Council and directing that it grant appellant's application for a person-to-person transfer.

Conclusions and Order

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14.

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

Accordingly, it is, on this 9th day of January, 1979,

ORDERED that the action of the Municipal Council of the Township of Woodbridge be and the same is hereby reversed, and the Council be and is hereby directed to approve the transfer in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - LEWDNESS - IMMORAL ACTIVITY - INDECENT PERFORMANCE - PRIOR SIMILAR RECORD - RECOMMENDED REVOCATION MODIFIED TO SUSPENSION OF LICENSE FOR 365 DAYS TO PERMIT TRANSFER OF LICENSE.

In the Matter of Disciplinary :
 Proceedings against :

Blue Ribbon Inn of :
 Irvington, Inc. :
 t/a Blue Ribbon Inn :
 433 Grove Street :
 Irvington, N.J. :

CONCLUSIONS
 AND
 ORDER

Holder of Plenary Retail Consump- :
 tion Lic. 0709-33-007-001, issued :
 by the Municipal Council of the :
 Town of Irvington. :

. :

Citrino, Balsam and Di Biasi, Esqs., by Donald M. Newmark,
 Esq., Attorneys for Licensee.
 Mart Vaarsi, Esq., Deputy Attorney General, Appearing for Divi-
 sion.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded "not guilty" to the following charge:

On July 27 and 28, 1977, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered a female person, while performing on your premises for entertainment of your customers and patrons, to engage in conduct of a lewd, indecent and immoral manner and to commit and engage in acts, gestures and movements of and with her hands, legs and other parts of her body in a manner and form having lewd, indecent and immorally suggestive meaning; in violation of Rule 5 of State Regulation No. 20.

I

Pursuant to a specific assignment to investigate subject premises for alleged lewd performances, ABC agent K testified on behalf of the Division that, on July 27th 1977, accompanied by Agent C, she entered the subject premises at about 9:30 P.M. She described the interior as having a oblong bar with a go-go stage in the middle. To the left was a

self-service cooler and rest rooms. In the rear towards the left side there is a kitchen and a pool table. A phone booth is located on the rear right side. Both agents sat at bar stools located to the right, about five feet from the stage.

A go-go dancer was performing as they entered. Her performance was characterized as being "in the usual go-go fashion".

The owners of the stock of the corporate licensee, Maxwell and Marlene West, and a bar maid were on the premises.

At approximately 10:20 P.M. a second go-go dancer, Tina Carrera, ascended to the stage to perform. Her costume consisted of a two piece open-mesh knit; the top consists of a band that fit around the breasts; the bottom was a "G" string fitted with black elastic. The outline of the dancers nipples were visible through the open mesh and pubic hairs were visible on the side of the G String Bottom due to its skiminess. She wore no stockings or panty hose. She danced for thirty-five minutes before ending the set.

At approximately 11:15 P.M. she resumed her dancing, wearing the same outfit. While dancing, she was observed to back up to a bottle of Galliano, located in a speed rack adjacent to the stage and several inches below its level, the top of which extended almost one foot above the stage. She squatted and began thrusting her vaginal area up and down, seemingly touching the bottle, and simulating sexual intercourse.

She folded a dollar bill, given as a gratuity, lengthwise and inserted it into her vaginal area after pulling the bottom away, exposing the pubic hair. Using muscular action, she then caused the bill to move up and down. It appeared to Agent K that the bill was held fast and manipulated by the vaginal lips, although (barely) covered by the costume material. After several seconds she removed it, placed it in her mouth for a few seconds. She sucked on the bill and then exchanged it for a new bill with a nearby patron.

Next, she lowered the bottom of her costume, exposing her vagina. A male patron had a flashlight and shined the beam upon the vaginal area, which was clearly observed by the patronage. The dancer commented "can you see it now?"

A bill was folded lengthwise and again inserted into the vaginal area. She then made jerking motions upon the bill, as if simulating masturbation of a penis.

Obtaining a cigarette, she lit it and inserted same into the buttock cleavage as she danced. After dancing in this manner for a few seconds, she removed it and sat down upon the stage. She inserted the filter end into her vagina, after moving the costume material to one side. She removed the cigarette, puffed it, and gave it to a patron as a souvenir. The patron with the flashlight again aimed its beam upon the subject areas.

During this set, someone yelled "take it out". She answered, "I can't, the door is open". Agent K glanced at the door and observed someone close it, whereupon the dancer pulled the costume aside, exposing her left breast. She fondled her breast and made licking motions with her tongue.

At another point, she obtained a comb from a patron. She sat down, with her knees up and spread apart, and proceeded to comb the exposed pubic hair.

Thereupon, Agent C departed and telephoned the local police for assistance.

During the course of the performance Marlene West and the barmaid remained at their stations serving drinks to customers. Although they were within close proximity of the go-go stage throughout, neither took any affirmative action, whatsoever to restrict the dancer's activities. Similarly, Maxwell West circulated throughout the licensed premises, and at times sat at the bar viewing the performance, without ever attempting to admonish the dancer or order her off the stage.

A.B.C. Agent C testified in corroboration of Agent K's testimony, supplying added detail but nothing of significance, other than emphasizing that the male with the flashlight used it throughout the performance; not occasionally, as one might infer from agent K's prior testimony.

Marlene West testified on behalf of the corporate licensee, that none of the incidents, which both ABC agents alleged occurred that evening, did, in fact, occur. She maintained that Agent K had a bit too much to drink and, therefore, by inference, was incapable of observing with accuracy the events of the evening. She stopped short of alleging that the agent was under the influence of alcohol, however. She further maintained that the lighting was so subdued that one could not see very clearly beyond a few feet, as indicated by the following colloquy:

- Q. What would you say your range of vision would be to see something very clearly?

- A. Very clearly? perhaps three feet ... somebody that would be sitting up in the front area would be at least six feet away, possibly seven.
- Q. What about where Agents K and C were seated? How far away is that in distance?
- A. At least six feet, perhaps seven.

Later, on cross-examination, she qualified this testimony by stating that "I never said you could barely see her body. I never said that you could see outlines of her body. I stated that you could not see every movement." When questioned further, she stated that since no one complained about insufficient lighting in the stage area, she assumed that it was sufficient. Thereafter the following question was asked,

- Q. You can't have it both ways. Can you see the dancer from where you are sitting or can't you?
- A. Unless you are blind, you can see ... of course you can see her.

Mrs. West steadfastly denied having stocked Galliano for over a year prior to the alleged occurrence, nor did they serve Strega, a liquor that comes in a bottle very similar in size and shape to the Galliano bottle.

Mrs. West related an incident which occurred after the agents left, wherein the dancer exhibited the panty hose she had worn while performing, and questioned whether she should have surrendered them along with the knit outfit, when requested by the agents.

George D. Latimer testified on behalf of the licensee that he lived nearby and often frequented the establishment. Latimer is a Senior Engineer with a pollution control device manufacturer. He is articulate, and, in general, presents a positive image. His testimony, in essence, was that he did not see any of the alleged actions described by the agents on the date in question. He drank beer in moderation and directed his attention to the performance, although admitting to conversing with fellow patrons. Other than one visit to the men's room, he remained at his bar stool, located near the stage, from the time of his arrival. He denied that any patron had a flashlight in the premises on that evening.

Maxwell West's testimony was largely corroborative of his wife Marlene's prior testimony. He did relate a story culminating in a statement that at one time so many patrons used flashlights that " ... (at) one time we were ready to

take off all the electricity in the bar and just use flashlights as our source of electricity".

Tina Carrero the go-go dancer, next testified on behalf of the licensee, and likewise denied all allegations made by the agents. She related that, as a consequence of minor surgery, she was scarred on the left breast, the one alleged by the agents she exposed. She stated that she wore pantyhose on the evening in question, which was flesh-toned and seamless. She was able to hide the elastic waist-band by tucking it under several layers of hose.

II

We are dealing here with a purely disciplinary matter and its alleged infraction. The Division need establish its case only by a fair preponderance of the believable evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super 242 (App. Div. 1960). In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec 1042 (1964).

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

Using the said principle as a guide, I have carefully evaluated the testimony produced both on behalf of the Division and the licensee. I have had the opportunity to observe their demeanor as they testified. I am persuaded that the testimony of the ABC agents was forthright, concise, credible and fully supportive of the charge.

There was no showing of any improper motivation on their part, nor any bias against the licensee. They were assigned to pursue an investigation, and it was natural that their observations should be directed at the full activities during their visit. Consequently, their testimony was of a positive nature, specific and credible.

On the other hand, I find the testimony of the witnesses for the licensee to be negative, vague, imprecise, and, indeed, incredible.

In light of Latimer's testimony that he does not recall anyone using a flashlight that evening, which directly contradicts the recollections of both agents, and the Wests, I have grave doubt as to the credibility of his recollections on the evening of July 27 into July 28, 1977.

The dancer's credibility is diminished by the following colloquy on cross-examination.

"Q. You testified that this is the only bar you have ever worked in, in New Jersey. Is that correct?

A. Yes.

Q. Do you know of a place called the (name deleted)?

A. The (name deleted)?

Q. Yes.

A. Yes, I know of that lounge.

Q. Is it possible that you have worked there?

A. One time."

There followed a rather unconvincing attempt to explain that she misunderstood the question as originally asked.

Maxwell West's testimony had little ring of credibility, nor was it enhanced by the incredible story he related about the thought of switching over to flashlight power for illumination at the tavern.

Marlene West's attempts to impugn Agent K's sobriety, as well as their ability to clearly view the performance from their seats, appeared contrived and unbelievable.

After a careful consideration of the entire record herein, I find that the charge has been established by a fair preponderance of the credible evidence, indeed, by substantial evidence. I, therefore, recommend that an order be entered finding the licensee guilty of the said charge.

III

With respect to the imposition of penalty herein, and in recognition of the licensee's prior adjudicated record, I am convinced that the licensee has embarked upon a deliberate course of action of disregarding all rules and regulations governing the conduct on licensed premises, in an effort to pack it's

establishment daily, using lewd shows as the inducement.

The testimony and violation in this matter is strikingly similar to that brought out previously, at a consolidated hearing wherein licensee was found guilty of two sets of charges containing in part charges of allowing lewd performances upon its premises. A suspension of 145 days was imposed therein. Re Blue Ribbon Inn of Irvington, Inc., Bulletin 2276, Item 3.

I, therefore, recommend the immediate revocation of its license. For precedent, see Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra, wherein the Director's action revoking a Plenary Retail Consumption license for repeated violations of the minimum price regulations, was upheld upon appeal.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-19.6. In lieu thereof, written notification was received of the appointment of a trustee in Bankruptcy for the appellant corporation and the subsequent sale of the license to third parties, Frederick and Pauline Wentzler, the prior owners of the license.

Request was made by the purchasers of the license to reconsider the recommended penalty of revocation of license set forth in the Hearer's Report. I am satisfied that no direct economic benefit will be derived by the appellant from the sale of the license. In addition, the Municipal Council has no objection to the proposed transfer of license to the Wentzlers, in lieu of revocation. Lastly, the Wentzlers have previously indicated an ability to appropriately conduct a liquor licensed premises.

I have determined to modify the proposed revocation to a suspension of license for 365 days. I do so for the aforesaid reasons and because the trustee has entered a non vult plea to all pending charges against this licensee.

Thus the suspension of 365 days shall constitute the total penalty to be imposed for the following outstanding disciplinary proceedings in this Division:

- (A) S-11,623 - lewd show on March 18, 1978
 X-47,519-J and awaiting Hearer's Report

- (B) S-10,873 - consolidated proceedings
X-47,519-E and finding of guilt to
charges of lewd shows.
AND Conclusions and Order
dated September 27, 1977
S-11,045 suspended license for
X-47,519-F 145 days. Appellate
Division vacated stay on
May 8, 1978 and suspension
has been served. Appellate
Division affirmed Director's
action on October 25, 1978
(App. Div. Docket No. A-436-
77)
- (C) S-11,346 - the subject disciplinary
X-47,519-H proceeding wherein the
Hearer has recommended a
finding of guilt to lewd
show charges and revocation
of license
- (D) S-11,528 - lewd show on December 6, 1977
X-47,519-I and awaiting Hearer's Report

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendation of the Hearer, except as to penalty to be imposed, and adopt them as my conclusions herein. As previously stated, I shall not revoke this license, but will suspend same for 365 days.

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

ORDERED that the licensee be and the same is hereby found guilty to the subject charges herein, and the other disciplinary charges hereinabove set forth; and it is further

ORDERED that Plenary Retail Consumption License No. 0709-33-007-001 issued by the Municipal Council of the Town of Irvington to Blue Ribbon Inn of Irvington, Inc., t/a Blue Ribbon Inn for premises 433 Grove Street, Irvington, be and the same is hereby suspended for the balance of its term, to wit, midnight, Saturday, June 30, 1979, commencing nunc pro tunc 2:00 a.m., Thursday, December 7, 1978 and for any renewal of the subject license which may be granted for the 1979-80 license term; and it is further


ORDERED that upon Verified Petition filed with the Director

of this Division, the proposed transferees of the subject license, Frederick and Pauline Wentzler, may apply for the lifting of the suspension upon proof that they have received appropriate municipal approval transferring the license to them, and further, that the existing licensee or its stockholders have no interest directly or indirectly in the subject license; but in no event shall the license suspension be lifted prior to 2:00 a.m., Friday, December 7, 1979.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATION FILED.

South Jersey Distributors Inc.
Canale Drive and Delilah Road
Egg Harbor Township, New Jersey
Application filed April 4, 1979 for
place-to-place transfer of Limited
Wholesale License 3400-25-129-001,
From 430 North Pennsylvania Avenue,
Atlantic City, New Jersey.



Joseph H. Lerner
Director