STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2241 January 5, 1977

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - CURTNICK, INC. v. PATERSON.

Curtnick, Inc. t/a Curtnick, Inc., Appellant, v. Board of Alcoholic Beverage Control for the City of Paterson, Respondent.	On Appeal CONCLUSIONS AND ORDER

Miles Feinstein, Esq., Attorney for Appellant
Joseph A. La Cava, Esq., by Ralph L. De Luccia, 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 Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which, on February 26, 1976, suspended appellant's Plenary Retail Consumption License C-13, for premises 182 Getty Avenue, Paterson, for twenty days, following a finding of guilt to a charge alleging that, on January 7, 1976 appellant improperly displayed female figures on its licensed premises; in violation of Rule 6(b) of State Regulation No. 21.

The effective dates of the suspension were stayed by Order of the Director of March 8, 1976, pending the determination of this appeal.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses.

Additionally, a transcript of the proceedings held before the Board, with photographs then accepted into evidence, was offered into evidence, in accordance with Rule 8 of State Regulation No. 15.

No testimony was advanced at the hearing in this Division; counsel relied upon the transcript of the proceedings before the Board with attached photographs, and supplemented the same with oral argument.

The sole issue was: did the Board overstep its authority in determining that the exhibits of appellant were contrary to the regulation (Rule 6(h) of State Regulation No. 21). That regulation provides the following:

> "Rule 6. No...retailer shall include in ...advertisement directly or indirectly in any manner or by any means, device or medium:....
>
> (h) Any illustration of a female which is not dignified, modest and in good taste...."

From the photographs presented and the explanation of counsel, it was clearly evident that the appellant had frosted glass windows of its premises contain silhouettes of dancing females in life-size form.

With the interior of the premises lighted, these silhouettes gave the momentary illusion of unclad females dancing and that view was readily available to all passersby in front of the premises.

Prior to the presentment of the charge against the licensee, the owner of its corporate stock attempted to have these figures not project complete nudity by painting upon them simulated "G-string" garments. Nonetheless, the Board preferred the charge and, after hearing, found the appellant guilty.

In order to prevail in the instant matter, appellant must show that the action of the Board is arbitrary and capricious. Rule 6 of State Regulation No. 15. Arbitrary and capricious action of an administrative body means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though, the Director may have reached a different conclusion. Bayshore Sewage Company v. Department of Environmental Control, 122 N.J. Super. 184, 199 (Ch. Div. 1973).

Moreover, the Director should not substitute his judgment for that of the local issuing authority if there is substantial evidence to support its ruling. Cf. Kansas City Southern Ry. Co. v. Louisana Public Service Co., 223 So. 2nd 132.

Appellant contends that the figures in silhouette are not offensive, particularly following their being covered to comply with local standards. However, as the Court has long ago determined "We are not here concerned with censorship of a book nor with alleged obscenity of a theatrical performance. Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public

tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade." McFadden's Lounge, Inc. v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 61, 68 (App. Div. 1954).

Lewdness or immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally. Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App. Div. 1955); Jeanne's Enterprises, Inc. v. New Jersey, et al, 93 N.J. Super. 230 (App. Div. 1966) Aff'd. 48 N.J. 359 (1966).

Returning to the sole issue in the matter, i.e., did the appellant violate the provisions of Rule 6(h), State Regulation No. 21; it is apparent that it did. The figurines representing an unadorned female in dancing posture visible by passersby and traffic in the area were patently neither dignified nor in good taste, as determined by the Board. I find that the action of the Board in making that determination was neither arbitrary nor capricious.

The attempt to clothe those life-size figures indicates that the appellant concurred in the policemens advice that without such change disciplinary proceedings could follow.

Thus, I find that appellant has failed to sustain its burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Therefore, I recommend that the action of the Board be affirmed, the Order staying the suspension imposed pending the determination of this appeal be vacated, and the suspension be reimposed.

Conclusions and Order

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

Having carefully considered the entire matter herein, including the transcript of the testimony 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 29th day of September 1976,

ORDERED that the action of the respondent, Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order of March 8, 1976, staying the suspension imposed by the Board pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License, C-13, issued by the Board of Alcoholic Beverage Control for the City of Paterson, to Curtnick, Inc. t/a Curtnick, Inc. for premises 182 Getty Avenue, Paterson, be and the same is hereby suspended for twenty (20) days commencing at 3:00 A.M. Wednesday, October 13, 1976 and terminating 3:00 A.M. Tuesday, November 2, 1976.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - M.L.H. OPERATING COMPANY v. MOUNT LAUREL.

M.L.H. Operating Company t/a Mount Laurel Hilton Inn, Appellant, v. Township Council of the Township of Mount Laurel, Respondent.	On Appeal CONCLUSIONS AND ORDER

Archer, Greiner & Read, Esqs., by Juhan Runne, Esq., Attorneys for Appellant
Higgins, Trimble & Master, Esqs., by John W. Trimble, 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 Township Council of the Township of Mount Laurel (hereinafter Council) which, on June 28, 1976, denied appellant's application for renewal of its Plenary Retail Consumption License C-11, for premises on Route 73, Mount Laurel.

Appellant contends that the action of the Council was erroneous in that its resolution set forth as its reason for the denial of renewal the non-payment of the realty taxes due from appellant on the real property at which the license was situated. It denies that there was any legal authority by which the non-payment of such taxes could be the basis of denial.

In its Answer, the Council defends that its action was proper.

Upon receipt of appellant's petition of appeal, the Director of this Division on June 29, 1976 extended the term of the license pending the determination of this appeal

An appeal de novo was heard in this Division with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses pursuant to Rule 6 of State of State Regulation No. 15. However, in lieu thereof counsel for the respective parties merely presented oral argument.

By stipulation, certain facts were admitted: (a) there was no question respecting the proper operation of the licensed premises and (b) the appellant corporation had never paid realty taxes. In addition, information was received that an application for a tax receiver, pursuant to N.J.S.A. 54:5-1 et sec., and the scheduling of a tax sale had already been set by the Council.

In oral argument, appellant contends that there is no legal authority for a township to use the issuance or denial of a plenary retail license as a means of collecting taxes. N.J.S.A. 54:1-1 et sec. provides all of the machinery for such purpose; N.J.S.A. 33:1-1 et sec. relates solely to alcoholic beverages and contains no auxiliary provision permitting connection between the retailing of liquor and collection of realty taxes.

The Council responds that there was a basic infirmity in appellant's position as a primary requirement of any licensee, regardless of the type of license, is to discharge the obligations of such license, the payment of taxes being a primary one.

Additionally, the new "land-use act" recently adopted required all municipal taxes be paid prior to any grant or permission by any municipality respecting the use of its land. While, admittedly, such legislation had no effect upon the question here posed, it is evidence of both a legislative and judicial trend to prefix payment of taxes to the grant of municipal privilege.

The sole and solitary question posed in this appeal has been answered by the first Director (then Commissioner) of this Division, shortly following the creation of this Division, in 1933. In one of the earlies of reported decisions, In re Sofield, Bulletin 28, Item 1, then Commissioner D. Frederick Burnett wrote:

> "I am in hearty sympathy with the natural desire of your Township Committee to use every proper means to force the payment of taxes in your municipality. The question before me however, is not the worthiness of the motive but whether the power exists...the collection of municipal taxes which objective, however laudable, has nothing in common with Liquor Control...."

The succeeding Director (then Commissioner) Alfred E. Driscoll, in a parallel matter ruled:

> "Failure to pay real estate taxes due upon premises occupied by a licensee is not sufficient reason for denial of a license. Re Sofield, Bulletin 28, Item 1. Since on the record herein, no other issue now appears to be involved, I must reverse the action of respondent."

Bettlewood Republican Club, Inc. v. Haddon, Bulletin 527, Item 2.

Similarly, a few years later, the principle was repeated "...it has been long established that the collection of taxes has nothing to do with liquor control." Rockaway Township Tavern Association et al v. Rockaway, Bulletin 714, Item 6. The principle remains unchanged to date.

Hence, for the past forty years, all efforts to tie-in the issuance of alcoholic beverage licenses with the payment of other than alcoholic beverage taxes has been vigorously resisted.

It should be noted that, from explanation of counsel, the Council has not been derelict inits effort to collect the overdue taxes. A Receiver has been appointed; and a tax sale will soon take place. There is no doubt in the minds of anyone connected with either the Council or appellant that, eventually, the long-awaited taxes will be paid; it is the many years of their non-payment that appears to frustrate the Council.

The burden of establishing that the action of the municipal issuing authority is erroneous and should be reversed, rests with appellant, pursuant to Rule 6 of State Regulation No. 15. Since the action of the present Council has no legal basis, that burden has been met by appellant.

It isthus recommended that the action of the Council be reversed, and it be ordered to grant appellant's application for renewal of its alcoholic beverage license for the year 1976-77, in accordance with the application filed therefor.

Conclusions and Order

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

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 30th day of September 1976,

ORDERED that the action of respondent Council be and the same is hereby reversed; and it is further

ORDERED that the said Council be and the same is hereby directed to renew appellant's Plenary Retail Consumption License for the current licensing year, in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SEIZED ALCOHOLIC BEVERAGES IN VEHICLE - CLAIM FOR RETURN OF VEHICLE DENIED - VEHICLE FORFEITED.

In the Matter of the Seizure on September 27, 1975 of a quantity of alcoholic beverages and a 1971 Ford station wagon at Cootown Road, in the Township of Logan, Swedesboro, Gloucester County and State of New Jersey.	Case No. 13,305 On Hearing CONCLUSIONS and ORDER

Spagnoli and Thuring, Esqs., by Joseph W. Spagnoli, Esq., Attorneys for Claimant.
Carl A. Wyhopen, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether a quantity of alcoholic beverages and one 1971 Ford Station-wagon bearing N.J. Registration 169BMU, described in Schedule "A" attached hereto and made part hereof, seized on September 27, 1975 at or near Cootown Road, Logan Township, New Jersey, constitute unlawful property and should be forfeited.

At the hearing the claimant, Levi Walton, represented by counsel, appeared and sought return of the seized motor vehicle together with the alcoholic beverages. He gave detailed testimony, the substance of which was that he had sent his son down to a farm he rents in Gloucester County for the purpose of coralling some of his straying cattle. The vehicle used was his station wagon which contained twenty-three bottles of alcoholic beverages destined to be placed in his farm for winter use.

The claimant's son, John Walton, recounted his visit from his home in Plainfield to his father's farm in Gloucester County. He and his eight year old brother arrived at the entrance roadway to the farm where the home of his uncle is located. He observed several vehicles parked there and he approached one of several persons about, who, he later discovered was an Agent of this Division. That Agent, observing cartons in the rear of the vehicle opened them and discovered the bottles of alcoholic beverages, requested a receipt; none being produced, he caused Walton's arrest.

ABC Agents V and S testified that they were in the process of conducting a raid upon the premises to which Walton's car came, and that place was being investigated as a speakeasy operation. The Walton vehicle drove up and Agent V was explaining to its driver that a raid was in progress when he observed cartons in the rear of the vehicle which were containers for alcoholic beverages. He asked the driver, John Walton, if he had a permit to carry such liquor, and upon learning there was none, called his fellow Agent, Agent S, to assist. An inspection of the vehicle revealed the twenty-three containers of alcoholic beverages and resulted in their seizure along with the vehicle, and the consequent arrest of Walton.

The seized alcoholic beverages are illicit because the quantity transported without a license or permit was in excess of that permitted under our statutes. N.J.S.A. 33:1-1(i). Such illicit beverages, and the motor vehicle in which they were transported and found, constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-1(y), 66; Rule 1 of State Regulation No. 28.

The sole grounds for return of the articles seized must relate, in this instance, to N.J.S.A. 33:1-66(e) which provides the following:

> "(e) The director upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provision thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the director."

The issue is thus narrowed to the claimant's good faith based upon his ignorance of the law.

Claimant has attempted to establish his claim based upon his assertion that the alcoholic beverages in the rear of the car were intended for his own use during the winter. He alleges that he procured the liquor for that purpose and, as his intention was to visit the "farm" weekly, he would have a supply of such beverages available for the remainder of the season.

The explanation given by the claimant as to the presence of the car with the alcoholic beverages being at the McBride farmhouse concurrently with the raid is incredible. Levi Walton declared that the fence penning in his cows had broken so that he had placed fencing material in the car with instructions to his son to retrieve the cows, repair the fence and return. However, the son, testifying at a later date, denied that he had received any instructions to repair a fence.

Further, of the twenty-three containers of alcoholic beverages seized, sixteen were of the one-half pint variety, a size singularly adapted to an illicit operation. As the claimant's cousin, McBride, the person who occupied the principal residence at the farm, was suspected of engaging in illicit sales, the Division's contention that the alcoholic beverages were intended for later sale by the cousin has a ring of plausibility. Although this was, of course, not proven, the speculation alone dispels the claim of the claimant's innocence.

Claimant's version sets forth a close association between the claimant and McBride. They had an interwoven agricultural relationship and, although Walton asserted that he "owned" his portion of the farm, admitted that he "let his cousin take it back over" at the end of the year.

From all of the facts and circumstances herein, I conclude that the claimant has not convincingly evidenced such innocence on good faith as would entitle him to the return of the property seized. See Seizure Case No. 10,180, Bulletin 1321, Item 5; Seizure Case No. 12,347, Bulletin 2005, Item 6.

It is, therefore, recommended that the said seized motor vehicle and alcoholic beverages be forfeited.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 4 of State Regulation No. 28.

Having carefully considered the entire record herein 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 30th day of September, 1976

DETERMINED and ORDERED that the seized 1971 Ford Station-Wagon bearing New Jersey Registration 169BMU, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66 to be sold at public sale, or otherwise disposed of, at the direction of the Director of the Division of Alcoholic Beverage Control, in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages, as is more fully set forth in Schedule "A", attached hereto, constitutes unlawful property and the same be and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and the said alcoholic beverages be and the same shall be retained for the use of hospitals, and State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Joseph H. Lerner,
Director

SCHEDULE "A"

23 - containers of alcoholic beverages
1 - 1971 Ford, 4 door wagon, Serial No. A1E72H242413, N.J. Registration 169BMU

4. OBJECTIONS TO ISSUANCE OF PLENARY WHOLESALE LICENSE - APPLICATION GRANTED.

In the Matter of Objections to the Issuance of a Plenary Wolesale License to Goya Foods, Inc. 100 Seaview Drive Secaucus, N.J.,	CONCLUSIONS and ORDER

Qurik & Gallagher, Esqs., by Gerald M. Gallagher, Esq. and Jack Solomon, Esq. (of N.Y. Bar) Attorneys for Applicant

Milton H. Cooper, Esq., Appearing for New Jersey Wines and Spirits Wholesalers Association, an Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The applicant has filed an application for a Plenary Wholesale License for premises located at 100 Seaview Drive, Seacaucus, N.J. . A written objection to the issuance thereof having been filed by objector herein, a hearing was held thereon pursuant to Rule 12 of State Regulation No. 1.

At the hearing, the attorney for New Jersey Wines and Spirits Wholesalers Association, who is also its president, appeared on its behalf, However, no witnesses were called by or testified on behalf of the said objector. The objector's contention, presented in oral argument at the hearing is that there is"no public need or necessity" for the issuance of the said license.

Carmine Bonfiglio, a Vice President and Comptroller of the corporate applicant, testified as follows: the applicant is a New Jersey Corporation licensed by the Federal Government under both an importer's basic permit, and wholesaler's permit. Appellant corporation is a large food wholesaler having in excess of 2,000 food outlets in New Jersey that it services regularly. One of its subsidiary companies located in Florida has an alcoholic beverage license for distribution of wines and liquors in that state. The corporation is desirous of adding a line of wines from Spain, not presently distributed in this country, to be made available to more than fifty of its customers who have retail licenses.

The history of the phenomenal growth of Goya Foods, Inc. was recounted as a parallel to a similar growth of the number of the hispanis persons in proportion to our State's population. The demand for Spanish wines, liquors and brandies is growing constantly, and the hispanic population would be better served to have available certain Spanish wines not now available to them.

The president of Goya Foods, Inc., Joseph Unanue, testified that foods of his Company adorn the shelves of most all supermarkets located in New Jersey cities where there is any sizeable proportion of hispanic residents. He indicated that his Company intends to remain in New Jersey as their lease is for a twenty-five year term. He offered several letters from wineries in Spain to affirm his source of Spanish wines not now being distributed in the United States.

It was stipulated that the testimony of Hugo Baleiron, one of the directors of a large advertising agency handling advertising directed toward hispanic peoples, would support the opinion that there are between five and seven hundred thousand persons of hispanic background residing in New Jersey.

At the conclusion of the testimony on behalf of the applicant, the objector modified its objection limiting it to that portion of the application which related to prospective sales of brandies and liquors; the objectors position being that brandies and liquors originating in Spain were already properly marketed in New Jersey.

In order to sustain the subject application, the applicant must establish by a prima facie showing that there exists a need and it would afford a convenience for its products in the State. In its broadest application, this means that such issuance would not be detrimental to the public interest and welfare. Re Joeli Wine Distributors, Inc., Bulletin 1597, Item 8. The evidence clearly establishes that the number of hispanic residents in New Jersey has grown phenomenally, and there is a demand for certain Spanish wines not now being imported into New Jersey.

As noted hereinabove, no testimony was produced by the objector to contradict the evidence presented that the officers of the applicant are of good moral character, and that the applicant will receive expert direction in its operation in this State. Further, not the slightest scintilla of evidence has been introduced to support the general objection that there is not need or necessity for the license. Such general objections when unsupported must be considered untenable and sterile.

The applicant has established by a fair preponderance of the credible evidence that the grant of the applicant for the issuance of said license will permit the applicant to operate competitively with products geared to a receptive market and will serve the public interest Re Admiral Wine Co. Inc.,Bulletin 1460, Item 7; Western Grape Products, Bulletin 1668, Item 10; Re The Cathy Corporation, Bulletin 1638, Item 3; Mouriello v. Driscoll, 135 N.J.L. 220 (1947).

I recommend the grant of the license here applied for.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to pertinent State Regulations.

Having examined the entire matter 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 29th day of September 1976,

ORDERED that the application of Goya Foods, Inc. for a Plenary Wholesale License for premises located at 100 Seaview Drive, Secaucus, be and the same is hereby approved, subject to compliance with procedural requirements.

JOSEPH H. LERNER
DIRECTOR

5. APPELLATE DECISIONS - TURTLE BROOK RESTAURANT, INC. v. WEST ORANGE.

Turtle Brook Restaurant, Inc. t/a Turtle Brook, Appellant, v. Municipal Board of Alcoholic Beverage Control of the Town of West Orange, Respondent.	On Appeal CONCLUSIONS AND ORDER

Thomas C. Brown, Esq., Attorney for Appellant
James A. Ospenson, 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 Board of Alcoholic Beverage Control of the Town of West Orange (Board) which, on April 20, 1976, found appellant guilty of a charge alleging that, on January 30, 1976 appellant failed to have it's license certificate conspicuously displayed on it's licensed premises in plain view so as to be easily read by all persons

visiting the said premises; in violation of Rule 16 of State Regulation No. 20. In consequence of the finding, the Board suspended appellant's plenary retail consumption license for premises 555 Northfield Avenue, West Orange, for a period of three days, effective April 28, 1976.

Upon the filing of the appeal, the Acting Director, by order dated May 26, 1976, stayed the effective dates of such suspension pending the determination of the appeal.

In its petition of appeal, appellant contended (a) that the said license certificate was conspicuously displayed on its licensed premises; and (b) that considering the facts and circumstances herein the penalty was excessive. These contentions were denied in the Answer filed by the Board.

At the hearing de novo herein, the parties presented the appeal upon an agreed oral statement of facts, in accordance with Rules 6 and 8 State Regulation No. 15.

The stipulated facts may be summarized as follows: immediately inside of the kitchen door (the kitchen being a part of the licensed premises) there is contained a bulletin board; on the said bulletin board the license certificate was displayed, together with a list of employees and other pertinent information; this practice was never heretofore questioned; the license certificate is now displayed behind the bar; the licensee has no prior adjudicated record, and the Board found the violation to be "technical" in nature.

Rule 16 of State Regulation No. 20, in its pertinent part, provides as follows: "No retail licensee shall conduct a licensed business unless: (a) the current license certificate is at all times conspicuously displayed on the licensed premises in such plain view as to be easily read by all persons visiting such premises."

Inasmuch as the bulletin board (whereon the license certificate was attached) was located in the kitchen, it follows that it was not in such plain view as to be easily read by all persons visiting such premises as imperatively commanded by the quoted rule, I conclude and I find that the licensee has violated the said rule.

I thus, conclude that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Appellant finally contends that the penalty imposed was excessive. The measure or extent of a penalty to be imposed in disciplinary proceedings rests within the sound discretion of the issuing authority, and will not be disturbed on appeal unless the evidence clearly shows an abuse of discretion. Schwartz v. Paterson, Bulletin 1577, Item 2; Bacus v. Guttenberg, Bulletin 1332, Item 4; P.J. Mullins Bar, Inc. v. Paterson, Bulletin 1968, Item 1.

The power of the Director to reduce or modify a penalty imposed by the local issuing authority will be sparingly exercised, and then, only with the greatest caution. Sventy and Wilson v. Point Pleasant Beach, Bulletin 1930, Item 1 and cases therein cited. Therefore, I find that this contention lacks merit.

It is, accordingly recommended that an order be entered affirming the Board's action, dismissing the appeal, vacating the order staying the suspension pending the determination of this appeal and fixing the effective dates for the suspension of license heretofore imposed by the Board.

Upon duly considering all of the circumstances herein and the nature of the charge, I further recommend that, in the event this report is adopted, the appellant may be permitted to apply for the payment of a fine, in compromise, in lieu of suspension of license.

Conclusions and Order

Written Exceptions to the Hearer's report with supportive argument were filed by appellant herein pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report and the Exceptions thereto, which I find have either been correctly resolved in the Hearer's report or are devoid of merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Appellant requests that, in the event the Director adopts the Hearer's recommended findings, it may be permitted to pay a fine in lieu of suspension, in accordance with the Hearer's recommendation contained in his said report.

In the exercise of my discretion, I concur in the recommendation of the Hearer with respect to the imposition of a fine in compromise, in lieu of suspension of license for three days; adopt the said recommendation as my conclusion. I shall, therefore, approve appellant's application for the payment of a fine in lieu of suspension of license for three days.

Accordingly, it is, on this 14th day of October 1976,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the Town of West Orange in finding the appellant guilty of the subject charge, be and the same is hereby affirmed; and it is further

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated May 26, 1976, staying the effective dates of the suspension heretofore imposed by the respondent pending the determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that the payment of a $300.00 fine by the appellant be and is hereby accepted in lieu of a suspension of license for three (3) days.

JOSEPH H. LERNER
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Point Pleasant Distributors, Inc.
314 to 328 & 319 to 323 Hawthorne
Avenue & 312 Richmond Avenue
Point Pleasant Beach, New Jersey
Application filed December 27, 1976
for additional warehouse license
for premises 101 Highway 35, Point
Pleasant Beach, New Jersey, under
Limited Wholesale License WL-30.

Joseph H. Lerner
Director