

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

BULLETIN 2002

October 6, 1971

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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 2002

October 6, 1971

1. APPELLATE DECISIONS - H. AUGUST K. INC. v. WHARTON.

H. August K. Inc., t/a)	
A. C. Liquors,)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS
Borough Council of the	)	and
Borough of Wharton,	)	ORDER
Respondent.)	

Fullerton, Kenihan & Porfido, Esqs., by Lawrence P. Cohen, Esq.,
Attorneys for Appellant
Robert E. Yadlon, 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 respondent whereby on June 14, 1971 it suspended appellant's license for thirty days effective July 10, 1971, after appellant pleaded guilty to a charge alleging that on April 20, 1971 it sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Upon filing of the appeal, an order was entered on July 6, 1971 staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

In its petition of appeal appellant alleges that the penalty was "arbitrary and severe" and "would cause an excessive hardship upon the appellant." The answer of respondent denies appellant's allegation.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and the parties hereto agreed to the following stipulation of facts:

Appellant pleaded guilty to this charge of selling alcoholic beverages to a 17-year-old minor and the Council imposed a thirty-day suspension. It took into consideration the fact that on April 4, 1971, appellant had pleaded guilty to a charge of sale to an 18-year-old minor on February 16, 1971 and its license was suspended for ten days effective May 3, 1971.

Thus, the resolution indicates that the Council took into consideration the fact that the instant violation occurred during the pendency of the prior similar violation in imposing the subject penalty.

The sole issue in this matter is whether the penalty imposed by respondent is so excessive as to constitute an abuse of discretion by respondent.

It has always been the policy of this Division that a suspension imposed by the local issuing authority in disciplinary

proceedings should not be disturbed unless it has been adequately shown by appellant to have been so manifestly excessive to warrant a reduction thereof. Arpy Inc. v. Fairview, Bulletin 1383, Item 1. The power of the Director to reduce or modify a penalty must be sparingly exercised and only with the greatest caution. Even the fact that a penalty may be considered relatively severe does not of itself justify reduction on appeal. De Luccia v. Paterson, Bulletin 1781, Item 1.

The penalty usually imposed by the Director for sale to a 17-year-old minor where there has been a prior similar violation within the past five years is a suspension of thirty days. Re One Twenty-Eight, Inc., Bulletin 1451, Item 4; Re Central Liquor Co., Inc., Bulletin 1641, Item 3. In fact, the subject violation occurring as it did while the similar violation was pending may well be considered an aggravating circumstance calling for an increased penalty. The penalty imposed herein, in my opinion, does not appear to be unduly excessive and there is no evidence of any improper motivation on the part of respondent thereof. Branham v. Harrison, Bulletin 1331, Item 1. Thus, the contention of appellant lacks merit.

The prevention and sale of intoxicating liquors to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken, et al., 135 N.J.L. 502 (1947).

It is accordingly recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective date of suspension which was stayed by the Director pending determination of this appeal.

Conclusions and Order

No exceptions were taken to the Hearer's report within the time limited in Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 11th day of August 1971,

ORDERED that the action of the respondent 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 dated July 6, 1971, staying respondent's order of suspension pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Wharton to H. August K. Inc., t/a A. & C. Liquors, for premises 197 South Main Street, Wharton, be and the same is hereby suspended for thirty days, effective 9:00 a.m. Thursday, August 26, 1971, and expiring at 9:00 a.m. Saturday, September 25, 1971.

Richard C. McDonough
Director

2. APPELLATE DECISIONS - NEW HAMPSHIRE HOUSE, INC., ET.AL. v. SUMMIT, ET.AL.

New Hampshire House, Inc., et al.,)	
Appellants,	)	On Appeal
v.	)	CONCLUSIONS
Common Council of the City of	)	and
Summit, and Summit Squire, Inc.,	)	ORDER
Respondents.)	

 John Anthony Lombardi, Esq., Attorney for Appellants
 Moser, Griffin, Kerby & Cooper, Esqs., by Russell T. Kerby, Jr., Esq.
 Attorneys for Respondent City Council
 Diana and Diana, Esqs., by Wilfred P. Diana, Esq., Attorneys for
 Respondent Summit Squire, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent City Council of the City of Summit (hereinafter Council), which by a vote of six to one granted a plenary retail consumption license to respondent Summit Squire, Inc., for premises 359 Springfield Avenue, Summit.

The resolution of the Council, dated April 20, 1971, approving the grant of the license reads in part as follows:

"WHEREAS, the City of Summit, on March 2, 1971, duly adopted an ordinance which permits the issuance of one additional Plenary Retail Consumption license in the City, and

WHEREAS, [a] a public hearing...held on March 25, 1971 the...Council [considered the respective merits of three applicants for the grant of the additional license], and

WHEREAS, the...Council...decided that there is a need for the type of restaurant facilities proposed by Summit Squire, Inc. and that the granting of a Plenary Retail Consumption License to Summit Squire, Inc. for premises at 359 Springfield Avenue would be in the best interest of the City and"

"WHEREAS, the application of the Summit Squire, Inc. has been investigated by the Chief of Police, Fire Chief and Board of Health and approved by them.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF SUMMIT

That the application of Summit Squire, Inc., a New Jersey corporation for a Plenary Retail Consumption

License, said license to be known as C-9, for the premises at 359 Springfield Avenue, Summit, New Jersey, is hereby approved and said license is hereby granted to Summit Squire, Inc. and is issued subject to the following conditions:

1. The privileges of this license may not be exercised and the certificate shall be retained by the City Clerk until the following requirements are met:

a. The premises at 359 Springfield Avenue, Summit, shall be completely renovated pursuant to the preliminary plans and sketches submitted with the application of Summit Squire, Inc.

b. Final detailed plans shall be submitted to the Common Council for acceptance prior to obtaining a building permit.

c. All requirements of the Building Code, Board of Health and Sanitary Codes shall be fully complied with and final detailed plans shall be submitted to the appropriate Boards prior to Council acceptance.

2. Said license shall and in the future be limited for use only in connection with a restaurant having not less than 100 banquet seats and not less than 150 restaurant seats for a total of not less than 250 seats located on three floors.

BE IT FURTHER RESOLVED that the City Clerk be and he is hereby authorized and directed to issue to Summit Squire, Inc. a Plenary Retail Consumption License pursuant to the terms and conditions of the foregoing resolution.

BE IT FURTHER RESOLVED that the Building Inspector, Police Chief and the Health Officer shall certify to the City Clerk when the renovated premises have been fully completed in accordance with the final detailed plans."

Appellants contend that the action of the Council was erroneous for the following stated reasons:

"A. There was no showing of any need or necessity for the issuance of a ninth plenary retail consumption license by the City of Summit and the ...Council...had determined the same on two separate occasions during 1971.

B. The...Council...refused to increase the hours for the license held by the appellant, New Hampshire House, Inc., and other license holders so as to make them competitive with restaurants and taverns in the communities surrounding the City of Summit and the issuance of a ninth license merely aggravates an already adverse situation affecting the appellant and other license holders.

C. There are already eight plenary retail consumption licenses in existence in the City of Summit, seven of which are non-hotel licenses. The 1970 Census as certified by the United States Department of Commerce for Summit for 1970 is 23,500, and, therefore, the eighth non-hotel plenary retail consumption license could not have been legally authorized or issued. As a matter of fact, the population for the City of Summit declined from that which existed as a result of the 1960 census."

The Council, in its answer, denied the substantive allegations hereinabove set forth and affirmatively alleged that its action was a reasonable exercise of its discretion and that Summit with a population of approximately 23,500 as determined by the 1960 census had authority to issue an additional license.

The answer of respondent Summit Squire, Inc., is substantially similar to the Council's answer.

The appeal was heard *de novo* pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

It was uncontroverted that population of the City of Summit according to the 1960 Federal census was 23,677 and that according to the 1970 Federal census it is 23,620.

The testimony of City Clerk Harry Kates established that until the year 1970, a total of seven plenary retail consumption licenses (plus one hotel license) were issued in the City of Summit. No new consumption licenses were issued since 1953, except for the license issued to appellant, New Hampshire House, Inc., in 1963.

Chronologically, the minutes of the Council reflect that on December 1, 1970, it (by a vote of five to two) defeated a proposed ordinance to increase the number of plenary retail consumption licenses from seven to eight. On January 19, 1971 a motion to reintroduce the ordinance failed due to the lack of a second. On February 2, 1971, a motion to reconsider the introduction of ordinance increasing the number of plenary retail consumption licenses from seven to eight was adopted. A public hearing was held by the Council on March 2, 1971 to reconsider its failure to adopt the ordinance increasing the number of plenary retail consumption licenses. At the termination of the hearing, the ordinance increasing the number of on-premises consumption licenses from seven to eight was adopted by a vote of five to one. One councilman abstained due to the fact he was appointed on that particular evening.

On March 25, 1971, the Council held a public meeting to consider the merits of three applicants for the grant of the additional license. Each were represented by attorneys. On April 20, 1971, the Council adopted a resolution granting the license to Summit Squire, Inc.

On cross examination by the attorney for Summit Squire, the city clerk testified that the Council had before it, at the public hearing held on March 25 to consider the merits of granting the license to the respective applicants, the following: (1) a brochure detailing various features which would develop the Summit Squire into a distinctive, high-class restaurant; (2) approximately thirty letters favoring the application filed by Summit Squire;

(3) four letters opposing the application filed by Summit Squire, and (4) a petition containing several hundred signatures favoring Summit Squire's application. These were received in evidence.

Councilman Edwin Votey testified that he was present at the meetings held by the Council on March 25 and April 20. He had the benefit of examining the brochure presented by Summit Squire, the petition and letters hereinabove referred to favoring and opposing the grant of the license. Votey voted in favor of the issuance of the license for the "...reason is that I believe that the citizens of Summit had expressed a very great desire to see a fine restaurant established of the type proposed by the Summit Squire in the City of Summit, and that there was a need for such a restaurant in the town." The grant of the license was conditioned upon the establishment containing not less than two hundred and fifty seats. He was not in favor of the license being used for a "gin mill". The effect of the 1970 census was discussed and considered in the deliberations.

Doctor Alexander Crossett, who had been a councilman since December 1, 1970 testified that the 1970 census which indicated that the population was less than that shown by the 1960 census was considered in connection with the issuance of the new license.

Frank H. Lehr, councilman-at-large and president of the City Council, testified that the date of the promulgation of the 1970 census was discussed.

On cross examination, Councilman Lehr testified that he voted in favor of issuance of an additional license. Additionally, he testified as follows:

"Q Can you tell us, sir, the reason that you had for the granting of the application to Summit Squire?

A Well, I personally, and I feel the City Council, I'm sure, did all feel that there was a need for a good restaurant in the community. We were not anxious in any way, shape or form to create another gin mill just to give out another license, but we would be interested in creating and giving a license if it would entice into the community a good first class restaurant, and this is the background that led up to all of this.

Q That led up to the issuance of the new license?

A Yes, to the introduction of the ordinance and the issuing of the license. Of the three applicants, the Summit Squire was the best presentation. They offered more to the City and the citizens of the City and I think it was far above any of the other applicants. The other two applicants, one wanted to build an office building with a restaurant in an area which was not zoned for a public restaurant, so this would have been a problem. Also, it wasn't very well thought out at the time of the proposition, it didn't think to me. The other applicant was a local restaurant which does a good job but not what I would determine a first class restaurant. The sole purpose of myself and, I certainly believe, the other members of the Council, was to entice a good first class restaurant into the community."

He spoke with many private citizens who were in favor of the establishment of a first class restaurant. The Council considered

the petition favoring the issuance of the license containing several hundred names and also the letters favorable to the establishment of a first class restaurant in arriving at its decision.

During the course of the hearings before the Council to consider the ordinance increasing the issuance of the new license the only objectors were other liquor licensees. Questioned why he had voted for the restrictions in the license issued to Summit Squire, Councilman Lehr replied, "...This, again, goes back to the fact that I'm interested in a good restaurant, and if this restaurant failed I would like that license to be null and void, so, for this reason, we limited it to the 250 seats. This would limit it to a large restaurant. That is, it couldn't go around the corner and end up in a small bar. For this reason we tried to restrict it so that if this business venture fails, that the license will not be available."

In behalf of Summit Squire, Raymond C. Zeltner, a principal thereof testified that he retained a firm to engage in a feasibility study for the establishment of a restaurant at the proposed location in which liquor would be served. Additionally, he is basing his proposed endeavor upon his personal knowledge of the community.

On cross examination, the witness testified that a package liquor store is located two doors from or approximately thirty feet distant from the proposed premises. The owner thereof assisted in collecting signatures on the petition favoring the proposed establishment.

Ralph Steinhart, a member of the firm of Steinhart-Gabriel Associates, who is engaged as a restaurant and hotel consultant providing economic operational research, testified that he was retained by Summit Squire to undertake a market study for the establishment of the proposed restaurant at the proposed site. After examining the location (in the community's central business district) conferring with utility companies, interviewing business executives in the area, interviewing at random local people as to their reactions and needs, he concluded that there is a "...strong market 'want' for the proposed restaurant, both in Summit and in the surrounding towns."

Called in behalf of the Council, Councilman Votey testified that on December 1, 1970 he voted against the passage of the ordinance authorizing the issuance of a new license. At that time no one appeared in support of the ordinance and tavern and restaurant owners appeared in objection to its passage. However, when the matter came up for consideration on March 3, 1971 he voted in favor of the passage of the ordinance for the reason that there was a "very heavy outpouring" of local citizens in favor of the ordinance authorizing the issuance of the new license.

None of the City officials heard the case of Tagliaboschi v. Metuchen being mentioned during the course of the deliberations pertaining to the grant of the new license.

I find that the City of Summit, with a population of 23,677 according to the 1960 census had a total of eight plenary retail consumption licenses issued as of December 1, 1970 including one license issued to a hotel and accordingly had the right to grant, under the existing law, three additional plenary retail consumption licenses.

I further find that the last license issued by Summit was in the year 1963 to appellant, New Hampshire House, Inc. This license is presently unrestricted except for the hours restriction common to other licensees.

I further find that the population of the City of Summit, according to the 1970 census, is 23,620. On September 19, 1969 R.S. 33:1-12.14 was amended to provide that no new plenary or seasonal retail consumption license shall be issued in any municipality unless and until the combined total number of such licenses in the municipality is fewer than one for each 3,000 of its population as shown by the last then preceding Federal census. (Prior to such amendment, the population quota figure was 2,000.) The amendatory law provided that "This act shall take effect immediately but remain inoperative until the promulgation of the 1970 decennial Federal Census." The promulgation of a national census takes effect upon the governor filing in the office of the secretary of state a copy of the bulletin issued by the director of a national census or other officer having charge thereof. R.S. 52:4-1. However, Ch. 14 of the Laws of 1971, approved January 28, 1971, provides that, with exceptions not here pertinent, the Federal census of 1970 shall become effective May 1, 1971, or on the date of the filing of the bulletin provided for in R.S. 52:4-1, whichever date is later.

Appellants' first contention that there was no showing of need or necessity for the issuance of an additional plenary retail consumption license is without merit. Perhaps, it may be validly argued that there is never a public need or necessity for the establishment of any licensed premises. The trend has been to consider the public convenience or welfare as the criterion upon which to base the issuance or transfer of a liquor license. Cf. Lubliner v. Bd. of Alcoholic Bev. Con. Paterson, 33 N.J. 428, 446 (1960); Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 465, 466 (App. Div. 1955).

The fact that the Council had reversed its previous position of not favoring the grant of an additional license is of no moment. The Council is not bound by the principles of stare decisis or res adjudicata in matters such as the instant matter which involves policy considerations. See Lubliner, supra (33 N.J. at p. 441 and 444).

In Lubliner, supra, Justice Jacobs in speaking for the court (p.441) said, "...the municipal issuing authority's function in determining whether additional licenses shall be allowed in the municipality or in particular areas, is primarily a policy determination on the basis of facts which are generally undisputed. Where the municipal issuing authority reasonably entertains the opinion that it is in the public interest to do so, it is free to alter an earlier policy determination....". See also Tozzi's Tavern, Inc. v. Plainfield, 65 N.J. Super. 286 (App. Div. 1961) wherein the court held that the council's refusal to permit change of location of package store liquor license did not bar approval of change one month later by newly elected council and city common council members are not required to state reasons for their vote on application to change location of package store liquor license or to show good cause for changing vote on successive applications.

Appellants' contentions that the Council's refusal to authorize later closings of liquor licensees so that they would be on a parity with some neighboring communities and that the issuance of a new license would aggravate an economic disadvantage are without merit. It is undisputed that a municipality may set the hours governing the opening and closing of plenary consumption licensees. Moreover, there is not a scintilla of evidence that Summit Squire would be permitted to remain open longer than any other licensees.

Appellants attempted to establish during the course of the hearing that political overtones or considerations tainted the Council's action. It is my considered opinion that this allegation is devoid of factual substance.

It is apparent that the appellants rely mainly upon the Director's ruling in Tagliaboschi v. Metuchen, Bulletin 1972, Item 1.

That matter, on appeal was molded as if application for the issuance of the license was made directly to the Director for the reason that a member of the local issuing authority was also a member of the local Elks Club, an applicant therein and a respondent on said appeal. The Director thus, in the exercise of his discretion, deemed it to be in the best interest of the municipality not to issue another license. This finding was dispositive of both applications, namely, the applications of the Elks Club and of Tagliaboschi. In addition to exercising his original jurisdiction, the Director also found that, insofar as the Tagliaboschi application was concerned, the local issuing authority had jurisdiction to act with respect to him and exercised its discretionary power reasonably in determining that this appellant failed to sustain the burden of establishing that Metuchen's action was erroneous. In the subject case appellants seek to reverse the action of the local issuing authority. The burden is, therefore, upon the appellants to establish that the Council's action was unreasonable and constituted an abuse of its discretion.

It is my view that the Tagliaboschi case cannot be used as an umbrella to taint with illegality all grants of additional licenses subsequent to the passage of the amendment to R.S. 33:1-12.14 on September 19, 1969 and prior to the effective date thereof which was delayed to May 1, 1971. The Director is enjoined from reversing the action of the local issuing authorities and substituting his judgment for theirs unless there is clear and convincing proof that reasonable support therefor cannot be found in the record.

As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

And further, in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following applicable principle (at p.23):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling

of suspicion, for as Justice Holmes has properly admonished. 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

It is apparent that, in the matter sub judice, the Council voted to grant a new license because there was substantial public sentiment in favor thereof. It is noteworthy that the only objection to the action of the Council came from the appellants, one of whom operates a restaurant facility and the other is the owner of the building where the said restaurant is located. Thus, the only objection came from those who might be affected economically by the Council's action.

Again, it is noteworthy that the Council was circumspect in guarding against the new license becoming another "gin mill" by imposing a condition that the license be used in connection with a restaurant facility having not less than one hundred banquet seats and not less than one hundred-fifty restaurant seats or a total of two hundred-fifty seats. It was evidently impressed by the presentation made by Summit Squire that the license was to be used in conjunction with the establishment of a first class restaurant. Can it be said that in honoring this type of widespread public sentiment that the Council acted unreasonably?

As indicated hereinabove, the Director supports the principle that, where reasonable men, acting reasonably, have arrived at a determination it should be sustained unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960).

In the recent case of Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

The Council has, in my opinion, understood its full responsibility, and has acted circumspectly and in the reasonable exercise of its discretion in the grant of the additional license. I do not find the objections of sufficient merit and thus conclude that appellants have failed to sustain the burden of establishing that the action of the Council was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reason aforesaid, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

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, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 18th day of August 1971,

ORDERED that the action of respondent Common Council of the City of Summit be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBER - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CENTER OF ITALIAN CULTURE (CASA ITALIANA)
985 So. Orange Avenue
Newark, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Club License CB-15 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Mario V. Farco, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 21, 1971 it sold alcoholic beverages to a non-member, in violation of Rule 8 of State Regulation No. 7.

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 Progressive Democratic Club, Bulletin 1911, Item 7.

Accordingly, it is, on this 13th day of August 1971,

ORDERED that Club License CB-15 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Center of Italian Culture (Case Italiana) for premises 985 So. Orange Avenue, Newark, be and the same is hereby suspended for ten (10) days commencing 2:00 a.m. Tuesday, August 17, 1971 and terminating 2:00 a.m. Friday, August 27, 1971.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 35 DAYS, LESS 7 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Delray's Melody Inn, Inc.)
t/a Melody Inn)
347 South Salem Street)
Victory Gardens)
PO Dover, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Victory Gardens.)

Weiner, Schoifet & Hendler, Esqs., by Benjamin Weiner, Esq., Attorneys for the licensee.
Edward F. Ambrose, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

1. "On January 15, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Carol ---, age 20 and Carol D. ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons, in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

2. "On March 20, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Kathleen M. ---, age 19 and Donna L. ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Absent any adjudicated record prior to January 15, 1971, the license would normally be suspended on the first charge for ten days (Re Ocean Drive Hotel, Inc., Bulletin 1887, Item 9), and on the second charge (considered as a second similar violation within the past five years. Cf. Re Costello, Bulletin 1971, Item 5 and Re LaFreda & Olive, Bulletin 1824, Item 2) for twenty-five days, or a total of thirty-five days, with remission of seven days for the plea entered, leaving a net suspension of twenty-eight days. However, the licensee has made application for 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, I have determined to accept an offer in compromise by the licensee to pay a fine of \$1,484 in lieu of suspension.

Accordingly, it is, on this 10th day of August 1971,

ORDERED that the payment of a fine of \$1,484 by the licensee is hereby accepted in lieu of a suspension of license for twenty-eight days.

Richard C. McDonough
Director

- 5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Abraham Cohen)
t/a El Rio)
Route 17)
Mahwah, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8 issued by the Township Committee of Mahwah Township.)

Licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, May 22, 1971, between 12:30 and 12:45 a.m. he sold alcoholic beverages viz., one pint bottle of gin, for off-premises consumption in violation of Rule 1 of State Regulation No. 38.

Licensee has a prior record of suspension of license by the municipal issuing authority for five days effective December 17, 1962 for sales during hours prohibited by state regulation. The prior record of suspension for similar violation occurring more than five but less than ten years ago considered, the license would ordinarily be suspended for twenty days with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Bock, Bulletin 1933, Item 7. 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 \$600 in lieu of suspension.

Accordingly, it is, on this 11th day of August 1971,

ORDERED that the payment of a \$600 fine by the licensee is hereby accepted in lieu of a suspension of license for fifteen days.

Richard C. McDonough
Director

6. SEIZURE - APPLICATION FOR HEARING IN ADVANCE OF STATUTORY HEARING - DEFERRED UNTIL STATUTORY HEARING.

Case No. 12,529

In the Matter of the Seizure on	:	
July 16, 1971 of a quantity of	:	
alcoholic beverages, a 1967 Buick	:	APPLICATION FOR THE
two-door hardtop automobile, a	:	RETURN OF SEIZED PROPERTY
metal cash box and \$152.44 in cash	:	IN ADVANCE OF STATUTORY
at the unlicensed premises of	:	HEARING
Bertino Farm, Linden Avenue,	:	
Waterford Township, County of	:	ORDER
Camden and State of New Jersey.	:	

.....
Rosetta Brown, Pro Se, Claimant.
Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

Application has been made for the return of a 1967 Buick Riviera sedan seized in the instant matter, by Rosetta Brown, Carlton Apts., Cedar Street, Millville, N. J. pursuant to Rule 1 of State Regulation No. 28, on the allegation that irreparable harm would result from awaiting a statutory hearing and, therefore, requesting a preliminary hearing.

The claimant upon being granted such preliminary hearing is required to present evidence at such hearing that she is sole owner of the property, that she has acted in good faith and did not know or have any reason to know that her vehicle would be engaged in illegal alcoholic beverage activity, and that irreparable harm would result from awaiting a statutory hearing, presently scheduled for September 9, 1971.

At the hearing held herein, Rosetta Brown testified that she is the conditional vendee of the vehicle in question. The vehicle registration indicates the Cumberland National Bank, Bridgeton, N. J. as secured party. Further evidence disclosed that Rosetta Brown has paid a total of \$723.36 to the secured party and there remains due and owing \$2,456.96

Additionally, the Division was advised on the day following the hearing herein by the secured party that they requested a hearing with respect to their interest therein.

The claimant, therefore, has failed to establish her sole ownership of the vehicle claimed.

Accordingly, it is on this 13th day of August 1971,

DETERMINED and ORDERED that the application for return of the vehicle herein in advance of statutory hearing be and the same is hereby denied and will be held over for statutory hearing pursuant to the provisions of Rule 1 of State Regulation No. 28.

Richard C. McDonough
Director

7. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #336)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	
Retail Consumption License C-3,	)	On Petition
issued by the Township Committee)	
of the Township of Southampton to)	
	)	ORDER
Léffler Hob N Nob Tavern, Inc.)	
Route 206)	
Southampton Township)	
P.O. Vincentown, N.J.)	

Licensee, Pro se

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on July 26, 1971, petitioner was fined \$75, plus \$25 costs, in the Southampton Municipal Court, upon being convicted of a charge of sale of alcoholic beverages to a minor on June 8, 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 at this time the effect of the automatic suspension should be temporarily stayed. Re Schwertfeger, Bulletin 1976, Item 10.

Accordingly, it is, on this 16th day of August 1971,

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

Richard C. McDonough
Director

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - PERMITTING LICENSED PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
)
)
 Martin Wladich, Jr.
 99 Washington St.
 Hoboken, N. J.,)
)
 Holder of Plenary Retail Consumption License C-149 (for 1970-71 license period) and C-142 (for 1971-72 license period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)
)

CONCLUSIONS

and

ORDER

 Andrew F. Batistich, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on Sunday, March 14, 1971 he permitted consumption of alcoholic beverages and (2) failed to keep licensed premises closed during hours in violation of applicable sections of local ordinance.

Licensee has a prior record of suspension for twenty days effective January 9, 1964 for allowing gambling on the premises (Re Wladich, Bulletin 1547, Item 7).

The prior record of suspension for dissimilar violation occurring more than five years ago disregarded, 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 Eszlari, Bulletin 1982, Item 4.

Accordingly, it is, on this 6th day of August 1971,

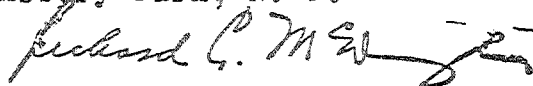
ORDERED that Plenary Retail Consumption License C-142, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Martin Wladich, Jr., for premises 99 Washington Street, Hoboken, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, August 23, 1971, and terminating at 2 a.m. Thursday, September 2, 1971.

Richard C. McDonough
Director

9. STATE LICENSES - NEW APPLICATION FILED.

Crown Beer Distributors, Inc.
1740 State Highway #34
Wall Township, N. J.

Application filed September 30, 1971 for place-to-place transfer of State Beverage Distributor's License SBD-138 from 905-907 Railroad Avenue, Asbury Park, N. J.



Richard C. McDonough
Director