

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

BULLETIN 2186

June 5, 1975

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1. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR VIOLATION -
LICENSE SUSPENDED FOR 72 DAYS - APPLICATION FOR FINE IN LIEU OF
SUSPENSION DENIED.

In the Matter of Disciplinary)
Proceedings against)

Emersons Ltd. of Wayne, Inc.)
t/a Emersons Ltd.)
1377 Route #23)
Wayne, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-29, issued by the Municipal)
Council of the Township of Wayne.)

-----)
Cahill, McCarthy and Hicks, Esqs., by Gordon C. Strauss, Esq.,
Attorneys for Licensee

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
May 11, 1974, it sold alcoholic beverages to four minors, three
age sixteen, and one age seventeen, in violation of Rule 1 of
State Regulation No. 20.

The licensee has a prior record of payment of a fine to
the Director in compromise in lieu of a suspension of thirty-two
days, on December 6, 1973, for sale to minors.

The license will be suspended on the charge herein for
forty-five days to which will be added an additional forty-five
days by reason of the similar violation which occurred within the
past two years, making a total suspension of ninety days, with
remission of eighteen days for the plea entered, leaving a net
suspension of seventy-two days.

The licensee has made application for the imposition of
a fine in compromise in lieu of suspension, pursuant to the pro-
visions of Chapter 9 of the Laws of 1971. This application is
denied for the reason that an application by the within licensee
had heretofore been granted in conjunction with the prior similar
offense, which occurred within one year prior to the date of the
within violation embraced by the subject charge.

Accordingly, it is, on this 2nd day of August 1974,

ORDERED that Plenary Retail Consumption License C-29,
issued by the Municipal Council of the Township of Wayne to

Emersons Ltd. of Wayne, Inc., t/a Emersons Ltd. for premises 1377 Route #23, Wayne, be and the same is hereby suspended for seventy-two (72) days, commencing 3:00 a.m. on Wednesday, August 14, 1974 and terminating 3:00 a.m. on Friday, October 25, 1974.

Leonard D. Ronco
Director

2. COURT DECISIONS - EMERSONS LTD. OF WAYNE, INC. - REFUSAL BY DIRECTOR TO ACCEPT FINE - AFFIRMED.

Superior Court of New Jersey
Appellate Division
A-3556-73

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

EMERSONS LTD. OF WAYNE, INC.
t/a EMERSONS LTD.
1377 Route #23
Wayne, New Jersey

Submitted April 15, 1975 - Decided April 22, 1975.

Before Judges Carton, Crane and Kole.

On appeal from Order of the Director of the Division of Alcoholic Beverage Control.

Messrs. Cahill, McCarthy and Hicks, attorneys for appellant (Mr. Gordon C. Strauss on the brief).

Mr. William F. Hyland, Attorney General of New Jersey, attorney for Division of Alcoholic Beverage Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Emersons Ltd. of Wayne, Inc. Bulletin 2186, Item 1. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

3. APPELLATE DECISIONS - ALICE G. TOWNSEND, INC. v. ORANGE.

Alice G. Townsend, Inc.,)
)
 Appellant,)
)
 v.)
)
 Municipal Board of Alcoholic)
 Beverage Control of the City)
 of Orange,)
)
 Respondent.)

On Appeal
 CONCLUSIONS
 and
 ORDER

 Anthony J. Iuliani, Esq., Attorney for Appellant
 Beninati & LaMorte, Esqs., by Frank A. LaMorte, 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 Municipal Board of Alcoholic Beverage Control of the City of Orange (hereinafter Board) which, on July 17, 1974, denied renewal of appellant's Plenary Retail Consumption License C-17, for premises 48-50 North Center Street, Orange.

Appellant contends that the Board's action was arbitrary and unreasonable in that its determination was contrary to the weight of the evidence presented before it, and there was no testimony elicited before the Board upon which its decision could be based. The Board answered that its action had been based upon the prior record of appellant which constituted a nuisance to the municipality.

An appeal de novo hearing was held in this Division at which the parties had full opportunity to offer evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. However, in accordance with Rule 8 of State Regulation No. 15, transcripts of the hearings held by the Board were offered into evidence upon which the parties agreed to rely in lieu of the introduction of testimony.

Upon the filing of the appeal, the Director entered an order on July 24, 1974 extending appellant's license pending the return of a subsequent Order to Show Cause respecting a continuance of the license pending the determination of this appeal. Subsequent thereto, the Director, on December 4, 1974, vacated the extension of appellant's license upon motion of the Board's attorney. Such motion was grounded on the occurrence of two subsequent incidents

within appellant's premises at which police intervention was required. Rules 11 and 12 of State Regulation No. 15.

The record reveals that, at a hearing on the aforesaid motion, testimony was elicited of Karen Coscarello, Secretary of the Board. She acknowledged receipt of approximately twenty-three police incident reports furnished the Board by the local Police Department during 1971, 1972, 1973 and 1974. Copies of such reports were made part of the record.

At a subsequent hearing on motion, testimony was received of Alice Townsend, owner of the corporate stock of appellant corporation, who recounted a debilitating physical condition existing for a long period of time, which precluded her participation in the direct management of the licensed premises. She insisted that she had retained a competent staff, and the difficulties which had been encountered in the premises resulted from deterioration of the neighborhood in which the premises are located.

The Board agreed to rely on the information contained in the police reports as the basis for its determination that the premises had become a nuisance and should no longer be licensed.

The reports of the police as submitted by the Board may be briefly outlined as follows:

<u>Date</u>	<u>Case No.</u>	<u>Description of Incident</u>
November 25, 1974	20990	Assault and battery on female. Barmaid refused assistance.
November 10, 1974	20023	Patron with weapon; upon barmaid's call, patron an off-duty Newark police officer.
October 1, 1974	17326	Patron complained wallet missing.
June 23, 1974	10867	Manager asked for assistance in ejecting disorderly patron.
June 15, 1974	10145	Bartender requested aid as young men vandalized the burglar alarm.
February 25, 1974	3098	Disturbance - patron cut and hospitalized - manager called police.
January 2, 1974	00094	Female patron beaten by other female.

December 11, 1973	21064	Patron mugged on exterior by other patron's accomplice.
November 11, 1973	19270	Patron knifed - manager called police.
October 12, 1973	17470	Patron entered with shotgun.
August 6, 1973	13195	Fight - barmaid called police.
June 2, 1973	8914	Fight - patron hit with bottle.
February 8, 1973	2007	Disturbance.
February 2, 1973	1723	Fight.
January 31, 1973	01553	Female patron assaulted.
January 18, 1973	905	Female patron struck - hospitalized.
March 8, 1972	4422	Manager asked eviction of unruly patron.
July 18, 1972	11283	Barmaid asked ejection of drunken patron.
November 1, 1972	17715	Bartender requested aid to quell disturbance.
November 1, 1972	17727	Disturbance - Sale of narcotics to police informer.
November 1, 1972	17727	Sergeant vice squad reported premises as assembly place for narcotics users and sellers
November 26, 1972	19009	Patron assaulted - hospitalized.
December 9, 1971	18062	Disturbance - call for aid by manager - ended prior to police arrival
November 7, 1971	16235	Injured patron taken to hospital on call of barmaid.

It may be noted, parenthetically, that the first three incidents listed, occurred subsequent to the Board's denial of renewal of license; they are included however, because the Director based his order vacating the prior extension of the license term pending this appeal, on the first and third incidents set forth hereinabove. Additionally, the Board urged their inclusion in that such incidents were typical of those preceding the denial date and serve to illustrate its characterization of appellant's premises as a nuisance and a trouble spot.

It should also be stated that the incident described as occurring on February 25, 1974 and identified as Case No. 3098 was the subject of an appeal to this Division, following disciplinary proceedings instituted against the license which action was reversed by the Director.

Counsel for appellant contends that, in addition to the three subsequent incidents occurring subsequent to the Board's action, all incidents prior to June 30, 1973, the date of renewal for the 1973-74 licensing period, be excluded from consideration. He argues that, by renewal of license, the Board absolved appellant from being characterized as maintaining a nuisance.

The Board, on the other hand, asserted that it was the totality of all incidents that culminated in its determination that the premises constituted a nuisance; and that the Board's grant of renewal in 1973 and 1972 was, then, justified in that appellant's record was not then as ponderously negative.

The crucial issue in this appeal is: does appellant's record presented to the Board justify the Board's action in denying renewal of license. In short, did the Board act reasonably and in the proper exercise of its discretion in its determination?

Appellant alleges that it did not violate any State regulation governing the conduct of licensees and use of licensed premises, and that no disciplinary proceedings were instituted by the Board against it. It would have been a more satisfactory procedure for the Board to initiate such proceedings upon specific charges, and to base its refusal to renew on an adjudicated record.

The Board responded to that allegation by pointing out a disciplinary charge it had instituted against the licensee in February 1974, which resulted in a suspension of sixty-days, and which remained until reversal by the Director of this Division on November 7, 1974, long past the date of its action on renewal. Re Alice Townsend, Inc. v. Orange, Bulletin 2169, Item 2.

It is understandable that local issuing authorities at times withhold the institution of disciplinary charges where warranted, with the expectation that the licensees will make good faith efforts to improve the conditions in the operation of the licensed premises. Cf. R. B. & W. Corporation v. North Caldwell, Bulletin 1921, Item 1.

In a matter parallel with R.B. & W. Corporation, supra, the Director held:

"Thus, in this matter, entirely apart from the consideration as to appellant's culpability for the deleterious conditions which surrounded this establishment, the broad question posed before the Council on the subject application for renewal, was whether, in the light of all of the surrounding circumstances and conditions, it was good for North Caldwell and the neighborhood involved, for this tavern to continue to exist at this particular location at all. The objective judgment of the Council was that its continuance would not serve the public interest and the immediate neighborhood." D'Ambola v. North Caldwell, Bulletin 1922, Item 1.

The ultimate question presented by the record in this appeal, therefore, is one of fact. Notwithstanding the de novo character of appeal, the Director in his determination of the issues, should affirm where there is competent evidence in the record to support the conclusion of the local issuing authority. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106. The primary responsibility in the first instance, for enforcement of laws pertaining to retail licensees rests upon the municipality. Benedetti v. Trenton, 35 N.J. Super. 30 (App. Div. 1955); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

Whether a license should be renewed rests within the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates a clear abuse of that discretion. 279 Club v. Newark, 73 N.J. Super. 15 (App. Div. 1962); Nordco, 43 N.J. Super. 277 (App. Div. 1957). To sustain the Board's denial, all that need be established is that the Board was reasonably persuaded that the renewal of the license would be contrary to the public interest. Sharp's Lodge, Inc. v. Lakewood, Bulletin 1842, Item 1. The determinative consideration is the public interest in the creation or continuance of the licensed operation. Blanck v. Magnolia, 38 N.J. 484 (1962).

The Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his own personal view. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960). The privilege of selling alcoholic beverages at retail, which is granted to the few and denied to the many must be exercised in the public interest. Paul v. Gloucester County, 50 N.J.L. 585.

In evaluating the totality of the evidence presented herein and the argument of counsel, I find that the action of the Board was neither unreasonable nor arbitrary, but, on the contrary, resulted from a conscientious review of appellant's record. Applying the test as set forth in Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292 (1970), i.e., Did the decision of the local Board

represent a reasonable exercise of discretion on the basis of the evidence presented? It is quite apparent that the response is in the affirmative.

It is, therefore, concluded that appellant has not met the burden imposed upon it under Rule 6 of State Regulation No. 15 requiring that it establish that the action of the Board was erroneous and should be reversed. Hence, I recommend that the action of the Board be affirmed, and the appeal be dismissed.

Conclusions and Order

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

In its exceptions the appellant contends that it should be afforded an opportunity to negotiate and obtain a person-to-person transfer of the license. Under the facts and circumstances herein, this contention lacks merit, and, indeed, has no judicial support.

Under the doctrine of Lyons Farms Tavern Inc. v. Newark, supra, unless the Board's action is manifestly unreasonable and arbitrary, the Director must affirm. Furthermore, as was pointed out in Nordco v. State, 43 N.J. Super. 277 (App. Div. 1957) (where appellant argued that it should be "afforded a reasonable opportunity to transfer its license and realize on the good-will built up by it in connection with the place where the facility was located") there was no "abuse of discretion in refusing to allow transfer of license so as to permit realization of good-will by vendee under contract to continue the business at the same location." This principle is particularly applicable since, as in the matter sub judice, the tavern constituted a "trouble spot".

Thus, having carefully considered the transcripts of testimony, the exhibits, the Hearer's report and the exceptions filed thereto which I find lacking in merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 23rd day of April 1975,

ORDERED that the action of the Board be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

Leonard D. Ronco
Director

4. APPELLATE DECISIONS - DANNY'S LOUNGE, INC. v. PATERSON.

Danny's Lounge, Inc.)	
t/a Danny's Lounge,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
Board of Alcoholic Beverage)	AND
Control for the City of)	ORDER
Paterson,)	
Respondent.)	
Carmen A. Ferrante, Esq., Attorney for Appellant		
Joseph A. LaCava, Esq., by Ralph L. DeLuccia, Esq., Attorneys		
for Respondent.		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the determination of the respondent Board of Alcoholic Beverage Control of the City of Paterson which, by resolution dated November 14, 1974, revoked appellant's plenary retail consumption license, effective November 18, 1974 after finding it guilty of the following charges:

"(1) On July 28, 1971, you allowed, permitted and suffered the execution of a false police questionnaire containing false, fraudulent and misleading statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25.

(2) On July 13, 1971, you allowed, permitted and suffered the execution of and the filing on July 14, 1971, of an application for the transfer of Plenary Retail Consumption License C-164 containing false, fraudulent and misleading statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25.

(3) On June 5, 1972, you allowed, permitted and suffered the execution and filing of an application for the renewal of Plenary Retail Consumption License C-164 containing false, fraudulent and misleading

statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25.

(4) On June 29, 1972, you allowed, permitted and suffered the execution and filing of an application for the transfer of Plenary Retail Consumption License C-164 containing false, fraudulent and misleading statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25.

(5) On June 11, 1973, you allowed, permitted and suffered the execution and filing of an application for the renewal of Plenary Retail Consumption License C-164 containing false, fraudulent and misleading statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25.

(6) On December 18, 1973, you allowed, permitted and suffered the execution of and the filing on January 3, 1974 of an application for the transfer of Plenary Retail Consumption License C-164 containing false, fraudulent and misleading statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25.

(7) On June 5, 1974, you allowed, permitted and suffered the execution and filing of an application for the renewal of Plenary Retail Consumption License C-164 containing false, fraudulent and misleading statements and/or signatures in that the signatures thereon are not those of the officers so indicated; in violation of N.J.S.A. 33:1-25."

In its petition of appeal, appellant contends that the said action was erroneous and against the weight of the evidence; and that the penalty imposed was too severe.

In its answer, respondent denied the substantive contentions of the petition of appeal.

Upon the filing of the appeal, an order dated November 15, 1974, was entered by the Director staying the effect of respondent's order of revocation pending the determination of this appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted in accordance with Rule 8 of

State Regulation No. 15. This was supplemented by testimony at this hearing and by several exhibits which were received in evidence.

At the hearing held by the Board, seven documents were offered in evidence and, in the order that they were received in evidence, they corresponded with the seven charges preferred against appellant.

It is undisputed that, in the year 1971, David Miller, an accountant, prepared the incorporation papers for the corporate appellant wherein he designated Rose Riccardi as a 98 percent stockholder, himself as the holder of one share and his wife, Bertha Miller as the holder of the remaining one share. Each were listed as directors of the corporation at that time.

In the first exhibit, which is referred to in Charge (1) as the police questionnaire, the signatures which purport to be those of Rose Riccardi, David Miller and Bertha Miller appear thereon.

The six succeeding exhibits are applications for either a transfer of license or renewal thereof, and are specifically referred to in the remaining charges under consideration herein. Bertha Miller is referred to in each as the secretary of the appellant corporation, and a signature which purports to be hers appears on each. Also, in these exhibits, David Miller is listed as the treasurer of the corporate appellant and a signature which purports to be his appears on some of these exhibits.

In substantiation of the charge, Bertha Miller testified that she signed the original certificate of incorporation because she had worked part time for her husband for 34 years. However, she had no knowledge that she had been named secretary of the corporation, nor did she ever consent to being named secretary.

Additionally, she avers that the signatures which appear to be that of Bertha Miller on the police questionnaire and on the applications mentioned in the charges herein are not her signatures, nor did she ever authorize anyone to affix her signature to those documents.

Subsequent to the incorporation, she never had anything to do with the books or records of the corporation, nor did she ever see them.

David Miller testified that, after the original incorporation papers were drawn in 1971, he was not requested to perform any accounting or other services for appellant corporation. He assumed that appellant had retained another

accountant because of the distance between his office and appellant's premises. At no time did he affix his signature on any of the documents where his purported signature appears, nor did he ever authorize anyone to affix his signature on any document. He was not aware that he was designated treasurer of the appellant corporation, nor did he ever give his consent thereto. He never acted in the capacity of treasurer of the corporate appellant or in any other capacity.

In defense of the charges, Danny Riccardo, husband of Rose Riccardo, testified that, upon the recommendation of a third party, he contacted David Miller by telephone, and, as a result of the telephone conversation Miller, formed the appellant corporation.

The questioning of Riccardo, then revealed the following:

"Q Did you have a conversation after the corporation was formed with Mr. Miller with reference to certain items having to do with the City of Paterson and Danny's Inc.?"

A When we got the corporation papers back from Trenton, which then had to be filed with the Excise Board in Paterson, when my wife went down after the application, it had on there that the president and secretary and treasurer had to sign their names to it. So I called Mr. Miller up and he said to me, and in fact, he told me and he told my wife, that they only had one percent and to do anything that has to be signed as far as the tavern is concerned -- sign it.

Q Did you in fact sign certain documents?

A Right from the very first beginning.

Q Which documents contained the name David Miller and also Bertha Miller?

A Yes, sir."

Riccardo did not meet with Miller or his wife, personally, until the night of the hearing before the Board. He asserted that Miller told him that he could sign his (Miller's) name and his (Miller's) wife's name. Bertha Miller did not, personally, authorize him to sign his name.

Riccardo conceded that he affixed the signatures of both Millers on all of the forms including the police form and reiterated that he had received authorization from Miller to do so.

At the hearing de novo, David Miller was called as a rebuttal witness. He testified that he did not personally meet Riccardo until the time of the hearing held by the Board to consider the subject charges. His entire dealings with Riccardo was by means of telephonic conversation. At no time did Riccardo indicate to him that he desired to use his and his wife's names as officers of the corporation, nor did he ever grant such authorization. He never authorized Riccardo to use or sign his name to any document indicating that he was an officer of appellant corporation.

He first became aware that his and his wife's names were being used when it was called to his attention that their names appeared in a legal notice published in a local newspaper.

Although he and his wife were listed as owning one percent of stock each, no shares were actually issued to them.

In sum, appellant argued (1) that Riccardo had authorization to sign the names of Bertha and David Miller, and the fact that the signatures were affixed to numerous documents over a period of several years conclusively indicates that there was no intent to deceive; and (2) that under the circumstances, the penalty of revocation was too severe.

I.

In arriving at a determination of the first issue raised by appellant, I observe, preliminarily, that we are dealing with a purely disciplinary action and that such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super 449 (App. Div. 1951). Thus, the Board was required to establish its case by a fair preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Bev. Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Bev. Control, 40 N.J. Super. 501, 503 (1956). 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. It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1946); Gallo v. Gallo, 66 N.J. Super 1 (App. Div. 1961).

I have carefully examined and analyzed the testimony of Bertha Miller, David Miller and of Danny Riccardo who testified at the hearing held by the Board. Additionally, I have had the benefit of hearing the testimony of David Miller at the de novo hearing.

Since there was a sharp conflict in the testimony adduced before the board, it became the duty of the Board to evaluate the testimony, after observing the demeanor of the witnesses, assessing the interest of each witness to the outcome of the proceeding, and giving weight to such testimony as is found credible.

It is apparent that the Board found the testimony of the witnesses called by it to be believable in the circumstances and not improperly motivated. It is my view and I find that the testimony of the Millers to the effect that they never authorized Riccardo to sign their names on any of the documents mentioned in the charges is fully credible. It does violence to the common experience of mankind, that an individual who has been an accountant for many years, would give blanket oral authority to a client whom he had never met personally to sign his and his wife's names to various documents and with no limitation of the duration of the alleged authorization.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion is upon the appellant. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. Apparently the Board felt that the believable evidence established the truth of the charge. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Cf. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502; Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

II.

Appellant contends that the penalty of revocation of license was excessive.

A liquor license is a privilege. Mazza v. Cavicchia, 15 N.J. 498 (1954). The privilege of selling alcoholic beverages at retail, which is granted to the few and denied to the many, must be exercised in the public interest. Paul v. Gloucester County, 50 N.J.L. 585 (1888). The control of that privilege is vested in the issuing authority.

"In the exercise of that power, the Legislature invested the local issuing authority (Council) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations including violation of the law or of State or local regulations.

R.S. 33:1-31. The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive."

Maczka v. Elizabeth, Bulletin 1746, Item 1; Benedetti v. Trenton, Bulletin 1040, Item 1, aff'd 35 N.J. Super 30 (App. Div. 1955); Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Feldman v. Irvington, Bulletin 2143, Item 2, aff'd (App. Div. 1974), opinion not approved for publication.

I conclude that, under the facts herein, involving as it does, a fraudulent misrepresentation of a substantial nature, the penalty of revocation is not manifestly excessive and unreasonable.

III.

Furthermore, I find that there is no evidence to show any improper motivation on the part of the Board or that it acted capriciously in reaching its determination.

In sum, my examination of the facts and the applicable law generates no doubt whatsoever that the charge was established by a preponderance of the believable evidence. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Board be affirmed, the appeal be dismissed, and the order of the Director staying the Board's action pending determination of this appeal be vacated.

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. No answer to the said exceptions was filed by the respondent.

Having carefully considered the entire matter herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the exceptions filed with respect thereto which I find to be lacking in merit, I concur in the findings and the recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 16th day of April 1975,

ORDERED that the action of the Board be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order dated November 15, 1974, staying the revocation of appellant's license pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-164, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Danny's Lounge, Inc., t/a Danny's Lounge for premises 791 Main Street, Paterson, be and the same is hereby revoked, effective immediately.


Leonard D. Ronco
Director