

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

BULLETIN 2410

August 31, 1981

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1. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER
OF THE PETITION OF THOMAS AND RINA FRANCESCONI.

In the Matter of the Petition of

Thomas and Rina Francesconi

Holders of Plenary Retail Consumption
License No. 1414-33-036-001 issued by
the Township Committee of the Township
of Jefferson.

CONCLUSIONS

AND

ORDER

McLoughlin, Devin and Mayers, Esqs., by Donald B. Devin, Esq.,
Attorneys for Petitioners.

INITIAL DECISION BELOW

Dated: May 1, 1980

- Received: May 2, 1980

Hon. David J. McGee, Administrative Law Judge

BY THE DIRECTOR:

No written Exceptions to the Initial Decision below
were filed by the parties.

Having carefully considered the entire record herein,
including the transcript of the testimony, the exhibits and
the Initial Decision below, I concur in the findings and recom-
mendations of the Administrative Law Judge and adopt them as
my conclusions herein, except as modified hereinbelow.

I believe there is one point that requires clarification.
Judge McGee cited the Legislative history reread N.J.S.A. 33:1-
12.39 which history apparently fails adequately to identify the
evil that this statute seeks to remedy. He then asserts: "If
one does not know the evil activity it is difficult to know if
a petitioner's 'good cause' represents a valid excuse." He adds:
"I can only surmise from my regulatory experience in the utility
field, that where an activity is licensed there is a tendency
for the licensees to buy up outstanding licenses and put them
to no use in order to restrain competition and to increase the
value of their own license. I assume the same pattern of act-
ivity existed with regard to liquor licenses."

This assumption is baseless. N.J. 33: 1-12.31 reads, in pertinent part, as follows:

"On and after the effective date of this act no person, as the same is defined in R.S. 33:1-1, shall . . . acquire a beneficial interest in more than a total of two alcoholic beverage retail licenses, but nothing herein shall require any such person who has, on August 3, 1962, such an interest in more than two such licenses to surrender, dispose of, or release his interest in any such license or licenses."

Thus, under this statutory limitation, licensees are prescribed from buying up additional licenses in order to reduce competition. This inhibits the tendency of licensees to obtain other licenses. Furthermore, in order to obtain a transfer of a license, the licensee must show that there is a need and necessity for such license and a public convenience to be served by the said transfer. Thus, the pattern of activity which exists with respect to public utilities is inapplicable to that with respect to liquor licenses.

Finally, the Initial Decision concludes as follows: "it is hereby ordered that petitioner's Class C liquor license be renewed." N.J.S.A. 33:1-39 does not authorize such renewal; it merely provides that, upon "good cause" shown and after a hearing, the Director may "authorize a local issuing authority to consider the application for renewal, which it may grant or deny, in the reasonable exercise of its discretion."

Accordingly, it is, on this 16th day of June, 1980,

ORDERED that the Township Committee of Jefferson Township be and the same is hereby authorized to consider the application for renewal of the subject license for the 1980-81 license term and to thereupon grant or deny the said application in the reasonable exercise of its discretion; and it is further

ORDERED that, if the application for renewal is approved, the renewed license shall be made subject to the special condition that the license must become operational during the 1980-81 license term.

JOSEPH H. LERNER
DIRECTOR

APPENDIX A
INITIAL DECISION BELOW

IN THE MATTER OF THE PETITION
OF THOMAS AND RINA FRANCESCONI
RE: ALLEGATIONS OF "POCKET
LICENSE"

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INITIAL DECISION

OAL DKT. No. ABC 751-80

APPEARANCES:

Ravin, Katchen & Greenberg, by Stephen B. Ravin, Esq.,
the trustee in bankruptcy

Kahn & Weiner, by Wayne H. Weiner, on behalf of Agenda
Development Corporation, the prospective purchaser

BEFORE THE HONORABLE DAVID J. MCGEE, A.L.J.:

This matter concerns the petition of the trustee in bankruptcy of the estate of Thomas and Rina Francesconi to seek renewal of a Class C liquor license which is alleged to have not been actively used in connection with the operation of a licensed premises within two years of an unspecified licensing period. Petitioner seeks to show good cause for why his license should be renewed in accordance with N.J.S.A. 33:1-12.39.

This proceeding was initiated when the Township of Jefferson by resolution dated June 26, 1978 renewed petitioner's license subject to the determination of the State Director of Alcoholic Beverage Control. The matter was determined to be a contested case by the agency and was transmitted to the Office of Administrative Law for determination. A hearing was held on April 3, 1980 where all parties had opportunity to present evidence.

The difficulty with this case is in determining what "good cause" means in the context of the statute, N.J.S.A. 33:1-12.39. That statute reads as follows:

No Class C license, as the same is
defined in R.S. 33:1-12, shall be re-
newed if the same has not been actively

used in connection with the operation of a licensed premises within a period of 2 years prior to the commencement date of the license period for which the renewal application is filed unless the director, for good cause and after a hearing, authorizes a further application for renewal: provided ...

The legislative history is sketchy and basically reiterates the statute. The legislative history is as follows:

Statement to Assembly Bill No. 1875, (N.J.S.A. 33:1-12.39) dated June 10, 1976, the Assembly Commerce Banking and Insurance Committee:

"This legislation, (N.J.S.A. 33:1-12.39) would prohibit the renewal of a Class C liquor license in the event that such license has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period, for which the renewal is filed unless such renewal is authorized by the Director of the Division of Alcoholic Beverage Control."

New Jersey State Senate Law Public Safety and Defense Committee Statement to Assembly Bill No. 1875, dated November 8, 1976:

"The purpose of this bill, (N.J.S.A. 33:1-12.39), is to provide for the retirement of unused Class C alcoholic beverage licenses by prohibiting their renewal if they are not actively used for two years preceding the renewal date."

Clearly, the legislative history does not identify the evil that N.J.S.A. 33:1-12.39 seeks to remedy. If one does not know the evil activity it is difficult to know if a petitioner's "good cause" represents a valid excuse. I can only surmise from my regulatory experience in the utility field, that where an activity is licensed there is a tendency for the licensees to buy up outstanding licenses and put them to no use in order to restrain competition and to increase the value of their own license. I assume the same pattern of activity existed with regard to liquor licenses. In view of the evil activity which I have postulated, I conclude that it would be a valid excuse or a sufficient showing of good cause if the licensee could show at every stage of the period of inactivity

OAL DKT. No. ABC 751-80

that he was making bona fide attempts to put the liquor license to use. Such a showing would negate any intention to restrain competition or hold the liquor license as an appreciating asset.

The testimony of Thomas Francesconi indicated that he first purchased the liquor license in March 1974. The property to which the liquor license related was divided in two parcels. On one parcel there was an existing building that could be used for a cocktail lounge. On the other parcel there was sufficient commercial land only for the erection of a package store. In March 1974, soon after the licensee purchased the license, the building was condemned by the Township. The licensee then sued the owner of the building on the basis of their lease agreement.

The litigation which was before Judge Muhr in Morris County was delayed by the Karen Ann Quinlan trial. The litigation was finally resolved in May 1976 adversely to the licensee.

The licensee had expended large sums of money on legal fees and was unable to pay a loan of \$50,000 from the National Community Bank. The bank foreclosed and in order for the licensee to redeem the property he needed to borrow \$26,000.

Throughout 1977 the licensee made attempts to borrow \$26,000. He applied to the Lakeland State Bank in Newfoundland, New Jersey, the Empire National Bank in Greenwood Lake, New York, and a bank in Manhattan, New York City. In addition, the licensee dealt with a lawyer, Mr. Gordon Belemont, to find a private lender. In December 1977 a private lender was found and the property was bought back from the bank.

In February 1978 the licensee entered bankruptcy under Chapter 12. While the licensee was in bankruptcy he began negotiations with Agenda Development Corporation for the sale of the property and license. During this time the licensee went before the Jefferson Township Planning Board for site plan approval for a package liquor store. In October 1978 Agenda Development Corporation terminated negotiations due to some difficulties.

In the summer of 1979 the licensee sold the property to a Mr. Guidice of Agenda Development Corporation. From the Summer of 1979 the licensee attempted to sell the license to other purchasers. Finally in February 1980 the license was sold, subject to the Director's approval, to Agenda Development Corporation.

From the testimony of Mr. Francesconi, I conclude that throughout the period of inactivity, however that period is determined, the licensee made bona fide attempts to put the license to use. I therefore conclude the licensee has shown good cause for why his license should be renewed.

The licensee also testified that the license is worth \$25,000 and represents the sole asset in the plan of reorganization in bankruptcy. Failure to renew the license would abort the entire plan. I find this testimony to be persuasive supporting evidence showing good cause.

Finally, evidence was submitted showing that the original purchase price of the license was approximately \$30,000 in 1974 and the sale price to Agenda in 1980 is \$25,000. This evidence negates any intention on the part of the licensee to hold the license as an appreciating asset and shows a lack of bad faith.

After a review of the record and having observed the demeanor of the witnesses, I FIND:

1. Throughout the period from March 1974 to the present, the licensee has actively sought to make use of his Class C liquor license.
2. The liquor license in question is the sole asset in a plan of reorganization currently before the bankruptcy court and failure to renew the license would abort the plan.
3. The licensee purchased the liquor license in 1974 for approximately \$30,000 and has contracted to sell it in 1980 for \$25,000.

Based on the foregoing findings, I CONCLUDE:

1. Petitioner has shown good cause why his Class C liquor license should be renewed as required by N.J.S.A. 33:1-12.39.

Accordingly, it is hereby ORDERED that petitioner's Class C liquor license be renewed.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, my Initial Decision in this matter and the record in these proceedings.

2. APPELLATE DECISIONS - EGO III, v. WHARTON.

#4378
Ego III,

Appellant,

vs.

Mayor and Borough Council
of the Borough of Wharton,

Respondent.

CONCLUSIONS

AND

ORDER

OAL DKT. NO. ABC 5176-79

Anthony L. Bongiovanni, Esq., Attorney for Appellant.
Robert E. Yadlon, Esq., Attorney for Respondent.

INITIAL DECISION BELOW

Hon. Jack Berman, Administrative Law Judge

Dated: May 22, 1980

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Received: May 23, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed on behalf of the appellant pursuant to N.J.A.C. 13:2-17.6.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Initial Decision, and the Exceptions filed thereto, I concur in the findings and conclusions of the Administrative Law Judge as hereinbelow modified, and adopt them as my conclusions herein.

This was an appeal from the action of the respondent, which by resolution dated June 25, 1979, found the appellant guilty of violation of N.J.A.C. 13:2-23.6 and suspended the license for four (4) days and, in addition, imposed a fine of \$250.00. The Administrative Law Judge determined that the "penalty imposed by respondent was fair and reasonable in all respects and was not an abuse of its discretion, nor was it arbitrary, capricious, or unreasonable."

In its Exceptions licensee argues that the findings of fact by the Administrative Law Judge were in error; and that

by an amended resolution the respondent vacated the \$250.00 fine and reimposed the four days suspension of license.

I am satisfied that there was sufficient credible evidence to establish the guilt of the respondent. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

However, with respect to the imposition of a fine by the local issuing authority, the Administrative Law Judge was clearly in error in his conclusion that such action was proper. N.J.S.A. 33:1-31 states:

The director may in his discretion and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may in the discretion of the director be proper under the circumstances in lieu of any suspension of any license by the director or any other issuing authority.

Thus, it is clear that only the Director has the authority to accept a fine in compromise in lieu of license suspension.

The respondent obviously became aware of that fact, for, by amended resolution, dated July 16, 1979, copy of which is attached hereto and made a part hereof, it reimposed the four days suspension, and omitted any reference to a fine payment.

Accordingly, it is, on this 19th day of June, 1980,

ORDERED that the action of the respondent as hereinabove modified be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that any renewal of Plenary Retail Consumption License No. 1439-33-004-001 which may be granted by the Mayor and Council of the Borough of Wharton to Ego III for premises 17 Fern Avenue, Wharton be and the same is hereby suspended for four (4) days commencing 2:00 a.m. Thursday, July 3, 1980 and terminating 2:00 a.m. Monday, July 7, 1980.

JOSEPH H. LERNER
DIRECTOR

APPENDIX A
INITIAL DECISION BELOW

IN RE:)	<u>INITIAL DECISION</u>
EGO III)	OAL DKT. NO. A.B.C. 5176-79
V.)	AGENCY DKT. NO. APPEAL 4378
BOROUGH OF WHARTON)	

APPEARANCES:

Anthony L. Bongiovanni, Esq., Attorney for Petitioner, Ego III

Marshall Gates, Esq., Attorney for Respondent, Borough of Wharton

BEFORE THE HONORABLE JACK BERMAN, A.L.J.:

On July 9, 1979, Ego III (Petitioner) filed with the Division of Alcoholic Beverage Control, a Notice of Appeal and Petition seeking to set aside a decision by the Mayor & Council of the Borough of Wharton (Respondent), rendered on June 25, 1979, finding petitioner in violation of State Regulation 13:2-23.6 and fining petitioner \$250.00 and further ordering petitioner to close its business after closing hours on July 22, 1979 and not to re-open it until the opening hours of July 27, 1979.

On July 9, 1979 an Order was issued by the Honorable Joseph Lerner, Director of the Division of Alcoholic Beverage Control of the State of New Jersey, staying the Order of respondent pending determination of the appeal.

This matter was transmitted to the Office of Administrative Law pursuant to N.J.S.A. 52:14F-1 et seq.

On April 4, 1980, a hearing was held at the Freeholder's Conference Room in the Administrative Building of the Morris County Court House in Morristown, New Jersey.

The hearing was deemed to be concluded on May 5, 1980, the date on which the Court received petitioner's Brief. (See proposed Uniform Administrative Rules of Practice 19:65.16.1).

At the hearing the following exhibits were received in evidence:

Respondent's Exhibits

- R-1 (a) & (b) Ego III - 1st Column Complaint No.
(c) Letter on the stationery of the Department of Police, Borough of Wharton dated August 11, 1978 to Honorable Mayor and Council re: Ego III
- (d) - (l) Ego III - 1st Column Complaint No.
- (m) Letter on stationery of Department of Police, Borough of Wharton, re: Ego III
- R-1 (15) - 28) Incident Cards re: Ego III
- R-4 Master Control Card (3 pages)

The following witnesses testified:

FOR RESPONDENT

- | | |
|------------------------|--|
| Anthony Guadagnino - | Clerk and Administrator,
Borough of Wharton |
| William Z. Hocking - | Police Chief, Borough of Wharton |
| Alan Hand - | neighbor of licensed premises |
| Gary Bixler - | neighbor of licensed premises |
| Henry Doblosky, Jr., - | Captain with the Borough of Wharton |

James D. Mathie - Police Department
Police Officer with the Borough of Wharton
Police Department

FOR PETITIONER

Karen Garneau - neighbor of licensed premises
Michael Savage - a former bartender employed by petitioner
Joseph Severini - Frequent customer of petitioner

Petitioner is the holder of Plenary Retail Consumption License 1439-33-004-001 for premises 17 Fern Avenue, Wharton, New Jersey, and was found by respondent in violation of State Regulation 13:2-23.6 for "engaging or allowing or permitting or suffering in or upon the licensed premises brawls, acts of violence, disturbances, or unnecessary noise," Resolution June 25, 1979, Borough of Wharton.

Although petitioner never received anything in the form of a Bill of Particulars or statement of specified incidents alleged to have occurred, which petitioner is alleged to have violated, the sequence of time that has been brought before the Court to review by respondent, are the years 1976 through 1979.

Certain exhibits R-1 and R-4, were received in evidence with the proviso that they be corroborated by the testimony of witnesses having first hand knowledge of relevant facts contained therein. Those matters within the exhibits not containing such relevant facts were excluded.

The exhibits emanate from respondent's Police Department, being recordations of complaints regarding the licensed premises for that period. (1976-1979)

There is no contestment as to the infrequent complaints occurring in 1979 especially the latter six months, following respondent's hearing and decision of June 25, 1979.

Chronologically the complaints corroborated by testimony are:

May 14, 1976 Patron asked by petitioner to leave licensed premises.
1:29 a.m.

May 28, 1976 Patrons parked in neighbor's driveway.
11:24 a.m.

May 30, 1976
11:40 a.m. Couple fighting outside licensed premises using foul language.

June 17, 1976
12:43 a.m. Complaint from petitioner's neighbor that there was a noisy group by petitioner's tavern. When police arrived, they checked the area. No one was located. Two cars were leaving as they arrived.

July 3, 1976
11:31 p.m. Complaint of a party lying on ground by Ego III, possibly beaten up. "Youths in the area were clowning around." R-1 (F). The Police Officer who arrived at the scene in response to the complaint, did not know whether any incident occurred in/or around the licensed premises.

July 22, 1976
12:23 a.m. Petitioner reported to police that a patron had been in a fight with one of the owners and was causing problems. Patron left the premises, only to return again whereupon he was dissuaded by the police from entering the licensed premises.

August 11, 1976
1:59 a.m. Testimony that a neighbor saw two people trying to get into a car after he saw them leaving the licensed premises. R-1(G) shows that "...two people on Fern Avenue locked out of car."

August 27, 1976
10:30 p.m. Cars parked in neighbor's driveway. The neighbor "thinks" they belong to petitioner's patrons.

January 9, 1977 Neighbor testified that a very large disturbance occurred at the licensed premises. Police closed the bar. R-1 (K) states that petitioner's bartender was in a mutually agreed fight causing him to be "taken to D.G.H. by friend." (I assume "D.G.H." to mean Dover

General Hospital since the aided resided in Dover).

- April 25, 1977 Police Captain Doblosky, Jr., testified that a Mr. Lewis refused to sign a written complaint that day, charging that his brother beat him while at the licensed premises.
- June 8, 1977 A neighbor living next door to the licensed premises, separated only by a lot, heard commotion on the street coming from petitioner's patrons.
- July 31, 1977 According to Officer Mathie, Mr. Ginsburg, one of the owners of the licensed premises, called police to have an unruly patron removed from the licensed premises.
- August 18, 1977 A neighbor living 40-50 feet across the street from the licensed premises testified that he was awakened around 1:45 a.m. from noise emanating from a crowd in petitioner's parking lot. A group of 3-4 men were singing. He reported the incident to the police. This incident was also reported to the police at 11:56 p.m. and 11:57 p.m., by two other neighbors.
- December 26, 1977 Neighbor testified that he had heard noise coming from the licensed premises. He reported this to the police.
- March 5, 1978 Neighbor testified that there was a loud argument emanating from the parking lot of the licensed premises.
- June 1978 A Sunday evening about 6 p.m. Neighbor testified that a large number of people came out of the licensed premises fighting in the street and in his parking lot. He asked them to get-off his property and was assaulted by

three of them. He sustained cuts, scrapes and bruises. He filed complaints against them.

June 11, 1978

Two incidents were testified to by neighbor. One incident was where the neighbor observed children in the parking lot of the licensed premises lighting fireworks. Another incident was noise occurring outside the licensed premises.

July 1, 1978

Neighbor testified that he complained to the police that a loud noise was emanating from the parking lot of the licensed premises. Police Report (R-1 (18)) states "Dispersed Group."

September 11, 1978

Neighbors testified that late in the evening there was a large party taking place in the parking lot of the licensed premises.

September 12, 1978

Neighbor testified that a patron of petitioner parked his tractor trailer with the motor running, in front of his home. He called the police. Later the patron removed the truck.

October 10, 1978

Police Officer testified that in response to an incident reported to the police by one of the owners of the licensed premises, he escorted a patron who was posing as a narcotic agent, out of the licensed premises.

February 10, 1979

Neighbor testified that around 9:00 p.m., a fight took place in front of the licensed premises, before a large crowd. He stated that three women were arguing with three men. The men, he stated, beat up the women and left in a car, leaving the women on the ground.

March 5, 1979

Police Captain testified that he received a call that a fight was occurring on the street in front of the

licensed premises. When he arrived at the licensed premises, there was a lot of shouting and yelling occurring. Because of the disorder, he asked the owners to close the bar down in order to prevent a riot. The owners immediately complied. Although the fighting parties were arrested, no charges were brought against the licensed premises. According to the testimony of petitioner's bartender, he summoned the police.

Respondent's witnesses also testified that in addition to the recorded complaints entered by the police, other disturbances occurred during the period from May 1976 to March 1979.

Petitioner presented the testimony of a neighbor, a bartender and a frequent patron. The import of their testimony was that petitioner ran its premises in an orderly, respectable manner.

Having reviewed and considered the Petition of Appeal, the respondent's letter memorandum, the petitioner's brief and all of the papers filed in this matter; and having heard the argument of counsel, the COURT makes the following findings of fact and law:

1. The foregoing discussion is incorporated herein by reference.
2. Petitioner is the holder of license No. 1439-33-004-001.
3. On June 25, 1979, respondent passed a resolution that the licensed premises be closed for a period commencing after closing hours on July 22, and not to re-open until the opening hours of July 27, 1979 for a total period of four (4) days and in addition fined the petitioner the sum of \$250.00.
4. Petitioner from May 14, 1976 until March 5, 1979, allowed or permitted or suffered in or upon the licensed premises brawls, acts of violence, disturbances and unnecessary noise specifically on 5/30/76, 1/9/77, 6/8/77, 8/18/77, 12/26/77, 3/5/78, 6/78, 6/11/78 (two separate incidents), 7/1/78, 9/11/78, 9/12/78, 2/10/79, and 3/5/79.

Sufficient evidence was produced by respondent at the hearing that petitioners violated N.J.A.C. 13:2-23.6 during the period May 14, 1976 to March 5, 1979. That regulation states:

"(a) No licensee shall engage in or allow, permit or suffer in or upon the licensed premises:

1. Any lewdness or immoral activity;
2. Any brawl, act of violence, disturbance, or unnecessary noise;
3. Nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance."

The terms "allow, suffer or permit," have previously been construed by the Court. In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947), the holder of a retail consumption license challenged the Director's finding that he allowed, permitted or suffered the consumption of alcoholic beverages by minors on his premises. The licensee contended that culpability could only be premised upon knowledge of the illegal activity. The Court examined the intention behind the legislation and the ABC regulation and determined that the licensee did "suffer" the unlawful consumption. The Court noted that:

"Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority". Id. at p 31 (emphasis added).

The prohibited activities may occur in or upon the license premises. In Tyrone's Haven, Inc. v. Borough Council of South River, ABC Bull. 2214.1 aff'd ABC Bull. 2242.2 (App. Div. 1976), the complaint encompassed activities in the area of the licensed premises. Excessive noise emanated from the premises, broken bottles were strewn about the area and the patrons verbally harrassed passersby. The licensee argued that since the activities occurred outside the premises, failure to renew his license constituted error. However, the Director determined that a licensee is responsible for conditions in and

about the premises. Although the disruptive activities occurred around rather than within the premises, the licensee could still be responsible for maintaining a nuisance.

Petitioner contends that the penalty imposed by respondent was unreasonable (i.e. 4 day suspension and \$250.00 fine). "It is within the sound discretion of the Director of the Division of Alcoholic Beverage Control to determine how long a defendant's license is to be suspended because of any violation," Mitchell v. Caviccia, 29 N.J. Super. 11 (App. Div. 1953). This Court finds that the penalty imposed by respondent was fair and reasonable in all respects and was not an abuse of its discretion nor was it arbitrary, capricious or unreasonable.

It is therefore **CONCLUDED** that petitioners from May 14, 1976 to March 5, 1979 allowed or permitted or suffered in or upon its licensed premises brawls, acts of violence, disturbances, and unnecessary noise in such a manner as to constitute a nuisance.

It is hereby **ORDERED** that the Petition is hereby **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the head of agency, the **Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner**, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the **Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner**, my Initial Decision in this matter and the record in these proceeding.



Joseph H. Lerner
Director