

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 2345

April 18, 1980

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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 2345

April 18, 1980

1. ADVISORY OPINION BY DIRECTOR - RELATIVE TO OCCUPANCY LIMITATIONS SET BY LOCAL ISSUING AUTHORITY.

Sim, Sinn, Gunning & Fitzsimmons, Esq.  
Brick, New Jersey

Starkey, Kelly, Cunningham & Blaney, Esqs.  
Brick Town, N. J.

Re: Borough of Manasquan Ordinance No. 1120

Gentlemen:

This letter shall confirm my opinion with respect to the above-referred Ordinance and the discussions with counsel at the Division offices on August 2, 1979.

The subject matter of the amended Ordinance, to wit, occupancy limitations, has been recognized by this Division in prior administrative determinations as cognizable within the ambit of the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq., provided such restriction or limitation bears a reasonable relationship to specific regulatory or statutory problems sought to be alleviated (normally a nuisance situation prohibited by N.J.A.C. 13:2-23.6) A.H.S., Inc. v. Wall Township, Bulletin 2308, Item 1, aff'd by App. Div. in unreported opinion (Docket No. 496-78) recorded in Bulletin 2315, Item 1.

Therefore, given the general subject matter recognition, and without any further factual determinations herein, I shall approve the Ordinance under the provisions of N.J.S.A. 33:1-40. Such approval is ex parte. Milchman v. Newark, Bulletin 838, Item 8. Any consideration on its merits would be available in the event of an appeal to this Division from an action suspending or revoking a particular license for breach thereof. Marchi, et al., v. Clifton, et al., Bulletin 1385, Item 1.

The current posture of Ludwel Enterprises, a licensee in Manasquan, in its objection to the Ordinance, is one of attack against the Ordinance as a whole. The jurisdiction to determine the constitutionality of a municipal ordinance is not vested in an administrative agency, but rather, in a court of competent jurisdiction. Blank v. Mayor and Borough Council of Magnolia, 73 N.J. Super. 306, 310-12 (App. Div. 1962), rev'd in part, 38 N.J. 484 (1962), appeal on remand, 85 N.J. Super. 297 (App. Div. 1964); Seip v. Mayor, etc. of Frenchtown, 79 N.J. Super. 521, 524 (Chan. Div. 1963). Thus, the propriety of the Ordinance as a valid municipal enactment would be cognizable in the Superior Court proceeding now pending.

Subject to the determination of that litigation, if this Ordinance were to be enforced against a licensee, and an appeal therefrom were taken to this Division, then this Division would entertain the argument that the Ordinance, as applied to a particular licensee may be found to be unreasonable. Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940). See also Re Woodrow Wilson Democratic Club of Passaic, Inc., Bulletin 867, Item 2; North Jersey Street Ry. Co. v. Jersey City, 75 N.J.L. 349 (Sup. Ct. 1907).

JOSEPH H. LERNER  
DIRECTOR

Dated: August, 1979

2. OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTION LICENSE - LINCOLT DISTRIBUTORS, INC. to KIMALCO CORP.

In the Matter of Objections to  
the Transfer of State Beverage  
Distribution License SBD- 3400-19-  
733-001 from:

Lincolt Distributors, Inc.  
Newman Springs Road  
Lincroft, N.J.

to:

Kimalco Corp.  
823 Tonnele Avenue  
Jersey City, N.J.

CONCLUSIONS  
AND  
ORDER

.....  
Michael R. Fink, Esq., for the Applicant.

Initial Determination Below

Hon. Edward D. Beslow, A.L.J., c/s - June 5, 1979  
Received June 12, 1979

BY THE DIRECTOR:

No written objections to the Report of the Administrative Law Judge were filed by the applicant or the objector.

While not articulated in the Report, the facts set forth do indicate that the applicant has satisfied the criterion set forth in Re: M & T Beer Distributors, Inc. Bulletin 2300, Item 2; Re: Calabrese, Bulletin 2196, Item 5 and Re: Mystic, Bulletin 1833, Item 3 to warrant transfer of license.

I specifically do not adopt those comments on page 2 of the Report which assumes the Division's non-appearance at hearing constitutes an absence of reasons to oppose the applicant's request. Prior to actual transfer approval, I shall review the investigation of the applicant conducted by the Division to ascertain compliance with Statute and other Regulations.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Administrative Law Judge's report, I adopt the Initial Determination of the Administrative Law Judge insofar as it refers to the objection filed to the application and the finding that there is a public need and necessity for such transfer. I shall, however, condition my ultimate grant of transfer approval upon my investigation of the applicant, its qualifications, financing, possessory rights to premises sought to be licensed and any other statutory regulatory requirements applicable to this application.

It is particularly necessary for this Division's ultimate action to be based upon an up-to-date investigative report. The adjudicatory process has taken approximately 5½ months and the application was filed on or about December 22, 1978, approximately 7 months ago.

Accordingly, it is, on this 17th day of August, 1979,

ORDERED that the application of Kimalco Corp. for the transfer of State Beverage Distribution License No. 3400-19-733-001 from Lincolt Distributors, Inc. to itself and from premises Newman Springs Road, Lincroft to 823 Tonnele Avenue, Jersey City, be and the same is hereby approved subject to the satisfactory outcome of the Division investigation heretofore described.

Joseph H. Lerner  
Director

APPENDIX

Initial Determination Below

IN RE OBJECTIONS TO SBD TRANSFER )  
APPLICATION OF KIMALCO CORPORATION)

INITIAL DECISION

O.A.L. DKT. NO. A.B.C. 98-79

APPEARANCES:

Michael R. Fink, Esq., for the applicant

BEFORE THE HONORABLE EDWARD D. BESLOW, A.L.J. c/b:

On December 22, 1978, Kimalco Corporation (applicant) applied to the Division of Alcoholic Beverage Control (Division) for a transfer, both as to person and place, of the State Beverage Distributor license currently issued to Lincolt Distributors, Inc. (Lincolt) for premises located at Newman Springs Road, Lincroft, New Jersey. The applicant intends to transfer the license to premises located at 823 Tonnele Avenue, Jersey City, New Jersey. On the same day, Lincolt applied to the Division for a renewal of its present license as it had apparently been allowed to lapse. The Division has informed Lincolt that the granting of its application will be contingent on the approval of the transfer application of the applicant.

A written objection, dated January 9, 1979, from Michael T. Borseso, Director of Police of the City of Jersey City, was forwarded to the Division by the Acting Secretary of the Jersey City Board of Alcoholic Beverage Control thereby necessitating the scheduling of a hearing pursuant to N.J.A.C. 13:2-7.8. A public hearing in this matter was held on April 20, 1979. Appearances are noted above. No objectors were present.

In support of its application, the applicant relied on the testimony of Carl G. Braun, Jr., Assistant to the Vice-President. He testified that the applicant intends to operate a wholesale and retail distributing facility, with home delivery available, dealing in the sale of warm beer and soda. There will be no cooling capabilities on the premises.

He indicated that the building that will house the business has dimensions of 30 feet wide by 50 feet long of which the front portion, consisting of approximately 12 feet by 50 feet, contains a presently existing gas only Amoco service station owned and operated by the Kimber-Allen Petroleum Company (Kimber-Allen), who is leasing the remainder of the premises to the applicant. Mr. Braun stated that, as a result of a conference with the Division's staff, the proposed licensed premises will be segregated from the unlicensed service station area by a solid wall with no access between the two portions. He added that as the front of the building is in excess of 45 feet from the highway and

O.A.L. DKT. NO. A.B.C. 98-79

as there will be approximately 25 parking spaces surrounding the licensed premises, there will be no interference with the flow of traffic or the operation of the service station. He further stated that the applicant and Kimber-Allen will employ their own personnel to operate their respective businesses and in no way would they be the same individuals.

The witness testified that the applicant had made a marketing survey of a three mile by one-half mile area adjacent to the proposed premises which the applicant felt would constitute its local market and wherein no comparable operation to the one planned by the applicant presently exists. As the survey disclosed a high concentration of people of Spanish and Portugese extraction, he indicated that in addition to carrying domestic products, the applicant is planning to stock Spanish and Portugese beers which are not now available in this particular area.

Mr. Braun further verified that the applicant will not be supplied with any beer unless and until its transfer application is approved by the Division and that all necessary improvements required at the proposed licensed premises will be completed before the applicant's operation is started.

As indicated above, no objection appeared at the public hearing. It should also be noted that the Division's staff made no appearance. Since the issuing authority is charged with the duty of making its own thorough investigation with regard to transfer application, pursuant to N.J.A.C. 13:2-7.10(a), it can be presumed that the Division's decision not to appear at the hearing indicates that it has not uncovered any reason to oppose the applicant's request.

Therefore, based on a review of the entire record in this matter,

I FIND:

1. The applicant has applied to the Division for a transfer, both as to person and place, of the State Beverage Distributors license currently issued to Lincolt.
2. As it has evidently allowed its license to lapse, Lincolt has applied to the Division for a renewal of its present license. The granting of this application is contingent on the approval of the transfer application of the applicant.
3. No objectors or member of the Division's staff appeared in opposition to the applications.
4. The proposed operation of the applicant will provide services and products not presently available to residents in the surrounding area.

O.A.L. DKT. NO. A.B.C. 98-79

In view of the foregoing, I CONCLUDE that the applicant has sustained the burden of establishing that its application should be approved. Accordingly, the application of the applicant for a transfer, both as to person and place, of the State Beverage Distribution license currently issued to Lincoln IS HEREBY APPROVED, subject to finding # 2, above.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period N.J.S.A. 52:14B-10.

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

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DATE

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EDWARD D. BESLOW, A.L.J. c/b:

Receipt Acknowledged:

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DATE

\_\_\_\_\_  
AGENCY HEAD

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

- 3. DISCIPLINARY PROCEEDINGS - UNLAWFUL POSSESSION AND SALE OF DRUGS BY EMPLOYEES - NON VULT PLEA ENTERED - ADMINISTRATIVE LAW JUDGE ORDERED DIRECTOR TO ACCEPT A FINE IN COMPROMISE, IN LIEU OF SUSPENSION IN INITIAL DECISION - NON VULT PLEA ACCEPTED - JUDGE'S ORDER OF A FINE IN LIEU OF SUSPENSION REJECTED AS BEING SOLE FUNCTION OF DIRECTOR TO BE EXERCISED AT HIS DISCRETION.

In the Matter of Disciplinary Proceedings against

L.J.T. Corporation  
t/a Night Owl Lounge  
10½ South Florida Avenue  
Atlantic City, N.J.

Holder of Plenary Retail Consumption Lic. 0102-33-133-001, issued by the Board of Commissioners of the City of Atlantic City.

.....

S-12,163  
X-54,570-C

CONCLUSIONS  
AND  
ORDER

Console, Marmero & Li Volsi, Esqs., by Leonard J. Wood, Esq., Attorneys for Licensee.  
David Griffiths, Esq., Deputy Attorney General, Appearing for Division.

Initial Determination Below:

Hon. Stephen Marshall, Administrative Law Judge., c/s -  
July 17, 1979  
Received July 19, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Determination were filed by the parties, pursuant to N.J.A.C. 13:2-19.6.

However, several comments on the procedure, followed in this matter are noted. Initially, when a disciplinary proceeding is disposed of at hearing by the entry of a non vult plea, it is no longer a contested matter within the purview of N.J.S.A. 52:14F-1 et seq. The file should be returned to this Division for entry of penalty and a hearer's report is unnecessary.

If the non vult plea is entered subject to certain representations as to the provisions of settlement, other disposition or penalty, such terms should be noted and proceedings terminated contingent upon my approval. If I were to reject said terms, the case would be resubmitted to the Office of Administrative Law for further hearing.

I also note that I completely reject any provisions in the Initial Determination which purport to order the Director to accept the payment of a fine, in compromise, in lieu of suspension. The discretion to accept a monetary penalty is vested

solely in the Director, when he determines same proper under the circumstances. N.J.S.A. 33:1-31. Should an Administrative Law Judge wish to comment on alleged mitigating circumstances, such factual basis and opinion may be set forth. However, the ultimate determination of penalty, particularly a fine in lieu of suspension, are matters vested in the Director's discretion.

I have reviewed the subject file and note that: (a) the alleged narcotic activity was conducted by employees of the licensee, (b) the penalty represented as Division policy was not completely accurate, since factors indicating aggravated circumstances can result in a greater license suspension, and (c) there was no agreement by me to permit a fine in lieu of license suspension. In consequence, I reject the plea negotiations set forth in the Initial Determination and remand the matter to the Office of Administrative Law for further proceedings.

I specifically afford the opportunity to the licensee to withdraw its non vult plea, or, in the alternative, accept a license suspension of sixty-five (65) days, less thirteen (13) for the plea entered, or a net suspension of license of fifty-two (52) days.

Accordingly, it is, on this 5th day of September, 1979,

ORDERED that the plea negotiation set forth in the Initial Determination below be and is hereby rejected; and the matter be and is hereby remanded to the Office of Administrative Law for further proceedings consistent with the determination herein.

Joseph H. Lerner  
Director

APPENDIX

Initial Determination Below

IN THE MATTER OF L.J.T. CORPORATION, t/a ) INITIAL DECISION  
 NIGHT OWL LOUNGE ) O.A.L. DOCKET NO. A.B.C. 1150-79

## APPEARANCES:

John Douris, owner of the Night Owl Lounge

Edward Curcio, Esq., of Console, Marmero & LiVolsi, of Berlin, N.J.,  
 on behalf of Douris and the Night Owl Lounge

David Griffiths, Esq., Deputy Attorney General, on behalf of the N.J.  
 Division of Alcoholic Beverage Control

BEFORE THE HONORABLE STEPHEN MARSHALL, A.L.J.:

This case is a hearing brought on by a complaint filed by the N.J. Division of Alcoholic Beverage Control against L.J.T. Corporation, t/a Night Owl Lounge for violations of N.J.S.A. 33:1-31, and N.J.A.C. 13:2-23.5 and 2-23.6, involving the unlawful possession and sale by employees within the premises of prescription legend drugs and controlled dangerous substances. The defendant corporation originally filed a not guilty plea in answer to the complaint, and a hearing was ordered held in Newark on June 7, 1979. During the course of the hearing, the defendant corporation changed its plea from not guilty to non-vult, noted what it felt were mitigating factors in the case, and requested the Administrative Law Judge and Division of Alcoholic Beverage Control to impose a fine in lieu of a suspension. This request was accepted by the Administrative Law Judge and the Division of Alcoholic Beverage Control.

Prior to the plea change, the Division of Alcoholic Beverage Control had presented testimony of two (2) Alcoholic Beverage Control Inspectors regarding the incidents which had led to the filing of the complaints. The facts involving these incidents were not contested by the defendant corporation, but were claimed to be the sole responsibility of two (2) former employees without the knowledge and against the expressed policy of the owner. The testimony of the owner of the defendant corporation also noted that he was in the process of trying to sell the Night Owl Lounge, and requested a fine in lieu of suspension so as to facilitate his search for a buyer. The Deputy Attorney General representing the Alcoholic Beverage Control concurred in both requests, for the change in

O.A.L. DKT. NO. A.B.C. 1150-79

plea and for the imposition of a fine in lieu of suspension. He noted that under the Alcoholic Beverage Control policy the circumstances surrounding the incident would lead to an imposition of a thirty-five (35) day suspension (remitted to twenty-eight (28) days) in a non-vult pleading. He stated that the amount of the fine imposed in lieu of such suspension would be determined by the Alcoholic Beverage Control staff after an inspection of the defendant corporation's financial records. This was agreed to by the defendant corporation as part of the settlement.

After a consideration of the entire record in this case, I FIND that:

1. The defendant corporation's employees had possessed and engaged in the selling of prescription legend drugs and controlled dangerous substances upon the premises of the defendant corporation.
2. The owner of the defendant corporation had no knowledge of these acts of his employees, and such acts were contrary to his orders to his employees.
3. The owner of the defendant corporation is in the process of seeking a buyer for the corporation and attendant liquor license, and its suspension at this time might impose an unreasonable burden upon him.

Therefore, I CONCLUDE that the defendant corporation is technically liable for violations of N.J.S.A. 33:1-31 and N.J.A.C. 13:2-23.5 and 13:2-23.6. As a result, the defendant corporation would ordinarily suffer a suspension of its liquor license for a period of thirty-five (35) days (remitted to twenty-eight (28) days). However, in view of the defendant corporation's change of plea to non-vult and the other mitigating circumstances brought forward at the hearing, I also consider it appropriate to substitute a monetary fine upon the defendant corporation, in lieu of a suspension.

Therefore, I HEREBY ORDER the defendant corporation to pay a monetary fine, the amount of which shall be determined by the Division of Alcoholic Beverage Control after a consideration of the relevant circumstances. If the defendant corporation does not pay the fine within a reasonable amount of time, it shall suffer suspension of its liquor license for the period originally determined by the Division of Alcoholic Beverage Control.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period N.J.S.A. 52:14B-10.

O.A.L. DKT. NO. A.B.C.1150-79

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 proceedings.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
STEPHEN MARSHALL, A.L.J.

Receipt Acknowledged.

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DATE

\_\_\_\_\_  
AGENCY HEAD

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

- 4. DISCIPLINARY PROCEEDINGS - HINDERING - LICENSEE FAILED TO PRODUCE AND SURRENDER TO DIRECTOR MATERIALS FOR EXAMINATION DURING INVESTIGATION - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE FOR LIFTING UPON SURRENDER OF REQUIRED MATERIAL- HOWEVER, SHALL NOT BE LIFTED IN ANY EVENT, SOONER THAN 20 DAYS.

In the Matter of Disciplinary Proceedings against

Hi-Grade, Inc.  
t/a Hi-Grade Wine & Liquor Store  
250 East Hanover Street  
Trenton, N.J. 08608

Holder of Plenary Retail Distribution License No. 1111-44-018-003 issued by the City Council of the City of Trenton.

-----  
Weintraub & Gelade, Esqs., by Richard B. Gelade, Esq.,  
Attorney for Licensee.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that: (1) from on or about April 18, 1978, it failed to produce and surrender to the Director materials which the Director is authorized and empowered to investigate and examine, in violation of N.J.S.A. 33:1-35; and (2) from on or about April 18, 1978, it failed to facilitate, hindered and delayed, or caused the hindrance or delay of an investigation of the licensed business, in violation of N.J.A.C. 13:2-23.30.

The license will be suspended for the balance of its term and any renewal thereof, with leave granted for the lifting of such suspension upon the surrender to the Director of his deputies of the documents, records and other materials which have been demanded under N.J.S.A. 33:1-35, which suspension, however, shall not be lifted, in any event, sooner than twenty (20) days after the commencement date of the said suspension.

Accordingly, it is, on this 5th day of September, 1979,

ORDERED that Plenary Retail Distribution License No. 1111-44-018-003 issued by the City Council of the City of Trenton to Hi-Grade, Inc., t/a Hi-Grade Wine and Liquor Store for premises 250 East Hanover Street, Trenton be and the same is hereby suspended for the balance of its term, viz., mid-night, June 30, 1980, effective 10:00 p.m. on Monday, September 10, 1979 and for the term of any renewal of said license which

S-11,881

X-54,565-A

Aff'd X-54,564-A

CONCLUSIONS

AND

ORDER

may be granted, with leave to apply to the Director for the lifting of the suspension whenever the unlawful situation has been corrected by the surrender to the Director or his deputies of the documents, records and other materials which have been demanded under N.J.S.A. 33:1-35, but, in no event shall the lifting of said suspension be sooner than twenty (20) days from the commencement of the suspension herein.

JOSEPH H. LERNER  
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - HINDERING - LICENSEE FAILED TO PRODUCE AND SURRENDER TO DIRECTOR MATERIALS FOR EXAMINATION DURING INVESTIGATION - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE FOR LIFTING UPON SURRENDER OF REQUIRED MATERIAL - HOWEVER, SHALL NOT BE LIFTED IN ANY EVENT, SOONER THAN 20 DAYS.

In the Matter of Disciplinary Proceedings against

M.R.D. Corporation  
t/a Colonial Liquors  
653 Ingham Avenue  
Trenton, N.J. 08618

S-11,882

X-54,564-A

Aff'd - X-54,565-A

CONCLUSIONS

Holder of Plenary Retail Distribution License No. 1111-44-156-002 issued by the City Council of the City of Trenton.

AND

ORDER

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Weintraub, and Gelade, Esqs., by Richard B. Gelade, Esq.,  
Attorney for Licensee.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that: (1) from on or about April 18, 1978, it failed to produce and surrender to the Director materials which the Director is authorized and empowered to investigate and examine, in violation of N.J.S.A. 33:1-35; and (2) from on or about April 18, 1978, it failed to facilitate, hindered and delayed, or caused the hindrance or delay of an investigation of the licensed business, in violation of N.J.A.C. 13:2-23.30.

The license will be suspended for the balance of its term, and any renewal thereof, with leave granted for the lifting of such suspension upon the surrender to the Director or his deputies of the documents, records and other materials which have been demanded under N.J.S.A. 33:1-35, which suspension, however, shall not be lifted, in any event, sooner than twenty (20) days after the commencement date of the said suspension.

Accordingly, it is, on this 5th day of September, 1979,

ORDERED that Plenary Retail Distribution License No. 1111-44-156-002 issued by the City Council of the City of Trenton to M.R.D. Corporation, t/a Colonial Liquors for premises 653 Ingham Avenue, Trenton be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1980, effective 10:00 p.m. on Monday, September 10, 1979 and for the term of any renewal of said license which may be granted, with leave granted to the licensee or any transferee of said license to apply to the Director for the lifting of the suspension whenever the unlawful situation has been corrected by the surrender to the Director or his deputies of the documents, records and other materials which have been demanded under N.J.S.A. 33:1-35, but, in no event shall the lifting of said suspension be sooner than twenty (20) days from the commencement of the suspension herein.

JOSEPH H. LERNER  
DIRECTOR

- 6. DISCIPLINARY PROCEEDINGS - NON VULT PLEA ENTERED TO CHARGE THAT APPLICANT FALSELY STATED NOT DISQUALIFIED BY VIRTUE OF CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE - LICENSE ORDERED CANCELLED - DIRECTOR AGREES TO REQUEST TO ACCEPT A FINE IN LIEU OF CANCELLATION ON CONDITION ACTIVITY CEASE UNTIL LICENSE IS TRANSFERRED TO ANOTHER - FINE PREDICATED UPON SALES PRICE; IN ESSENCE, A DISGORGEMENT OF PROFITS OF SALE.

In the Matter of Disciplinary Proceedings against ) S-11,346

Conrad's of Atlantic City t/a Conrad's 3710 Atlantic Avenue Atlantic City, New Jersey ) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. 0102-33-057-003 issued by the Board of Commissioners of the City of Atlantic City. )

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Cooper, Perskie, Katzman, April, Niedelman & Wagenheim, Esqs., by David J. Weiss, Esq., Attorneys for Licensee. Leonard A. Peduto, Jr., Esq., Deputy-Attorney General, representing the Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that:

In your short form application filed June 13, 1977 with the Board of Commissioners of the City of Atlantic City, upon which you obtained your current plenary

retail consumption license, you failed to answer Question No. 13 to show a change of your answer from "No" to "Yes" to Question No. 30 in your long form application for your license for the 1975-76 licensing period, which asks: "Has the applicant or has any person mentioned in this application having a beneficial interest in the license applied for or in the business to be conducted under said license ever been convicted of any crime?", whereas in truth and fact, Raymond Geftman, listed in such application as president, director and one-hundred percent shareholder of your corporation, had been convicted on or about March 25, 1977 of the crimes of (1) Mail Fraud, in violation of U.S. Title 18, U.S. Code Sections 1341; and (2) Interstate Transportation in Aid of Racketeering Enterprises, Aiding and Abetting, namely Arson, in violation of U.S. Title 18, U.S. Code Sections 1952 and 2; such false statement being in violation of N.J.S.A. 33:1-25 .

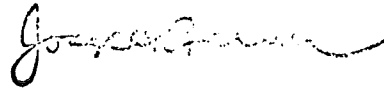
Licensee requested that, in lieu of cancellation of license, it be permitted to preserve same for the purposes of effectuation of a transfer of license. It had ceased operations prior to the preferment of these charges and will continue to do so until a transfer of license is approved.

It was further requested and agreed to by the Division that, upon sale of the license, a fine, in compromise, in lieu of cancellation would be accepted, pursuant to N.J.S.A. 33:1-31. The amount of the fine would be predicated upon the sales price and operate, in essence, as a disgorgement of profits on sale.

A transfer of license having been completed, and having carefully considered the application of the licensee to pay a fine, in lieu of cancellation of license, I have determined to accept a fine of \$11,700.00 in lieu of cancellation of license.

Accordingly, it is, on this 26th day of September, 1979,

ORDERED that the payment of a fine of \$11,700.00 be and the same is hereby accepted in lieu of cancellation of the subject license.



JOSEPH H. LERNER  
DIRECTOR