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

BULLETIN 2172 January 23, 1975

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - DON PATTEN CORP. v. UNION.

Don Patten Corp., t/a D.J. Lounge, Appellant, v. Township Committee of the Township of Union, Respondent.	On Appeal CONCLUSIONS and ORDER

Sachar, Bernstein & Rothberg, Esqs., by David H. Rothberg, Esq., Attorneys for Appellant
Albert L. Simpson, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Township Committee of the Township of Union (hereinafter Committee) which on June 25, 1974 denied renewal of appellant's Plenary Retail Consumption License C-45 for the license year 1974-75.

In its petition of appeal, appellant alleges that the action of the Committe was erroneous in that its conclusions were against the weight of the evidence and its actions were unreasonable and capricious. The Committee denied these contentions.

Upon the filing of the appeal, by order dated June 27, 1974, the Director extended appellant's 1973-74 license until determination of the appeal and the entry of a further order herein.

The appeal in this Division was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded counsel to introduce testimony and to cross-examine witnesses. Additionally, the transcript of the proceedings before the Committee, at its meeting of June 25, 1974, was admitted into evidence pursuant to Rule 8 of State Regulation No. 15.

At the de novo hearing in this Division, a number of witnesses were produced by the Committee who testified substantially to the same effect as reflected in the minutes of the meeting held before it. The synthesis of their testimony was as follows: This tavern is located on a busy intersection in the Township, the side and rear of which is flanked by residences; nearby is another tavern of which the witnesses were in similar complaint.

Acting Police Chief Edward L. Miller testified that the records of the Police Department indicated ten calls were received between January 1, and mid-May of 1974, which related to appellant's premises or the contiguous area. Only one call related to any condition respecting the interior of appellant's premises and that one revolved around loud noises originating therein. His records reveal that appellant, upon being informed of the complaint, immediately caused the condition to be corrected. The remaining calls concerned complaints by neighbors relating to conduct of patrons who, upon leaving caused undue noise in the area. On cross-examination, the witness admitted that he did not recommend to the Committee that appellant's license should not be renewed.

The Committee introduced the the testimony of several neighbors, Jeffrey C. Caine, Suzanna Gallucio, Mary B. Collins, Donna and Patrick Lynch, Mara Djurasovic, Annmarie and Garret O'Connor, Raymond A. and Ann W. Rinaldi. From all of their testimony the following factual picture emerges: The appellant acquired ownership of the licensed premises about the first of the year (by later stipulation it was admitted that appellant acquired the premises on November 28, 1973). Prior thereto the former owner caused no difficulties in the operation of the same premises. Thereafter, the character of the patronage changed and a noisy and unruly crowd emerged each evening, particularly during week-ends; sleep became impossible; the lawns were strewn with beer bottles, cans and papers; property was damaged and one neighbor, Suzanna Gallucio, described their outside hoses being cut after they complained to the noisy patrons. Photographs were admitted into evidence revealing the cut hose and the litter strewn about sidewalk area. A petition signed by more than thirty near by residents objecting to the renewal of appellant's license (which had been presented to the Committee) was also admitted into evidence.

Appellant introduced the testimony of Robert A. Schweikardt, the immediate prior owner of the premises. He stated that after ten years he sold the tavern to the appellant at the end of November, 1973. His management of the premises had been without difficulty until passage of the law that permitted drinking by eighteen year-olds. Thereafter complaints began to develop. He recounted that one of the present complainants, Jeffrey C. Caine, had once come to him with a bag of garbage picked up on the lawn which contained empty bottles of alcoholic beverages. Upon Schweikardt's denial that he sold such brands of beverages, he asserted that Caine replied that he was "going to get the bars out of here". On cross-examination, Schweikardt admitted he was a lienor of the present establishment to the extent of $25.000.00.

The principal stockholder and officer of appellant corporation, Donald F. Patten, testified that after his purchase of the premises he conferred with the Committee and was informed that the premises were a "trouble spot". After experimenting with live music on weekends, a complaint developed by police who asserted that the tavern was noisy. This complaint resulted in appellant being called before the Mayor and Council. Patten was informed of the extent to which the complaints developed. In consequence, he terminated the entertainment program completely.

In an attempt to eliminate possible sources of neighborhood distress, the premises are closed at midnight except that he closes at eight o'clock on Saturday evenings. No hard liquor is sold for off-premises consumption and gatherings from fraternity groups from nearby Kean College are unwelcome. Although some teenagers continue to patronize the tavern, they are not encouraged and he hopes their patronage will cease. An outside guard had been retained for a short period but this service was unfruitful toward eliminating the problems on the exterior. During his ownership he had received no visits from the police relative to interior difficulties nor had there been any charges maintained against him.

Extracting elements from all of the testimony, it appears that appellant's premises are located in a ground-floor store of a corner building alongside and behind which are located one-family residences. During the many years the premises were used as a typical neighborhood tavern there were no substantial complaints against its operation. A combination of law change, permitting the servicing of teenagers coupled with new ownership which by offering live entertainment and maintaining a less decorous establishment encouraged a more unruly clientele, brought appellant to its present difficulties.

The crucial issue in this appeal is whether the action of the Committee in denying renewal of appellant's plenary retail consumption license was reasonable under the circumstances presented to it. It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Committee in the first instance and, in order to prevail on this appeal, appellant must show that the action of the Committee was unreasonable and a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

The dispositive issue is whether the evidence herein justifies the action of the Committee in refusing to renew appellant's license. Nordco Inc. v. Newark, Bulletin 1148, Item 2. The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957) A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail. Zicherman v. Driscoll, 133 N.J.L. 586 (1946).

It is basic that the action of the municipality must be reasonable in equating the rights of the licensee with the paramount rights of the public. Rajah Liquors v. Div. of Alcoholic Bev. Control, supra.

> "It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local issuing authority. Common fairness to the licensee has been the basis for this policy. If undesirable conditions develop.... the local authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired."

Stratford Inn, Inc. v. Avon-by-the Sea, Bulletin 1775, Item 2.

In matters relating to the denial of renewal of licenses, the Director has unhesitatingly affirmed the denial of renewal by the local issuing authority particularly in situations where the licensees have an extensive record of suspensions of license, (Starshock, Inc. v. Pennsauken, Bulletin 2131, Item 1; Greenstein v. Elizabeth, Bulletin 2135, Item 4; The Back Street Lounge, Inc. v. Newark, Bulletin 2138, Item 1.) or when the licensee failed to correct intolerable situations outside the licensed premises (Delroz, Inc. v. West Orange, Bulletin 2027, Item 2; Silver Edge Corp. v. Newark, Bulletin 2083, Item 2.)

Conversely, the Director has reversed the local action denying renewal of license where the exterior conditions have not been attributable to the licensee. Double E., Inc. v. Jersey City, Bulletin 2137, Item 5; Burks v. Passaic, Bulletin 1967, Item 4; Cf. B&L Tavern Inc. v. Bd. of Comrs. of Boro. 42 N.J. 131 (1964).

Additionally in matters wherein licenses have not been renewed due to inability of the licensee to control the patronage or for many and varied reasons, the Director has reversed the action of the local authority and directed renewal of license for the purpose of permitting the licensee to effectuate a sale of the licensed premises. Red Ranch, Inc. v. Wall Twp., Bulletin 1773, Item 2; Walker v. Newark, Bulletin 1750, Item 1.

Following the doctrine laid down by the court in Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955) wherein the court stated:

> "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection. . . ."

the Director has held that a new owner who is learning the rudiments of managing licensed premises should be accorded a more favorable position where he endeavors to prevent possible infractions. To-Jon Inc., v. Watchung, Bulletin 1946, Item 1.

Despite the number of complaints registered by the neighbors in the vicinity of the appellant's premises with the local police relating to the exodus of unruly patrons from appellant's premises, no disciplinary charges were leveled against it in consequence thereof. Captain Edward L. Miller of the Union Township Police Department Record Bureau testified that seven calls were received during a period January 6, 1974 through May 13, 1974. Of these calls, the record indicates the first was unfounded, the second pertained to loud music originating from the premises which, on police notice, was immediately corrected. The third and fourth were from appellant; both related to some dispute between patrons that was settled by appellant before police arrival. The fifth and sixth calls were unfounded and the seventh by a neighbor who was upset by some patron who had left his children unguarded while he was imbibing in the premises.

From the testimony of the complaining neighbors, it was apparent that their calls to the police were not recorded as complaints against appellant but against the particular infractors, who at the moment were loud, profane and generally unruly. The distance between appellant's premises and the police station is apparently such that by the time police vehicles responded, the perpetrators, whose actions generated the calls, had departed the area.

It is thus apparent from the entire record herein that appellant's patrons have caused his premises to become a nuisance which the public need not tolerate. The cause of that condition is directly attributable to the failure of the appellant to discourage a patronage which has become the despair of the neighbors. It is further apparent that there may have been a laxity by the police department in failing to investigate the cause of the myriad complaints and to take remedial steps as may have been necessary, including, but not limited to, recommendations to the Committee for the institution of disciplinary proceedings against appellant.

Thus, while the Committee is to be commended for coming to grips with an extremely difficult problem it has, in short, sought to "kill the patient rather than amputate". The Police record indicates that when a complaint for noise was called to the attention of appellant, the situation was immediately and cooperatively corrected. It is thus apparent that a desire to manage the licensed premises in a proper manner and without cause for difficulties to the neighbors was appellant's concern. That it had not fully done so at the time the renewal application was acted upon could well have been due to the time limitation and lack of expertise.

Accordingly, it is recommended that the action of the Committee be reversed and it be directed to renew the license in order to permit appellant to correct the situations described and to eliminate the need for neighbors to resort to police assistance. Appellant however should be pointedly warned that upon the expiration of the current licensing period, when its

application for renewal is again before the Committee, the determination as to whether it has fully corrected the nuisance will be made and, if not made, the license would obviously not be renewed.

Conclusions and Order

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

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

The appellant is pointedly warned that failure to eliminate those conditions which were the subject of complaints by local residents, and to conduct its business in a law-abiding manner, may well result in corrective action by the municipal issuing authority during the present licensing period.

Accordingly, it is, on this 20th day of November 1974,

ORDERED that the Township Committee of the Township of Union be and the same is hereby directed to renew appellant's plenary retail consumption license for the 1974-75 licensing period nunc pro tunc in accordance with the application filed therefor.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - ORTIZ v. HOBOKEN.

Wilfredo Ortiz, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Hoboken, Respondent.	On Appeal CONCLUSIONS AND ORDER

Francis P. Meehan, Jr., Esq., Attorney for Appellant
Dudley A. Schlosser, Esq., by Walter J. Beronio, 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 Hoboken (hereinafter Board) which, on June 24, 1974 denied renewal of appellant's plenary retail consumption License C-35 for premises 520 Adams Street, Hoboken, for the 1974-1975 licensing period.

Appellant's petition of appeal contended that the action of the Board was arbitrary and unreasonable, and was based upon insufficient evidence. The Board denied these contentions, and defended that its determination was based upon the advice and testimony of members of the police department.

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

Lieutenant August Ricciardi, commander of the "Tavern Squad" of the Hoboken Police Department, testified that on May 6, 1974, in response to a citizen complaint about loud music, police visited the appellant's licensed premises, notified the licensee of the complaint; and the situation was immediately corrected.

On May 18, 1974, another visit to the premises was initiated by a citizen complaint which resulted in summonses being issued to persons on the sidewalk in front of the premises on a charge of drinking alcoholic beverages on a public street. No charges were leveled against appellant.

On May 23, 1974, during evening hours, members of the police department, including Lieutenant Ricciardi and Patrolman Edward Skelly, visited the appellant's premises in front of which a large gathering had congregated. After entering, identification of certain patrons were made and four persons known to the police as "drug users" were observed among the patronage. The licensee was noticed of the presence of these individuals.

Returning a few days thereafter, Ricciardi again saw two of the four persons so identified and again warned appellant to get "rid of the garbage" from the premises -- in short, he directed the appellant not to serve those individuals. Ricciardi never saw any of those four persons again in the premises.

Patrolman Edward Skelly testified that he had given out numerous traffic "tickets" for double parking to motorists in front of appellant's premises. On May 23, 1974, in the evening, he was one of the police officers who responded to a directive to visit appellant's tavern. At that time, he entered with others, and observed the four known drug users identified by Ricciardi.

Thereafter, Skelly observed one of the "users" drinking from a can of beer outside of appellant's premises, and warned him about drinking in public; with that, the said "user" retreated inside.

Appellant testified and introduced the testimony of a neighbor, the barmaid-manager, a part time barmaid, a patron as well as a police officer who testified on behalf of appellant. The testimony of these witnesses may be capsulated as follows:

Appellant purchased the licensed premises and the building housing it for the sum of $50,000 on April 1, 1974. He spent an additional $25,000 refurbishing the interior of the bar and a rear hall, completing the work about the beginning of May. He had a "Grand Opening" on May 23, when more than one hundred patrons appeared for the celebration. While that was in progress, police officers appeared to check the exterior and dispense large congregations of patrons and the parking violators.

There had been prior police visits respecting loud music (which was instantly corrected), and parking violations which

is a continuous problem.

The appellant denied having been noticed as to specific drug users, but admitted being told by the police lieutenant to get the "garbage" out of his premises. He further denied knowing who the "users" were until photographs were shown to him at the hearing before the Board.

Police Officer Marco Ravera of the Hoboken Police Department testified on behalf of appellant with whom he has been friendly for a long time. He described the situation respecting complaints lodged against appellant for traffic violations as a common problem to the area. There are also known narcotic users in the area.

A local resident, Carmella Magliaro, who lives nearby appellant's premises testified that there has been a tavern at that location for "fifty" (sic) years. The block also contains several social clubs whose members sit outside and drink beer. The block contains tenement buildings and, on the ground floor of these buildings, are stores, in which the clubs as well as appellant's premises are located. These premises are located on a narrow, one-way street. Parking has always been a problem on this street, but that problem has not significantly increased since appellant began his business operation.

Photographs admitted into evidence reveal a densely urban area, in which appellant's premises are located. Interior photographs indicate that this facility has a modern bar, with a rear hall to accommodate parties.

The Board exhibited a petition signed by twenty-seven residents who requested corrective action be taken to quell disturbances emanating from appellant's premises. The petition cited the abusive behavior of the patrons.

It is well established that the grant or denial of an alcoholic beverage license rests within the sound discretion of the Board in the first instance. In order to prevail on this appeal, the appellant must show that the Board acted unreasonably and that such action constitutes a clear abuse of its discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962). Upon such showing, the Director is authorized to reverse the Board's action. Florence Methodist Church v. Florence, 38 N.J. Super. 85 (App. Div. 1955); Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958).

It is quite apparent that the renewed operation of these licensed premises by appellant after a long period of inactivity when the premises were not in operation, which reopening was

accompanied by the active gathering of more than one hundred noisy patrons, was sufficiently disturbing to the neighbors to request police aid. The record reveals that the appellant cooperated with the authorities, to some extent, toward reducing the volume of the music played, but he did not correct situation with respect to gatherings in front of his premises to the satisfaction of the authorities.

The record does not reveal, however, any prolonged activity of any kind that would require a denial of renewal of the license privilege. Appellant began operation on or about May 1; the "Grand Opening" occurred on May 23 and the hearing was held before the Board on June 24. At no time were any charges preferred against appellant or any persons within the establishment; in fact, no misconduct was alleged. The temporary presence of certain "drug users" did not result in their arrest nor of further surveillance. It was not contended by the Board that there was any drug traffic in the premises, nor was it a rendezvous for any criminal element. Even the reference to the four known drug "users" is sparse; they were not thereafter seen in the premises after the appellent was made fully cognizant of their existence.

The continued congregation of patrons in front of the premises, however, need not be tolerated; the licensee is responsible for the conditions both in and outside of his licensed premises which are caused by patrons thereof. Conte v. Princeton, Bulletin 139, Item 8; Garcia v. Fair Haven, Bulletin 1149, Item 1, Nonetheless the proofs were not dispositive that the persons seen drinking on the sidewalk in front of appellant's premises obtained the alcoholic beverages from him or from the social club immediately next door. Additionally, it is conceivable that tenement residents would, in hot weather, repair to the stoops and sidewalk and there consume cans of beer.

I am persuaded, upon the examination of the record herein, that the appellant has made some good faith efforts to manage his establishment in a satisfactory manner. Thus he should be given an opportunity to prove his worthiness to merit his license. He is further pointedly advised that the burden of removing congregants in front of his premises that come from his establishment is on him and his failure to do so places his license in jeopardy. If undesirable conditions develop in the future, the Board always has the power which they should promptly exercise to institute disciplinary proceedings even before the renewed licensing period has expired. Double E. Inc., v. Jersey City, Bulletin 2137, Item 5.

It is, concluded that the appellant has met his burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Therefore, it is recommended that the action of the Board be reversed and that the Board be directed to grant the license to appellant for the 1974-75 licensing period, in accordance with the application filed therefore. It is, further recommended that appellant be directed to forthwith amend his application to properly cite the trade name under which the license operates.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of November 1974,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Hoboken be and the same is hereby reversed, and it is hereby directed to renew appellant's plenary retail consumption license for the 1974-75 licensing period nunc pro tunc subject to the special condition that the application filed therefor is concurrently amended by appellant, to properly set forth the trade name under which the said licensed business is being conducted.

Leonard D. Ronco
Director

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN UNLICENSED BUILDING - CLAIM FOR RETURN OF PERSONALTY, EQUIPMENT AND CASH - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY FORFEITED.

In the Matter of the Seizure on August 4, 1974 of a quantity of alcoholic beverages, miscellaneous personal property and $35.15 in cash at the unlicensed premises of Nichols Park, Inc. Key Club located at 499 Tuckahoe Road, in the Township of Monroe, County of Camden, and State of New Jersey.	Case No. 13,108 On Hearing CONCLUSIONS and ORDER

P. Jeffrey Wintner, Esq., Appearing for claimant, Nichols Park, Inc. Key Club
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 to determine whether 163 containers of alcoholic beverages, miscellaneous personal property, equipment and $35.15 in cash, as set forth in an inventory attached hereto and made part hereof, marked Schedule "A", and which were seized on August 4, 1974 at the unlicensed premises of Nichols Park, Inc. Key Club, 499 Tuckahoe Road, Williamstown, Monroe Township, constitutes unlawful property and should be forfeited.

Nichols Park, Inc. Key Club, through its counsel, appeared at the hearing in this Division and sought the return of the items of personalty, equipment and cash in the amount of $35.15 seized by agents of this Division.

The Division file was admitted into evidence together with a sample of the seized alcoholic beverages. The file included the chemical analysis of such alcoholic beverages, certified by the Director that the quantity of alcohol contained was an alcoholic beverage fit for beverage purposes and exceeded the statutory limitations. A further certification by the Director was also included which established that no license or permit for the sale of alcoholic beverages had been issued to claimant, Nichols Park, Inc. Key Club or to anyone of the name Nichols for the premises 499 Tuckahoe Road, Williamstown.

ABC Agent M testified that on August 4, 1974, he and other agents of this Division, accompanied by local police officers conducted a raid on the subject premises following a purchase of alcoholic beverage therein by an agent of this Division. He had in his possession "marked" money which had been used for the purchase of the alcoholic beverage. Following the purchase

a search was made and the "marked" money retrieved, the alcoholic beverages, cash, personalty and equipment seized and the sellers of the alcoholic beverages were placed under arrest by the police officers of Monroe Township. ABC Agent S testified in partial corroboration of Agent M.

Claimant introduced the testimony of John L. Diggs and John Pratt both of whom described themselves as "trustees" of the claimant club. Both insisted that the ABC agent entered and joined a group of card players at a table, paid to Michael Nichols, son of the "president" of the club, the sum of $25.00 as table stakes with which to enter the game. They both believed that the "marked" $5 bill later retrieved from the cash register, as had been indicated by the agent, was actually discovered in Michael's pocket and had not been used for the purchase of any alcoholic beverage. They both characterized the drink which the agent was consuming at the time of the raid as a house drink freely given to the card players. They vigorously denied the agent's testimony that he had obtained the drink at the bar and paid the barmaid.

Both Diggs and Pratt described the claimant club as having about fifty-six members who used a part of the home of Edward V. Nichols as a meeting place. The officers of the club were all members of the Nichols family. Each club member paid an annual dues of $5.00 and the members may drink all they wish.

The seized alcoholic beverages are illicit because they were intended for sale and sold without a license. N.J.S.A 33:1-1(i). The testimony developed on behalf of the claimant lacks a ring of truth. The allegation that the drinks were given gratuitously to the agent, a complete stranger, is contrary to logic. Further, it has long been held that the mere giving of alcoholic beverages without consideration constitutes a a violation of the statute when such gift is coupled with the owner's interests. Re Naschatier, Bulletin 258, Item 7 (1938); Re Amato, Bulletin 726, Item 8. If, as claimant suggests, the alcoholic beverage served was a gift to a participant in the gambling game then in progress, such gift of alcoholic beverage would constitute a violation. See Seizure Case No. 12,893, Bulletin 2118, Item 2.

Considering all of the circumstances herein, the nature, location and officers of the claimant "club", I am satisfied that the premises were used for the unlawful sale of alcoholic beverages; the ease with which the agent gained entry and made the purchase supports such conclusion.

Accordingly, it is recommended that the claim of the Nichols Park, Inc. Key Club for the return of the alcoholic

beverages, personalty, equipment and $35.15 in cash should be rejected and the same be forfeited.

Conclusions and Order

Written exceptions to the Hearer's Report with supportive argument were filed on behalf of Nichols Park, Inc. Key Club, claimant herein, pursuant to and within the time limited by Rule 4 of State Regulation No. 28.

I have examined and evaluated the said exceptions and find that they have either been satisfactorily considered and resolved in the Hearer's Report, or are lacking in merit.

The claimant notes inconsistencies in the testimony of the witnesses. In my examination of the testimony, I, too, have found inconsistencies in the testimony of the witness for the Division and those of the claimant. However, the testimony of the Division witness was persuasive when he clearly indicated that payment was made for alcoholic beverage with identified "marked" money which was found in the cash register. The absence of the "marked-money list" at the hearing was quickly corrected by its submission to claimant's counsel as soon as a copy thereof was procured from the office of the Prosecutor of the County.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Hearer's Report and the exceptions taken with respect thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of November 1974,

DETERMINED and ORDERED that the claim of Nichols Park, Inc. Key Club for the return of the alcoholic beverages, personal property as listed in Schedule "A" attached hereto and cash in the amount of $35.15, be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the said personal property and cash in the amount of $35.15 be and the same is hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66, to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages shall be retained for the use of hospitals and State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Leonard D. Ronco
Director

SCHEDULE "A"

163 - containers of alcoholic beverages
1 - pool table; 1 - shuffleboard;
1 - cigarette machine; 1 - juke box
Misc. personal property
$35.15 - cash

4. STATE LICENSES - NEW APPLICATION FILED.

Louis Graniero and Concetta Graniero
T/a Home Beverage Service
80 West Forest Avenue
Englewood, N.J.

Application filed January 22, 1975 for person-to-person transfer of State Beverage Distributor's License SBD-90 from Edward Kabot and Muriel Kabot, t/a Home Beverage Service.

Leonard D. Ronco
Director