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

BULLETIN 2176 March 13, 1975

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1. APPELLATE DECISIONS - CAVALIERE v. BRICK TOWNSHIP.

John J. Cavaliere, t/a Point West, Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Township Committee of the Township of Brick, Respondent.	)	

Hiering, Grasso, Gelzer & Kelaher, Esqs., by Vincent A. Grasso, Esq., Attorneys for Appellant
Doyle and Oles, Esqs., by John Paul Doyle, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The respondent Township Committee of the Township of Brick (hereinafter Committee), adopted a resolution on December 19, 1972, granting a plenary retail consumption license to appellant, John J. Cavaliere, for vacant land located on Mantoloking Road, in the Township of Brick. The subject license was one of two licenses issued by the Committee by reason of their availability as ascertained by the 1970 census. The actual issuance of the license was conditioned upon the appellant constructing a restaurant and bar facility, in accordance with submitted plans, by December 31, 1974.

The Committee, by resolution dated June 29, 1973, renewed the license for the licensing year 1973-74 subject to the special condition that the building be completed by December 31, 1974.

The subject appeal challenges Committee's action which, by resolution dated June 18, 1974, denied appellant's application for the renewal of his 1974-75 license.

In his petition of appeal, appellant urges that the Committee's action was erroneous for the following stated reasons:

> "A. The termination of the period within which the structure was to be completed was arbitrary;

B. The imposition of the condition upon the renewal of the license for the period ending June 30, 1974 i.e., structure was to be completed on December 31, 1974, extended beyond the period of the license so to expire June 30, 1974; and, said condition was invalid.

C. The applicant has diligently pursued all necessary applications to permit construction of the building set forth in the original application, but due to the delays experienced at all levels of government, the necessary approvals have not been obtained.

D. Statutes, laws and rules and regulations by controling (sic) agencies pertaining to the premises were enacted subsequent to the initial issuance of the license to the appellant; were unforeseen at the time of said representation to the Council of the Township of Brick; in view of the delays which have been experienced and will be experienced, the condition of completion by December 31, 1974, has become unduly restrictive and a reasonable extension of time should be permitted to the applicant-appellant under the circumstances.

E. The Resolution attached hereto as Exhibit "B" refers to an alleged "statutory investigation" conducted by the municipality, and the appellant verily believes and alleges that no such investigation has ever been made, and contrary to the statute no copy thereof or charge for rejection, as required by the statute, were served upon the appellant.

F. The action in rejecting the said license by the Council of the Township of Brick was improper in that no formal objections either by the issuing authority or any citizen were filed in writing to the Clerk as required by the Notice of Application."

The Committee, in its answer, asserts that appellant had accepted the condition which provided that construction of the premises would be completed by December 31, 1974 and that, in any event, the time within which appellant could have appealed the imposition of the condition contained in the license for the year ending June 30, 1972 and for the year ending June 30, 1973 had expired. It also alleges that the said condition could not now possibly be met by the appellant.

It was stipulated that the applications and the plans and specifications were in proper order.

Appellant, John J. Cavaliere, testified that he was a part owner of Triarch Corporation which is vested with title to a large tract of undeveloped land, upon a small part of which, he proposed to construct a building to house the licensed premises.

Much of the land was lowland and required filling. Prior to December 1972, he had made application to the appropriate State agency and to the Army Corps of Engineers for dredging and land fill permits. Thereafter, in 1973, when the Wetlands Map was published showing that the tract upon which the proposed structure was to be built was in the wetlands area, he filed an application as required by the Wetlands Statute, on September 26, 1973, in order to meet the condition imposed by the Committee in the renewal of the 1973-74 license. He retained the services of an architect, an engineer and a biologist to assist in securing the required permits.

A hearing on the wetlands application was held on August 20, 1974. The State has ninety days from that date to render a decision.

A sewage treatment plant and a sewage collection system is being built by the Township. The system will not be completed in the area where he intends to build until the year 1976. Septic tanks are forbidden in the area. He is doubtful that he would be permitted to install a holding tank. In the meantime, if he could obtain a permit to construct the building after complying with the various requirements, he would be willing to complete the construction of the proposed building and not use it until he received requisite lawful authorizations.

On cross examination, the witness testified that he was aware that there were more applications filed for the licenses than were available. He conceded that, in addition to the State wetlands approval, he would also need site plan approval from the Township before he could obtain a building permit. He would also need a water and waste approval from the State in lieu of public sewer system, and a County site plan approval. He did not intend to prepare applications to obtain those approvals until he was certain of obtaining the wetlands approval. After obtaining all approvals, it would then take five months to construct the proposed building.

In behalf of the Committee, Robert J. Ballif, whose qualifications as a professional engineer, land surveyor and professional planner were admitted, testified that he has been employed as an engineer by the Township of Brick and by its Planning Board. He is familiar with the normal application requirements of both bodies, utilities authority and the county Planning Board. In addition, he must also meet State standards and obtain its approval.

To the witness' knowledge, appellant has not filed any applications other than the wetlands application. In instances where an application is awaiting State wetlands approval, the planning board would accept an application for site approval, and process that application to the point that if the wetlands approval was to be granted, the application for the site approval would then be ready for final action by the Planning Board, which meets twice monthly. The local Planning Board would also review an application pending before it while the County site plan approval was pending. Further, in order

to obtain local site plan approval, an application must set forth that an application has been made to the municipal utilities authority.

I

Appellant contends that the termination period within which the structure was to be completed was arbitrary. In its resolution, adopted on December 19, 1972, the Committee gave appellant until December 31, 1974 to construct the building to house the licensed premises, a period slightly in excess of two years.

I find this contention to be devoid of merit.

II

Appellant urged in his petition of appeal, that the imposition of the special condition upon the renewal of the license for the 1973-74 licensing period, i.e., that the structure must be completed on or before December 31, 1974, extended beyond the licensing period and was thus invalid.

Appellant quoted no legal authority in support of this contention. As a matter of fact, appellant did not complain or take a timely appeal from the imposition of this special condition when the license was renewed in June 1973 and it must be inferred that he acquiesced thereto. In any event, similar conditions imposed by local issuing authorities have been held to be valid. Passarella v. Board of Commissioners of Atlantic City, 1 N.J. Super. 313 (App. Div. 1949.)

Additionally, it appears that appellant has abandoned this contention. It is noted that if the Committee had limited the duration of the condition to a period of time co-extensive with licensing period, the appellant would have had until June 30, 1974 to complete his building instead of December 31, 1974. Thus, appellant's complaint with respect thereto is not made in good faith.

III

It is apparent that the Committee was greatly concerned with the delay encountered by appellant in the commencement of the construction of the proposed liquor facility, due to the problems caused by the nature of the situs of the proposed liquor facility, which would render it practically mandatory that appellant await the commencement of the construction until such time as a sewage collection system is completed in the area of the proposed location. In view of the fact, according to his testimony, the system would not be completed in that area until sometime in 1976; that appellant's estimate that the construction time for the proposed building would take at least five months; and that, even assuming that appellant received all permits including State Wetlands, municipal and County permits, it is quite apparent that the construction could not be completed prior to the latter part of the year 1976.

In its resolution denying the renewal of the license, the Committee set forth that appellant had not received the permits required from the State agencies to commence construction that appellant could not complete construction prior to December 31, 1974; and that it was no longer in the best interests to grant a renewal of license for premises that are vacamt.

The crucial issue in this appeal is whether the record substantiated and justified the Committee's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where the renewal of a license is sought, falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N. J. Super. 277, 287 (App. Div. 1957). As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (Sup. Ct. 1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. 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, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse."

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, supra.

In arriving at a determination herein, I observe that it is a fundamental principle that a municipal issuing authority should not be required to renew a license where there is little likelihood, if at all, that a building will be constructed within the licensing period, and where extensions have been granted therefore for the construction of a building and this has not eventuated. Cf. Fiory v. Ridgewood, Bulletin 1932, Item 1 and cases cited therein.

There is no persuasive evidence to indicate any improper motivation on the part of the Committee in its action, and there appears to be substantial evidence to support its determination herein. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970), reprinted in Bulletin 1905, Item 1:

"...Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

IV

In his petition of appeal, appellant alleges that the action of the Committee was procedurally improper.

I find the record barren of anything to support this contention.

In any event, appellant suffered no harm or prejudice since, at this de novo hearing, he was accorded full opportunity to present evidence and to cross examine witnesses. See Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943); Rule 6 of State Regulation No. 15.

I find from my examination and assessment of the total record herein that the Committee's determination was supported by substantial evidence and that it acted circumspectly in the public interest in its discretion to refuse to renew appellant's license for the current license period. Further, I conclude that appellant has not established that the action of the Committee was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the Committee's action be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

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

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

Accordingly, it is, on this 8th day of January 1975,

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

ORDERED that the order dated July 17, 1974, extending the term of appellant's 1974-75 license pending determination of the appeal be and the same is hereby vacated, effective immediately.

LEONARD D. RONCO
DIRECTOR

2. APPELLATE DECISIONS - JOLOF, INC. v. BRADLEY BEACH.

Jolof, Inc., t/a Joe's Bar & Grill,	)	
	)	On Appeal
Appellant,	)	CONCLUSIONS AND
v.	)	ORDER
Board of Commissioners of the Borough of Bradley Beach,	)	
	)	
Respondent.	)	

Benjamin J. Lipetz, Esq., Attorney for Appellant
Keith and Winters, Esqs., by Nestor A. Winters, Esq., Attorneys for Respondent

BY THE DIRECTOR:

Licensee was found guilty by the municipal issuing authority on November 6, 1974 of permitting the licensed premises to be operated in such a manner as to become a nuisance during the prior license year. In consequence thereof, the license was suspended for thirty days, effective November 13, 1974.

Upon the filing of an appeal to this Division, the effective date of said suspension was stayed, pending the determination of the appeal, by my Order of November 11, 1974. Thereafter, the licensee requested that the appeal be dismissed and made application for the imposition of a fine in compromise, in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Upon notice to it of such application, the municipal issuing authority registered its objection to the imposition of a fine on grounds that the licensee had been guilty of a continuous nuisance and that the penalty imposed was considered to be an abatement of such nuisance.

Having carefully considered the application in question and the objections thereto, I have determined in the exercise of my discretion, that an acceptance of an offer in compromise by the licensee to pay a fine of $1,500.00 should not be interpreted as a diminution of the suspension, but, rather as sufficiently substantial to hopefully serve a deterrent for further violations by the licensee.

Furthermore, the licensee is pointedly warned that future violations of the Alcoholic Beverage Law and the Rules and Regulations of this Division may well result in substantial suspension or revocation of the said license.

Accordingly, it is, on this 10th day of January 1975,

ORDERED that the payment of a fine of $1,500.00 by the licensee is hereby accepted in lieu of the suspension of license for thirty (30) days.

Leonard D. Ronco
Director

3. APPELLATE DECISIONS - HELEN'S HIDEAWAY, INC. v. HAWTHORNE.

Helen's Hideaway, Inc., Appellant, v. Board of Commissioners of the Borough of Hawthorne, Respondent.	)	On Appeal CONCLUSIONS AND ORDER

Iannaccone, Rapkin, Chessin & Carrion, Esqs., by Ramon Carrion, Esq., Attorneys for Appellant
Evans, Hand, Allabough & Amoresano, Esqs., by Douglas C. Borchard, Jr., 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 Board of Commissioners of the Borough of Hawthorne (Board) which suspended appellant's plenary retail consumption license for twenty-five days, effective May 1, 1974, upon finding appellant guilty of a charge that on June 19, 1973 it sold, served, delivered and allowed the consumption of an alcoholic beverage to a minor, Theodore T---, age 17, in violation of Rule 1 of State Regulation No. 20.

In its petition of appeal, appellant alleges that the Board's action was erroneous in that the finding of guilt was not supported by the weight of the evidence; and that Rule 1 of State Regulation No. 20 is unconstitutional because it is too vague.

The Board, in its answer, defended that the evidence was sufficient to justify the factual findings made by the Board.

Upon filing of the appeal, the Director, by order dated May 1, 1974, stayed the Board's order of suspension pending the determination of this appeal.

The appeal herein was based upon the transcript of the proceedings held by the Board supplemented by additional testimony adduced at the subject appeal, in accordance with Rules 6 and 8 of State Regulation No. 15.

At the hearing held by the Board, Theodore testified that he was born on May 12, 1956, and was 17 years of age on June 19, 1973, the date alleged in the charge. On that day, at approximately noontime, he was cleaning out his locker at a school which he attended, and met William Fleming, a teacher at the school. Both he and Fleming proceeded to the appellant's licensed premises for lunch.

He sat at the corner seat at the left side of the bar, had a beer and conversed with Fleming. Each of them ordered and consumed a beer. There were approximately eight patrons in the barroom. They were then each served a second beer. Fleming paid for the first beer, Theodore paid for the second. Theodore consumed both beers and a sandwich. He was not requested to furnish proof of age or sign a written representation with respect to his age.

Despite an intensive cross examination, the youth maintained that he ordered and consumed two beers while at the bar. He denied that he ordered or drank a coke. He and Fleming departed from the licensed premises together.

In defense of the charge, John Wohlrab, a principal officer of the corporate appellant, testified that he recalled Fleming and a male whom Fleming introduced as "Ted" entering the premises on May 19, 1973 at approximately 2:00 p.m. His helper had left at approximately 1:30 p.m. and he alone was tending bar and taking care of the kitchen. He could recall only one other patron in the barroom at that time.

Fleming ordered a glass of beer for himself and a coke for Ted. He wouldn't have served Ted a beer because he felt that Ted was below the minimum statutory age. Fleming remained at the bar; Ted proceeded to the pool table and played pool by himself. Ted placed the coke on a table adjacent to the bar. They then ordered a hamburger each and Fleming ordered a beer for himself and a coke for Ted. They then engaged in a game of pool. While thus engaged, Fleming consumed his food and drink from the bar. Ted consumed his food and drink from the table. Fleming paid for everything ordered. At no time did he see Ted drink any of his (Fleming's) beer.

Wohlrab explained that his helper comes in at 11:30 a.m. and works until 1:30 or 2:00 p.m. depending upon the volume of business. The helper tends bar exclusively; he works in the

kitchen and goes to the bar only to bring the food thereto. He caters to certain individuals who work in the area and patronize the licensed premises regularly at lunch time.

He could not state with certainty that the Theodore who testified in this proceeding was the same individual who accompanied Fleming on the date in question.

On being recalled as a witness, Theodore reiterated that he was cleaning out his locker at 11:30 a.m. when Fleming took him to appellant's premises. It was examination time, he had nothing scheduled for the rest of the day. Fleming had to report back in the afternoon and he (Fleming) dropped him off at the school after patronizing the licensed premises. Fleming suggested to Theodore not to divulge that they had visited the licensed premises.

Finally, the witness asserted that, although he recalled Wohlrab was present in the barroom, he was actually served by some other individual who was tending bar at that time.

At the de novo Hearing, William Fleming testified that he was a teacher of the high school at which Theodore was a student and that he was acquainted with Theodore.

On May 19, 1973 at approximately 11:45 a.m. he saw Theodore at the school parking lot and invited Theodore to lunch. They drove to appellant's licensed premises which is an approximate five minute drive from the school.

Arriving at the licensed premises, Fleming ordered a mug of beer and a hamburger. The minor ordered a mug of coke and a hamburger. Fleming then ordered another mug of beer and Theodore ordered another coke. He denied ordering beer for Theodore. Theodore went off to play pool. Theodore brought his coke near the pool table, while Fleming remained at the bar. He neither heard Theodore order beer or observed him drink beer. They remained in appellant's premises approximately forty-five minutes to an hour and returned to school together.

On cross examination, the witness testified that there were "a few people there, some painters in old clothes". Wohlrab was tending bar, someone else was working in the kitchen. He did not observe the individual who was working in the kitchen leave the premises.

The witness conceded that he had appeared before the State Department of Education in defense of a charge that he had participated in securing alcoholic beverages for a minor at the appellant's premises. At that proceeding which was

held prior to the time that he had any knowledge of our ABC proceeding against the licensee his testimony was substantially the same as the testimony he has now offered in the present ABC proceeding.

I

Appellant argues that the Rule under which it was found guilty is unconstitutional and void. I find this contention to be totally without merit.

A challenge to the constitutionality of a statute or rule can only be adjudicated by a court of competent jurisdiction, since statutes are presumed to be valid on their face. Cf. Klein and Tucker v. Fairlawn and Schweder, Bulletin 1175, Item 3; Blanck v. Magnolia, 73 N.J. Super. 306. (App. Div. 1962), reversed on other grounds, 38 N.J. 484 (1962). The Director is not empowered to disregard or repeal a statute or a rule. As hereinabove stated, such authority is vested in a court of plenary jurisdiction. Cf. Blank v. Magnolia, supra; Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940).

II

In determining this matter on the merits I observe, preliminarily, that we are dealing with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12. N.J. Super, 449 (App. Div. 1951). Thus the proof must be supported only by a preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

It is firmly settled that the Director's function on appeal, is not to reverse the determination of the municipal issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1; Monteiro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion rests with appellant. Rule 6 of State Regulation No. 15. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: Could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Cf. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502

(E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App. Div. 1957); Lyons Farms Tavern v. Mun. Bd. of Alc. 55 N.J. 292 (Sup. Ct. 1970).

Since there was a sharp conflict in the testimony adduced before the board, it became the duty of the Board to evaluate the testimony, after observing the demeanor of the witnesses, assessing the interest of each witness to the outcome of the proceeding, and giving weight to such testimony as it found credible. It is apparent that the Board found the testimony of the witness called by the Board to be believable in the circumstances and not improperly motivated. I concur in that view.

On the other hand, I find glaring inconsistencies in the respective accounts of the circumstances surrounding the subject charge as given by the two witnesses who testified in behalf of the appellant.

Their accounts differed in so far as the time of entry into licensed premises, as to who was tending bar, as to who was in the kitchen at that time, and also relative to the size of the patronage during the time that Fleming and the minor patronized the licensed premises.

I find that the charge herein was proved by a fair preponderance of this credible evidence. I, therefore, find that appellant has failed to meet its burden of establishing that the action of respondent herein was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be affirmed, the appeal be dismissed, and that the suspension heretofore imposed by the Board and stayed by the Director pending this appeal be reimposed.

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 conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 10th day of January 1975,

ORDERED that the action of the respondent Board in finding appellant guilty of the charge herein be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated May 1, 1974, staying the Board's action, pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the Borough of Hawthorne to Helen's Hideaway, Inc., t/a Helen's Hideaway, for premises 36 Pasadena Place, Hawthorne, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. on Thursday, January 23, 1975, and terminating at 3:00 a.m. on Monday, February 17, 1975.

LEONARD D. RONCO
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against	:	
Adeline Fernandes and Ernesto Fernandes t/a E.P.C. Club 257-263 Third Street Elizabeth, N.J.,	:	
Holder of Plenary Retail Consumption License C-20, issued by the City Council of the City of Elizabeth.	:	SUPPLEMENTAL ORDER
Transferred to	:	
Adeline Fernandes t/a E.P.C. Club Same address	:	

Forman, Forman & Cardonsky, Esqs., by Louis L. Forman, Esq., Attorneys for Licensees
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

On May 14, 1974 Conclusions and Order were entered in the above matter suspending the subject license for ninety days, after the licensees were found guilty of a charge alleging that on December 8, 1973 they permitted immoral activity, i.e., solicitation for prostitution on the licensed premises, in violation of Rule 5 of State Regulation No. 20. Re Fernandes, Bulletin 2151, Item 4.

Prior to the effectuation of the said Order of suspension, on appeal filed, the Appellate Division of the Superior Court temporarily stayed the operation of the said suspension pending the determination of the said appeal.

On December 16, 1974 the Appellate Division of the Superior Court entered an order affirming the action of the then Acting Director. Re Adeline Fernandes and Ernesto Fernandes, t/a E.P.C. Club v. Division of Alcoholic Beverage Control (App. Div. 1973), Docket A-2494-73, not officially reported, recorded in Bulletin 2174 Item 3. The suspension may now be reimposed.

Ernesto Fernandes, the co-licensee, died during the pendency of these proceedings, and the license was transferred to and is presently held by the surviving co-licensee, Adeline Fernandes.

Accordingly, it is, on this 9th day of January 1975,

ORDERED that Plenary Retail Consumption License C-20, issued by the City Council of the City of Elizabeth to Adeline Fernandes, t/a E.P.C. Club, for premises 257-263 Third Street, elizabeth, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. on Wednesday, January 22, 1975 and terminating at 2:00 a.m. on Tuesday, April 22, 1975.

Leonard D. Ronco
Director