STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2022 January 10, 1972

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 2022 January 10, 1972

1. COURT DECISIONS - THE CHATEAU CORPORATION v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-365-70

In the Matter of Disciplinary
Proceedings against

THE CHATEAU CORPORATION,
t/a THE CHALET
120 West Passaic Street
Rochelle Park, New Jersey.

Holder of Plenary Retail Consumption
License C-1, issued by the Township
Committee of the Township of
Rochelle Park,

THE CHATEAU CORPORATION
t/a THE CHALET,

Appellant

v.

THE DIRECTOR OF THE DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,

Respondent.

Argued December 6, 1971 - Decided December 17, 1971

Before Judges Sullivan, Leonard and Carton.

On appeal from the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control.

Mr. Murray A. Laiks argued the cause for appellant (Mr. David Waldman, on the brief; Messrs. Heller & Laiks, attorneys).

Mr. Sherman T. Brewer, Jr., Deputy Attorney General, argued the cause for respondent (Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. George F. Kugler, Jr., Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from decision in Re Chateau Corporation v. Division of Alcoholic Beverage Control, Bulletin 1943, Item 8, Director affirmed. Opinion not approved for publication by Court Committee on Opinions.)

2. NOTICE TO LICENSEES - AMENDED WHOLESALE AND MINIMUM CONSUMER RESALE PRICES PURSUANT TO FEDERAL 10% SURCHARGE TAX ON IMPORTS.

TO ALL LICENSEES:

On August 20, 1971, I issued a directive in which I found that an emergency then existed by reason of the imposition by President Nixon's Executive Order of August 15, 1971, of a 10% surcharge tax on all imported alcoholic beverages, effective August 16, 1971. I therefore authorized the filing of amended wholesale and minimum consumer resale prices for all imported alcoholic beverages, effective September 1, 1971 and until further notice, to reflect the exact amount of such surcharge, without any markup or other additional charge. These surcharge amounts have since been listed in each Division Minimum Consumer Resale Price pamphlet under a separate column captioned "Surcharge" and have also been applicable to the wholesale prices of imported alcoholic beverage items so listed.

On December 20, 1971, President Nixon terminated the surcharge, effective immediately. Under the circumstances, I find that another emergency now exists with respect to the administration of State Regulations No. 30 and 34 by reason of such action.

Accordingly, I hereby rule that, effective December 21, 1971, all wholesale-to-retail price filings are hereby amended, and, effective January 1, 1972, all minimum consumer resale prices are hereby amended, to delete the amount of the surcharge in effect on imported alcoholic beverages. Wholesale licensees have heretofore been advised of this change.

It is expected that by January 1, 1972 the appropriate licensees will have depleted most, if not all, of their existing inventory of imported alcoholic beverages upon which the surcharge has been paid. Until January 1, 1972, retail sales to consumers must include the surcharge amount as currently filed with the Division. On and after said date, the amounts listed in the Minimum Consumer Resale Price Pamphlet for the First Quarter of 1972 under the "Surcharge" column should be disregarded.

In order to avoid chaotic conditions that would result from mass returns by retailers of imported alcoholic beverages purchased from wholesalers prior to December 21, 1971, I hereby rule that no such returns shall be made between December 21 and 31, 1971. Returns of imported alcoholic beverages purchased by retailers between December 9 and 20, 1971, inclusive, may, however, be accepted by wholesalers between January 1 and 12, 1972, inclusive without individual Division prior approval, notwithstanding the provisions of Rule 12 of State Regulation No. 34 to the contrary. Credit for such returns shall be based upon the wholesaler-to-retail price in effect on the date of delivery to the retailer, less the surcharge.

No general waiver of any of the provisions of State Regulation No. 39 concerning the Division Default List will be made by reason of the above moratorium on returns. However, special extreme hardship situations arising solely by reason of the moratorium may be the subject of individual petitions to this office for special relief from said default provision.

I have taken the action provided herein in order to achieve the most equitable solution to a difficult situation. No procedures could be individually applied to existing surcharge--paid inventories of licensees without resulting in varying prices for the same merchandise at frequent intervals, contrary to our State price control system's attempt to maintain price stability in the industry. Taking into consideration the fact that some licensees benefitted price-wise with respect to inventories held at the time of the September 1, 1971 price increase, the current price action may be deemed an equalization of the effect of prior inventory appreciations.

I request the whole-hearted cooperation of all licensees to accomplish the trasitional changes effected herein.

Richard C. McDonough
Director

Dated: December 28, 1971

3. NOTICE TO RETAIL CONSUMPTION LICENSEES - UNDERPROOF ALCOHOLIC BEVERAGES CAUSED BY EVAPORATION - NEW POLICY.

NOTICE TO ALL RETAIL CONSUMPTION LICENSEES:

Recent Division investigations have disclosed an increasing number of violations by retail consumption licensees by reason of the fact that they have possessed bottles containing alcoholic beverages which are underproof due to evaporation. Heretofore, these cases have resulted in the sending of Division letters warning them that any future similar violations would result in disciplinary proceedings to suspend or revoke their licenses.

However, due to the fact that these warning letters apparently have not constituted a sufficient deterrent against the commission of this type of violation, I have decided to impose fines in lieu of such letters in these types of cases. Since the public is being cheated when they purchase underproof drinks of alcoholic beverages, even though this is caused by mere evaporation, more stringent action is required to put an end to the careless practice of licensees permitting open bottles of alcoholic beverages to remain on their licensed premises for undue periods of time. Of course, "refill" cases other than those due to evaporation will continue to be the subject of disciplinary proceedings directed towards license suspension or revocation.

The new policy of fines instead of mere warning letters will be instituted immediately. All retail consumption licensees therefore would be well advised to examine their open stocks of alcoholic beverages to insure that none of them is underproof.

Dated: December 28, 1971 Richard C. McDonough
Director

4. NOTICE TO PRICE FILERS - AMENDED PRICE LISTINGS REQUIRED DUE TO RECENT INTERNATIONAL CURRENCY RE-EVALUATION.

TO ALL DIVISION PRICE FILERS:

Due to the recent international revaluation of many currencies, there has been an increase in the price of many imported alcoholic beverages effective within the past week. This means that importers and wholesalers selling imported alcoholic beverages in this State are now paying a substantially higher price for such products, without receiving commensurate increases upon resale of these products to retailers.

Under the circumstances I find that such situation is deemed adequate cause to require the filing of amended prices of imported alcoholic beverages only, to become effective February 1, 1972. In view of the fact that the subject of devaluation of the American dollar is to be presented to Congress and in view of the current uncertainty of the international monetary market, the proposed amended price filings will be accepted subject to change, cancellation or deferral depending upon the occurrence of these future events.

The amended price filings will apply to wholesaler to wholesaler, wholesale to retailer and minimum consumer resale prices, on multiple, private label and exclusive brands as follows:

WHOLESALE TO WHOLESALE PRICE AMENDMENTS

All amended price filings must be in this office on or before 4:00 P.M. Thursday, January 6, 1972 and should be listed in the usual manner on the enclosed price filing forms. All filers must notify each wholesaler to whom they intend to sell such alcoholic beverages of the price amendment ON OR BEFORE JANUARY 6, 1972 and certification of such notice must be made on the above mentioned price filing forms.

WHOLESALE TO RETAIL PRICE AMENDMENTS

All amended price filings must be in this office on or before Monday, January 10, 1972. In order to facilitate processing of the amended prices, filers must utilize tear sheets of the wholesale price pamphlet to become effective the first quarter of 1972. Failure to utilize these tear sheets may result in delay and possible omissions of filed price amendments. Please note also that due to time limitation, no inspection period will be provided for these price amendments.

MINIMUM CONSUMER RESALE PRICE AMENDMENTS

All amended price filings must be in this office on or before Monday, January 10, 1972. In order to facilitate processing of the amended prices, filers must utilize tear sheets of the minimum resale price pamphlet to become effective the first quarter of 1972, except of course with respect to private label and exclusive brands, whose prices should be filed in the usual manner on cards. Failure to utilize these tear sheets may result in delay and possible omissions of filed price amendments.

All filers should specifically note that only amendments of the prices of imported alcoholic beverages will be accepted under this ruling and no new item filings may be included. It is expected that a supplemental wholesale price pamphlet and a supplemental minimum consumer resale price pamphlet will be published by this Division and mailed to all licensees prior to February 1, 1972, subject to the proviso hereinabove stated with respect to possible Congressional or other governmental action.

The cooperation of all filers and licensees is requested in connection with the timely and proper filing of the authorized price amendments in order that these matters may be accomplished in an orderly fashion.

Dated: December 30, 1971

Richard C. McDonough
Director

5. NOTICE TO STATE LICENSEES - POLICY CHANGE - EMERGENCY TRANSPORTATION PERMITS.

TO STATE LICENSEES:

Under authority of R.S. 33:1-74, it has been customary for the Division to issue emergency transportation permits to allow licensees the privilege of transporting alcoholic beverages in vehicles not previously licensed but required in emergencies.

To obtain such emergency transportation permit the licensee is required to file an application with appropriate fee at the Division office subsequent to which the permit is issued and either picked up by, or mailed to the applicant.

In recent months, I have been asked, by State Licensees, to devise some remedial plan that may eliminate the inconvenience and delay in obtaining such type of permits inasmuch as licensees are not aware of their need until such time as the actual emergency arises.

Taking cognizance of the undue hardship ofttimes placed upon licensees, I have authorized members of my staff to adopt the following change in policy.

State licensees may request any number of transit insignia without filing the application form for such insignia. The usual fee of ten dollars for each insignia will be submitted with the request. Blank application forms for transit insignia and the actual insignia will be forwarded to the applicant licensee. When the need for an additional vehicle arises, one of the insignia may be affixed to the vehicle and an application form will be executed in full and forwarded to this Division immediately. Such insignia, applied for in advance, may be used only on commercial vehicles even though commercial fee may have been paid as registration fee for license plates on passenger vehicles.

When a vehicle, to which one of the above referred to insignia has been affixed, is no longer required in an emergency the insignia must be destroyed and the Division so notified. It may not be left intact on the vehicle when the vehicle is no longer under control of the licensee.

No refund will be made on unused insignia purchased by a licensee under the above plan. On the date of expiration of unused insignia (April 30th each year) all unused insignia must be destroyed.

Dated: December 23, 1971

Richard C. McDonough
Director

6. APPELLATE DECISIONS - ESTORIL LOUNGE, INC. v. NEWARK.

Estoril Lounge, Inc.,)
Appellant,)
v.)
Municipal Board of Alcoholic Beverage Control of the City of Newark,)
Respondent.)

On Appeal

CONCLUSIONS and ORDER

Martin Gelber, Esq., Attorney for Appellant
William H. Walls, Esq., by Matthew J. Scola, 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 Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) whereby it suspended the plenary retail consumption license issued to appellant for premises 87 Madison Street, Newark, for sixty days effective October 18, 1971, after finding appellant guilty of a charge alleging that on January 17, 1971 it permitted immoral activity within the licensed premises, in violation of Rule 4 of State Regulation No. 20.

Appellant alleges that the action of the Board was erroneous in that its action was against the weight of the evidence, was arbitrary and discriminatory. The Board denied these allegations and defended that the evidence substantiated its findings.

Upon filing of this appeal the Director entered an order staying the effective date of the suspension imposed pending the determination of the appeal.

The appeal herein was presented de novo pursuant to Rule 6 of State Regulation No. 15 and was based solely upon the transcript of testimony presented at the hearing before the Board pursuant to Rule 8 of State Regulation No. 15.

The transcript of the hearing below, admitted into evidence by the aforesaid stipulation, sets forth that on September 15, 1971 the Board heard testimony elicited in the matter and on September 22, 1971, by a two-to-one vote, found appellant guilty of the charge; on September 29, 1971 it suspended appellant's license for sixty days.

The transcript reveals that Detective David Toma of the Newark Police Department visited the licensed premises of appellant on January 17, 1971, where he found "several people, males and females, sitting at the bar. I saw a female sitting at the bar, and one male walked up to the female and whispered something in her ear. She in turn whispered something in his ear. At this time she got up and she was putting her coat on, she said to this male, 'You go ahead, I will follow you.' This male spoke to three other men, and they walked outside. Right in front of the bar they spoke for a minute or two and they walked away. This girl was right behind them. She was always a block or so behind them...."

He further testified that he followed the three men and the girl to an apartment building a short distance away. After waiting ten or fifteen minutes, he entered the apartment through a ruse and found one of the men undressed under bed covers and the woman, now nude, hiding in a closet. The other men were in the kitchen.

The woman was arrested for soliciting.

In response to the question, "When you observed her whisper into the ears of the male and spoke to them, would that be in the presence of the bartender, or, was there a bartender in the vicinity", the witness responded, "I would say the bar was a little crowded. I could not say the bartender was standing there or not. I am not sure of that."

John Ruela testified on behalf of appellant that he is the bartender in appellant's premises and that he was engaged in that capacity therein on January 17, 1971. He recollected nothing unusual happening on that date. He could not recall the officer being present on that date nor the incident as testified to by the officer.

The principal stockholder of appellant corporation (Armor Moraes) testified that he was not present on January 17, 1971. He asserted that he does not allow prostitutes to frequent the establishment and, to his knowledge, there have been no complaints for such. His testimony did not reveal if he had been advised by the detective of the incident shortly after its occurrence or when he was first noticed of the charge.

A specific statement of the charge did not accompany the petition of appeal, the answer nor the transcript. Even the findings of the Board did not delineate or detail the charge on which its determination was based. In the petition of appeal there was reference to a violation of Rule 4 of State Regulation No. 20. Among others, this rule relates to prostitutes or any illegal activity carried on in licensed premises which results in conviction in criminal prosecution. The answer recites that appellant permitted lewdness and immoral activity in the licensed premises. Rule 5 of State Regulation No. 20 relates to lewdness.

As specification of the charge was not furnished, the quantum of evidence must be tested against both rules in order to examine the Board's determination. It must be assumed that the Board predicated its findings on the alleged immoral activity, there being no affirmative evidence offered in substantiation of a charge that appellant allowed, permitted or suffered a prostitute on its licensed premises. Whatever the charge, the findings of the Board were of necessity predicated upon the evidence adduced before it.

Capsulating that evidence we find that a detective was in the licensed premises, he watched while a female had a conversation with a man, which conversation was whispered and inaudible to him. Following this, the man spoke to others, all of whom left the bar followed by the female. There was no testimony other than this description as to what occurred in the premises. There was no testimony that the female solicited the men, as would a prostitute. There was no testimony that the female did anything in the licensed premises that was lewd or immoral.

Following the female and the three men to an apartment, the detective found the female, nude, in a closet and "We had of course made the arrest of soliciting ...." There was no proof offered whatever to indicate if the arrest led to conviction or if the arrest was predicated upon solicitation within the licensed premises. There was no proof that the female engaged in any immoral act or received compensation for an act about to be performed. The only immoral act testified to, if indeed it was an immoral act, was the female being nude in the closet. There was no proof that the man in the bed was not her husband nor was there proof that an immoral act was anticipated.

A charge must be established by affirmatively satisfactory evidence. A guilty finding may not be based upon mere suspicion, no matter how reasonably inferable such suspicion may be. Re Doyle, Bulletin 469, Item 2; Weiss v. Newark, Bulletin 164, Item 8; Re Silidker, Bulletin 405, Item 5. The then Director in Re Silidker, supra, cited Re Kaas, Bulletin 239, Item 1, as follows:

> "'Unless the offense can be tied in and brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club. The mere presence of a prostitute or other person of ill repute on licensed premises does not make out a case.'"

In the absence of any affirmative proof showing illegal activity by the female or her male companions, it appears quite unnecessary to make inquiry respecting the knowledge or participation, if any, that the agents of the licensee may have had in the activities of the female above described. There was no affirmative evidence to show that the licensee or its agents knew if the female was a prostitute (if in fact she was) or that she was engaged in any illegal activity. While the truth of a charge in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt (Atkinson v. Parsekian, 37 N.J. 143 (1962)), the question in every case is whether a reasonable man, acting reasonably, could have reached the administrative agency decision under review from the evidence found in the entire record, including inferences to be drawn therefrom. Cooley's etc. v. Legalized Games etc., 78 N.J. Super. 128 (App.Div. 1963).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947); G.E.L.L., Inc. v. Newark, Bulletin 1911, Item 1.

In view of the absence of proofs of the occurrence of any illegal conduct within the licensed premises or engendered within the licensed premises with the knowledge or acquiescence of the licensee or its agents, it appears clear that the appellant has sustained its burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is therefore recommended that the action of the Board be reversed and the charge 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 herein, including the transcript of testimony, the exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3rd day of December 1971,

ORDERED that the action of respondent be and the same is hereby reversed and the charge be and the same is hereby dismissed.

Richard C. McDonough,
Director.

7. APPELLATE DECISIONS - WREDE v. RIDGEFIELD PARK.

Herbert Wrede, Appellant, v. Board of Commissioners of the Village of Ridgefield Park, Respondent.	On Appeal CONCLUSIONS and ORDER

Kenith D. Bloom, Esq., Attorney for Appellant
Browne, Buckalew & DeMarrais, Esqs., by Michael DeMarrais, Esq., Attorneys for Respondent Ridgefield Park
Chandless, Weller & Kramer, Esqs., by Ralph W. Chandless, Esq., Attorneys for Respondent Gigante
Goodman, Stoldt & Breslin, Esqs., by Sidney V. Stoldt, Jr., Esq., Attorneys for Respondent Ridge Park

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Village of Ridgefield Park (hereinafter Village) which granted the application of respondent Ridge Park Operating Corporation (hereinafter Ridge Park) for a person-to-person and place-to-place transfer to it of plenary retail consumption license held by respondent John Gigante (hereinafter Gigante) and from premises at 205 Bergen Pike to a motel operated by Ridge Park on U.S. Route 46 in said Village.

On April 13, 1971, the Village by unanimous vote adopted a resolution approving such transfer which limited the licensed premises to three connected buildings containing motel rooms and a proposed cocktail lounge to be constructed in accordance with plans furnished; the licensed premises were not to include an existing gatehouse nor existing restaurant; exterior advertising signs were prohibited.

While the appeal was directed to the action of the Village approving the transfer, the petition of appeal projected grounds for appeal revolving about a lengthy history of difficulties among the appellant, the Village and Gigante, the major thrust of the appeal was that the action of the Village was erroneous. Both the Village and Ridge Park denied that the action of the Village was improper.

There being no transcript of the meeting of the Village, a hearing was held de novo in accordance with Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to present evidence and cross-examine witnesses.

Appellant produced a parade of witnesses consisting of, among others, the Village Clerk, the Mayor and the members of the local issuing authority.

Harold J. Jones, Village Clerk, produced the adopted resolution granting the transfer and indicated that its adoption at a public meeting was preceded by caucus meetings of members of the Board, at which he was not present.

Testimony of Mayor Gilbert A. Gibbs, Commissioners Eugene McIntyre, Benito R. De Luca and Louis P. Perna is contractable, as follows:

Ridge Park operates a Howard Johnson motel in the Village and applied for transfer of Gigante's license to it, which license was to embrace a gatehouse at the motel. Reports from the Police and Fire Departments revealed that the motel was properly operated. The inclusion of the gatehouse was objectionable to the Board. A sketch of the buildings (exhibit A-8) was offered by Ridge Park and it proposed the location of the license to include the motel units and in an extension connecting two wings of the motel instead of being in the gatehouse, as initially proposed. That location was approved with limitations. Alcoholic beverages could not be served in the restaurant within the motel grounds; a new fire alarm system would have to be installed and there would not be any outside advertising signs permitted.

With these restrictions, the transfer was approved. The Mayor and each commissioner declared that the issuance of this license would be in the best interests of the residents of their community and would be of service to the motoring public.

Issue was made of a prior rejection in 1968 of an application by Howard Johnson Motor Lodge for a license to embrace the same premises. Mayor Gibbs testified that there were differences in conditions applicable when the 1968 application was received; the traffic situation has since changed, and the granting of the prior application would have resulted in an increase in the total number of licenses in the Village, a situation not desired by the Board and obviated by the present transfer.

Appellant Herbert Wrede testified that he is in an automobile specialty business, selling cars and manufacturing special cars. He lived in the Village for many years but now resides elsewhere. His principal objection to the action of the Village was that he never received official notification of denial of his application for transfer of Gigante's license.

A local issuing authority possesses wide discretion in the transfer of a liquor license, subject to review by this Division in the event of abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). The action of municipal issuing authorities may not be reversed by the Director unless he finds the act to have been clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et als., 135 N.J.L. 502 (1947). With these principles as the test, it is apparent in this matter that the Village made a clear and unanimous determination that the transfer to the respondent Ridge Park, would be in the best interests of the community.

Further, it is clear that the application of Ridge Park and the proposals attendant upon it were weighed. Requirements that would bring full benefit to the public were set forth as conditions upon which the application would be approved. The placing of the license in the "gatehouse" on the premises was considered too near the highway; the applicant was required to place the licensed premises in a juncture between two motel buildings. The license could not embrace the existing restaurant; an alarm system had to be installed and Ridge Park was not permitted exterior signs to encourage business.

Apparently Ridge Park considered these limitations to be reasonable for no objection was raised to their imposition. "The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual." Kelley v. Manalapan, Bulletin 531, Item 3. The test in granting or withholding a transfer by an issuing authority is public good, not the benefit or detriment to a licensee. Fanwood v. Rocco, 33 N.J. 404 (1960).

Appellant had once attempted to obtain approval of the Village on his application for a transfer of the Gigante license. That attempt being abortive, the attorney for the Village returned appellant's funds posted as an application fee to him by letter dated January 19, 1971.

At the hearing before this Division, it was initially ruled that the letter of the Village attorney was an act of the Village; and if the appellant desired to appeal that act such an appeal must be filed before the elapse of the thirty-day period set forth in the statute (N.J.S.A. 33:1-38), and in the regulations of this Division (Rule 3 of State Regulation No. 15).

Thus, appellant's appeal respecting his application was untimely and is not a proper subject of this appeal. Hess Oil & Chem. Corp. v. Doremus Sports Club, 80 N.J. Super. 393 (1963); Scrudato v. Mascot S. & L. Assn., 50 N.J. Super. 264 (App. Div. 1958). Since it was untimely the Director lacks jurisdiction to entertain said appeal.

Therefore, after considering all of the evidence herein, including the transcript of the testimony, the exhibits and the briefs of counsel, it is concluded that appellant has failed to sustain the burden of establishing that the action of the Village was erroneous, or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15.

It is accordingly recommended that an order be entered affirming the action of the Village, and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant and an answer to said exceptions verified by the attorney for respondent, pursuant to Rule 14 of State Regulation No. 15.

Appellant's principal exception relates to the determination by the Hearer to exclude evidence prior to the date of a letter sent by counsel for respondent Village to appellant on January 19, 1971, which letter he found to be dispositive of the rejection by the Village of appellant's application for transfer of license. Appellant contends that such letter was not an official termination of municipal interest in and action on the application.

A review of the voluminous correspondence among counsel for the parties, copies of which were attached to the pleadings, revealed a letter dated January 20, 1971 to counsel for the municipality from appellant's counsel, which in part contained the following:

> "It is apparent to me, therefore, that the town has chosen to ignore our application for the transfer of a liquor license...."

Appellant thereby accepted the finality of the municipal action. The Hearer properly did likewise.

The contention that the time of appeal by appellant had not then begun is patently frivolous in view of counsel's then acceptance of that action. He now wishes this Division to overrule his own conclusion and thus avoid the statutory limit for the filing of appeals to this Division. Hess Oil & Chem. Corp. v. Doremus Sports Club, 80 N.J. Super. 393 (1963); Rule 3 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcripts of the testimony, the Hearer's report, the exceptions filed with respect thereto, and the answer to the said exceptions, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of December 1971,

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

Richard C. McDonough,
Director.

8. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PREMISES - ALCOHOLIC BEVERAGES, PERSONAL PROPERTY and CASH ORDERED FORFEITED.

In the Matter of the Seizure on June 5, 1970 of a quantity of alcoholic beverages, one pool table, one cigarette machine, two nut vending machines and miscellaneous personal property in a cinder block building at R.D. 1, Pedricktown Road, Pedricktown, Oldmans Township, County of Salem and State of New Jersey.	Case No. 12,335 On Hearing CONCLUSIONS and ORDER

Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

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 180 containers of alcoholic beverages, one pool table, one cigarette machine, two nut vending machines and miscellaneous personal property as set forth in a schedule attached hereto, made a part hereof and marked Schedule "A", seized on June 5, 1970 in a cinder block building at R.D. 1 Pedricktown Road, Pedricktown, Oldmans Township, County of Salem and State of New Jersey constitute unlawful property and should be forfeited, and, further, to determine whether the sum of $20.00 (Twenty dollars), deposited under protest with the Director on June 24, 1970 by James Mayes, representing the retail value of two nut vending machines retained by Mayes, shall be forfeited or returned to him. The statutory period in which Mayes may seek return of the monies deposted as provided by N.J.S.A. 33:1-66, Rule 2(c) of State Regulation No. 28, having expired, this hearing proceeded pursuant to N.J.S.A. 33:1-66 and Rule 1 of State Regulation No. 28.

On the date of hearing, no one appeared to seek return of the seized property or the monies deposited with the Director as aforesaid.

The records of the Division establish that on the morning of June 5, 1970 Agents G, D and B and members of the New Jersey State Police proceeded to the premises herein after a State Police officer had purchased a can of beer therein for thirty-five cents. The owner and operator of the premises was determined to be Jose Luis Ortiz, Pedricktown, N.J.

Ortiz was arrested and charged with the sale of alcoholic beverages without a license and possession of alcoholic beverages with intent to sell without a license in violation of N.J.S.A. 33:1-2 and N.J.S.A. 33:1-50. He was also charged with maintaining a disorderly house in violation of N.J.S.A. 2A-85-1. Additionally, 39 persons were arrested as disorderly persons.

The seized property included 165 twelve-ounce cans of beer, 14 full pints of rum, a plywood bar, shot glasses, plastic drink stirrers and the personalty enumerated in Schedule "A" attached hereto. $365.47 in cash was also seized and retained by the New Jersey State Police.

The records of the Division disclose that no alcoholic beverage license or permit of any kind was ever issued to Jose Luis Ortiz at premises R.D. 1 Pedricktown Road, Pedricktown, Township of Oldmans, County of Salem. The records also contain the affidavit of publication of notice of hearing, proof of mailing of notice of hearing to two parties known to have an interest herein and evidence that diligent efforts to make service of notice upon the third party have proven unsuccessful and the report of chemical analysis of the Division chemist that one twelve-ounce can of Budweiser Beer seized herein contains an alcoholic beverage fit for beverage purposes with an alcoholic content of 4.79% by volume.

The alcoholic beverages and personal property seized herein, as more completely set forth in Schedule "A" attached hereto, constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-1(i); N.J.S.A. 33:1-2; N.J.S.A. 33:1-66.

Accordingly, it is on this 3rd day of December, 1971

DETERMINED and ORDERED that the seized property, including the alcoholic beverages as set forth in Schedule "A" attached hereto, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29, or retained for the use of hospitals, 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; and it is further

DETERMINED and ORDERED that the sum of $20.00 (Twenty Dollars) deposited by James Mayes, under protest, as aforesaid, be and the same is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66 to be accounted for in accordance with law.

Richard C. McDonough,
Director

SCHEDULE "A"

15 - containers of alcoholic beverages
165 - cans of beer
1 - pool table; 1 - cigarette machine
2 - nut vending machines
Miscellaneous personal property

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

The Hungry Eye (a corporation)
9 Broadway
East Paterson, N.J.

Holder of Plenary Retail Consumption License C-5 issued by the Mayor and Council of the Borough of East Paterson.

CONCLUSIONS AND ORDER

Licensee, Pro Se.
Walter H. Cleaver, Esq., appearing for the Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Friday, July 2, 1971, at about 11:05 P.M. it sold alcoholic beverages, viz., a bottle of Sangria wine in original container for off premises consumption in violation of Rule 1 of State Regulation No. 38.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a nte suspension of ten days. Re Barnes and Mazyack, Bulletin 2001, Item 10. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $490 in lieu of suspension.

Accordingly, it is, on this 7th day of December, 1971,

ORDERED that the payment of a $490 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

RICHARD C. McDONOUGH
Director

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
3 West Corp.)
t/a The New Shangri-La)
677 Mt. Prospect Avenue)
Newark, N. J.)
)
Holder of Plenary Retail Consumption License C-340 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - - - -

Leon Sachs, Esq., Attorney for the Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads _non vult_ to a charge alleging that on September 21, 1971, it possessed three bottles of alcoholic beverages the labels of which did not truly describe their contents.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. _Re Bobo Bar, Inc._, Bulletin 2003, Item 12.

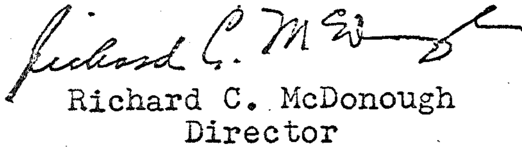
Accordingly, it is, on this 8th day of December 1971,

ORDERED that Plenary Retail Consumption License C-340 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 3 West Corp., t/a The New Shangri-La, for premises 677 Mt. Prospect Avenue, Newark, N.J., be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. on Monday, December 13, 1971 and terminating at 2:00 a.m. on Tuesday, December 28, 1971.

Richard C. McDonough
Director

11. STATE LICENSES - NEW APPLICATION FILED.

The Buckingham Corporation
Gateway 1, Suite 1500
Raymond Plaza West and Market Street
Newark, N. J.
Application filed January 7, 1972 for place-to-place transfer of Plenary Wholesale License W-53 from 620 Fifth Avenue, New York, New York.



Richard C. McDonough
Director