

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

BULLETIN 2235

August 12, 1976

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - LA ULTIMA COPA CORP. v. UNION CITY.
2. APPELLATE DECISIONS - WILLIAM J. HARE ENTERPRISES, INC. v. LINDENWOLD, ET AL.
3. APPELLATE DECISIONS - MIRAPH ENTERPRISES, INC. v. PATERSON.
4. APPELLATE DECISIONS - MIRAPH ENTERPRISES, INC. v. PATERSON.
5. APPELLATE DECISIONS - FERRIS v. PHILLIPSBURG.



the Board held on December 17, 1975 was admitted into evidence pursuant to Rule 8 of State Regulation No. 15. Counsel to the parties relied upon the aforesaid transcript upon which to buttress their respective oral arguments made in this Division. An additional witness was called by appellant for the sole purpose of identifying the funds found upon the bartender subsequent to his arrest.

A review of the transcript of the proceedings before the Board reveals that evidence against appellant was given by Detective Charles Kohrherr, of the Union City Police Department, who visited appellant's premises on June 4, 1975 to conduct an investigation of alleged gambling activity. Such investigation revealed betting paraphernalia on the back-bar adjacent to the cash register. Other betting slips were found in a garbage can.

The bartender, Antonio Hernandez, was arrested and a search was conducted of his person. That search revealed the sum of \$1,997.00 in cash. He was thereupon charged with gambling. The gambling slips were accepted into evidence.

At the hearing in this Division, one witness was produced by the appellant; he was Felix Gonzales, a principal officer of the corporate licensee. He testified that he was at home at the time of the police raid but, on the day before, he had provided Hernandez with \$1,785.00 for the purpose of paying the Montego Company the balance due for some refrigeration. The declared purpose of introducing such testimony was to overcome any inference that the funds uncovered from Hernandez, i.e. the \$1,997.00, were in any way to be used for or were the result of gambling activity.

In lengthy oral argument, appellant's counsel contended that the mere presence of gambling slips found in the premises without further evidence as to their use, would be insufficient to sustain the charge against the appellant. Appellant maintains that money and slips identified as fruit of gambling activity must relate to specifically proven gambling activity, and, as there was none proven in this matter, the charge must fail.

Such contention is groundless. The resolution adopted by the Board recites the charge which involves the conduct of a lottery. However, the Resolution continues to outline the proofs upon which the charge was based, and such proofs are ample to support a charge based upon Rule 6 of State Regulation No. 20. Such rule continues "...nor shall any licensee possess ...or allow...any such ticket...upon the licensed premises...."

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error, that the action of the respondent was clearly against the logic and effect of the presented facts. Nordco, Inc. v. State, 43 N.J. Super 277 (App. Div. 1957); Hudson-Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502 (1947); Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

Further, the appellant offered no explanation whatever respecting the presence of the gambling slips discovered on the counter and in the refuse pails. The failure to call witnesses leads to an adverse inference, namely, that if witnesses presumably available, were not called to testify, they could not truthfully deny the allegations contained herein and their testimony, if given, would have been unfavorable to the appellant. Hickman v. Pace, 82 N.J. Super. 483 (1964); O'Neil v. Bilotta, 18 N.J. Super 82, aff'd. 10 N.J. 308, (1952).

Appellant contended, both before the Board and at the hearing in this Division, that appellant had no knowledge of the slips discovered in the premises. However, it is well established that a licensee is responsible for the misconduct of persons employed on licensed premises and is fully accountable for their activity during such employment. In re Olympic, Inc., 49 N.J. Super 299 (App. Div. 1958); In re Schneider, 12 N.J. Super 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates the explicit instructions of the employer. Greenbrier, Inc. v. Hock, 14 N.J. Super 39 (App. Div. 1951); F & A Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

From my evaluation of the testimony, I am satisfied that the Board could reasonably have reached the conclusion that it did, after assessing the credible evidence presented. 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. Hudson-Bergen County Retail Liquor Stores Ass'n. v. Hoboken, supra; Cf. Nordco, Inc. v. State, supra. I find that they could have reached such determination. Paramount Wines & Liquors v. Paterson, Bulletin 2114, Item 5.

My examination of the facts and the applicable law generates no doubt in my mind that this charge was established by a fair preponderance of the credible evidence. I have also considered the other matters alleged in appellant's petition of Appeal and find them devoid of merit.

Therefore, I conclude that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that an order be entered affirming the Board's action, dismissing the appeal,

and fixing the effective dates for the suspension of license imposed by the Board and stayed by order of the Director.

Conclusions and Order

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

Having carefully considered the entire matter herein, including the transcript of the testimony, the exhibits and the Hearer's report together, and the Exceptions filed thereto which I find have either been considered and correctly resolved in the Hearer's report, or are lacking in merit, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of May 1976,

ORDERED that the action of respondent, Board of Commissioners of the City of Union City 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 of February 20, 1976, staying the suspension imposed by the Board pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Union City to La Ultima Copa Corp. for premises 2522 Bergenline Avenue and 419 - 26th Street, Union City, be and the same is hereby suspended for fifteen (15) days commencing at 3:00 a.m. on Wednesday, May 26, 1976 and terminating at 3:00 a.m. on Thursday, June 10, 1976.

Joseph H. Lerner  
Acting Director

2. APPELLATE DECISIONS - WILLIAM J. HARE ENTERPRISES, INC. v. LINDENWOLD, ET AL.

William J. Hare Enterprises, )  
Inc. t/a Linden Liquor Store )  
and Linden Lounge, )

Appellants, )

v. )

Mayor and Borough Council of )  
the Borough of Lindenwold, and )  
Joseph V. Montagno, )

Respondents. )

Novack & Trobman, Esqs., by David Novack, Esq., Attorneys for )  
Appellant )

Robert L. Messick, Esq., Attorney for Respondent, Lindenwold )  
Mahoney, MacIlwraith & Crovo, Esqs., by James E. Crovo, Esq., )  
Attorneys for Respondent, Montagno )

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant challenges the action of the respondent Mayor and Borough Council of the Borough of Lindenwold (hereinafter Council) which, by resolution dated December 22, 1975 granted a plenary retail distribution license to the respondent, Joseph V. Montagno, for the current licensing period, for premises situated at Oak Avenue and White Horse Pike, Lindenwold. Appellant contends that such action was invalid, basing its allegation upon both the factual and legal circumstances under which the said application for the license was granted.

At the de novo hearing on appeal in this Division, the parties relied solely upon documentary evidence and legal argument. No oral testimony was offered or presented.

I find the following facts, which are substantially uncontroverted and not in genuine dispute, to be as follows:

N.J.S.A. 33:1-12.14 provides that among other things, no new plenary retail distribution license shall be issued in a municipality "unless and until the number of such licenses existing in the municipality in fewer than one for each 7,500 of its population as shown by the last then preceeding census."

On Appeal

CONCLUSIONS  
AND  
ORDER

The 1970 "Decennial Federal Census" established the population of the Borough of Lindenwold at 12,199.

During the summer of 1973, the Bureau of the Census, Social and Economics Statistics Administration, United States Department of Commerce, conducted a special census for Lindenwold, at its request, and determined that the population of the Borough as of August 23, 1973 was 16,265. A certified copy of the official census was duly filed with the Secretary of State of New Jersey on November 2, 1973 and was officially received by Robert M. Falcey, Assistant Secretary of State who officially certified that figure to be the population of the Borough of Lindenwold. These documents were admitted into evidence.

Prior to December 22, 1975 one plenary retail distribution license had been issued by the Council. However, on the basis of the Special Census Report, which now entitled this municipality to issue two such licenses, the Council adopted an ordinance repealing the existing ordinance limiting the number of liquor licenses. The language of the ordinance provided that it shall "become effective immediately upon passage and publication and according to law." That same day it adopted a resolution approving the application of Montagno for a plenary retail distribution license for the premises situated at Oak Avenue and White Horse Pike, Lindenwold.

I shall now consider the substantive legal issues raised by the appellant at the hearing herein.

I.

Appellant contends that the legislative intent with respect to the subject statute was that the words "federal census shall mean a decennial census and not a special census". It argues that "the intention of the law was that the license shall be frozen for a ten year period in accordance with the Federal Decennial Census."

This matter was recently resolved by the Director in South Jersey Package Stores Association v. Edgewater Park and Sil Inc., Bulletin 2043, Item 3 and (upon remand) in Bulletin 2085, Item 2. In the first Conclusions and Order (Bulletin 2043, Item 3), the Director held that the words "federal census" did not mean exclusively a "decennial census". N.J.S.A. 33:1-12.14 defines "census" as "federal census" as it relates to liquor license quotas. It does not use the term "decennial". "By implication, therefore, a 'special census' done by the Federal Bureau of the Census could reasonably be employed."

The Director, however, reversed the action of the respondent in that matter in granting the said license, because there was no proof that the special census was "promulgated

through the office of the Secretary of State". It appeared that "Inquiry by this Division to the office of the Secretary of State revealed no information pertinent to the special census conducted on behalf of the respondent."

An appeal was taken from the Director's determination to the Appellate Division of the Superior Court. Prior to the oral argument on the appeal, it became apparent that the Conclusions and Order of the Director of this Division were based upon erroneous information obtained by the Division from the office of the Secretary of State, which office disclaimed knowledge of the filing with it of a certificate issued by the United States Bureau of Census relative to a special population census conducted by it in the Township.

The Deputy Attorney General assigned to represent the Director in the matter ascertained that a certification of the result of the "special census" had, in fact, been received in the office of the Secretary of State, and the results of such census had been promulgated by way of a certification of the Acting Secretary of State that the prior certification of population of the Township by the United States Bureau of Census had been properly "filed in his office; whereupon the matter was remanded to this Division to permit the introduction of such evidence." Since the determination in the Conclusions and Order (Bulletin 2043, Item 3) was "based primarily upon the inaccurate information gleaned from the office of the Secretary of State that there was no public record of the results of the 'special census'", the Director vacated his prior order, and affirmed the action of the respondent (Bulletin 2085, Item 2).

In the latter determination, the Director reaffirmed his position in the prior Conclusions and Order that, since the legislature did not employ the denomination "decennial census" in connection with the Alcoholic Beverage Law, the "Federal Special Census" could be used, provided such figures were properly promulgated.

In the matter sub judice that infirmity does not exist. The "special census" figures as certified by the United States Bureau of the Census was duly filed with the Secretary of State and does constitute a valid census for the purpose of determining the number of licenses that may be lawfully issued. Therefore, this contention is without merit.

## -II.

Appellant (joined by the Council in this argument in a Separate Defense in its Answer), next argues that the award to Montagno was invalid for the following reason: On December 8, 1975, the Council had, in effect, an ordinance limiting the

number of plenary retail distribution licenses to one. On that date, it introduced the ordinance No. 417, the purpose of which was to repeal the existing ordinance limiting the number of licenses to one.

At the hearing on December 22, 1975, the said ordinance was adopted, with the provision that it shall become effective "immediately upon passage and publication and according to law". Therefore, it approved the application of Montagno and granted the license to him later that same night.

Appellant argues that this ordinance could not legally take effect until it was properly presented to the Mayor for his signature and properly and lawfully published. Therefore, at the time of the granting of the said license, the Council still had in effect the ordinance limiting the number of distribution licenses to one and, thus, the action of the Council was invalid.

I find this contention lacking in merit. The principle is well settled that "the law in effect at the time of the disposition of a cause by an appellate court governs." Borough of Little Ferry v. Bergen County Sewer Authority, 9 N.J. 536, p. 547, cert. den. 73 S. Ct. 105, 344 U.S. 865, 97 L.Ed. 670 (1952); Westinghouse Corp. v. United Electric, etc., 139 N.J. Eq. 97 (E. & A. 1946); see Cranberry Lake Quarry Co. v. Johnson, 95 N.J. Super 495, p. 516 (App. Div. 1967).

It is not the status of the law prevailing at the time of filing of applications for a license or permit that controls, but the status of the law prevailing at the time the agency's decision is rendered. Pombo et als v. Totowa and Chicken Barn, Inc., Bulletin 1442, Item 2. Sayreville Italian-American Club. v. Sayreville, Bulletin 1411, Item 1; Socony-Vacuum Oil Co. Inc. v. Mount Holly Township, 135 N.J.L. 112 (Sup. Ct. 1947); Jump v. Logan, Bulletin 1179, Item 1; Ming's Chinese Restaurant Inc. v. Teaneck, Bulletin 1279, Item 2; Tice v. Woodcliff Lake, 12 N.J. Super 20, p. 25 (App. Div. 1951). Thus, the law became valid after the grant of the application for the said license, and thereby validated the grant, and eliminated the impediment.

Since I find that the grant as of the time of this appeal has been validated and is considered to have been made under a valid ordinance, I reject the allegation of both the appellant and the Council, and find this allegation to be without legal substance.

### III.

In its Petition of Appeal, the appellant maintains that the subject license is "worth substantially more than the annual renewal fee", and that it should have been "issued

to a qualified purchaser who would bid the highest sum therefor at a public auction."

There is no statutory or precedential authority for this contention. In any event it is clear, and I so find, that the Council acted within its lawful authority in approving the said application.

I have evaluated the other matters raised in the Petition of Appeal and find that they are devoid of merit.

Therefore, I conclude that appellant has failed to meet its burden of showing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the respondent Council be affirmed and the appeal herein be dismissed.

#### Conclusions and Order

No Exceptions to the Hearer's report were filed with the Acting Director 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 in the said report, and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of May 1976,

ORDERED that the action of the respondent Mayor and Borough Council of the Borough of Lindenwold be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner  
Acting Director

3. APPELLATE DECISIONS - MIRAPH ENTERPRISES, INC. v. PATERSON.

#3998	)	
Miraph Enterprises, Inc.	)	
t/a The Cabaret,	)	
	)	
Appellant,	)	On Appeal
	)	
v.	)	CONCLUSIONS
	)	AND
Board of Alcoholic Beverage	)	ORDER
Control of the City of	)	
Paterson,	)	
	)	
Respondent.	)	
Philip Tanis, Esq., by Michael A. Sternick, Esq., Attorneys	)	
for Appellant	)	
Joseph A. La Cava, Esq., by Ralph L. De Luccia, Jr., Esq.,	)	
Attorneys for Respondent	)	
BY THE DIRECTOR:	)	

The Hearer has filed the following report herein:

Hearer's Report

The Municipal Board of Alcoholic Beverage Control of the City of Paterson (Board) preferred charges against appellant as follows:

- "1. On Wednesday, September 10, 1975, and divers dates prior thereto, you employed and had connected with you in a business capacity, one Augustus Felisbret, a person who had been convicted on January 15, 1975, of a crime involving moral turpitude, viz., the distribution and possession with intent to distribute a controlled dangerous substance; in violation of Rule 1 of State Regulation No. 13.
2. On Wednesday, September 10, 1975, and divers dates prior thereto, you employed and had connected with you in a business capacity, one Ann Mitchell, a person who had been convicted on December 28, 1971, of a crime involving moral turpitude, viz., prostitution; in violation of Rule 1 of State Regulation No. 13.

3. On Monday, September 15, 1975, at approximately 1:48 A.M., you allowed, permitted and suffered your place of business to become a nuisance in that you allowed, permitted and suffered a brawl, act of violence or other disturbance and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Following a plea of non vult, the Board, by resolution adopted on October 8, 1975, suspended appellant's plenary retail consumption license for premises 11 Hamilton Street, Paterson, for ten (10) days, on each charge or a total of thirty (30) days, with remission of five days for the plea entered, leaving a net suspension of twenty-five (25) days. The resolution further provided that "this Board has no objection to the payment of a fine in lieu of the penalty imposed."

In its petition of appeal, appellant alleges that it entered its plea of non vult to the second charge on the mistaken belief that the employee named therein was convicted of a crime involving moral turpitude whereas, in fact, the said employee was convicted of violation of a Paterson Municipal ordinance and, therefore, the penalty imposed on account of the said charge should have been vacated. Appellant further alleges that the Board retracted its prior commitment to permit appellant to pay a fine in lieu of suspension.

In its answer, the Board left appellant to its proof as to the allegations contained in its petition of appeal.

At the hearing de novo herein, the parties agreed to submit the issues for determination based upon the pleadings, the resolution and oral argument, in accordance with Rules 6 and 8 of State Regulation No. 15.

A review of the oral argument reveals that there is no change of position insofar as the plea of non vult relative to first and third charges. Concerning the second charge, the attorney for the Board candidly admitted that the criminal violation charged against appellant's employee was amended from a violation of N.J.S.A. 2A:133-2p to a violation of a city ordinance. It is basic that a conviction based upon a violation of a city ordinance is not a conviction of a crime involving moral turpitude. Thus, that charge must fail and I recommend dismissal of that charge.

In sum, it is recommended that the Board's finding of guilt on the first and third charges be affirmed, and that

its finding of guilt on the second charge be reversed. It is also recommended that the action of the Board in suspending appellant's plenary retail consumption license for twenty-five (25) days be modified to a net suspension of fifteen (15) days.

Upon considering the totality of the record herein, I further recommend that, in the event this report is adopted, appellant may be permitted to pay a fine, in compromise, in lieu of suspension upon proper application therefor.

#### 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 argument of counsel, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of June, 1976

ORDERED that the action of respondent in finding appellant guilty of the second charge preferred herein and suspending its license be and the same is hereby reversed, and the aforesaid charge be and the same is hereby dismissed; and it is further

ORDERED that the action of the respondent with respect to the first and third charge be and the same is hereby affirmed, and that the appeal herein relative thereto be and the same is hereby dismissed; and it is further

ORDERED that my order dated December 11, 1975, staying respondents' action pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-248, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Miraph Enterprises, Inc., t/a The Cabaret, for premises 11 Hamilton Street, Paterson, with respect to the first and third charges be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Tuesday, June 15, 1976, and terminating at 3:00 a.m. Wednesday, June 30, 1976.

Joseph H. Lerner  
Acting Director

4. APPELLATE DECISIONS - MIRAPH ENTERPRISES, INC. v. PATERSON.

#4010

Miraph Enterprises, Inc., )  
t/a The Cabaret, )

Appellant, )

On Appeal

v. )

CONCLUSIONS  
AND  
ORDER

Board of Alcoholic Beverage  
Control for the City of )  
Paterson, )

Respondent. )

Philip Tanis, Esq., by Michael A. Sternick, Esq., Attorneys  
for Appellant

Joseph A. LaCava, Esq., by Ralph L. DeLuccia, 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 respondent Board of Alcoholic Beverage Control for the City of Paterson (Board) which, by resolution dated December 30, 1975, suspended appellant's plenary retail consumption license for premises 11 Hamilton Street, Paterson, for thirty days effective January 6, 1976, after finding appellant guilty in disciplinary proceedings of the following charge:

"On November 28, 1975, and divers dates prior thereto, it allowed, permitted and suffered its place of business to be conducted in such manner as to become a nuisance in that it allowed, permitted and suffered known convicted prostitutes to frequent its licensed premises; in violation of Rule 4 of State Regulation No. 20."

Appellant, in its petition of appeal, alleges that the action of the Board was erroneous in that it was (a) against the weight of the evidence and (b) based upon incompetent evidence.

The Board, in its answer, denies the substantive allegations of the petition.

Upon the filing of the appeal, an order was entered by the Director on January 5, 1976, staying the Board's order of suspension until the entry of further order herein.

At the hearing de novo, the parties agreed to present this appeal solely upon the stenographic transcript of the hearing held by the Board and oral argument, pursuant to Rules 6 and 8 of State Regulation No. 15.

It appears from the testimony of Detective Salvatore Calafiore of the Paterson Police Department that, accompanied by Detective Casper Morelli, he visited the appellant's tavern on numerous occasions from October 1 to November 22, 1975 in order "to maintain a surveillance on the tavern of all known convicted prostitutes that frequent Miraph Enterprises' lounge."

The witness explained that on the occasion of these visits, he observed at least several females congregated in the tavern who had been either arrested for prostitution, or were "known" to him to be a prostitute or had admitted to him of being a prostitute. He did not observe the occurrence of any acts of solicitation for prostitution in appellant's premises.

It was stipulated that the testimony of Detective Morelli would be similar to the testimony adduced from Calafiore.

No evidence was introduced of the conviction of any of the said females for prostitution.

In order to arrive at a fair determination of proceedings of this kind which are disciplinary in nature, an examination of the charge upon which the finding of guilt is based is of critical importance.

A reading of the charge in the case sub judice indicates that the charge is not based upon an alleged violation of Rule 4 of State Regulation No. 20 in its totality but more specifically that Rule 4 of State Regulation No. 20 was violated in that appellant allowed, permitted and suffered known convicted prostitutes to frequent its licensed premises, in violation of the said rule. (Emphasis added)

I find the record completely devoid of proof of the essential element underscored above.

I deem commendable the Board's desire to prevent undesirables from frequenting licensed premises. However, a conviction must be based upon the specifications of the charge.

In consequence of the failure of the Board of substantiate its action by the production of any evidence to sustain the charge, I find that appellant has met its 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.

Accordingly, it is, 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 the testimony, the argument of counsel, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of June, 1976

ORDERED that the action of the respondent in finding appellant guilty of the charge preferred herein be and the same is hereby reversed, and the charge be and the same is hereby dismissed.

JOSEPH H. LERNER  
ACTING DIRECTOR

5. APPELLATE DECISIONS - FERRIS v. PHILLIPSBURG.

Donna Marie Ferris,	)	
t/a Jersey House,	)	On Appeal
	)	
Appellant,	)	CONCLUSIONS
	)	and
v.	)	ORDER
	)	
Town Council of the Town	)	
of Phillipsburg,	)	
	)	
Respondent.	)	

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 DeMasi, Harbort & Duh, Esqs., by Boyd Harbort, Esq.,  
 Attorneys for Licensee  
 Morrow & Benbrook, Esqs., by Donald W. Morrow, Esq.,  
 Attorneys for Respondent

BY THE DIRECTOR:

Appellant appeals from the action of respondent, Town Council of the Town of Phillipsburg, which suspended appellant's Plenary Retail Consumption License, C-12, for premises 469 South Main Street, Phillipsburg, for thirty days, effective Saturday, April 24, 1976, upon its determination that, on April 5, 1975 appellant had allowed, permitted and suffered the consumption of alcoholic beverages by a minor at its licensed premises. The suspension

was stayed by the Director by order of April 23, 1976, pending the determination of this appeal.

At the hearing in this Division, appellant's attorney advised the Director that the respondent Council had decided not to oppose the appeal and would confirm its decision by subsequent letter. Thereafter, a letter was received in this Division on July 26, 1976, confirming the respondent's decision, as aforesaid.

Bernard J. Ferris, manager of the appellant's premises and husband of the licensee, testified that the guilty finding arrived at by the Council was the result of unintentional error by the Council, which based its findings on the alleged violation pursuant to N.J.S.A. 33:1-81B. This statute relates solely to violations by minors, and is not the applicable statute in matters where a licensee is charged with a sale of alcoholic beverages to a minor.

He described the following events leading up to the hearing: two minors rushed passed a "door check" being conducted at the entranceway of the appellant's premises and run over to a youth patron then playing pool. A scuffle followed and the manager summoned the police who immediately ejected these minors.

There was no allegation that these two minors had been served or consumed any alcoholic beverages whatever. The minors gave the false story to the local police that they had obtained alcoholic beverages in the premises because they sought "revenge" against the licensee for having them arrested.

In view of the withdrawal of the Answer and the joinder in the request for immediate adjudication of the matter by the Director, with concomitant waiver of the Hearer's report, I had the entire record forwarded to me for my consideration. After carefully considering the facts and circumstances herein, I find that the appellant has established that the action of the Council in finding appellant guilty of permitting consumption of alcoholic beverages by minors, was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Accordingly, it is, on this 5th day of August, 1976

ORDERED that the action of respondent, Town Council of the Town of Phillipsburg be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.



Joseph H. Lerner  
Director