

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
U.S. ROUTES 1-9 (SOUTHBOUND), NEWARK, N.J. 07114

BULLETIN 2429

DECEMBER 14, 1982

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

BULLETIN 2429

DECEMBER 14, 1982

1. RECENT LEGISLATION - LIMITATION ON NUMBER OF STATE BEVERAGE DISTRIBUTION LICENSES AND PERMISSIBLE PERIOD OF INACTIVITY - AUTHORIZATION TO SELL CHILLED DRAUGHT MALT ALCOHOLIC BEVERAGES IN KEGS OR CONTAINERS OF AT LEAST ONE FLUID GALLON CAPACITY; TRANSPORTATION OF WINE SOLD AT RETAIL BY PLENARY AND FARM WINERY LICENSEES VIA PARCEL DELIVERY SERVICES - FEES, TERMS AND CONDITIONS.

(a) Modifications in Rights and Privileges of State Beverage Distributor's License

Chapter 166 of the Laws of 1982 (adopted November 1, 1982) amends and supplements N.J.S.A. 33:1-11 (2c). An SBD licensee can now sell to retailers or at retail "chilled" malt alcoholic beverages in kegs, barrels or other similar containers of at least one fluid gallon capacity. Law specifying that all other malt alcoholic beverage sales must be of "unchilled" products of not less than 144 fluid ounces, remains the same. A new section was added which added two (2) new provisions:

(1) SBD licenses will be subject to the same type "pocket license" concept now applicable to retail licenses under N.J.S.A. 33:1-12.39. Licenses which are inactive for the past two (2) license terms cannot be renewed unless the Director authorizes renewal based upon either a showing of good cause or upon proof that good faith efforts to resume active operation have been made. The reason for inactivity will determine which standard applies;

(2) No additional SBD licenses shall be issued to exceed the number in existence on the date this Law took effect. On November 1, 1982, there were seventy-two (72) SBD licenses in existence. Thus, the maximum number of SBD licenses that may be issued and in existence at any time is seventy-two (72).

(b) Transportation of Wine by Approved Parcel Delivery Services for Plenary and Farm Winery Licensees

Chapter 176 of the Laws of 1982 (adopted November 12, 1982) supplements and adds new sections to N.J.S.A. 33:1-28. The basic provisions of N.J.S.A. 33:1-28, which require all licensees to

transport alcoholic beverages pursuant to and within the terms of a license or transit insignia, remain unchanged.

This law provides an alternative method for Plenary or Farm Winery licensees, that are qualified for retail sales privileges, to transport wine purchased in person on the licensed premises. Upon payment of a \$150. annual fee to the Director, the winery may ship the purchased wines via an unlicensed parcel delivery service.

The Director must first approve the parcel delivery service. The delivery service has the duty of determining that the person signing the delivery receipt is of legal age to consume alcoholic beverages. The statute sets forth required terms of the invoice, authorization to the Division to inspect same and a three (3) year document retention by the licensee.

2. NOTICE REGARDING PRODUCT INFORMATION FILING - BRAND REGISTRATION

Pursuant to N.J.A.C. 13:2-33.2, the Director prescribes the form for filing Brand Registration of all alcoholic beverages intended to be sold by or to wholesale and retail licensees, the due date and fees involved. Absent such filing for "each calendar year", the sale of the alcoholic beverage product is prohibited.

The initial Brand Registration filing encompassed the 1980 calendar year. Certain tangential litigation apparently resulted in the absence of specific notice to file for the 1981 calendar year. Filing is required for the 1982 calendar year. In Bulletin 2427, Item 2, I indicated same, particularly as to the efficacy of designation of authorized distributors under N.J.A.C. 13:2-25.2 and N.J.A.C. 13:2-25.3. Only partial compliance has resulted from that Bulletin notification.

The requirement for filing is again restated. Unless otherwise modified, a filing shall be required by February 15 of each calendar year. The fee for each registration is \$10.00. No single registrant shall be required to pay total registration fees in excess of \$1,000.00. Changes occurring in the last filing, or the additional registrations of new items, should be made during the calendar year and require payment of registration fee.

The time to file Registrations for the 1982 calendar year is December 31, 1982. Extensions of time to file is granted without specific request until February 15, 1983.

The time to file Registrations for the 1983 calendar year is February 15, 1983. No 1983 Registration will be accepted until

1982 filings are made. No extensions of time will be granted except upon approval of the Director.

Where a Registration for 1982 and/or 1983 is identical to the 1980 Registration on file with the Division, the registrant can reaffirm the previous filing by indicating the number of filings and payment of the fee for each such reaffirmation for each applicable calendar year. An affidavit or certification is sufficient. New listings or changes require the completion of Brand Registration forms.

Failure to file Registrations will result in the invalidity to distribute the non-registered product and/or the unauthorized distribution by wholesalers or retailers of products for which they are not designated under N.J.A.C. 13:2-25.2 and N.J.A.C. 13:2-25.3.

3. NOTICE REGARDING SALES BELOW COST - WHERE BOTTLE COST IS A FRACTIONAL CENT - GENERAL APPLICABILITY OF REGULATION TO ON-PREMISES OPEN GLASS OR CONTAINER SALES (N.J.A.C. 13:2-24.8)

N.J.A.C. 13:2-24.8 prohibits sales below cost and defines "cost".

An inquiry has been received as to what the lowest possible resale price may be when the bottle or case price, as the case may be, is a fractional cent. The answer is that the bottle or case price must be rounded off to the next higher full cent. For example, if the total invoice price (including taxes and freight charges) for a case of twelve (12) bottles is \$114.85, the bottle "cost" is \$9.570833. This means that the lowest resale cost for an individual bottle must be \$9.58.

Further inquiry has been received asking whether the sale in an open container or glass is covered by the "cost" regulation. The regulation does apply to sales by the drink, with an exception for those situations where one complimentary drink is permitted. See, Bulletin 2381, Items 2 and 4. Any other opinions or determinations contrary to the above are herein rescinded.

Retail licensees should immediately review existing reduced price promotions to insure compliance. Proportionate costs for non-alcoholic mixers, components or accessories need not be included.

4. NOTICE REITERATING PROVISIONS CONCERNING COMBINATION SALES BY RETAILERS (N.J.A.C. 13:2-24.9)

Retail licensees are reminded that subsection (c) of N.J.A.C. 13:2-24.9 permits them to combine different products, alcoholic or non-alcoholic, and offer them for sale at a single unit price. This option exists subject to conditions which include the requirement

that each of the combined products be available for purchase as an individual item at an advertised or shelf priced amount. Also, the costs to the consumer buying the combination package cannot be less than the cost to the consumer if he purchased the same items individually. Retailers do not have to include the cost, or have available for individual purchase, the ordinary gift type packaging utilized.

5. NOTICE REGARDING DISCOUNTS FOR PROMPT PAYMENT AND INTERPRETATION OF REQUIREMENT FOR COST JUSTIFICATION (N.J.A.C. 13:2-24.1)

The question has been raised as to the permissibility of discounts for prompt payments by retailers to wholesalers under N.J.A.C. 2-24.1 and specifically, as to the permissibility of a discount of four percent (4%) for payments within four (4) days, or three percent (3%) for payment within seven (7) days, but limited to a specific brand.

The inquiry has suggested that such discounts are not permissible unless they are specifically geared to an actual dollar savings by a wholesaler, i.e., unless they are cost justified. The inquirer referenced an opinion letter of former Director Lerner dated June 25, 1981 and set forth in full at Bulletin 2422, Item 7. That advisory opinion was subject to a per curiam affirmance by the Appellate Division of the Superior Court in Wine and Liquor Salesmen of the State of New Jersey, Local #19 v. Joseph H. Lerner, etc., et al., (A-5403-80T1 - App. Div. 1982), certification denied, 91 N.J. 281 (1982).

The June 25, 1981 Advisory Opinion was specifically directed to the question of whether arbitrary quantity discounts, unrelated to actual wholesaler savings, violated N.J.A.C. 13:2-24.1. The opinion held that they did not and specifically said that "a quantity discount needs no cost justification to be lawful under N.J.A.C. 13:2-24.1 (a)(1)(i)." To the extent that the singular issue to be resolved in the Advisory Opinion and subsequent judicial affirmance involved quantity discounts only, the precedential value is limited to that area of discussion.

What has prompted the inquiry and possibly some confusion was a single sentence in a summary in the opinion letter which, after stating the holding that quantity discounts need no cost justification to be lawful under N.J.A.C. 13:2-24.1(a)(1)(i), provided: "Any other discount or differential made available to the trade must be supported by due allowance for actual cost savings, N.J.A.C. 13:2-24.(b)(1)." That was added by way of dictum and was not germane to the question being answered. It also references subsection (b) of this regulation which is an exception to subsection (a).

N.J.A.C. 13:2-24.1(a) prohibits transactions, sales or contracts which discriminate between purchaser competitors by offering to different purchasers, prices, credit terms, discounts, rebates, allowances or advertising services which are not available at the time of the transaction to another similar purchaser competitor under the same circumstances. If there is no such discrimination, any discount, rebate, allowance or advertising service, or any credit terms may be offered without regard to cost justification or actual cost savings to the wholesaler, provided that they are clearly contained in the filed Current Price List and/or Marketing Manual required by N.J.A.C. 13:2-24.6.

N.J.A.C. 13:2-24.1(b) only comes into play if there is such discrimination between purchaser competitors under N.J.A.C. 13:2-24.1(a). If there is, N.J.A.C. 13:2-24.1(b) permits such ostensible discrimination provided it is cost justified, and the subsection limits the differential allowed in such case to the "actual differences in the cost." Thus, if these discounts for prompt payment were not offered to all purchaser competitors, they would presumptively be discriminatory and would require specific cost justification.

However, in the case of the discounts for prompt payment referred to in the inquiry, the discounts were contained in the Current Price Lists of the wholesalers and there is no indication that they were offered discriminatorily to some purchasers and not to others. As long as the same discount is "available at the time of (the) transaction" to all like purchasers, it is not violative of N.J.A.C. 13:2-24.1 and requires no cost justification.

6. DISCIPLINARY PROCEEDINGS - LICENSEE'S APPLICATION TO LIFT INDEFINITE LICENSE SUSPENSION THAT WAS PREVIOUSLY ORDERED UPON FINDING OF HINDERING DIVISION INVESTIGATION IS DENIED - CONCLUSION OF ADMINISTRATIVE LAW JUDGE REJECTED.

In the Matter of the Petition
of

P.P.B., Inc.
t/a PIKE BEER & BEER

OAL DKT. NO. ABC 4057-82
S-12,820 - H-7480-34

) CONCLUSIONS
) AND ORDER

)
)
) For Lifting of Suspension set
forth in Division Order dated
January 11, 1982.

Donald C. Brown, Esq., Attorney for Petitioner.
Lauren Fleischer, Esq., Deputy Attorney General, appearing on behalf
of Division.

INITIAL DECISION BELOW

Hon. Sybil R. Moses, Administrative Law Judge
Dated: July 13, 1982

Received: July 13, 1982

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the Deputy

Attorney General representing the Division and written Answer was submitted thereto by the licensee, pursuant to N.J.A.C. 13:2-19.6.

In the Exceptions, it is argued that the Administrative Law Judge's determination to vacate the suspension at this time, even though she also concluded that the licensee has failed to comply with the outstanding Order of January 11, 1982 concerning production of documents, is inconsistent and improper. It is further submitted that the holding in Catena v. Seidl, supra, page 13 of the Initial Decision, is not analogous. Finally, it is argued that the suspension is warranted because of non-compliance with regulatory and statutory provisions that are clearly justified to achieve a lawful purpose and compliance is a responsibility of the holder of a liquor license, which is a privilege not a right.

In the Answer to the Exceptions, the licensee concurs in the findings of the Administrative Law Judge that "...a continued suspension would be violative of the licensee's due process rights in that it would amount to a complete revocation of the license and would be merely punitive." Initial Decision at 15. The licensee submits it is and that it has complied with the Order and requests of the Division to the best of its ability and the suspension, which has now exceeded 200 days, is a great economic hardship to the licensee and its employees. The licensee further contends that the present suspension, if continued, amounts to a license revocation and is not warranted upon the charges filed.

Evaluation of the proofs submitted in this matter overwhelmingly support the conclusion reached by the Administrative Law Judge that the licensee has failed to adequately produce documents in three of the six categories requested. I concur in this aspect of the findings and the discussion thereof in the Initial Decision and adopt same as my conclusion herein.

I reject, however, the balance of the findings in the Initial Decision which set forth legal and factual applications and conclusions recommending that the indefinite suspension be vacated.

Initially, the Administrative Law Judge questions the legal authority for the imposition of a license suspension for an indefinite term predicated upon correction of an unlawful situation or finding of continuing hinderance of an investigation. Not only has this practice been established for over thirty-five years in this Division, but judicial review thereof has affirmed same. Re DeBolt, Bulletin 667, Item 3; Re Vallery, Bulletin 832, Item 5; Re Hi-Grade, Inc. and MRD Corporation, Bulletin 2345, Items 4 & 5, aff'd by Superior Court-Appellate Division in unreported decision noted at Bulletin 2346, Item 1; Re Parmelli's Hotel & Tavern, Inc., Bulletin 2185, Item 3, aff'd by Superior Court-Appellate Division in unreported decision (App. Div. Docket No. 2525-74), suspension thereafter lifted, Bulletin 2264, Item 3. In addition, the licensee took no appeal from the Conclusions and Order of the Director on January 11, 1982. Any further review of the propriety of the imposition of this penalty is barred in this proceeding.

Concerning the attempted analogy of the decisions by the Court in the Catena cases and incorporation of a similar standard of review to this proceeding, I find same inappropriate and inapplicable.

Proceedings to suspend or revoke a liquor license are in rem, not in personam. Re 160 Ocean Avenue Corp., Bulletin 2209, Item 3. Forfeiture of a property right is not an issue, because the license is not property, but a privilege. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). In Catena, the personal liberties of an individual were under consideration. Even still, it required over five years before he could attain his liberty and then only after the Court evaluated his age (73 years old), deteriorating state of health, length of confinement and conclusion that further confinement would not accomplish the purpose and predicate for the contempt order. In the petition sub judice, no individual is imprisoned, the length of time involved in no sense equates with the period in Catena and the only hardship is a pecuniary one not generally considered a proper basis for relief under the Alcoholic Beverage Law. Downie v. Somerdale, 44 N.J. Super. 88 (App. Div. 1957). I reject the findings that the length of time itself has transposed the suspension into a punitive act. As noted in the Exceptions, the licensee holds the keys to the jailhouse.

What basically is involved in this matter is an ascertainment whether, given the statutory and adjudicated obligation of the licensee to cooperate in the Division investigation, the licensee has facilitated "...as far as may be in their power to do so,..." in the demands of the investigation and has "...not in any way hinder(ed) or delay(ed) or cause(d) the hinderance or delay of same, in any manner whatsoever..." N.J.S.A. 33:1-35; Mitchell v. Cavicchia, 29 N.J. Super. 11 (App. Div. 1953)).

It is clear that the licensee has failed to produce the records concerning the acquisition of the license, income and disbursement records from January 1979 to April 21, 1980 and documentation of sources of investment into the business. The administrative Law Judge so found and I concur. It is further clear to me that the licensee has yet to adequately explain or justify its failure to comply.

To date, the licensee has failed to produce, in either the original proceeding or this application, one witness to testify under oath concerning these issues. The sole stockholder, Cecelia Calabrese, hasn't testified, nor has her son, James Calabrese, the manager and day-to-day operator of the business. The attorneys referenced as providing advice or representation haven't testified. They are Louis Caggiano, Edward Garabedian and Emmett Fitzpatrick. The medical condition of Cecelia Calabrese hasn't been verified through competent testimony of physicians.

The factual issues raised in the proceeding should only be resolved on the basis of live testimony with an opportunity for cross-examination, not on ex parte affidavits and arguments of Counsel. Catena v. Seidl, supra, 66 N.J. at 37.

In the present posture of this matter, I reject the conclusion that the documents required in Items 1 and 2 "do not exist". Initial Decision at 15. No competent proofs have been submitted by the licensee to

establish who originally received or prepared the documents required; where they were normally retained; how many copies existed; whether there were any records' relocations; who was entrusted with their safety; what further uses were made for them after creation, etc. No proofs were advanced that the sellers of the license, Idol A. Naccaroto and Marie Naccaroto, were solicited to obtain documents or, at the least, presented before this agency to testify to their knowledge of the circumstances of the transactions of alleged loan and subsequent sale of Clover Leaf Cafe, Inc. The licensee has not established the records in Items 1 and 2 do not exist or that they cannot be reconstructed.

With respect to the proofs as to source of funds for acquisition, the questions and issues raised in my letter to Counsel dated April 14, 1982, Exhibit P-2 in evidence, still remain open. Rather than reiterate these comments and question, I incorporate the exhibit herein by reference. Clearly, the alleged real estate profits and alleged proceeds of the Estate of Mrs. Calabrese's husband can or should be further documented or explained.

In sum, I am satisfied that the licensee continues to evade, avoid and hinder the Division's requests to produce normally retained and required documentation and reasonable inquiries into the source of funds for license acquisitions. The importance of such information, to assure compliance with N.J.S.A. 33:1-25; N.J.S.A. 33:1-26; N.J.A.C. 13:2-7.10(b)3 and N.J.A.C. 13:2-23.32, cannot be waived where the licensee has failed to competently demonstrate valid reasons for failure to comply. See, Florence Methodist Church v. Twp. Committee, Florence Twp., 38 N.J. Super. 85 (App. Div. 1955); Narducci and Testa v. Atlantic City, Bulletin 2305, Item 3, aff'd in unreported Superior Court-Appellate Division opinion (App. Div. Docket No. 706-78), noted in Bulletin 2340, Item 1.

Having determined that the licensee has failed to produce any competent proof that the required records cannot be produced, it is unnecessary to comment, in detail, on the Administrative Law Judge's suggestions as to the appropriate procedure the Division should now follow. I do note that I reject such suggestions and find same to be intrinsically inconsistent.

Having fully evaluated the record in this matter, I shall reject the ultimate conclusion in the Initial Decision. I deny the application of the licensee to lift the current license suspension. I shall entertain any future applications by the licensee to lift the suspension upon proof that the documentation and records have been supplied, or upon request, for further hearings, at which time the licensee shall offer witnesses to testify, under oath, to such documentation and/or the reasons and efforts to obtain same and existent unavailability.

Accordingly, it is, on this 24th day of August, 1982,

ORDERED that the application of P.P.B., Inc., t/a Pike Beef & Beer, holder of Plenary Retail Consumption License No. 0415-33-009-001, for premises 800 Black Horse Pike, Gloucester Township, Blenheim, N. J., to lift the suspension imposed in Conclusions and Order dated January 11,

1982, be and the same is hereby denied, without prejudice.

JOHN F. VASSALLO, JR.
DIRECTOR

Appendix - Initial Decision Below
with Division Letter Dated April 14, 1982

INITIAL DECISION

OAL DKT. NO. ABC 4057-82

AGENCY DKT. NO. S-12,820 H-7480-34

P.P.B., INC., t/a PIKE BEEF & BEER,
Petitioner/Movant

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

APPEARANCES:

Donald C. Brown, Esq.,
on behalf of P.P.B., Inc., t/a Pike Beef & Beer

Lauren Fleischer, Deputy Attorney General,
on behalf of the Division of Alcoholic Beverage Control

Record Closed June 14, 1982

Decided July 13, 1982

BEFORE SYBL R. MOSES, ALJ:

This matter comes before the court as the result of a request for a hearing by the above-captioned licensee in order to determine whether a suspension imposed as a result of a prior disciplinary proceeding should be lifted. On November 24, 1981, this judge rendered an Initial Decision, after a hearing was held on the original disciplinary charges, which was affirmed by Order of former Director Joseph H. Lerner on January 11, 1982, and which suspended the license for 60 days or until six specific items were provided or an adequate explanation was given. On March 23, 1982, counsel for the licensee filed a

verified petition asking that the suspension be lifted. On April 1 and April 9, 1982, additional submissions were made by counsel in support of the licensee's assertion that it was now in compliance with the agency's requests and regulations and that the suspension should be immediately lifted. On March 29, 1982 and April 4, 1982, former acting Director Dennis P. O'Keefe and Director John F. Vassallo, Jr., respectively, expressed disagreement with the licensee on whether there had been full compliance with the Order. Therefore, on April 19, 1982, counsel for the licensee requested a hearing. On April 22, 1982, the matter was referred to the Office of Administrative Law for that very purpose.

A prehearing conference was held via telephone conference call on May 18, 1982. As a result of that conference call, the following matters were determined.

1. This judge determined that she would consider the verified petition in the nature of a motion to lift the presently existing suspension.
2. The court determined that the licensee, P.P.B., Inc., would be the movant, and directed that the movant would have the burden of proof in regard to the issues in controversy in this case. The Division of Alcoholic Beverage Control (Division or ABC) will be the respondent on the motion to lift the suspension.
3. The legal issues to be determined were clearly delineated. They are:
 - A. Whether or not the licensee has complied with the Order of former Director Lerner and the Initial Decision of this judge requiring that it provide the missing documentation or explain its lack of compliance? (Six specific items were requested.)
 - B. If an explanation has been proffered to show why certain documents have not been provided, can the Director continue to maintain the suspension in question?

Counsel for the licensee asked that the matter be held on an especially accelerated schedule of proceedings pursuant to N.J.A.C. 17-3.2(c) because of the special needs of the parties. While the Division of Alcoholic Beverage Control objected to accelerated scheduling of this matter, the court determined, after review of the reasons set forth by Mr. Brown in oral argument during the telephone conference call and in a subsequent letter of May 20, 1982, that there was good reason to accelerate the hearing of this matter. A hearing in this matter was held on short notice on May 27, 1982 at the Office of Administrative Law, 185 Washington Street, Newark, New Jersey. Appearances are noted above.

At the hearing the attorney for the licensee submitted on the papers already provided to the ABC, which included the verified petition, and correspondence between licensee's counsel and the Acting Director and Director of the Division. The licensee's attorney submitted a list of all documents that he and other counsel had supplied to the Division prior to the May 27 hearing, and upon which he relies to show compliance with the Order. The licensee did not call any witnesses. The Division also introduced documents, which were in its possession, in support of its argument that there had not been full compliance with the Order. The following is a list of evidence submitted in this matter.

P-1 **Verified petition with attachments**

P-2	Six letters -	May 20, 1982
		March 29, 1982
		April 1, 1982
		April 6, 1982
		April 9, 1982
		April 14, 1982

P-3 Affidavit of Edward Garabedian

P-4 Affidavit of Cecelia Calabrese

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- P-5 Chart of accounts - 1979-80 general ledger
- P-6 Riley letter, dated December 29, 1981
- P-7 South Jersey Realty Abstract Company report of Title and Endorsement,
Schedule of Judgment
- P-8 Mortgage Note, January 13, 1969, received December 29, 1970
- P-9 Daily income and disbursement records (one page)
- P-10 Letter, dated March 1, 1982, schedule of adjustment (three pages)
- P-11 Receipted invoices from January 4, 1980 to December 31, 1980, Abbott
Dairies; Ireland Coffee-Tea invoices, January 3, 1980 to December 26,
1980
- P-12 Cancelled checks, etc. from January 1979 to April 22, 1980
Check stubs \$2564 - 3631, January 1979 to April 22, 1980
Bank statement and deposit slips - December 29, 1978 to April 30, 1980
- P-13 Documents, invoices, etc., 1979 through April 1980
 Crown Coat, Apron & Towel Service, Co.
 K and G Bar and Restaurant Supplies, Inc.
 Penn Fish Co.
 Carbonator Rental Service, Inc.
 Sea Lord, Inc.
 CHF
 Holly Distributors, Inc.
 Garden State W & S
 Dealers' Liquor Co.
 J & J Distributing Co.
 Kasser Liquor Co.

Konrad Beer Distributor, Inc.
Hub Beer Distributors, Inc.
Asbury Distributing Co., Inc.
Joseph H. Reinfeld, Inc.
Burns Beverage Co.
William Bryen Co.

- R-1 1975 Corporation income tax return
- R-2 Copy of Pulini check #110
- R-3 Consent Judgment
- R-4 Copies of P.P.B., Inc., cancelled checks
- R-5 Copy of Judgment Order, financing statements, federal tax liens
- R-6 Deed # C 434396-CH (Cecelia Calabrese)
 Deed # 156676A (Kagey, Inc.)
 Application for Corporate Clearance Certificate
 Pennsylvania corporate income tax return, 1972
 Statement of disposition
 Industrial Valley Title Insurance Co. - settlement statement
- R-7 Copy of two building permits
 three pages of building inspector's log

The parties stipulated to the following facts:

1. Counsel agreed that Edward Garabedian, upon whose affidavit the licensee relies, was disbarred in the State of Pennsylvania on January 11, 1977.

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2. Counsel agreed that Mrs. Calabrese told Inspector C. that she kept all the cash that was invested in the business of the licensee, except for proceeds from the sale of real estate, in her house.

The crucial language in the January 11, 1982 Order of then Director Joseph H. Lerner, which forms the crux of this motion, states:

that the suspension was . . . effective 2:00 a.m., Monday, January 25, 1982, with leave granted to the licensee to move to lift the suspension by verified petition upon proof that the unlawful situation (hindering an investigation and/or failing to produce records) has been corrected; . . .; but in no event shall said suspension be lifted sooner than 60 days from the commencement of the suspension set forth herein.

The verified petition referred to was filed on or about the 60th day of the suspension period, and asked for the lifting of the suspension because of compliance by the licensee with the terms of the aforementioned order. The expedited hearing request was made after correspondence and communications with the Director and staff of the Division were not successful in having the suspension lifted. Counsel argues that the licensee has cooperated fully with the Director and his investigators by providing numerous documents as well as other information which went far beyond that required by the Initial Decision of this judge or by former Director Lerner's Order, in order to answer any questions the present Director had regarding the original purchase of the license. Counsel further argues that the continuous denial of the request to lift the suspension and the additional requests for more documents and information after the material referred to was provided has had the effect of a "fishing expedition." Counsel states that the licensee is not able to provide any further explanation in regard to any missing documents and is not able to provide any additional documents. The licensee has suffered and is continuing to suffer extreme economic loss because of the suspension of the license.

The Deputy Attorney General argues, on behalf of the Division, that the licensee has not complied fully with the Order of this judge's Initial Decision, which was adopted by

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former Director Lerner. In order to achieve compliance, and obviate the charge of hindering an investigation, the licensee was directed to provide the following material:

1. Purchase agreement, bill of sale and closing statement, and cancelled checks in connection with the purchase of the licensed business
2. Income and disbursement records from January 1979 to April 21, 1980
3. Business ledger books from January 1979 to April 21, 1980
4. 1979 personal income tax return, Cecelia D. Calabrese
5. Documentation of sources of investment into the business
6. Payroll and salary records, including 941 forms

The Division is satisfied that submissions by the licensee have fulfilled compliance with Items 4 and 6, but the Deputy Attorney General asserts that the licensee has inadequately responded to the requests for documentation set forth in Items 1, 2, 3 and 5.

Item 1 requires the licensee to disclose a purchase agreement, bill of sale and closing statement, and cancelled checks in connection with the purchase of the licensed business. The Division points out that the only material provided was an affidavit of attorney Edward Garabedian, which the Division submits is not a credible affidavit because he has been disbarred and because of his failure of recollection. The Deputy Attorney General further argues that the requirement for income disbursement records, Item 2, is not satisfied by the submission of just one daily record page (P-9). Further, the request for the business ledger book, Item 3, is not satisfied by the submission of a general ledger for 1979-80, because it is so conclusory that it does not yield useful information. The Deputy Attorney General points out that the cash pay outs which are shown as monthly totals, such as for dairy and coffee products, do not account for the sum of the cash disbursements reflected in the ledger, and indicates that the Division is very disturbed by

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the fact that the licensee's books do not reflect exactly where the cash is going. The Division is also disturbed by the fact that a loan of \$40,000 by Pulini, Inc. to P.P.B., Inc. is not reflected in the ledger book at all. The Deputy Attorney General also argues that Item 5, the request for documentation of sources of investment into the business, has not been met at all. No documentation has been provided to show that the property sales, from which the licensee says the cash was provided, generated sufficient money to buy the license. Furthermore, the Division does not accept the rationale that Mrs. Calabrese was in the habit of keeping \$60,000 in cash in her home.

The attorney for the licensee responded to the Division's arguments by asserting that notwithstanding the present status of the Pennsylvania law license of Mr. Garabedian, he was the attorney upon whom the Calabreses relied for legal and financial advice. He points out that the chronology of the purchase of the business and property transfers, etc., was documented in a letter filed with the Division and in the verified petition, and any other documents have either been lost or misplaced over the decade that has passed since the purchase of the business. In regard to the fact that only one daily record sheet has been provided, counsel simply states that is all that exists. He argues that there are daily business expenses for food, some liquor, uniforms, napkins, etc., which account for the cash pay outs, and which are undocumented, and he asserts that expenses of this sort are not unusual figures. Counsel asserts that the suspension, which is well over 120 days as of June 11, 1982, is far beyond that which this charge would warrant.

In order to determine whether or not the suspension should be lifted, the court must first determine whether or not the licensee has complied with the demands of the ABC as set forth above (1 through 6), since this judge and the former Director of the ABC found that by its original noncompliance, the licensee had hindered the original investigation. This court has reviewed the statutory and case law in order to determine if there is a standard to which a licensee's compliance can be compared or by which it can be judged. N.J.S.A. 33:1-35 grants the Director of the Division of Alcoholic Beverage Control broad investigatory powers. Gillhaus Beverage Company v. Lerner, 78 N.J. 499 at 507-508 (1979). Its provisions include the ability to conduct "an examination of the books, records,

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accounts, documents and papers of the licensees or on the licensed premises." N.J.S.A. 33:1-35. To effectuate such an investigation, the Director has the power to compel the production of such books, records, etc., Id., and the statute imposes strict requirements upon licensees, to wit:

N.J.S.A. 33:1-35 Investigations, inspections, searches and examinations; examination of witnesses; subpoenas; procedure on failure to obey; powers of deputy directors

The Director of the Division of Alcoholic Beverage Control and each other issuing authority may make, or cause to be made, such investigations as he or it shall deem proper in the administration of this chapter and of any and all other laws now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution or sale thereof, or the collection of taxes thereon, including the inspection and search of premises for which the license is sought or has been issued, of any building containing the same, of licensed buildings, examination of the books, records, accounts, documents and papers of the licensees or on the licensed premises.

Every applicant for a license, and every licensee, and every director, officer, agent and employee of every licensee, shall, on demand, exhibit to the director or other issuing authority, as the case may be, or to his or its deputies or investigators, or inspectors or agents all of the matters and things which the director or other issuing authority, as the case may be, is hereby authorized or empowered to investigate, inspect or examine, and to facilitate, as far as may be in their power so to do, in any such investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever. Investigations, inspections and searches of licensed premises may be made without search warrant by the director, his deputies, inspectors or investigators, by each other issuing authority and by any officer. . . .

To effectuate this statute, the Director has promulgated N.J.A.C. 13:2-23.30, which commands:

No licensee shall, directly or indirectly, fail, on demand, to produce, exhibit, or surrender to the Director of the Division of Alcoholic Beverage Control, his deputies or inspectors. . . any and all matters and things which the director or other issuing authority is authorized or empowered to investigate, inspect or examine. . . .

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Since it is clear that the existing law holds the licensee to a strict standard of compliance to demands for production, which was not met in the original proceeding, in order to have the suspension lifted, the licensee must demonstrate compliance with the requests and show that the hindering of an investigation is not continuing. There are no decisions issued by the Director or the courts which adopt a lesser standard of compliance than that of requiring the licensee to comply with the statute and facilitate the investigation as far as may be in his power to do so. There is no standard of reasonable or substantial compliance in order to invalidate the charge of hindering an investigation.

In order to determine whether or not the licensee has complied with the demands in the six areas in which there were failures, which led to the Order from which this motion is made, there must be a strict factual review of the items provided. The court is satisfied, as is the Division, that the licensee has complied with Items 4 and 6 as set forth above, in that the personal income tax returns of Cecelia D. Calabrese and payroll and salary records, including 941 forms, have been provided.

Item 1 requires the licensee to provide the purchase agreement, bill of sale and closing statement, and cancelled checks in connection with the purchase of the licensed business. This court has reviewed the materials provided by the licensee, which it urges fully comply with that request (specifically P-3, P-7 and P-8) but finds that these documents do not provide complete compliance with request 1. Mr. Garabedian's affidavit (P-3) is faulty in that it was conclusory, uncorroborated, and based on imprecise recollection. The Title report and mortgage note (P-7 and P-8) do not show where the money came from which was used to purchase the licensed business and pay off the debts of the prior owners, Mr. and Mrs. Naccarato, nor does it represent any purchase agreement, etc., between Mrs. Calabrese and the Naccaratos. Counsel's argument, that the explanation for the source of funds has been corroborated by Mrs. Calabrese during her interviews with ABC inspectors, is weak at best. The corroboration of which he speaks was never in the form of a sworn affidavit, but merely in the form of an assertion by Mrs. Calabrese, that she kept the cash with which she provided the balance of the payments, above and beyond the money received from the sale of real estate, in her home in Philadelphia. Mrs. Calabrese's affidavit, P-4, merely discussed her ill health which

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prevented her from appearing as a witness. For these reasons, this judge concludes that the licensee has not provided the documentation required by Item 1, and further concludes that the proffered explanation for failure to do so is inadequate.

Item 2 and Item 3 required the licensee to provide income and disbursement records and business ledger books from January 1979 to April 21, 1982. The court has reviewed the material provided by the licensee in response to that directive. The court finds that in response to the order to provide income and disbursement records, only one daily record sheet has been provided. The explanation for the failure to provide all the daily income and disbursement records between January 1979 to April 21, 1980, was that they no longer exist because the licensee was unaware that the ABC required such meticulous daily records be kept for an indefinite period. The court does not accept this argument. If the daily record of April 20, 1980 (P-9), which was seized on April 22, 1980, the first day ABC inspectors visited the licensed premises, is in existence, it would contravene logic and common sense to think that the licensee had this one document but had lost, destroyed or never kept the records for the days immediately preceding April 20, 1980. Therefore, the explanation that the documents never existed is not adequate to explain their absence. The dates of the income and disbursement records requested by Item 2 do not go so far back in the past and are not so voluminous as to be of the type which might have been destroyed or lost because of their bulk or the passage of time. Accordingly, this judge finds that the licensee has not complied with the request of Item 2 for daily income and disbursement records between January 1979 and April 21, 1980.

In regard to the request for the business ledger books for the same time period, the ABC asserts the books are incomplete since they do not reflect where all the cash was spent, they do not reflect the loan from Pulini, Inc., and they are forced figures, as the accountant relied on the verbal communications of Mrs. Calabrese. This judge has reviewed the original general ledger for 1980 and the original income and disbursement records for 1978 and 1979 (P-5). These documents are represented to be the only general ledger and records that were ever in existence. The fact that it is not the preferred form of the general ledger and that it does not reflect everything that the Division wants it to reflect does not detract from the fact that the document in evidence is the general ledger

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and records which were requested. Furthermore, the licensee's accountant has provided an explanation, albeit tenuous, for the journals and ledger. (See P-10.) Accordingly, the court concludes there has been compliance with the request of Item 3.

The court realizes that the documentation of sources of investment into the business, Item 5, is the crucial request, because it is this order which would reveal, if appropriate documentation were provided, whether or not there is an undisclosed interest in this business, because some entity, whose identity is not being disclosed, provided cash for investment into the business. The licensee has provided a deed regarding property sold by Cecelia Calabrese, see R-6, as well as a deed regarding property transferred from Kagey, Inc., see R-6, which accounts for approximately \$60,000, of which approximately \$45,000 went to the Calabreses, which they invested into the licensed business. The sales of property, as reflected in the deeds, took place in 1972, two years after the business was purchased. Counsel for the licensee, in argument, points out that the only thing that occurred in 1970 was the purchase of the license and the lot, as the building had burned down. It was 1972 when the reconstruction of the building was completed, for which the money from the sale of the real property was used. Counsel argues that it was cash left to the widow that was used to purchase the license, land and corporate books, and to pay off the judgments of the prior licensee. This cash was kept at home, which counsel asserts is a custom "with old Italian people who don't believe in banks."

As best this court can reconstruct, the purchase in 1970 involved a payment of \$48,140.94 of a balance due on a mortgage owed by the prior licensee, payment of \$10,754.53 due to alcoholic beverage wholesalers and the IRS, and a payment of an undefined amount due for sales taxes, etc., and other regulatory charges, all in addition to a \$4,700 purchase price. This indicates a minimum of \$63,595.47 paid in or around 1970. In 1972 there was a payment of approximately \$60,000 for materials to reconstruct the premises, and a payment of approximately \$60,000 for an addition to the licensed premises, which expenses were covered by the sale of the properties described. There is no explanation whatsoever, other than a third-hand revelation that Mrs. Calabrese told the ABC investigator that she kept all the cash which was invested into the business in 1970 in her home in Philadelphia, as she did not believe in banks. There is no

documentation whatsoever of the source of the cash, receipts for the cash, or agreements, etc. This judge just cannot accept this third-hand assertion as the basis for a finding of fact, from which a conclusion can be drawn that the licensee has provided adequate documentation of the sources of the money for the original investment into the business. There has to be some competent and credible evidence to support a finding of fact and none has been provided in this regard. See Weston v. State, 60 N.J. 36, 50-52 (1972). Accordingly, the court concludes that the licensee has not complied with the directive to provide adequate documentation of original sources of investment into the business. The documentation of the sale of real estate from Cecelia Calabrese and from Kagey, Inc., a family-owned corporation, which accounts for approximately \$45,000 of the \$120,000 invested in 1972, is only partial compliance in that it only relates to part of the second stage of the investment.

Having concluded that Items 1, 2 and 5 still have not been provided by the licensee, this judge must now determine if the Director's Order, which imposed a suspension of 60 days as a penalty for hindering an investigation and which ordered said suspension continued until the licensee complied with or explained the lack of compliance with the directive to produce the requested documents, should be lifted. This court has found no case law or regulations which establish criteria with which it can assess whether a suspension can be imposed for an indefinite term, or whether such a suspension, at some point in time, becomes coercive in nature. The instant licensee has failed to produce certain crucial documents, stating they do not exist, or explaining their absence with hearsay and insufficient competent and credible evidence. Given the failure to comply and the concomitant continuance of hindering the investigation, should this suspension continue indefinitely?

This court has concluded that the suspension of the license for hindering an investigation cannot be continued indefinitely, as its purpose is no longer valid. An analogous situation is seen in the case of a witness who refuses to testify, is held in contempt and incarcerated. The incarceration is generally imposed for an indefinite term and is a coercive measure designed to elicit the testimony of the witness. See Catena v. Seidl, 65 N.J. 257 (1974), 66 N.J. 32 (1974) and 68 N.J. 224 (1975), where the Supreme Court addressed the issue of whether a contemner can be incarcerated indefinitely because of

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his failure to testify. In Catena, the plaintiff refused to answer questions in appearances before the State Commission of Investigation, an investigatory body charged to investigate operations of organized crime. As a result, he was prosecuted for civil contempt and ordered imprisoned until such time as he purged himself of contempt. After four years of imprisonment he petitioned the court for release. The court held that "the order holding plaintiff in contempt no longer had a coercive impact and had become punitive in nature and therefore the order must be vacated." Catena, 65 N.J. at 261. The Supreme Court went on to say that "(t)he legal justification for commitment for civil contempt is to secure compliance. Once it appears that the commitment has lost its coercive power the legal justification for it ends and further confinement cannot be tolerated." Id. at 262. The test to be applied to determine whether or not to continue an indefinite imprisonment is whether there would be a substantial likelihood that such a continued commitment would accomplish the purpose of the order upon which it was based. Id. at 262-263. This test is subjective and requires consideration of all the relevant factors. The burden of proof is on the contemner to demonstrate that there is no reasonable likelihood that indefinite and continued incarceration will cause him to break his silence. The rationale of the Catena cases can be utilized to assess the validity of the continued suspension in the case at bar. Like the commitment for civil contempt, it appears to this judge that a legal justification for the original suspension was to secure compliance with the order to produce the documents, the lack of which was hindering the Division's investigation of the licensee. It now appears that the suspension has lost its coercive power, as it has not secured the production of some of the records in question. The test applied in Catena is adaptable to the case at bar. Is there a substantial likelihood that a continued suspension will accomplish the purpose of the original order and secure the documents in question?

After reviewing all of the relevant factors, with the licensee bearing the burden of proof, the court concludes that there is no reasonable likelihood that the purchase agreement, bill of sale, and closing statement and cancelled checks in connection with the purchase of the licensed business will be provided. The court draws the same conclusion in regard to the income and disbursement records requested by Item 2. That is because it appears to this judge, from a review of the documents and affidavits provided by the

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licensee, as well as from a review of all the evidence submitted by the Division, that the documents requested by Items 1 and 2 do not exist. The court further concludes that documentation of any other sources of investment into the business, other than the 1972 sale of real estate, is not likely to be forthcoming in light of the fact that the licensee has not presented any testimony from any of the Calabreses and is relying on third-hand hearsay assertions, and on faulty ethnic generalizations. Any further suspension will not force production of the three remaining categories of documents which the licensee was ordered to produce in order to lift the suspension and to remove the finding that it hindered the investigation. The license has already been suspended far beyond the original 60-day period, and as of this date, has been suspended for 169 days.

The question now becomes what is the appropriate procedure to follow in light of the fact that this judge has concluded that a further continuing and indefinite suspension will not force the production of these documents and cannot be continued to be sustained. In the instant proceedings, a continued suspension would be violative of the licensee's due process rights in that it would amount to a complete revocation of the license and would be merely punitive. The underlying current here, which has never been formalized in a charge, is that there is an undisclosed interest in the license. The hindering charge in the original proceeding arose from an investigation to ascertain whether there existed an undisclosed interest in the license, in violation of N.J.S.A. 33:1-25. Since, due to the hindrance of the investigation, charges of an undisclosed interest were never filed against the licensee, it appears to this judge that to allow the suspension of this license to continue indefinitely would be determining the allegation of an undisclosed interest without affording the licensee an opportunity to a hearing on that specific charge. N.J.S.A. 33:1-31 provides a licensee with a due process right of notice and hearing prior to a suspension or revocation.

No suspension or revocation of any license shall be made until a 5-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him.

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Furthermore, an indefinite suspension is equal to revocation. Insufficiency of a licensee's records and loss of records do not warrant a complete revocation of the license, although failure to report an undisclosed interest might. Therefore, the instant suspension, no longer having the coercive effect of producing the documents needed to complete the investigation, has become punitive in nature and should be lifted. This conclusion is without prejudice to the right of the Division to file a complaint against the licensee, asking for revocation of the license for failure to reveal an undisclosed interest, or for complete hindrance of an investigation without good reason, and without prejudice to the right of the Division to file a complaint for failure to keep proper books of account, in violation of N.J.A.C. 13:2-23.32, and to seek revocation of the license on that basis.

In sum, the court has reviewed the documents produced and explanations or lack of documents in order to determine if they comply with the order of January 11, 1982, and thus warrant a lifting of the suspension. The court has found that three, out of the six requested categories of documents, have been provided and compliance in regard to Items 3, 4, and 6 is complete. In regard to Items 1, 2 and 5, the licensee has not produced the requisite documents to comply with the Order of January 11, 1982, nor has the licensee produced a satisfactory explanation for noncompliance. However, the suspension for failure to produce the documents, which failure hindered an investigation, should be lifted since it has become punitive in nature. This conclusion is without prejudice to the right of the ABC to institute further proceedings to revoke and this judge has not addressed the issues, and is making no findings whatsoever, in regard to whether or not there is presently an undisclosed interest in this license, or existed at the time of purchase, whether or not the licensee has failed to reveal such an undisclosed interest, or whether or not the licensee has failed to keep appropriate books and accounts as required by the Division's regulations.

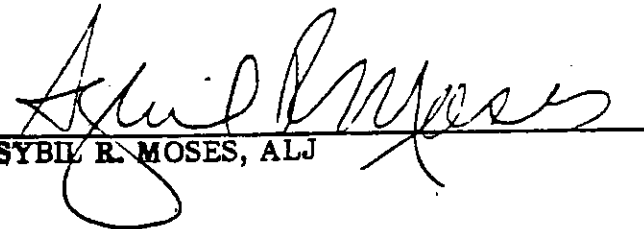
Based on the foregoing analysis, it is hereby ORDERED that the suspension of the instant license for hindering an investigation should be removed; and

It is further ORDERED that the lifting of the suspension is without prejudice to the right of the Division to lodge further and other charges asking for revocation of this license upon the giving of appropriate notice and hearing.

This recommended decision may be affirmed, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who is empowered by law to make a final decision in this matter. However, if John F. Vassallo, Jr. does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JOHN F. VASSALLO, JR. for consideration.

July 13, 1982
DATE


SYBIL R. MOSES, ALJ

April 14th, 1982.

Donald C. Brown, Esq.
52 North Broad Street
Woodbury, New Jersey 08096

RE: P.P.B., INC.
T/A PIKE BEEF AND BEER
800 BLACK HORSE PIKE
GLOUCESTER TOWNSHIP
OAL - ABC 573-81
S-12,820 H-7480-34

Dear Mr. Brown:

A re-review of the Verified Petition submitted March 23, 1982 and your letter presentations of April 1 and 9, 1982 has been conducted. The essential question for consideration is whether or not the licensee has corrected the unlawful situation which resulted in the filing of administrative charges against the license on October 28, 1980 and subsequent license suspension by former Director Joseph Lerner by Order of January 11, 1982.

A brief review of the history of this matter may assist in establishing a perspective:

- (1) On April 22, 1980 Inspectors of the State Police Alcoholic Beverage Control Enforcement Bureau began an investigation concerning the true ownership of License No. 0415-33-009-001 held by P.P.B., Inc. The 100% stockholder of record is Mrs. Cecelia D. Calabrese of Philadelphia, Pa. On that date the licensees, then

attorney, Louis N. Caggiano accepted an investigative "request for documents", form NJABC - 4010.

- (2) On May 28, 1980 Mrs. Calabrese and her son, James, were interviewed in the presence of Mr. Caggiano and a former Pennsylvania attorney, Edward A. Garabedian. The Investigative report (previously provided in discovery) discloses that Mrs. Calabrese stated her original investment in the licensed business to be between \$70,000.00 and \$73,000.00. The reports further indicate that in 1969 the license and business property was held by Clover Leaf Cafe, Inc. The stock in that corporation was held by Idol A. Naccaroto (99.7%) and Marie A. Naccaroto (.03%). The licensed premises had been destroyed by fire and the business was deeply in debt. Mrs. Calabrese had loaned Mr. Naccaroto funds, i.e., \$4,000.00 and ultimately agreed to purchase Clover Leaf Cafe, Inc. for \$4,700.00 and her assumption of the corporation's liabilities. The documentation supplied to investigators or statements made to investigators establish the following expenditures:
- a) Payment of \$48,140.94 balance due on mortgage to Peoples National Bank.
 - b) Payment of \$10,754.53 due to alcoholic beverage wholesalers and the IRS.
 - c) Payment of an undefined amount due for Sales Tax, real estate taxes, Unemployment Compensation contributions, and license renewal costs.
 - d) Payment of approximately \$60,000.00 for materials, etc., to reconstruct the licensed premises.
 - e) Payment of approximately \$60,000.00 for an addition to the licensed premises. With the exception of an undefined portion of the \$60,000.00 used for "the addition", which is claimed to have been secured through "retained earnings" of the business, the claimed "source" of the well over \$118,000.00 invested was "cash".
- (3) Repeated investigative requests to provide documentation for the "source of the cash" proved futile. On October 28, 1980 the Division filed charges against the license for hindering a Division investigation by failing to produce the same. The licensee was found guilty by Hon. Sybil R. Moses, AJL in an Initial Decision of November 24, 1981, which was adopted by former Director Lerner as the final agency conclusion in the case on January 11, 1982. The license was suspended beginning January 25, 1982 and, by terms of the Order, will remain so, until records are produced. No appeal to the Superior Court Appellate Division was filed.

- (4) Among the records found by Judge Moses and Director Lerner to not have been produced were: Purchase agreement, bill of sale, and closing statement, and cancelled checks in connection with the purchase of the licensed business; and documentation of the sources of investment into the business.

In support of the source of investment in the business, the Division has recently received various documents, which raise further questions.

(1) In an Affidavit of February 22, 1982 Edward G. Garabedian states that the sale of property by Mrs. Calabrese in 1969 or 1970 became a major source of her investment in the business. The Division has not been provided with documentation relating to these transactions.

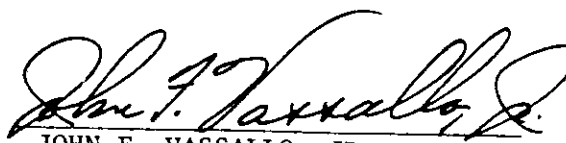
(2) In your submissions of April 1 and 9, 1982, it is indicated that two 1972 real estate transactions establish a source of funds. First, there is no proof that the proceeds from the two sales ever were disbursed to either Mrs. Calabrese or the licensee. Second, the Settlement Statement with respect to the Ridge Ave. property discloses that the net proceeds of the sale were \$31,699.67, not \$60,000.00. Third, in that transaction the seller was Kagey, Inc. Even if that entity was, in effect, James Calabrese, Federal Gift Tax payments would be required. Therefore, proof of the same will be required.

(3) Finally, even if I were to assume that the proceeds from the two real estate transactions (at best \$48,699.67) were applied to the business by Mrs. Calabrese, I would have to conclude that Mrs. Calabrese had at least \$60,000.00 in cash stashed in her home following her husbands' demise. I find it very difficult to accept that proposition in light of her husbands' employment as a truck driver and Mrs. Calabrese's disclosure that she had been robbed of substantial cash from a safe in her home during the relevant period involved. I suggest you submit proofs as to the source of that money.

In summary, until I am satisfied that the licensee has documented the source of investment into the licensed business, the license will remain suspended consistent with the Order of Director Lerner of January 11, 1982.

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PUBLICATION OF BULLETIN 2429 IS HEREBY DIRECTED THIS 14th
DAY OF DECEMBER 1982.


JOHN F. VASSALLO, JR.
DIRECTOR