

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2389

February 20, 1981

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2389

February 20, 1981

1. APPELLATE DECISIONS - THE REDWOOD COCKTAIL LOUNGE v. ORANGE.  
#4413

The Redwood Cocktail Lounge (A Corp. of New Jersey),	:	
	:	CONCLUSIONS
Appellant,	:	
	:	AND
vs.	:	
	:	ORDER
Municipal Board of Alcoholic Beverage Control of the City of Orange,	:	
	:	
Respondent.	:	

-----  
Friedman and Rosenberg, Esqs., by Ned M. Rosenberg, Esq.,  
Attorneys for Appellant.  
F. Michael Giles, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Joseph Rosa, Jr., Administrative Law Judge

DATED: February 13, 1980 - RECEIVED: February 14, 1980

BY THE DIRECTOR:

Prior to the date of the hearing at the Office of Administrative Law on the appeal by the appellant from the suspension of appellant's license by the respondent, based upon its finding of guilty to a charge more specifically set forth in the Initial Decision below, the parties hereto entered into an agreement whereby the appellant changed its original plea of "not guilty" to a plea of non vult to the said charge, and agreed to have the said appeal dismissed.

In return for the plea of non vult and the dismissal of the appeal, respondent agreed to "impose a suspension of 12 days, or in lieu thereof, a fine to be imposed in an amount to be determined and fixed by the Director of the Division of Alcoholic Beverage Control on the basis of the information to be submitted to the Director".

In such matters where there is an agreement entered into for the dismissal of the appeal and the reimposition of a suspension as modified, the appropriate order of suspension must be made by the Director; they are not referred back to the respondent for the imposition of suspension of license.

Therefore, I shall accept the recommendation of the Administrative Law Judge and enter an order dismissing the said appeal based upon the agreement entered into by the parties hereto. However, I shall deny the request of the appellant for the payment of a fine

in compromise, in lieu of suspension of the license in view of the fact that the appellant has a prior adjudicated record within the past few months, wherein the appellant paid a fine upon its plea of non vult to a charge of permitting and suffering lewdness and immoral activity in and upon its licensed premises.

Accordingly, it is, on this 10th day of March, 1980,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated October 25, 1979 staying the order of suspension pending determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License No. 0717-33-055-001 issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to The Redwood Cocktail Lounge (A Corp. of New Jersey) for premises 16-16a-18 South Essex Avenue, Orange be and the same is hereby suspended for twelve (12) days commencing 2:00 a.m. Thursday, March 13, 1980 and terminating 2:00 a.m. Tuesday, March 25, 1980.

JOSEPH H. LERNER  
DIRECTOR

INITIAL DECISION

THE REDWOOD COCKTAIL LOUNGE  
(A CORPORATION OF NEW JERSEY)

)  
)

OAL Dkt. No. ABC 5186-79  
AGENCY Dkt. No. Appeal  
4413/MUN REV 7465

v.

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF THE CITY  
OF ORANGE, NEW JERSEY

)  
)

APPEARANCES:

Friedman & Rosenberg, Esqs., by Ned M. Rosenberg for  
the Petitioner, Redwood Cocktail Lounge

F. Michael Giles, Esq., for Respondent, Municipal Board  
of Alcoholic Beverage Control of the City of Orange,  
New Jersey

BEFORE THE HONORABLE JOSEPH ROSA, JR., A.L.J.:

Pursuant to N.J.S.A. 33:1-31, the Municipal Board of  
Alcoholic Beverage Control of the City of Orange, (hereinafter  
Respondent), preferred charges against the Redwood Cocktail Lounge,  
a corporation of the State of New Jersey, (hereinafter Appellant),  
having its licensed premises at 16-16a-18 South Essex Avenue,  
Orange, New Jersey. The charges were that:

On June 17, 1979, you allowed, permitted and  
suffered in and upon your licensed premises, a  
brawl, an act of violence, a disturbance, and  
unnecessary noise; you also allowed, permitted  
and suffered your licensed place of business to  
be conducted in such a manner as to become a  
nuisance in violation of Section 13:2-23.6 of the  
Rules and Regulations, Title 13, Subtitle B,  
New Jersey Administrative Code.

On October 11, 1979, Respondent adopted a resolution  
suspending Appellant's plenary retail consumption license,  
(license No. 0717-33-055-001, of the City of Orange), for a per-  
iod of fifteen (15) days effective November 1, 1979, after finding

OAL Dkt. No. ABC 5186-79

Appellant guilty of the charges hereinbefore set forth. A copy of the Resolution and findings of fact of the Municipal Board of Alcoholic Beverage Control of the City of Orange are attached hereto. On October 16, 1979, a notice of Appeal from the local action was filed with the Director of the Division of Alcoholic Beverage Control, pursuant to N.J.S.A. 33:1-31 and N.J.A.C. 13:2-17.1 et seq. On October 25, 1979, the Director of Alcoholic Beverage Control, Joseph H. Lerner, issued an Order staying the Order of Suspension pending the determination of the Appeal. On October 29, 1979, an Answer was filed on behalf of Respondent, and on November 19, 1979, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Hearing was scheduled to be heard on January 2, 1980, before Administrative Law Judge Joseph Rosa, Jr.

At the date of hearing, F. Michael Giles, Esq., Attorney for the Municipal Board of Alcoholic Beverage Control of the City of Orange, stated that an agreement had been reached between the Respondent and the Appellant. The charges were read in full to the Appellant. The Appellant entered a plea of Non-Vult to the charge, and withdrew the Appeal previously filed. In return for the plea of Non-Vult, and the withdrawal of Appeal, Respondent agreed to impose a suspension of twelve (12) days, or in lieu thereof, a fine be imposed in an amount to be determined and fixed by the Director of the Division of Alcoholic Beverage Control on the basis of the information to be submitted to the Director. The suspension was a twenty (20%) percent reduction in penalty, as is the past agency practice, in return for the Appellant's plea and withdrawal of Appeal. The parties agreed to a Consent Order embodying the penalty of the twelve (12) day suspension of the plenary retail consumption license, or in lieu thereof, a fine to be paid.

Said Consent Order was fully executed by both parties, and was submitted to the Office of Administrative Law, Honorable Joseph Rosa, Jr., on February 5, 1980.

After careful review of the testimony and the record in this matter, I FIND:

1. Appellant is the holder of Plenary Retail Consumption License No. 0717-33-055-001, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange, New Jersey.
2. On, or about June 17, 1979, the Appellant allowed, permitted and suffered its licensed place of business to be conducted in a manner so as to become a nuisance and violation of N.J.A.C. 13:2-23.6.
3. As a result of the incident of June 17, 1979, the Municipal Board of Alcoholic Beverage Control, by resolution dated October 11, 1979, suspended the

OAL Dkt. No. ABC 5186-79

Appellant's plenary retail consumption license for a period of fifteen (15) days effective November 1, 1979.

4. Appellant filed an Appeal from this action of the Municipal Board of Alcoholic Beverage Control, the City of Orange.
5. Appellant now wishes to withdraw his Appeal and withdraw its original plea of Not Guilty to the charges preferred against it by the Municipal Board of Alcoholic Beverage Control of the City of Orange.
6. Appellant is aware of all of the potential consequences and penalties which may be imposed by the Director of the Division of Alcoholic Beverage Control for the aforesaid violation.
7. The Appellant has been furnished and has executed a copy of the proposed Consent Order, a copy of which is attached hereto, and made a part hereof, which provides for possible suspension of its plenary retail alcoholic beverage consumption license, No. 0717-33-055-001 issued by the City of Orange, for a period of twelve (12) days or that in lieu thereof, a fine may be imposed by the Director of the Division of Alcoholic Beverage Control.
8. That the Appellant was aware that this Order and Agreement may be modified, affirmed, or disapproved by the Director of the Division of Alcoholic Beverage Control, and if such Order is modified or disapproved by the Director, the Appellant will be allowed to withdraw his plea of Non-Vult and reinstitute his Appeal.
9. The aforesaid Appellant has entered into the Consent Order freely, knowingly, and without coercion.

I THEREFORE CONCLUDE that the withdrawal of the plea of Not Guilty has been entered into by the Appellant knowingly and voluntarily.

I FURTHER CONCLUDE that the Consent Order, attached hereto and made a part hereof, represents agreement entered into by the parties, hereto, and same is HEREBY APPROVED as if set forth fully herein.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency 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 with the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, my Initial Decision in this matter and the record in these proceedings.

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST  
THE REDWOOD COCKTAIL LOUNGE (A CORPORATION OF NJ)  
16-16a-18 SOUTH ESSEX AVENUE, ORANGE, NJ  
HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE  
NO. 0717-33-055-001

FINDINGS OF FACT

We, the Board find from the testimony rendered in the above matter that there was an altercation on June 17, 1979; and  
Further, that the wounds exhibited and testified to by the victim showed that the altercation was serious; and  
Further, that the testimony of Officer Jerry Racaniello and Officer John DeRosa and that of the victim regarding his leaving the establishment to report the incident was credible; and  
Further, that the testimony of the Barmaid and the owner's wife was not believable;  
Due to these and other facts heard and considered, the Board has decided to suspend the license of The Redwood Cocktail Lounge (A Corporation of NJ) for a period of 15 days.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE  
CONTROL OF THE CITY OF ORANGE, NEW JERSEY

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST )  
 )  
 The Redwood Cocktail Lounge (A Corp. of N.J.) )  
 )  
16-16a-18 South Essex Avenue, Orange, New Jersey )  
 )  
 HOLDER OF PLÉNARY RETAIL CONSUMPTION )  
 )  
 LICENSE NO. 0717-33-055-001 )

RESOLUTION  
 &  
 ORDER

WHEREAS, charges have been heretofore duly served upon the above named licensee, charging that on June 17, 1979, you allowed, permitted and suffered in and upon your licensed premises, a brawl, an act of violence, a disturbance, and unnecessary noise;

you also allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in violation of Section 13:2-23.6 of the Rules and Regulations, Title 13, Subtitle B, New Jersey Administrative Code, and at a hearing duly held thereon the testimony having established the truth of said charges.

IT IS, THEREFORE, on this 11th day of October 1979, on motion duly made and seconded,

RESOLVED AND ORDERED, that Plenary Retail Consumption License No. 0717-33-055-001, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange, New Jersey, to The Redwood Cocktail Lounge (A Corp. of NJ), 16-16a-18 South Essex Avenue, Orange, NJ be suspended for a period of 15 days effective November 1, 1979 at 2:00 A.M.,  
 to November 15, 1979  
 at 2:00 A.M..

Adopted: October 11, 1979

F. Michael Giles, Esq.

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
185 WASHINGTON STREET  
NEWARK, NEW JERSEY 07102

THE REDWOOD COCKTAIL LOUNGE  
(A CORPORATION OF NEW JERSEY)

: APPEAL 4413/MUN. REV. 7465

- vs -

:  
:  
:  
:  
: CONSENT ORDER  
:  
:  
:  
:

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF THE CITY  
OF ORANGE, NEW JERSEY

This matter having been opened to the Court on the appeal of the Redwood Cocktail Lounge (A Corporation of New Jersey), Ned M. Rosenberg, Esq., appearing and F. Michael Giles, Esq., appearing on behalf of the City of Orange - Municipal Board of Alcoholic Beverage Control, IT IS, THEREFORE, on this sixth day of February, 1980, ORDERED, that the Redwood Cocktail Lounge (A Corporation of New Jersey) be sanctioned with a fifteen (15) day suspension of license, with a twenty (20) percent reduction, and it is further ORDERED, that said sanction is based upon the licensee's plea of non-vult, and it is further ORDERED, that the Redwood Cocktail Lounge (A Corporation of New Jersey) apply to the Director of the State of New Jersey, Division of Alcoholic Beverage Control, for a fine in-lieu of suspension, which is the recommendation of all parties hereto.

Dated: February 6, 1980

Joseph Rosa  
Administrative Law Judge

F. Michael Giles, Esq.  
Attorney for the City of Orange

Ned M. Rosenberg, Esq.,  
Attorney for Redwood Cocktail Lounge

2. APPELLATE DECISIONS - CAVALIER, INC. v. PATERSON.

#4412

Cavalier, Inc.	:	
t/a Florida Drugs,	:	
	:	
Appellant,	:	CONCLUSIONS
	:	
vs.	:	AND
	:	
Municipal Board of Alcoholic	:	
Beverage Control of the City of	:	ORDER
Paterson,	:	
	:	
Respondent.	:	

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Pelio and Bateman, Esqs., by Marc C. Bateman, Esq.  
Attorneys for Appellant.  
Ralph L. DeLuccia, Jr., Esq., Attorney for Respondent.

Initial Decision Below

Hon. Sybil R. Moses, Administrative Law Judge

DATED: February 5, 1980 - RECEIVED: February 7, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by Respondent pursunat to N.J.A.C. 13:2-17.14.

In its Exceptions the respondent contends that the Administrative Law Judge failed to adequately restate and consider testimony adduced at the hearing before the Board which indicated that admissions as to failure to request identification and service of alcoholic beverages to the minors in question had been made by appellant's employee Officer Siedel.

In addition, the respondent argues that the Administrative Law Judge failed to follow the standard of review appropriate to an appellate review, but rather, substituted her opinion in place of the Board.

The testimony before the Board included the admission of service to the minor and failure to seek identification by an employee of appellant to the investigating police officer. The minor testified to his purchase at the appellant's premises from a "short bald headed" man. The appellant's principal stockholder testified the "short bald headed" man didn't work that evening. The employee of the appellant, Colon, testified similarly in defense of the charges.

The Board assessed the credibility of the parties, reviewed the testimony and found appellant guilty. Such finding is reasonably supported on the record below and the establishment of the charge by a preponderance of credible evidence is clear.

At the de novo hearing, the respondent submitted the record below pursuant to N.J.A.C. 13:2-17.8. The appellant supplemented the record with the testimony of the "short bald headed" employee, Esteban Gaona. He reiterated what had been advanced below, to wit, he was not on duty at the time the minor alleged he purchased alcoholic beverages.

In the instant matter, the administrative review by this agency is to determine whether or not the factual findings of the Board were supported by substantial evidence contained in the record. Fanwood v. Rocco, 59 NJ Super. 306, 317 (App. Div. 1959), aff'd 33 NJ 404 (1960).

The record before the Board indicates they believed the minor and the two investigating police officers. That testimony was worthy of belief in view of the circumstances under which it arose. The Board did not believe the defense proffered. While factors submitted at a de novo appeal could indicate a totally illegal basis or factual absence for the determination below, the supplemental testimony herein does not diminish the testimony of the minor and the police officers and the Board's credibility affixed thereto.

The Administrative Law Judge's finding that the evidence "shifted" and now "leans" to the defense indicates a substitution of judgment, rather than applying the appropriate standard of review. Hornauer v. Div. of Alcoholic Beverage Control, 40 NJ Super. 501 (App. Div. 1956). Therefore, I reject the findings and conclusions of the Administrative Law Judge. I find reasonable support in the record for the finding of sale of alcoholic beverages to a minor, and I shall affirm the action of the Board.

Accordingly, it is, on this 17th day of March, 1980,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Paterson be and the same is hereby affirmed, and the appeal be and is hereby dismissed; and it is further

ORDERED that my Order of October 23, 1979, staying the suspension pending determination of the appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License No. 1608-44-052-003 issued by the Municipal Board of Alcoholic Beverage Control of the City of Paterson to Cavalier, Inc., t/a Florida Drugs, for premises 507 Broadway, Paterson be and the same is hereby suspended for fifteen (15) days commencing 10:00 p.m. on Monday, March 31, 1980 and terminating 10:00 p.m. on Tuesday, April 15, 1980.

JOSEPH H. LERNER  
DIRECTOR

In the Matter of:	)	
CAVALIER INC., t/a FLORIDA DRUGS	)	<u>INITIAL DECISION</u>
vs.	)	OAL DKT. NO. A.B.C. 5185-79
THE MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL, PATERSON	)	Agency Dkt. No. Appeal 4412

Appearances:

Mark Bateman, Esq., appearing for Appellant,  
Cavalier, Inc., t/a Florida Drugs

Ralph DeLucia, Jr., Esq., Assistant Corporation  
Counsel, City of Paterson, appearing for  
Respondent, Board of Alcoholic Beverage  
Control, Paterson

BEFORE THE HONORABLE SYBIL R. MOSES, A.L.J.:

This is an appeal from the action of the Board of Alcoholic Beverage Control of the City of Paterson, which, by resolution dated October 11, 1979, found that Appellant, Cavalier, Inc., t/a Florida Drugs, on Friday, April 27, 1979, sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage directly or indirectly to James Seegers, age 17 and Melvin Buckingham, age 16, in violation of N.J.A.C. 13:2-23.1 and suspended the plenary retail distribution license # 1608-44-052-002 issued to Cavalier Inc. for a period of fifteen (15) days. Appellant filed said appeal on October 23, 1979, contending that the action of the Board was arbitrary, capricious and unreasonable. The Board, in its answer, denied the allegations of the appeal and contended that the suspension of the license in question was founded on competent and credible evidence and was within the sound discretion of the Board. The Board asked that said suspension be affirmed by this Judge.

A de novo hearing was held on Friday, January 4, 1980 in the Passaic County Courthouse, Paterson, New Jersey. Appearances are noted above.

The Board did not present any witnesses during the course of this hearing. It relied on a transcript\* of the hearing on October 10, 1979 before the Commissioners of the Alcoholic Beverage Control Commission, City of Paterson. During the course of that hearing the City of Paterson presented three witnesses. The first witness was Police Officer Richard Siedel. Officer Siedel testified that on April 27, 1979 he responded to a telephone call at Florida Drugs, wherein he was met by two young males who said they had bought beer and had a problem with the beer. He went into the store with his partner, Officer Schmidt, but was unable to ascertain the name of the person to whom they spoke in the store. That person, however, indicated he had refused to take back the broken bottle but admitted, when asked if he had sold the bottle of beer to the two youngsters, that he had. (See TI 7-25). The City also presented Officer Gene Schmidt who said he responded, with Officer Siedel, to the store because of a call that they were having a problem with juveniles. The salesman said the juveniles were harassing the customers but that they moved on before the police arrived. The manager of the store said they did not sell beer to the juveniles.

\* The transcript of the October 10, 1979 hearing shall be designated TI.  
The transcript of the hearing de novo on January 4, 1980 shall be designated TII.

Cross-examination revealed that the two young men never produced identification but said they were 17 and 16. They said the bottle they bought was cracked when they bought it. Officer Schmidt indicated that, although not in his report, the salesman said he did not always have time to check on the ages of the people who were buying beer. The policemen left after a very short time because of an emergency ambulance call.

The City's chief witness was Melvin Buckingham, who testified he was born on February 20, 1963. He said that on April 27, 1979 he was at Florida Drugs with his friend James, age 17. They bought a quart of beer for \$0.70. When they got outside they discovered the bottle was cracked. He testified the salesman never asked for age identification but when he went back in to get a new bottle the police were called. Melvin Buckingham said that he heard the salesman admit to the police that he had sold the bottle of beer to the two young boys. He described the salesman as a short bald man. (TI 24-15). Cross-examination revealed that the witness was angry and upset because the bottle had fallen outside and become cracked. Although difficult to ascertain credibility from a cold transcript, it appears that Mr. Buckingham was not the most responsive witness.

Michael Viola, the owner of Florida Drugs, testified at the hearing in Paterson that he was not in the store on April 27, 1979. He stated there is no one in the store in the evenings who is a short bald man, similar to the description Mr. Buckingham gave of the man who sold him the beer. Mr. Viola testified that Esteban Gaona works weekdays from 9:00 a.m. to 6:00 p.m., and is short and bald, but that he never works in the evening. Mr. Viola also testified that the store employees called the police themselves, and that there was no short bald man present when the police came. He felt very strongly that the boys were there simply to make trouble.

Carlos Colon testified for the licensee that he was the only salesman at the liquor counter on April 27, 1979. He insisted he did not sell the beer to Buckingham, although he conceded that he was busy and did not always ask for identification from everybody. Mr. Colon's testimony revealed that three or four kids came in with a broken bottle, said they dropped it in the street and were going to stay until they got a new bottle of beer. When the police came two of the kids ran and Seegers and Buckingham stayed behind. He testified that Esteban Gaona never came in that night. He only saw Gaona at 6:00 p.m. when he took over for him. The boys came between 8:30 and 9:00 p.m. Mr. Colon insisted that on the night in question he told the police he never sold the beer.

The City rested with the submission of the transcript marked R-1 in evidence.

Appellant, Florida Drugs, presented two witnesses at the hearing de novo. The first was Esteban Gaona who, despite a language problem, was a credible and honest witness. Mr. Gaona testified he has been working at Florida Drugs for one and a half years. He remembers working on April 27, 1979 until 6:00 p.m. He works 9:00 a.m. to 6:00 p.m. every day but he has never worked past 6:00 p.m. during the entire time he has been with the store. (See TII 8-3 through 23). He also said he has never gone back in the evening for personal reasons or to help out if it is crowded. Cross-examination merely brought out corroboration of direct testimony. Mr. Gaona insisted that when he finishes work he goes home and never comes back to work in the evenings.

Michael Viola, the owner and president of Florida Drugs, reiterated that Gaona was not present at the hearing October 10 because he was not thought to be needed since he had not been in the store on the evening of April 27, 1979. He corroborated that Gaona has never been sick, never worked past 6:00 p.m., and never comes in during the evening. He also testified that Gaona is the only bald headed employee of the store. A page of the payroll book, referring to April 27, 1979, was marked A-1 in evidence and showed that Mr. Gaona worked nine hours that day.

Both counsel summed up at the conclusion of the case. Counsel for the Board urged that the entire case could be decided because of the credibility of the police officers' testimony that the salesman admitted making a sale to the minor. Appellant's counsel argued that the Board was arbitrary and unreasonable by accepting the incredulous testimony of Melvin Buckingham. He urged this Court to accept as fact that the only person Mr. Buckingham could identify as the salesman of the beer was definitely not there that evening.

Having considered the transcript of the hearing on October 10, 1979 before the Board of Alcoholic Beverage Control of the City of Paterson, marked R-1 in evidence, and having observed the witnesses presented by the Appellant during the course of the hearing de novo, and having considered the entire record, together with the arguments of counsel, the Court makes the following findings of fact:

1. The Appellant, Cavalier, Inc., t/a Florida Drugs, 1407 Broadway, Paterson, New Jersey is a corporation of the State of New Jersey, and is the holder of a Plenary Retail Distribution License No. 1608-44-052-002, issued by the City of Paterson.
2. On October 11, 1979, Respondent, Board of Alcoholic Beverage Control, City of Paterson, suspended the Plenary Retail Distribution License of Cavalier, Inc., t/a Florida Drugs for a period of fifteen (15) days because it found that it had sold an alcoholic beverage to a minor on Friday, April 27, 1979.
3. The Paterson Police were called to the premises of Florida Drugs at 9:00 p.m. on April 27, 1979 by its employees. Officers Siedel and Schmidt responded to Florida Drugs, and were met by two young men who said they had bought beer at the store.
4. Melvin Buckingham, age 16, and his friend James Seegers, age 17, had a cracked bottle of beer in their possession on April 27, 1979 which they desired to replace at Florida Drugs.
5. Officers Schmidt and Siedel were unable to ascertain the name of the salesman who was alleged to have sold the bottle of beer to the two young men. They spent a very short period of time investigating because of an emergency call.
6. The salesman, later identified as Carlos Colon, did not always have time to check on the ages of the people who were buying beer, but he did not sell beer to Melvin Buckingham, aged 16, on April 27, 1979.
7. Melvin Buckingham's testimony that the salesman who had sold him the beer at Florida Drugs was a short bald men is not true.
8. The only short bald headed man working for Florida Drugs is Esteban Gaona, who does not work in the evenings at all. He was not at work on the evening of April 27, 1979, having left work at 6:00 p.m.

9. No person employed by Florida Drugs sold beer to Melvin Buckingham, age 16, or James Seegers, age 17, at approximately 8:30 to 9:00 p.m. on Friday, April 27, 1979.

The Board relied on N.J.A.C. 13:2-23.1(a), when suspending the license of Florida Drugs. That section says, in pertinent part:

"No licensee shall, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly to any person under the age of eighteen (18) years. . ."

The general grant or denial of an alcoholic beverage license rests in the sound discretion of the local licenseing authority in the first instance. This includes decisions in regard to suspension of the license for any period of time short of revocation. In order to prevail in an appeal, the appellant must show unreasonable action on the part of the local authority, constituting a clear abuse of their discretion. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962). Burden of proof in establishing that the action of the local Board was erroneous rests entirely with the appellant. See Downey v. Summerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco Inc. v. State, 43 N.J. Super. 277. It is clear that the decision of the local board can be reversed when a reviewing court finds, as a fact, that there has been manifest error, clearly unreasonable action or some untoward impropriety. See Nordco, supra.

At the conclusion of the hearing on October 10, 1979, Commissioner Hughes indicated that ". . . the evidence as presented by the parties is certainly contradictory. However, the weight of the evidence does lean to the fact that the Defendant in this case, in fact, served a minor or minors on the evening in question". (See TI 73-9 through 14). However, the Board did not consider all the evidence that was presented before the Administrative Law Judge. The testimony presented before the Judge indicated that the weight of the evidence has shifted and no longer "leans" to the fact that the Defendant did serve a minor on the evening in question.

This Court has found the testimony of Esteban Gaona to be credible and honest and to be correct in that he did not work on the evening of April 27, 1979 and the Court has further found that his testimony was corroborated by Mr. Viola, the owner of Florida Drugs. The policemen gave honest testimony but their investigation was cut short by an emergency call, and their recollection affected by that fact.

Having found as a fact that the only short bald headed man in question does not work in the evenings and did not work on the evening of April 27, 1979 and having found as a fact that Melvin Buckingham did not tell the truth when he said he bought the beer in question from such a man, it follows logically that if the Board had considered the entire record before this Judge, it could not reasonably have concluded that the violations charged did occur. See Pilon v. Board of Alcoholic Beverage Control of Paterson, 112 N.J. Super. 436 (App. Div. 1970).

Although the Respondent Board acted in the circumspect and reasonable exercise of its authority on the information and evidence it had before it, its action to suspend the license was unreasonable when the entire record, including the de novo hearing, is considered. The entire record does not have sufficient competent and credible evidence to support the Board's finding of fact that Florida Drugs violated N.J.A.C. 12:2-23.1.

Therefore, I CONCLUDE that Cavalier, Inc. t/a Florida Drugs did not sell an alcoholic beverage to a minor on April 27, 1979 and thus is not guilty of a violation of N.J.A.C. 13:2-23.1, and I further CONCLUDE that the suspension by the Board of Alcoholic Beverage Control of Paterson of Florida Drugs' plenary retail distribution license for 15 days be REVERSED.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control 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 with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

3. APPELLATE DECISIONS - WOHO, INC., A CORP. OF NEW JERSEY v. ATLANTIC CITY.

#4436

Woho, Inc., A Corp. of New Jersey,	:	
	:	CONCLUSIONS
Appellant,	:	
	:	AND
vs.	:	
	:	ORDER
Board of Commissioners of the City	:	
of Atlantic City,	:	
	:	
Respondent.	:	
-----		
McGahn & Friss, Esqs., by Solomon Friss, Esq., Attorneys for Appellant.		
Matthew H. Powals, Esq., Attorney for Respondent.		

BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City which, on October 11, 1979, denied appellant's application to renew its license for the 1979-80 license term.

Upon filing the within appeal, the Director, by Order dated November 27, 1979, extended the subject license pending determination of the appeal.

The basis for the denial of renewal was the Special Ruling of September 26, 1979 by the Director, Division of Alcoholic Beverage Control. This ruling held that renewal of the subject license would be contrary to the public interest because of appellant's failure to comply with the provisions of N.J.S.A. 33:1-12.39 concerning inactive licenses.

Subsequent to the filing of this appeal, the appellant submitted a Verified Petition requesting relief in accordance with N.J.S.A. 33:1-12.39. Said petition established "good faith" efforts to activate this license since it terminated active operations in 1976. The "good faith" efforts include the agreement to purchase the subject license and existing premises to be renovated in July 1978. After Task Force review, the license transfer was approved December 1978. An appeal from the transfer approval was filed and ultimately dismissed in 1979, and there is presently pending litigation between the appellant and the prior owner of the license.

Therefore, by my finding herein that appellant has established "good faith" efforts pursuant to N.J.S.A. 33:1-12.39 to warrant a further application for renewal of its license for the 1979-80 license term, the underlying objections and basis for my Special Ruling of September 26, 1979 no longer exists.

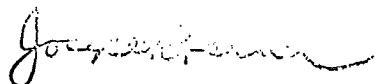
Thus, I shall vacate my Special Ruling of September 26, 1979 and shall find that approval of appellant's renewal application would not be contrary to the public interest. N.J.A.C. 13:2-3.10. The action of the Board of Commissioners shall, thereupon, be reversed and the application will be remanded to the Board of Commissioners for its consideration and the exercise of its discretion with respect thereto.

Accordingly, it is, on this 17th day of March, 1980,

ORDERED that my Special Ruling of September 26, 1979 be and the same is hereby vacated; and it is further

ORDERED that the appellant's application to renew its license for the 1979-80 license term is not contrary to the public interest, (N.J.A.C. 13:2-3.10); and it is further

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and the same is hereby reversed, and the subject application be and is hereby remanded to the Board of Commissioners to act upon such application in any way consistent with its authority.



Joseph H. Lerner  
Director