Ambrose

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

BULLETIN 1997 September 2, 1971

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1. APPELLATE DECISIONS - LOMBARDI et al. v. CHATHAM et al.

Anthony J. Lombardi and James Mulligan,

Appellants,

v.

Borough Council of the Borough of Chatham, and Philip Lax and Frank Lax,

Respondents.

On Appeal

CONCLUSIONS and ORDER

Appeal Dec 2047/1

John Anthony Lombardi, Esq., Attorney for Appellants
Herzog and Bisogno, Esqs., by Vincent T. Biscogno, Esq., Attorneys for Objectors
Mills, Doyle & Muir, Esqs., by Robert Muir, Jr., Esq., Attorneys for Respondent Borough
Judge, Sheeran, Mascia & Dowd, Esqs., by Charles M. Judge, Esq., Attorneys for Respondents Lax

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the granting of a plenary retail consumption license by respondent Borough Council of the Borough of Chatham (hereinafter Borough) to respondents Philip Lax and Frank Lax (hereinafter Lax) for premises 34-50 Main Street, Chatham, on which a proposed restaurant is to be erected. The appellants allege: (1) the ordinance under which the license was issued is illegal in that it created a plenary retail consumption license in excess of the number of such licenses permitted; (2) the resolution granting the license violated regulations of this Division and (3) in its action favoring Lax the Borough discriminated against the public interest. The respondents denied all of these charges.

The appeal was heard *de novo* pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

By stipulation of the parties, the license application, notice of hearing of the meeting at which the license was granted and population statistics of Chatham for 1960 and 1970 were made part of the record.

Briefly, the factual background that impelled this appeal began in 1957 when Lax bought an historically vintaged hotel named Chatham Inn and obtained, by transfer, the existing liquor license covering the premises. The Inn was operated in desultory fashion until 1963 when operation ceased and the premises were closed. The license was renewed annually although the business was not in operation. Fire destroyed the building in 1965. In 1967 the Borough did not renew the license. Two years later Lax came to the Borough with an ambitious plan to build a three-story office building on the lands once occupied by the Inn, from which another smaller portion had been subdivided, and on this latter

portion he proposed to erect a restaurant which would bear the name of a popular restaurant chain. The Borough, its Planning Board and Board of Adjustment approved and thereafter adopted the appropriate resolution which increased by one the number of plenary retail consumption licenses. The Borough Council thereafter granted the application of Lax for said license. This action precipitated four actions in lieu of prerogative writ that resulted, after consolidation, in an opinion and judgment by the Superior Court (Collins, J.C.C.) setting aside the action of the Borough in that the Board of Adjustment did not have proper legal foundation for the grant and there was the taint of impropriety by the Borough counsel (who had once represented Lax) in participating in the grant of the license.

Lax returned to the Borough with an altered plot plan for the restaurant that required no variance and thus eliminated one of the problems condemned by Judge Collins. Additionally the Borough retained new counsel, eliminating the taint of impropriety. Thereafter, on April 12, 1971, the offending ordinance and resolutions were adopted.

The appellants did not testify but relied instead upon the testimony of Borough Clerk Mowen, Mayor Davidson and Councilman Osborne.

John H. Mowen testified that: the application of Lax was filed, a notice thereof was twice published, a letter of objection was received; eleven days later a notice of hearing was given, a hearing was held and the license granted. The ordinance was introduced March 8 and properly published. Thereafter at a hearing held April 12, 1971, the resolution was adopted. On cross examination the witness indicated that he had checked procedure for acceptance of license application with this Division and followed the procedural steps outlined.

Both Mayor John Davidson and Councilman William Osborne testified that the Borough had carefully considered all aspects of the proposed restaurant and concluded that it represented a distinct gain for the municipality. Further, the site was one of two practical locations for it. The testimony of Lax recounted the long history of the Chatham Inn and the difficulties that stemmed from its closure and fire, the prior attempts to interest other restaurant and motel chains in the site, and the eventual interest of The Red Coach chain, which through him offered the present proposal. The construction time for the new restaurant was estimated at nine months.

I

The appellants' initial ground of appeal advances the argument that the population of the Borough was not sufficient to justify the granting of an additional plenary retail consumption license under new legislation that adjusted the number of licenses to one per 3,000 of population (the population of Chatham was stipulated at 9,517) and, as there are already three existing licenses, the ordinance was invalid. The thrust of their argument revolved about recent legislation (N.J.S 33:1-12.14, as amended September 19, 1969) which increased from 2,000 to 3,000 the number of persons for each plenary retail consumption license. This Act provided for the 1970 census as criteria of population count and a later law (Ch. 14, P.L. 1971) effectively set May 1, 1971 as the determinative date for its acceptance. Hence there was validity to the adoption of the ordinance. However, appellants rely upon

Tagliaboschi v. Metuchen et al., Bulletin 1972, Item 1. In that matter the Director reversed the grant of an additional license by the municipality, saying:

> "...And my considered opinion is that another such license should not now be issued to increase from one to two the number of licenses in excess of the new population quota to become effective shortly. To 'beat the gun' in this fashion would be contrary to the legislative intent evidenced by the hereinabove cited statutes."

The facts in the matter sub judice can be distinguished from Tagliaboschi, supra, in that from a pragmatic standpoint the Borough's action of increasing the number of licensed was not done merely to increase the number before the limitation date of the statute. Lax's license had not been renewed following the fire. The number of licenses was therefore reduced by one and the municipality adopted an ordinance accordingly reducing the outstanding licenses by one. Thereafter, upon presentation and approval of a proposal for a new restaurant, the Borough increased the number of licenses by one and granted that license to Lax. Thus in June of 1970 by this action the respondent Lax had his license back. At that point the 1970 census was merely under way. The progress toward the new restaurant was interrupted by the legal action. Additional time was required to take the corrective measures to be in compliance with the court's opinion so that it was nearly May 1, 1971 before the application was received, notices of hearing published, and the final ordinance and resolution were adopted. This chronology is recited to indicate that the action of the Borough was not done to "beat the gun" or to extend another license privilege because of the impending restrictive statute. There is in consequence no dishonor to the legislative intent.

II

Issue was made of allegation of impropriety by the Mayor and Council of the Borough. Appellants argue that respondent Borough acted quickly in adopting the resolution and ordinance and that such haste gave the impression of favoritism toward respondents Lax. These actions directly on the heels of a similar finding by Judge Collins respecting the participation of prior municipal counsel in the adoption of the previous ordinance and resolution give impetus to the furthering of that belief.

> "A public office is a public trust. Borough Councilmen, as fiduciaries and trustees of the public interest, must serve that interest with the highest fidelity. The law tolerates no mingling of self interest; it demands exclusive loyalty."
>
> Aldom v. Borough of Roseland, 42 N.J. Super. 495, (App. Div. 1956).

There was no allegation of self-interest on the part of the Borough even using the definition of "self-interest" provided by McNamara v. Saddle River Borough, 64 N.J. Super. 426 (App. Div. 1960) in which "self-interest" was described as that interest a councilman would receive personally from an over-all public benefit occurring in his personal residence area.

The impropriety ascribed to counsel for the Borough, as described in the opinion of Judge Collins, reflected a "taint of impartiality"; there was no impropriety, he found, on the part of the council members themselves.

Counsel for appellants has laid heavy stress on some faulty affidavits executed by the Mayor and a councilman as indicia of favoritism; while the record here is replete with reference to them, they were before the court in the prior action and no further reference will be made to them here.

Appellants ignore the fundamental that most all civic improvement comes from the enthusiasm of the public officials involved. Within the panoply of encouraged improvements, the public official will have his favorites, things which have a particular interest to him. So long as there is no individual self-interest, such enthusiasm is a laudable concomitant of the democratic process. "And their [the public official's] determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence'. Graham v. United States, 231 U.S 474, 480 (1913)."

Appellants have urged that the councilmen should have disqualified themselves and forwarded the matter for decision to the Director of this Division. Citing Blanck v. Magnolia, 38 N.J. 484 (1962) counsel for appellants argued that, since the Superior Court had found a taint of impartiality on the part of the then counsel of the Borough, the entire matter should have been forwarded to the Director, so that the aspect of impartiality could have been preserved. This argument might well be advanced had there been any suggestion whatever of personal interest in the application by the Mayor or councilmen. However, the record is barren of any suggestion of such interest. Testimony adduced by appellants of the Mayor and a councilman shows the opposite. Their desire that that valuable piece of property be put to a better use, a first-class restaurant be available to the residents and a prime ratable be added to the list were all contributing reasons for their support. Parenthetically it might be noted appellants themselves did not take the stand and offer any testimony that an alternate proposal was before the council or cite any reasons why the grant to Lax was a disservice to the community. Appellants relied instead on the testimony of the Mayor and a councilman. Their testimony put to rest any question of impropriety or need to refer to matter to the Director of this Division.

III

Appellants further urged that the grant of license be set aside as the regulations promulgated by the Director of this Division were not observed. In that connection reference was made to Rules 6 and 7 of State Regulation No. 2 which provide:

> "Rule 6. Each municipal clerk shall immediately upon receipt of a written objection, duly signed by an objector, transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it shall become the duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant and the objector of the date, hour and place thereof.
>
> "Rule 7. The date fixed for such hearing shall not be less than two (2) days after the second insertion shall have been published and should not be more than fourteen (14) days. For good cause, each issuing authority in the exercise of sound and fair discretion may (subject to appeal to the Director by the applicant if he proves that he is aggrieved by the delay), fix a date for hearing later than said fourteen (14) days or may adjourn the hearing."

It is conceded by admission that the second insertion of the notice of application was published March 18. Further, written notice of objection was received April 3 and the notice of the meeting was given on April 14 for the meeting on the objection held April 19. The violation of the rule, according to appellants, was that the date of the hearing (April 19) was more than fourteen days from the date of the last insertion (March 18). Rule 7 does provide that the date of hearing may be fixed later than fourteen days for good cause shown. It does not appear from the record that the appellants were in any way aggrieved thereby.

The rules and regulations adopted by the Director of this Division must be read _pari materia_ with each other and with the statutes controlling (_N.J.S Title 33_); cf. 82 C.J.S. _Statutes_, #366. Hence, Rules 6 and 7 of State Regulation No. 2 _must be_ read together with the remaining sections of the regulation as pertain to parallel situations. In that connection Rule 8 reads as follows:

> "Rule 8. No hearing need be held if no such objection shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

It is to be noted that Rule 8 provides that no hearing is necessary if no written objection is filed. As the Borough had no reason to set any hearing date at all until it received a written objection, the time limitations would run from the date of the receipt of written notice of objection. The date of such receipt here was April 3. On April 14 the Borough notified the objector of hearing for April 19, when the hearing took place. As the written objection was not received until the regulatory period had passed, it is manifestly absurd to challenge the date of hearing as being out of time.

The other procedural defect complained of was the inability of the municipal clerk to produce the affidavit of publication of the publishing of the hearing notices. Rule 10 of State Regulation No. 6 requires that such affidavit be furnished. The obvious purpose of the rule (and the companion Rule No. 15 of State Regulation No. 1) is to insure that there is proper public notice of the application. This rule intends a public safeguard. Here the clerk testified that he had the two clippings from the legal newspaper but he did not recall anything about the affidavit of publication. The appellants did not challenge the publication itself. There apparently was no question that the notices were properly published. Had the issue arisen concerning the lack of valid publication, then the absence of the affidavit of publication would have been material. However, as there was actual publication and presumably a proper affidavit followed or is available, its absence at the hearing is not fatal.

IV

An inferential objection was lodged revolving about the sound discretion or reasonableness in approving the site as a place for a restaurant, amid the objections of the neighbors. In that connection it should be noted that:

> "...the function of the Director was 'not to substitute [his] personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of [his] personal view on the subject.'" Fanwood v. Rocco, 59 N.J. Super. 306, 313 (App. Div. 1960).

The long chronology set forth supra is reasonable enough cause for the action of the issuing authority and its judgment should be affirmed.

After carefully considering the entire record herein, I find that the appellants have failed to sustain their burden under Rule 6 of State Regulation No. 15 establishing that the action of the Borough was erroneous. It is accordingly recommended that an order be entered affirming the action of the Borough and dismissing the appeal.

Conclusions and Order

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

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

Accordingly, it is, on this 15th day of July 1971,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed, subject to the following conditions:

1. That respondents Philip Lax and Frank Lax complete proposed licensed premises in accordance with submitted plans, and

2. That licensed premises shall be operated as a bona fide restaurant in accordance with representation made to respondent Borough Council of the Borough of Chatham.

Richard C. McDonough,
Director.

2. APPELLATE DECISIONS - WALL v. GLOUCESTER CITY.

Albert C. Wall, Inc.,
Appellant,
v.
Common Council of the City of Gloucester City,
Respondent.

On Appeal
CONCLUSIONS and ORDER

Novack & Trobman, Esqs., by Malcolm H. Trobman, Esq., Attorneys for Appellant
William E. Hughes, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Common Council of the City of Gloucester City (hereinafter Council) which by resolution dated April 1, 1971 denied appellant's application for renewal of its plenary retail consumption license. The resolution is as follows:

> "BE IT RESOLVED by the Mayor and Common Council of the City of Gloucester City, in the County of Camden and State of New Jersey, that the application for the renewal of Plenary Retail Consumption License by Albert C.Wahl, Inc., T/A Lindy's Bar, 238-240 Mercer Street, Gloucester City, New Jersey dated March 22, 1971 is hereby denied because of the failure of the applicant to file the application for renewal and pay the license fee within the time allowed by New Jersey Revised Statutes 33:1-12.13 or 33:1-12.18.
>
> "BE IT FURTHER RESOLVED that the City Clerk is hereby directed to return the check of David Novack dated March 22, 1971, in the amount of $600.00 to the said David Novack.
> Passed Common Council this 1st day of April, 1971."

The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15 and the parties were given full opportunity to present testimony and cross-examine witnesses.

The petition of appeal alleges that the licensee was notified in June 1970 it would not be necessary to apply for a renewal of license by reason of the fact that the license was then subject to a closing penalty and such application could be made later. On September 11, 1970 appellant's attorney submitted an application for renewal. The City Clerk returned the application and the fees by letter. Thereafter the Director of the Division of Alcoholic Beverage Control, responding to a letter from the licensees, found that the application had not been initially filed because of a misunderstanding. He recommended prompt refiling with the Council, which was done. The resolution appealed from resulted.

The answer of Council denied that appellant had ever been notified that an application need not be submitted, nor was

such application submitted within the time limits of the statute. The determination of the Director of this Division, referred to in the petition of appeal, was the result of misstatements given to the Division by appellant and hence was not binding upon the Director.

A review of the testimony indicates that Charles A. Gorman (secretary of appellant corporation) visited the City Clerk on June 11 or 12, 1970, armed with an executed application for renewal and $600 in cash representing the license fee. Apparently because the licensed premises were then under suspension and could not have opened on the renewal date of July 1, he left the office of the City Clerk with a misimpression that he need not file the application until the period of suspension was over. The then City Clerk (Edward J. Ronan) testified with vehement denial that he had ever so advised Gorman, but did recollect such a visit and admitted a discussion concerning a thirty-day period. He did recollect Gorman indicating he would use the license fee for something else. That there was an obvious misunderstanding cannot now be questioned.

On September 11, 1970 an application was filed, advertised and the fees paid. This application never reached the Council but was rejected by letter of the City Clerk on October 14. A later letter to the Director of this Division elicited the conclusion by him that failure to have applied within time was the result of misunderstanding and the licensee was without fault. This conclusion, contained in a letter dated March 2, 1971, authorized the Council to take appropriate action based upon R.S. 33:1-12.18 which provides:

> "New License on Failure to renew. Nothing in this act shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control."

The initial renewal period terminated June 30, 1970. The sixty days above began August 1 (see R.S. 33:1-96) and expired September 29, 1970. During that period appellant did apply but its application was not entertained by Council. The application was returned to the attorney for appellant by the City Clerk. There was no hearing on this denial; it was summary.

Without intending to suggest a course of action in similar situations, a short letter from the City Clerk to the licensee indicating its name was not included in the initial renewal resolution, and that such loss of license could be irretrievable might well have obviated this appeal or the difficulties in which the licensee found itself.

After receipt of a later determination by the Director of this Division that failure to renew was beyond control of the licensee and R.S. 33:1-12.18 could apply, Council adopted the offending resolution for no other reason than the belief that it was without the requisite power to grant the license.

Following the initial misunderstanding by which the application for renewal was not filed, the submission of a new application dated September 11 corrected the original defect.

At that point the application, fees and notice of advertisement were in hands of the Clerk and appropriate action could have been taken subject to the approval of the Director of this Division.

More than a month elapsed from the date the application was filed to the date of its rejection by the Clerk. It is manifestly unfair for the Council now to complain of the delays present in the matter when the application, received in time, was not acted upon until such statutory time period had elapsed.

It is therefore recommended that the action of Council be reversed and that it be directed to grant the appellant a license for the 1970-71 license period, in accordance with the application filed therefor.

Conclusions and Order

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

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

Accordingly, it is, on this 15th day of July 1971,

ORDERED that the action of respondent Common Council of the City of Gloucester City be and the same is hereby reversed, and respondent is directed to renew the license for the license period 1970-71 *nunc pro tunc*, and to renew such license for the license period 1971-72 in accordance with application filed therefor.

Richard C. McDonough,
Director.

3. DISCIPLINARY PROCEEDINGS - RETAILER PURCHASING ALCOHOLIC BEVERAGES FROM OTHER THAN NEW JERSEY WHOLESALER WHILE ON NON-DELIVERY LIST - PRIOR DISSIMILAR RECORD - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 50 DAYS, LESS 10 FOR PLEA.

In the Matter of Disciplinary Proceedings against

G. E. L. L., Inc. (A Corp.)
43-A Branford Place
Newark, N. J.,

Holder of Plenary Retail Consumption License C-732, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS and ORDER

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers days between April 13, 1970 and December 3, 1970 it purchased alcoholic beverages while on the non-delivery list from other than the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control, in violation of Rule 15 of State Regulation No. 20.

Licensee has a previous record of suspensions (1) by the municipal issuing authority for fifteen days effective April 27, 1970 for hindering an investigation (G.E.L.L. Inc. (Corp.) v. Newark, Bulletin 1911, Item 1), and (2) by this Division for thirty-five days effective January 29, 1971 for (a) fraud in license application, (b) employing solicitor on retail licensed premises and (c) failure to keep true books of account (Re G.E.L.L. Inc. (a corp.), Bulletin 1958, Item 2.

Deeming the violation aggravated by reason of licensee corporation's refusal to cooperate in the investigation and to disclose the identity of its participant in this violation, the license will be suspended for thirty days (Re Sauter's Steak Pub, Inc., Bulletin 1974, Item 4), to which will be added twenty days by reason of the record of the prior suspensions on charges occurring within the past five years (Re Valenti, Bulletin 1652, Item 8), making a total of fifty days, with remission of ten days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 15th day of July 1971,

ORDERED that Plenary Retail Consumption License C-732, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to G.E.L.L., Inc. (A Corp.), for premises 43-A Branford Place, Newark, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Thursday, July 29, 1971, and terminating at 2 a.m. Tuesday, September 7, 1971.

Richard C. McDonough,
Director.

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

In the Matter of Disciplinary Proceedings against

MILLS END, INC.
t/a Mills End
253 - 20th Avenue
Paterson, N. J.

Holder of Plenary Retail Consumption License C-124 issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Licensee, Pro Se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, June 13, 1971 it sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record the license would normally be suspended for 15 days, with remission of five days for the plea entered, leaving a net suspension of 10 days. Re Trosky, Bulletin 1975, Item 4. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $400.00 in lieu of suspension.

Accordingly, it is, on this 15th day of July 1971,

ORDERED that the payment of a $400.00 fine by the licensee is hereby accepted in lieu of a suspension of license for 10 days.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against MARY ROMANO, EXECUTRIX OF THE ESTATE OF PASQUALE ROMANO t/a Patty's Tavern 108 South Essex Avenue Orange, N. J. Holder of Plenary Retail Consumption License C-26 issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.	)	CONCLUSIONS AND ORDER

Malcolm H. Greenberg, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, May 2, 1971 she permitted the sale of alcoholic beverages for off-premises consumption in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record whereby license was suspended for ten days effective May 21, 1969 by the issuing authority for permitting a brawl on the premises and for ten days effective October 20, 1969 by the issuing authority for sale to minors, both in violation of State Regulations.

The prior record of suspensions for dissimilar violations occurring within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Trosky, Bulletin 1975, Item 4. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $800.00 in lieu of suspension.

Accordingly, it is, on this 15th day of July 1971,

ORDERED that the payment of a $800.00 fine by the licensee is hereby accepted in lieu of a suspension of license for 20 days.

Richard C. McDonough
Director

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Lincoln Lounge (A Corp.)
t/a Lincoln Lounge
8-10 Henry Street
Passaic, N. J.

Holder of Plenary Retail Consumption License C-64 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.

CONCLUSIONS AND ORDER

Licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 7, 1971 it sold alcoholic beverages to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days with remission of five days for the plea entered, leaving a net suspension of ten days. Re J & N, Inc., Bulletin 1982, Item 3.

Accordingly, it is, on this 15th day of July 1971,

ORDERED that Plenary Retail Consumption License C-64, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Lincoln Lounge (A Corp.), t/a Lincoln Lounge for premises 8-10 Henry Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing 2:00 a.m. Wednesday, July 28, 1971 and terminating 2:00 a.m. Saturday, August 7, 1971.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)
)
STANLEY KUCHARZYK
t/a Brass Lamp)
39 Harding Avenue
Clifton, N. J.)

Holder of Plenary Retail Consumption)
License C-120 issued by the Municipal
Board of Alcoholic Beverage Control)
of the City of Clifton.

CONCLUSIONS AND ORDER

Louis L. Leibowitz, Esq., Attorney for the Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 7, 1971 he possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Piez, Bulletin 1975, Item 6. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $400.00 in lieu of suspension.

Accordingly, it is, on this 16th day of July 1971,

ORDERED that the payment of a $400.00 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against Francis E. Cannon t/a Dempsey's Highway Liquor Route 206 Stanhope, N. J. 07874 Holder of Plenary Retail Distribution License D-2 issued by the Borough Council of the Borough of Stanhope.	)	CONCLUSIONS AND ORDER

Licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on May 19, 1971 he sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Faccone, Bulletin 1975, Item 8. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $200.00 in lieu of suspension.

Accordingly, it is, on this 16th day of July 1971,

ORDERED that the payment of a $200.00 fine by the licensee is hereby accepted in lieu of a suspension of license for five days.

Richard C. McDonough
Director

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against ERLTON BOWL LOUNGE, INC. Ellisburg Shopping Center Cherry Hill Township, N. J. Holder of Plenary Retail Consumption License C-2 issued by the Township Council of the Township of Cherry Hill.	)	CONCLUSIONS AND ORDER

Weinberg & Fishman, Esqs., by Barry M. Weinberg, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 9, 1971 it sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of ten days for sale to minors, by the Director effective June 28, 1965.

The prior record considered, the license would normally be suspended for ten days (Re Brierhurst, Bulletin 1919, Item 6) to which will be added five days by reason of a record of a prior similar suspension occurring more than five but less than ten years ago (Re Edgewood, Bulletin 1883, Item 6), with remission of five days for the plea entered, leaving a net suspension of ten days. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $1,780.00 in lieu of suspension.

Accordingly, it is, on this 16th day of July 1971,

ORDERED that the payment of a $1,780.00 fine by the license is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director

New Jersey State Library