

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

BULLETIN 2298

October 4, 1978

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STATE OF NEW JERSEY
Department of Law and Public Safety
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NEWARK INTERNATIONAL PLAZA
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October 4, 1978

1. APPELLATE DECISIONS - LYONS FARMS, INC. v. NEWARK ET AL.

Lyons Farms, Inc.,)	
)	
Appellant,)	
v.)	
Municipal Board of Alcoholic Beverage Control of the City of Newark and Orans Liquor, Inc.,)	CONCLUSIONS
)	AND
Respondents.)	ORDER
)	

Leon Sachs, Esq., Attorney for Appellant.
Salvatore Perillo, Esq., Corporation Counsel, by Robert
Tolins, Esq., Attorney for Respondent, City of Newark.
Ronald Owens, Esq., Attorney for Objectors.
Marx & Gourvitz, by Melvin D. Marx, Esq., Attorney for
Respondent, Orans Liquor, Inc.

BY THE DIRECTOR:

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which, by Resolution dated November 22, 1977, approved an application by Orans Liquor, Inc. for a place-to-place transfer of Plenary Retail Distribution License D-125 from 517-519 Bergen Street to 315-321 Lyons Avenue.

In its petition of appeal, the appellants contend that the action of the Board was erroneous and an unreasonable exercise of the Board's discretion. It further asserts that the transfer is violative of the local distance-between-premises ordinance.

The Board and Orans Liquor, Inc. deny these contentions in their answers.

An appeal de novo was held in this Division with full opportunity afforded the parties to present evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. In addition, the transcript of the testimony at the hearing before the Board was submitted into evidence in accordance with Rule 8 of State Regulation No. 15.

Sandra L. Thompson, president of the respondent Orans Liquor, Inc. testified at the de novo hearing in the Division. It appeared that the licensed premises had been operated at

515 Bergen Street, Newark, when, in the course of two years, there were three fires that substantially destroyed the building in which the licensed premises was housed. The business thereafter was unable to operate. In consequence of that destruction, an application was made for a place-to-place transfer to the proposed site at 315 Lyons Avenue, Newark.

From the sketches presented and the uncontroverted proffer of proof by counsel, it was readily admitted by all parties that the proposed site is clearly within 1,000 of other licensed premises.

The respondents assert that the destruction of the building in which the subject licensed had been housed, together with the urban renewal taking of all of the adjacent buildings in the area, brought the transfer within the exception to the 1,000 foot limitation as set forth in the Ordinance.

The operative portion of the applicable Ordinance 4:2-17 (d), provides as follows:

Notwithstanding the above mentioned 1,000 foot limitation affecting the transfer of any retail plenary consumption or distribution licenses, the local issuing authority, at their discretion, may allow transfer of such licenses free of such 1,000 limitation herein fixed in the event of any licensee's premises being taken for any municipal, county, state or federal project....

It is conceded that no competent proof whatever was introduced that the building housing the subject license had been taken by any of the above named authorities. It was further admitted that the proximity of the proposed location was well within 1,000 feet of other licensed premises.

It then appearing that the subject transfer was violative of the local Ordinance, counsel for respondents conceded that the transfer was not supported upon a proper basis. It is a well established principle that a local issuing authority has no jurisdiction to grant a transfer of a license in violation of the terms of a local ordinance. Petrangeli v. Barrett, 33 N.J. Super. 378 (App. Div. 1954); Danny's Lounge, Inc. v. Paterson, Bulletin 2183, Item 4. Counsel waived a Hearer's Report and requested a prompt determination by the Director.

Accordingly, it is, on this 26th day of May, 1978,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby reversed.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - SANTASIERO ET AL V. ATLANTIC HIGHLANDS, ET AL.

Leonard Santasiero and Melvin Lemberg,

Appellants,

vs.

Mayor and Council of the Borough of Atlantic Highlands and Janec Associates, A New Jersey Corporation,

Respondents.

ON APPEAL
CONCLUSIONS
AND
ORDER

.....
De Maio and Yacker, Esqs., by Stanley Yacker, Esq., Attorneys for Appellants.

William E. Russell, Esq., Attorney for Borough of Atlantic Highlands.

Sapiro and Gottlieb, Esqs., by Alan Gottlieb, Esq., Attorneys for Respondent, Janec Associates.

William Wilson, Esq., Attorney for Transferor, Snyder-Westerlind Corp.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the Borough of Atlantic Highlands (Council) which, by resolution dated October 25, 1977, granted respondent Janec Associates's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License, C-2, from Snyder-Westerlind Corp. to itself, and from 379 Ocean Boulevard to a vacant plot of land at Garfield and First Avenues, Atlantic Highlands.

Appellants allege in their petition of appeal that the action of the Council was erroneous and should be set aside for several reasons, among which are:

1. An opportunity to be heard in opposition to the application for the transfer had not been afforded to appellant;
2. The application had been improvidently granted contra to Rules 2, 7 and 18 of State Regulation No. 6, governing the filing of plans, imposition of conditions and scheduling of hearings.

3. The trade name of the proposed transferee, "Scenic Inn, Wines and Spirit Shoppe", creates an improper impression that the premises are licensed as a "distribution" licensee; and
4. The proposed situs is improper because of its proximity to a nearby school and at least four other licensed premises.

In their respective Answers to Appellants' petition, the respondents enter specific denials of these allegations.

The hearing on this appeal de novo was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses.

The resolution adopted by the Council, approving the subject transfer, provides as follows:

RESOLUTION

WHEREAS, Snyder-Westerlind Corp. did apply for a renewal of plenary retail consumption liquor license No. C-2, and did obtain from the Mayor and Council of the Borough of Atlantic Highlands a renewal of said license on June 28, 1977, and

WHEREAS, said plenary retail consumption liquor license No. C-2 was renewed upon the express condition that the license could not be effective at the premises applied for in said application and would be held in abeyance until such time as the place to place transfer of the license is approved by the Mayor and Council, and

WHEREAS, there has been filed with the Borough Clerk of the Borough of Atlantic Highlands an application by Janec Associates, t/a Scenic Inn Wine & Spirit Shoppe for a person to person and place to place transfer of the plenary retail consumption liquor license No. C-2 from Snyder-Westerlind Corp. to Janec Associates t/a Scenic Inn Wine & Spirit Shoppe and from 379 Ocean Boulevard to First and Garfield Avenues, and

WHEREAS, Janec Associates t/a Scenic Inn Wine & Spirit Shoppe does intend to lease premises to be built by Laird and Ellis at First and Garfield Avenues in accordance with plans attached hereto and marked Exhibit "A",

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Atlantic Highlands that the said plenary retail consumption liquor license of Snyder-Westerlind Corp. No. C-2 be transferred to Janec Associates t/a Scenic Inn Wine & Spirit Shoppe for premises located at First and Garfield Avenues upon the express condition that the license will not be effective at the above mentioned premises and will be held in abeyance until such time as the plans attached hereto and marked Exhibit "A" are completed, and a Certificate of Occupancy has been issued for the same by the Borough of Atlantic Highlands, and

BE IT FURTHER RESOLVED that the conditions heretofore imposed upon said license while said license was owned by said Snyder-Westerlind Corp. are removed.

Seconded by Mr. Donoghue and approved with the following roll call vote:

AYES: Donoghue, Curry, Frotton, Marchetti, Gross, Long.
NAYS: None.

Leonard Santasiero, testified on behalf of the appellants. He is the owner of licensed premises known as the "Copper Basket", a package store, located on First Street diagonally opposite the site where the respondent, Janec Associates, is presently constructing its proposed licensed premises. The two locations are about 175 feet apart.

The appellant then reiterated a discussion he had had with the Mayor of Atlantic Highlands about a rumor that the subject site might be used for a liquor license, and that the Borough had no "distance" limitation ordinance, as had many other municipalities. He described the attitude of the Mayor as opposed to another liquor license at the proposed site; and, further, that the Mayor expressed interest in introducing a "distance" ordinance. Santasiero obtained copies of such ordinances and forwarded them to the Mayor.

The appellant contacted the Mayor on frequent occasions to inquire as to the progress of the suggested ordinance. He admitted that he did not see the advertisement relating to the notice of hearing on the proposed transfer of Janec Associates.

Appellant was surprised to learn that the Council had approved the subject transfer. He admitted that he sent no written objection to the Clerk, relying solely on his telephone conversations with the Mayor.

A copy of the tax map of the Borough was introduced into evidence. It revealed four premises licensed for retail alcoholic beverage sales within a city block from the proposed site. First Avenue, on which both appellant and Janec Associates proposed location exist, is one of the principal north-south commercial streets in the Borough. That area along First Avenue, which contains the four licensed premises, is near State Highway Route 36. At the other extremity of First Avenue, where it approaches Sandy Hook Bay, are another group of licensed premises. These two areas are apparently the only places where alcoholic beverage licenses are permitted within the borough.

At the conclusion of appellant's testimony, no further evidence was introduced by the parties.

Counsel for Janec Associates proffered proof that, following the filing of the appeal, and initial conferences in regard to it, the name under which the respondent, Janec Associates, intends to trade has been altered to "Scenic Inn Wines & Liquors". The respondent asserts that the change in planned trade name should overcome the objections raised by appellant.

The burden of establishing that the action of the Council is erroneous and should be set aside, rests entirely with appellant, pursuant to Rule 6 of State Regulation No. 15. It is a firmly settled principle that the Director's function on appeal is not to reverse the determination of the municipal issuing authority unless he finds, as a fact, that there was a clear abuse of discretion or an unwarranted finding of fact or mistake of law. Schulman v. Newark, Bulletin 1620, Item 1; Monteiro v. Newark, Bulletin 2073, Item 2, and the cases cited therein.

The decisive test of the propriety of action of the issuing authority is one of reasonableness. Or to put it another way: Could the members of the Council, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? 1. Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970); 2. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 E.&A. (1947); 3. Nordco, Inc. v. State, 43 N.J. Super 277. 282 (App. Div. 1957).

I.

The appellant Santasiero's contention that he had not been afforded an opportunity to register his objection to the application for place-to-place transfer is not supported by his own testimony. The Notice was properly published and in the absence of written objections, the Council had full

power to determine the application of respondent without holding a special hearing thereon. Rule 10 of State Regulation No. 6.

II.

The appellants further contend that the transfer was improperly granted by the Council, in that, insufficient time had elapsed between the last date of publication and the actual date of the hearing thereon. The proofs supplied indicated that the hearing was held on October 25, 1977, which was a Tuesday. The date of the second publication was October 20, 1977, being a Thursday.

Although there were four full days, Friday, Saturday, Sunday and Monday, intervening between the date of publication and the date of the hearing, appellant insists that the days Saturday and Sunday were not business days, and that Monday was celebrated in many of the States as Veterans Day. However, that date was not commemorated in New Jersey, and the office of the Borough Clerk operated as usual for the entire day. The United States Post office did not deliver mail on Monday.

In this connection it is noted that Rules 7 and 9 of State Regulation No. 2 refer to "business" days, and the method by which a shortened hearing date may be validated.

I find that there were in fact two business days between the last newspaper insertion and the date of hearing. Friday was a business day and Monday was also a business day in New Jersey. That some states and the U.S. Post Office follow the Federal statute applicable for that date, is immaterial to the present issue. The obvious purpose of the Regulation was to afford time to the objector to note his objection. Even though the mail was not delivered on Monday, such letter of objection, had the appellant sent one, would have been delivered to the municipal Clerk on Tuesday morning, well before the meeting.

III.

Appellant's objection to the intended trade name to be employed by the respondent is well founded. The implication that the licensed premises possess a distribution license continues, even with the amended trade name. Appellant's contention that the word "BAR" should be embraced in the trade name of this "C" license has merit. Hollywood Liquors & Groceries, Inc. v. Matawan, Bulletin 1599, Item 2. It is, accordingly, recommended that the name respondent intends to employ must contain the word "Bar" following the name "Scenic Inn", and in place of "Wines".

IV.

Appellants final contention, that the proposed site is improper because of its proximity to a nearby school and other licensed premises, is not supported by proofs. The appellant Santasiero admitted that his primary concern related to the aspect of competition that the new business would generate. He did aver that he believed that the site was not a good one for the public because of both the school and the other licensed premises nearby. However, other than these subjective conclusions, he offered no substantive evidence to support that opinion.

From the map of the Borough introduced into evidence, it is readily apparent that the Council has permitted the several liquor facilities of the community to be on or near to First Street, and at both ends thereof. The remainder of the community is substantially without licensed beverage facilities. This being the apparent purpose of the municipal officials, it should not be disturbed. 1. Fanwood v. Rocco, 33 N.J. 404, 414 (1960); 2. Lubliner v. Paterson Board of Alcoholic Beverage Control, 33 N.J. 428, 446 (1960); 3. Paul v. Brass Rail Liquors, 31 N.J. Super. 211, 214 (App. Div. 1954).

My examination of the facts and the applicable principles of law, leads me to the conclusion that the appellants have failed to meet the burden of establishing by a fair preponderance of the credible evidence that the actions of the Council were erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Therefore, it is recommended that the action of the Council be affirmed and the appeal herein be dismissed.

CONCLUSIONS AND ORDER

Written exceptions to the Hearer's Report were filed by the appellant, and written Answers thereto were filed by the respondent, Janec Associates, pursuant to Rule 14 of State Regulation No. 15.

In its Exceptions, the appellant raises the same procedural arguments advanced at the hearing, to wit, failure by the Council to comply with the hearing requirements, and timeliness of its action under Division Regulations. These issues were correctly

resolved in the Hearer's Report and are without merit.

Additionally, the very nature of a de novo appeal requires the waiver of procedural defects below. Nordco, Inc. v. Division of Alcoholic Beverage Control, 43 N.J. Super. 277 (App. Div. 1957); Twin Manor, Inc. v. Asbury Park, Bulletin 2087, Item 2; Liquor Giant v. Fairfield, Bulletin 2109, Item 2. Without making such a finding, it is clear that the appellant was afforded a reconsideration to ascertain whether the evidence before the Council was sufficient to justify the grant of the transfer application. No such showing was made by appellant to establish that the action of the Council was erroneous and should be reversed.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report, the written Exceptions taken by the appellant, and the written Answers thereto by respondent, Janec Associates, I concur in the findings and recommendation of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of June, 1978,

ORDERED that except for the requirement that the trade name of the respondent, Janec Associates shall be forthwith modified to include the word "Bar", the action of the Mayor and Council of the Borough of Atlantic Highlands be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - BRAWL - BEFORE HEARING PROOFS DETERMINED TO BE INADEQUATE - CHARGES NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against
 Sodbell, Inc.
 t/a Guilio South
 1101-09 Ocean Avenue
 Asbury Park, N.J. 07712
 Holder of Plenary Retail Consumption License C-10, issued by the City Council of the City of Asbury Park.

CONCLUSIONS AND ORDER

Licensee, pro se.

BY THE DIRECTOR:

Licensee was served with a charge alleging that, on Saturday night March 19, 1977 into Sunday morning March 20, 1977, it allowed a brawl in its licensed premises; in violation of Rule 5 of State Regulation No. 20.

Subsequent to the filing of these charges, further information was received from the Chief of Police of Asbury Park which raised substantial questions as to the credibility of the alleged victims of the brawls. After reviewing this information along with the rest of the file, I have determined that there is insufficient evidence to warrant continued prosecution of this charge.

Having considered the foregoing facts and circumstances, I have determined to enter an order dismissing the charge preferred by the Division against the licensee.

Accordingly, it is, on this 1st day of June, 1978,

ORDERED, that the charge herein be and the same is hereby nolle prossed.

JOSEPH H. LERNER
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - FRAUD - MISSTATEMENT IN APPLICATION - PROOF OF PRIOR DISQUALIFICATION REMOVAL ACCEPTED IN MITIGATION - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

Louis Tarsitano
t/a Lou's Bar and Grill
805 Atlantic Avenue
Atlantic City, N.J.

Holder of Plenary Retail Consumption License C-25, issued by Board of Commissioners of the City of Atlantic City.

CONCLUSIONS

AND

ORDER

Goldenberg, Mackler & Feinberg, Esqs., by Kenneth D. Mackler, Esq., Attorneys for Licensee.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

The Division instituted proceedings against the licensee, by Order to Show Cause dated August 19, 1977, why Plenary Retail Consumption License C-25, issued to him by the Board of Commissioners of the City of Atlantic City for premises 805 Atlantic Avenue, Atlantic City, should not be suspended or cancelled or revoked based upon the following charge:

In your short form application filed May 13, 1977 with the Board of Commissioners of the City of Atlantic City, upon which you obtained your current plenary retail consumption license, you failed to answer Question No. 13 to show a change of your answer from "No" to yes to Question No. 30 in your long form application for your license for the 1975-76 licensing period, which asks: "Has the applicant or has any person mentioned in this application having a beneficial interest in the license applied for or in the business to be conducted under said license ever been convicted of any crime?", whereas in truth and fact, you, Louis Tarsitano, had been convicted on or about October 9, 1970 of the crime of unlawful voting contrary to and in violation of N.J.S.A. 19: 34-22; such false statement being in violation of N.J.S.A. 33:1-25".

The licensee was further noticed to show cause why the said license should not be cancelled for the following reason:

Said license was improvidently issued in violation of R.S. 33:1-25 in that you were disqualified from obtaining such license by reason of your conviction of the crime as aforesaid being a crime involving moral turpitude.

From the testimony and documents presented at the hearing held in this Division, the following undisputed facts emerge: The licensee pleaded guilty to one count each of two separate indictments, alleging that, on September 12, 1967 and on June 4, 1968, he voted in an election from a polling booth in a district in Atlantic City, wherein he did not reside and was not entitled to vote, contrary to the provisions N.J.S.A. 19:34-22. The pleas were filed on July 20, 1970 and, as a result thereof, the licensee was fined the sum of \$50.00 on each indictment. The crime charged was a misdemeanor in each case.

It was also undisputed that, on both his long form application for his license for the 1975-76 licensing period and on his short form application for his current 1977-78 licensing period, the licensee failed to disclose the aforesaid conviction of crime.

Prior to the hearing held in this Division, the attorney for the licensee, by letter addressed to the Director moved to present evidence at the disciplinary hearing by way of defense, that the said crime in violation of N.J.S.A. 19:34-22 did not involve moral turpitude. In response, the Director informed licensee's attorney by letter that consolidation of a request for a disqualification removal hearing, with the within disciplinary proceeding, would not be permitted for the reasons stated therein.

In any event, this issue became moot for the reason that the licensee's disqualification was removed by order of the Director dated March 6, 1978 in proceedings brought by the licensee. Re: Disqualification Removal Case No. 4094.

At the hearing held herein, the licensee explained that he had operated a bar and grill establishment at premises 604 Atlantic Avenue, Atlantic City, during the years 1967 and 1968, and that he and his family occupied the apartment over the business. Due to Urban Renewal condemnation proceedings, he transferred the subject license to 804 Atlantic Avenue, Atlantic City (his present location) sometime during the years 1969-1970, and again occupied an apartment over the licensed business. During both periods of time, he and his wife owned a home in Margate.

Inasmuch as the bar business was a twenty-four hour operation, he spent most of his time in either the establishment or the above same. Licensee explained that in voting from those addresses, he had no intention of violating the aforesaid statute.

He pleaded guilty upon advice of counsel that such action would not disqualify him from continuing in the liquor business.

Five letters attesting to licensee's good reputation were admitted in evidence.

Upon due consideration of the testimony, including the record of conviction and the record of removal of the licensee's disqualification, I conclude that the Division has sustained the burden of proving the charge by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty.

Considering the mitigating circumstances herein, including the fact that the licensee's disqualification from engaging in the alcoholic beverage industry was recently removed, in accordance with the provisions of N.J.S.A. 33:1-32, it is further recommended that the license be suspended for twenty days, and that the order to show cause why the license should not be cancelled be discharged.

CONCLUSIONS AND ORDER

No exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

The Hearer's Report is hereby amended and corrected at page 2 to reflect that the subject licensee's disqualification was removed by order of the Director dated May 18, 1978. Re Disqualification Removal Case No. 4132.

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 recommendation of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 30th day of May, 1978,

ORDERED that the licensee be and the same is hereby found "guilty" of the charge alleging a false answer on his license application for the 1975-76 license term, in violation of N.J.S.A. 33:1-25; and it is further

ORDERED that Plenary Retail Consumption License C-25 issued by the Board of Commissioners of the City of Atlantic City to Louis Tarsitano, t/a Lou's Bar and Grill for premises at 805 Atlantic Avenue, Atlantic City be and the same is hereby suspended for twenty (20) days commencing 2:00 a.m. Friday, June 9, 1978 and terminating 2:00 a.m. Thursday, June 29, 1978; and it is further

ORDERED that the Order to Show Cause, dated August 19, 1977, why the subject license should not be cancelled and declared null and void, be and the same is hereby discharged.

JOSEPH H. LERNER
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCES - PERMITTED ACTS OF VIOLENCE - SUFFERED FOUL LANGUAGE - HINDERED INVESTIGATION - PERMITTED PREMISES TO BECOME A NUISANCE - PLEA OF NON-VULT ENTERED DURING HEARING - PREMISES TO BE SOLD - LICENSE SUSPENDED FOR 190 DAYS.

In the Matter of Disciplinary Proceedings against:)

Foulks Village Tavern, Inc.)
 32 Riverside Avenue)
 Florence Township)
 (Burlington County))
 P.O. Roebling, New Jersey)
 08554)

CONCLUSIONS
 AND
 ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Florence Township.)

-----)
 Wherry & Casale, Esqs., by Charles Casale, Jr., Esq.
 Mart Vaarsi, Esq., Deputy Attorney General, Appearing for the
 Division.

BY THE DIRECTOR:

During the course of the partially-heard proceedings in this Division, the licensee changed its "not guilty" plea to non vult to charges alleging that, on March 5, 1977, in and upon its licensed premises it:

- 1.) sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No.20;
- 2.) allowed, permitted and suffered unlawful activity concerning controlled dangerous substances, in violation of Rule 4 of State Regulation No. 20;
- 3.) allowed, permitted and suffered acts of violence, in violation of Rule 5 of State Regulation No. 20;
- 4.) allowed, permitted and suffered foul and obscene language, in violation of Rule 5 of State Regulation No. 20;
- 5.) allowed, permitted and suffered its licensed place to be conducted in such manner as to constitute a nuisance, in violation of Rule

5 of State Regulation No. 20; and

- 6.) hindered and delayed an investigation, in violation of Rule 35 of State Regulation No. 20 and N.J.S.A. 33:1-35.

A similar change of plea from "not guilty" to non vult was entered to a seventh charge, which formed the basis of an Order to Show Cause why the subject license should not be cancelled. This charge alleged, in substance, that the licensee failed to disclose, in its license applications that William Dowd, an officer and 25% stockholder of the corporate licensee, had been convicted of the crime of larceny, on June 15, 1970. This is a crime which involves moral turpitude, and Dowd was, therefore, statutorily disqualified from having an interest in a license, N.J.S.A. 33:1-25.

Upon the proofs submitted that William Dowd had divested himself of his interest in the license after the charges were filed, and that he had his criminal conviction expunged by Court Order, the Deputy Attorney general representing this Division moved for discharge of the Order to Show Cause.

It was stipulated by counsel that a 190 day suspension on all seven charges, which includes an additional suspension for a prior offense, to wit, a sale to minor in 1974, would be recommended to the Director as the penalty to be imposed.

Counsel also stipulated, as part of the plea negotiation, that the licensee would use its best efforts to obtain another purchaser for the license and the licensed premises. It was acknowledged that same will be delayed because of pending Superior Court litigation concerning title deficiencies.

Good cause appearing, I shall accept the change of plea to non vult to all charges, discharge the Order to Show Cause entered herein, and suspend the subject license for 190 days. I shall defer establishing a timetable for transfer of the license pending the outcome of the aforementioned litigation. The licensee has agreed to and shall advise this Division when those proceedings are concluded.

Accordingly, it is, on this 31st day, of May, 1978,

ORDERED that Plenary Retail Consumption License C-12 issued by the Township Committee of the Florence Township to Foulks Village Tavern, Inc. for the balance of its term, i.e., 12 p.m. June 30, 1978, commencing 2:00 a.m. Monday, June 12, 1978;

and it is further

ORDERED that any renewal of said license which may be granted for the 1978-79 license term be and the same is hereby suspended until 2:00 a.m. Tuesday, December 19, 1978; and it is further

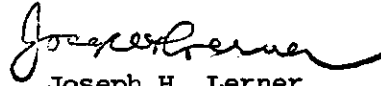
ORDERED that my Order to Show Cause dated May 3, 1977 why the subject license should not be cancelled and declared null and void, be and the same is hereby discharged.

JOSEPH H. LERNER
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Mediterranean Importing Co. Inc.
3333 New Hyde Park Road
New Hyde Park, N. Y.

Application filed September 28, 1978
for wine wholesale license.


Joseph H. Lerner
Director