

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 2327

August 30, 1979

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August 30, 1979

1. APPELLATE DECISIONS - COLUMNS-BY-THE-SEA v. AVON-BY-THE-SEA.

Columns-By-The-Sea, A Partnership,	:	
	:	ON APPEAL
Appellant,	:	CONCLUSIONS
	:	AND
vs.	:	ORDER
Board of Commissioners of Avon-By-The-Sea,	:	
	:	
Respondent.	:	

.....:

Alan C. Sugarman, Esq., by Kathleen R. Wall, Esq., Attorneys
 for Appellant.
 Healy & Weinstein, Esqs., by Daniel J. Healy, Esq., Attorneys
 for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellant appeals from the action of the Board of Commissioners of the Borough of Avon-By-The-Sea (Board), which, by Resolution on July 27, 1978, renewed the Plenary Retail Consumption License issued to Nova Inn, Incorporated t/a Avon Inn, for premises at Ocean and Sylvania Avenue.

In its Petition of Appeal, appellant contends that the Board's action was erroneous and should be reversed for the following stated reasons: (1) that the time within which application was made for renewal of said license had expired; (2) that there are no premises where the license can be used for the reason that the premises had been destroyed by fire prior to the renewal of the license and; (3) applicant for the renewal, "did not even appear to move the application".

In its Answer, the Board asserts that the renewal of the license was proper.

At the hearing de novo in this Division, held in accordance with N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), the parties hereto relied solely on the pleadings and legal argument in support of their respective positions.

In arriving at a determination herein, I observe that the burden of establishing that the action of the Board was erroneous and should be reversed rests with the appellant, in accordance with N.J.A.C. 13:2-17.6.

The well-settled principle governing this Division's function on appeal from the action of the local issuing authority is expressed in Paul v. Brass Rail Liquors, 31 N.J. Super. 211, 214, (App. Div. 1954), wherein it was held:

The issuance, renewal and transfer of a liquor license rests in the sound discretion of the issuing authority and its action will not be judicially disturbed in the absence of a clear abuse of discretion. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

Another expression of same is set forth in Fanwood v. Rocco, 33 N.J. 404, 414 (1960), wherein the Court stated:

". . . The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him . . . Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgement and discretion was reasonable . . ."

Since the Council's action in matters of this kind is discretionary, appellant, to prevail on appeal, must show manifest error or clear abuse of discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super, 598 (App. Div. 1955).

In considering appellant's first contention, there is nothing in the record before this Division to substantiate its argument that the application for renewal was not timely made. N.J.S.A. 33:1-12.26 specifically recognizes that a local issuing authority may act upon a renewal application within thirty days after the expiration of the previous license term. I, therefore, find that this contention lacks merit.

Relative to appellant's second contention, it appears that the licensed premises owned by Nova Inn, Inc., wherein its licensed privileges were exercised, was destroyed by fire after the close of its seasonal business in 1977.

Under these circumstances the action of the Board in renewing the license was appropriate. In fact, under recent legislation, where a license has not been actively used for a period of two years prior to the commencement date of the license period for which the renewal application is filed, the Director, for good cause and after a hearing, may authorize a further application for renewal. In cases where the licensee has been deprived of the use of the licensed premises as a result of eminent domain, fire or other casualty and establishes by affidavit filed with the Director that he is making a good faith effort to resume active use of the license, then the two year period herein provided shall be extended for an additional period of two years. N.J.S.A. 33:1-12.39. I, likewise, find that this contention lacks merit.

Finally, appellant argues that the Board's action was erroneous in that the applicant for the renewal did not appear to move the application. The complete answer to this argument is that there is no requirement in the Rules and Regulations for an applicant to appear before the Board on renewals of licenses in addition to filing an application therefor. It may be noted that no hearing need be held by a local issuing authority unless an objection has been filed, or unless the issuing authority, on its own motion, shall have determined not to renew the license.

For the aforesaid reasons, I recommend that an order be entered affirming the action of the Board and dismissing the appeal.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's report were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the legal argument of counsel, 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 March, 1979,

ORDERED that the action of the Board of Commissioners of the Borough of Avon-By-The-Sea be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - NOUMAIR v. ASBURY PARK ET AL.

Richard J. Noumair, t/a Richie's System,	:	
Appellant,	:	ON APPEAL
v.	:	CONCLUSIONS
City Council of Asbury Park and Alan C. Sugarman, Trustee in Bankruptcy of the New Berkeley Corporation,	:	AND
Respondents.	:	ORDER
.....	:	

Charles Frankel, Esq., Attorney for Appellant.
 Norman Mesnikoff, Esq., Attorney for Respondent-City Council
 of Asbury Park.
 Ira Kreizman, Esq., Attorney for Asbury Park Tavern Owners
 Association, Objectors.
 Katherine R. Wall, Esq., Attorney for Respondent - Sugarman.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the City Council of the City of Asbury Park (hereinafter Council) which, on June 7, 1978, denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License 1303-33-054-001, issued to respondent Alan Sugarman, Trustee of the bankrupt New Berkeley Corporation, former operators of the Berkeley Carteret Hotel, to appellant for proposed premises at 806 Main Street, Asbury Park.

The aforesaid action of the Council was not accompanied by any formal resolution, but rather, resulted from an oral vote to deny the application. This vote was a split vote, i.e., two councilmen voting in favor of the application, two opposed and one abstention.

The appellant contends in his Petition of Appeal that the absence of reasons upon which the Council's action was based gives rise to the implication that such action was arbitrary and capricious. The Council denies such contention in its Answer.

A de novo appeal was heard in this Division pursuant to N.J.A.C. 13:2-17.6, at which hearing the parties were permitted to introduce evidence and to cross-examine witnesses. In addition thereto, transcripts of the proceedings before the Council were offered pursuant to N.J.A.C. 13:2-17.8.

Testifying on behalf of the respondent-Council, Edward R. English, a Council member, stated that he had several specific reasons to support of his negative vote. Firstly, the parking situation in the area to which the license was intended to be transferred is a greivous problem. There are no off-street parking facilities in the area, and present traffic congestion will not permit another licensed premises. Also, this is a high crime area with instances of drug and prostitution activity. Loitering of large groups represents a problem. Moreover, there are a sufficient number of licensed premises on the block of the proposed transfer situs, including a licensed premises next door and another diagonally across the street.

As a further reason for his negative vote, Councilman English detailed a plan for the retiring of licenses presently underway and, because the Berkeley Carteret Hotel may someday be reopened, a liquor license would be required for it. Hence, the Council would then have to vote a new one under the hotel exception. Thus, the plan to reduce the number of licenses would be tharted by the approval of the subject application.

The owner of the tavern next door to the proposed transfer situs, John Polonio, next testified for the objectors that appellants restaurant, if licensed, would exacerbate the present parking problem. Further, he expressed concern that litter and refuse piling up between his building and that of the subject restaurant would further aggrevate the complained of conditions.

The president of the local licensed beverage association, George DeNardo, testified that his association objects to the issuance of any further licenses in the city, and, by approval of the subject transfer, a new license would be required for the Berkeley Carteret when that hostelry opens. He feels that the license should remain where it is.

Appellant, Richard Noumair, testified that he presently owns one restaurant on the ground floor of 806 Main Street, which has been in operation since 1962. In the past year, he opened a more formal restaurant on the second floor of that building, access to which is by separate stairway unconnected

with the ground floor restaurant. His application applies only to the operation of the restaurant on the second floor (with a third floor for storage), and has nothing to do with the luncheonette on the ground floor. He presently operates this restaurant from five o'clock in the afternoon to midnight, and accomodates an average of one hundred and fifty patrons during that period. The cuisine was described as "continental" with emphasis on Italian cooking. His application was for a conditioned license, i.e., he agreed to have the license limited to the service of alcoholic beverages at tables only, with neither a patron bar, or facilities for off-premises sales.

Mayor Ray Kramer testified that he voted in favor of appellant's transfer application for the reason that the premises are a bona fide restaurant, and such restaurant deserves a license, albeit a restricted one. He added that the license should be further conditioned against any inclusion of the existing luncheonette located on the ground floor. The restaurant presently attracts a professional clientele, and the grant of the license would be a benefit to the community at large.

Chief of Police, Thomas S. Smith, Sr., testified that, in his opinion there is a need for a restaurant, and appellant's restaurant would not, by virtue of the license, increase the present parking problem.

Joseph E. Robertson testified on behalf of appellant that there is a definite need for a good restaurant at the site of appellant's premises, and the expansion of the license privilege would enhance the establishment. Robertson is a former assemblyman and mayor of a neighboring borough, and is presently associated with the New Jersey Turnpike Authority. Other witnesses were present and would have testified in support of appellant's application, however, since such testimony would be cumulative, a proffer of proof was accepted in lieu of such testimony.

The sole and central issue in this matter is; was the determination of the Council based upon substantial evidence before it? Or, put another way, was its decision founded upon the logic of the presented facts?

It is preliminarily observed that the transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary and

unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Bromwell v. Newark Bulletin 1639, Item 1.

The instant case is comparable to and governed by the principles set forth in Bivona v. Hock, 5 N.J. Super. 118, 120 (App. Div. 1949) wherein the court stated:

...the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based.

From the statements made by Councilman English and the president of the local liquor dealers' association, George DeNardo, it is patently obvious that the objections raised revolved about the reluctance to create a situation by which an additional liquor license would eventually be issued to the Berkeley Carteret Hotel, the indirect transferor. Such conclusion is in error. There is no requirement upon the Council that it issue another license. To the contrary, the subsequent hotel operator could be required to secure an existing license by purchase.

Further by the position taken by Councilman English, it appears he is unaware of recent legislation, wherein an existing license, if not actively used within two license terms, cannot be renewed, absent specific authorization from the Director of the Division of Alcoholic Beverage Control.

Mayor Kramer and Police Chief Smith both recognize that, by the limited use of the license, alcoholic beverages could be served in appellant's restaurant as part of its "continental cuisine". Such limited use would hardly add to the admitted traffic and loitering problems in the area.

General objections or expressions of concern are, in themselves, not sufficient reason for denying a transfer. Fran-Mort, Inc. v. Saddle Brook, Bulletin 2218, Item 1; Oror, Inc. v. Hackensack, Bulletin 2269, Item 2.

For the reasons stated, I conclude and find that the appellant has sustained the burden imposed under N.J.A.C. 13:2-17.6. It is, therefore, recommended that the Council's action be reversed, and that an order be entered directing the Council to grant the application for transfer, subject to the imposition thereon of the following special conditions:

- (a) License shall only embrace and be limited to the restaurant on the 2nd and 3rd floors of the building at 806 Main Street;
- (b) No stand-up bar or other type bar, except a service bar, is permitted;
- (c) No alcoholic beverages shall be sold, served or delivered for off-premises consumption; and
- (d) Service of alcoholic beverages to dining guests shall be limited to the hours of five o'clock p.m. to eleven o'clock p.m.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the written memoranda of the parties and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of March, 1979,

ORDERED that the action of the City Council of the City of Asbury Park be and the same is hereby reversed, and the Council be and same is hereby directed to grant the transfers in accordance with the applications filed therefore upon compliance with statutory requirements, and expressly subject to the imposition of the four (4) special conditions recommended hereinabove by the Hearer and incorporated herein by reference as if set forth herein in length.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - SOUTH AMBOY LIQUORS, INC., A N. J. CORP. et al v. SOUTH AMBOY et al.

SOUTH AMBOY LIQUORS, INC.,	:	
A N.J. CORP., AND EDNA	:	
FRISCHETTA,	:	ON APPEAL
	:	CONCLUSIONS
APPELLANTS,	:	
VS.	:	AND
	:	ORDER
COMMON COUNCIL OF THE CITY OF	:	
SOUTH AMBOY AND HUBBARD'S	:	
CUPBOARD, INC.,	:	
	:	
RESPONDENTS.	:	

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John J. Vail, Esq., Attorney for Appellants.
Convery and Convery Esqs., by Clark W. Convery, Esq.,
Attorney for Respondent, City of South Amboy.
Richard C. McDonough, Esq., Attorney for Hubbard's Cupboard,
Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellants challenge the action of the respondent Common Council of the City of South Amboy (Council) which, by Resolution dated July 5, 1978, granted an application for place-to-place and person-to-person transfer of Plenary Retail Consumption License #1220-44-001-001, from Cinco-Rey, Inc., trading as Broadway Liquors, 108 South Broadway, South Amboy to Hubbards Cupboard, Inc., for premises 101 South Broadway, South Amboy.

Appellants contend that such action was erroneous, contrary to the public interest, and will have an adverse effect upon adjoining properties and the health and welfare of the residents.

In their Answers, respondents Council and Hubbard's Cupboard deny the substantive allegations contained in the Petition of Appeal.

A de novo hearing was held in this Division pursuant to N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

The parties chose to submit upon the transcripts of the two hearings held locally, supplemented by oral argument. Additionally, several objectors attended and two availed themselves of the opportunity of voicing their objections to the granting of the transfers.

From the Petition of Appeal and the transcripts, it appears that the bases of appellants' objections are:

- a) alcoholic beverages would be sold in a retail store that children normally patronize.
- b) the ownership will not actively manage it, resorting to absentee management.
- c) the current store manager is alleged to be involved in some sort of proceedings resulting from (claimed) violation of U.S. Department of Agriculture rules and regulations governing food stamps.
- d) a poor parking situation will be further exacerbated.
- e) the town should have purchased the license, when it became available for sale.
- f) there are too many plenary retail licenses in this area of the municipality.

- I -

The burden of establishing that the Council acted erroneously and should be reversed rests entirely upon the appellant, pursuant to N.J.A.C. 13:2-17.6. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Hudson-Bergen Package Stores Ass'n v. North Bergen, Bulletin 1981, Item 1.

There is no inherent or automatic right to the transfer of an alcoholic beverage license. In the absence of abuse of discretion in acting upon a license issuance or transfer, the action of the authority should not be disturbed by the

Director of this Division. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947). The action of the Council may not be reversed in the absence of manifest mistake or other abuse of discretion. Florence Methodist Church v. Florence Twp., 38 N.J. Super. 85 (App. Div. 1965).

Each municipal issuing authority has wide discretion in the transfer of a liquor license. Michida Corp. v. Jackson, Bulletin 2250, Item 4. Action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970), ("The conclusion is incapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action.").

The circumstance of liquor availability in a retail establishment which concurrently enjoys a sizeable youthful patronage has vexed parents and community leaders for years. Notwithstanding this genuine concern, hundreds of drug stores, delicatessen's, supermarkets and department stores throughout our state possess plenary retail distribution licenses. These licenses do not permit dispensing intoxicants by the glass for on-premises consumption. Sale is limited to beverages in sealed original containers for off-premises consumption. Properly supervised, they have presented no more of an unmanageable situation than the traditional package store. From the testimony, there are presently two such operations in South Amboy, excluding the licensee sub judice. I find no merit to this argument.

Similarly, I dismiss the contention that the proposed operation is more suspect because of absentee management. One need only look to the numerous chain supermarkets and department stores possessing retail distribution licenses where the owners retain competent employees to exercise certain functions of the operation, without undue problem, to see the inapplicability of this argument.

In performing the necessary and required background investigation prior to approval of an application to transfer ownership of a license, the Division investigation is normally to the persons having an interest in the license, not its employees. However, in a situation where it is known or suspected that an employee would be disqualified from

employment due to possible criminal background of the type deemed involving moral turpitude, prudence would mandate that the municipality investigate this individual, as well. In the event the investigation confirms the presence of a disqualified employee, this information should be made known to the proposed licensee, for appropriate action.

In the instant case, the municipality did perform the background investigation of the store manager and reported no such disqualification. I, therefore, find this allegation to be without merit.

The City of South Amboy is not unique in possessing a parking problem in its business center. I fail to see how it could possibly be exacerbated by moving the subject license from 108 South Broadway to an existing delicatessen located at 101 South Broadway. I dismiss this argument as frivolous.

New Jersey, by Statute (N.J.S.A. 40:48-2.39 et seq.) provides strict guidelines which a municipality must adhere to, in order to purchase and retire existing plenary retail consumption licenses in its jurisdiction. Subject license in a distribution license not specifically covered by this statute. Under the circumstances, the authority of the Council to purchase this license is not clear, even assuming all concerned had concurred. I dismiss this allegation as not relevant.

As to the clustering of licenses in this area, I make the following comments. South Amboy is a major stop on the North Jersey shore line - of the Jersey Central Railroad. Electrification terminates there and diesel locomotives must be substituted for the electric units on all trains arriving from New York City. This requires a minimum stay of ten minutes, and often more. Passengers traditionally leave the train and proceed to Broadway (one short block distant) which abounds with retail liquor establishments. They purchase package goods for later consumption. This trade is a significant part of these establishments yearly gross, and will remain so, until the rail line is electrified to Red Bank or Bay Head, at which time the stay will be reduced to a minute or two to discharge passengers only.

It is no accident that clustering exists on this street, and in the area proximate to the railroad station. Similar conditions exist in Hoboken, and no doubt in other communities, as well. Since South Amboy has no minimum distance regulation presently, I find no basis to this argument.

The resolution granting the transfer makes the following findings of fact:

1. A check of the background by the police of all the Shareholders of Hubbards Cupboard, Inc., and its Manager did not reveal any reason to deny the transfer based on criminal or improper moral turpitude.
2. The new location of the license is not in proximity of any school or church.
3. The transfer does not violate any zoning provisions of our ordinances.
4. The Council does not consider this transfer to be against the interest of the citizens of South Amboy, especially since these already exist within the City establishment which distributed both food and liquor, and the location transfer is a short distance from the existing business.
5. The City of South Amboy does not have any Ordinance which would permit it to reduce the number of licenses. (N.J.S.A. 40:48-2.40 et seq.).

I conclude that the appellant has failed to sustain the burden imposed upon him under N.J.A.C. 13:2-17.6 of establishing that the action of the Council was erroneous and should be reversed.

It is, therefore, recommended that an order be entered affirming the action of the Council and dismissing the appeal.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the appellants, pursuant to N.J.A.C. 13:2-17.14.

In their Exceptions, the appellants attribute error to the Hearer's failure to recite in his report or comment on the testimony set forth in the transcripts below submitted to the Division in this appeal. While the better procedure

would be to summarize fully the testimony below, and make findings thereon, the testimony of the objectors, sub judice, sets forth conclusionary remarks, comments or opinions specifically set forth in the Petition of Appeal and discussed by the Hearer in his report at length. I am satisfied that the Hearer correctly identified and resolved the issues presented. I thus find the Exception to be lacking in merit.

The appellants also assert general statements concerning alcohol abuses which another outlet for liquor may enhance, and some public statements against beer and wine in grocery stores. Enforcement tools exist to restrict and penalize a licensee who sells to intoxicated patrons.

The reference to beer and wine in grocery stores is not directed to a plenary or limited distribution licensee who may conduct a grocery store operation; but rather, to the issuance of a new class of licenses or elimination of the need for a license, at all, to sell beer and wine in any grocery store. Thus, I reject these Exceptions as without basis in fact or law.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's Report and the written Exceptions filed thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of March, 1979,

ORDERED that the action of the Common Council of the City of South Amboy be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - EMPLOYED DISQUALIFIED EMPLOYEE - FAILED TO HAVE TRUE BOOKS OF ACCOUNT - FAILED TO KEEP LIST OF EMPLOYEES ON PREMISES - MATTER HEARD EX PARTE - LICENSE SUSPENDED FOR BALANCE OF TERM - NOT LESS THAN 30 DAYS.

In the Matter of Disciplinary Proceedings against :

Hughes-Gaines, Inc. :
 t/a Jewell Box :
 1447 Broadway :
 Camden, N.J. :

CONCLUSIONS
 AND
 ORDER

Holder of Plenary Retail Consumption Lic. 0408-33-022-001, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. :

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Mart Vaarsi, Esq., Deputy Attorney-General, Appearing for Division.

BY THE DIRECTOR:

The Division filed charges herein that, (1) between October, 1976 and July, 1977 it employed a disqualified person in violation of N.J.A.C. 13:2-14.1; (2) that it failed to have true books of account of the licensed business in violation of N.J.A.C. 13:2-23.32 and, (3) in conducting its licensed business it failed to keep a required list of persons employed in violation of N.J.A.C. 13:2-23.13(3).

No response to the charges were received from the licensee and a "not guilty" plea was entered by the Division. A hearing date was established by certified mail. A return receipt was not obtained. In consequence, personal service of notice of rescheduled hearing date was served upon the licensee's agents at its licensed premises by an agent of this Division.

At the hearing in this Division held at the time and date contained in the notice, no one appeared for or on behalf of the licensee. The matter, therefore, proceeded ex parte in accordance with N.J.A.C. 13:2-19.6.

Testifying on behalf of this Division, ABC Inspector H stated that he conducted an investigation of the subject licensed premises on November 19, 1976 and thereafter during the following year. He ascertained that one Gary Samuels was employed as an assistant manager and that Samuels was a convicted felon. Further, Samuel's name did not appear on the employee record which is a regulatory requirement.

Agent H further testified that, pursuant to the scope of his investigation, he obtained the business records of the licensed premises from an attorney then representing the licensee. These records were totally insufficient as ordinary business records. Agent H stated that he was unable to complete his investigation respecting the "front" aspect of the business because of the total lack of satisfactory records.

The charges against the licensee have been proven by a preponderance of the evidence, indeed, by substantial evidence.

Information received by this Division indicates that at the present time the licensed premises are not in operation, nor is it the intention of the licensee to reopen until the summer months.

Accordingly, it is, on this 7th day of March, 1979,

ORDERED that Plenary Retail Consumption Lic. 0408-33-022-001, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Hughes-Gaines, Inc., t/a Jewell Box, for premises 1447 Broadway, Camden, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1979, effective upon further Order which shall be issued when the licensed premises resume substantial full time operation in connection with its licensed premises, and for the term of any renewal of said license which may be granted, with leave to the licensee or any bona fide transferee of the license, or on any renewal of the said license which may be granted, to apply to the Director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected; but in no event shall the lifting of the said suspension be sooner than thirty (30) days from the commencement of the suspension which may be imposed.



JOSEPH H. LERNER
DIRECTOR