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

LIC. NO. 0907-33-006-004

OAL DKT. NO. ABC 09114-14

APPEAL NO. 7816

THE GIN MILL TAVERN, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF KEARNY,	)	FINAL CONCLUSION AND ORDER
	)	
Respondent.	)	

John T. Ambrosio, Esq. for appellant (Ambrosio & Tomczak, attorneys)

Salvatore G. Roccaro, Esq. for respondent (Castano Quigley, LLC, attorneys)

Initial Decision Below by the Honorable Mumtaz Bari-Brown, Administrative Law Judge

Decided: April 23, 2015 Received: April 24, 2015

BY THE DIRECTOR:

The issues before me are (1) whether to uphold the Initial Decision concluding that a license holder who agrees to settlement with the issuing authority may, as a matter of law, apply to the Director for a monetary compromise in lieu of suspension and (2) whether a monetary compromise in lieu of suspension is appropriate in this case under N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.3(b)(1). Pursuant to timely Extensions granted by the Office of the Administrative Law on May 27, 2015 and July 24, 2015, my Final Decision must be rendered no later than September 8, 2015. For the reasons set forth herein, I shall accept the Initial Decision in its entirety. In

addition, I will set forth a policy regarding settlements and applications for compromise offer appeals.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

On April 30, 2014, the Township of Kearny ("Kearny"), served a Notice of Hearing on Charges upon the Gin Mill Tavern, Inc. ("Gin Mill"), alleging eight violations for which the presumptive penalty was a 127-day license suspension. Gin Mill pled not guilty and requested a hearing. Prior to the hearing, Gin Mill and Kearny executed a settlement in which Gin Mill entered a plea of non-vult on all charges and agreed to serve a 60-day license suspension to begin on June 5, 2014.

On June 4, 2015, Gin Mill applied to the Director of the Division of Alcoholic Beverage Control ("ABC" or "Division") requesting a stay of the 60-day suspension and seeking a monetary compromise in lieu of serving the agreed upon suspension. Former Director Michael I. Halfacre granted the application to stay the suspension and transmitted the matter to the Office of Administrative Law as a contested case. Kearny filed a Motion to Enforce Settlement and Gin Mill filed a cross motion for Summary Decision.

The ALJ granted Gin Mill's motion for summary decision, concluding that Gin Mill was not precluded, as a matter of law, from applying to the Director to pay a monetary offer in lieu of suspension. However, the ALJ considered the facts and any mitigating and aggravating factors, and recommended that I not accept such a resolution in this case.

On May 11, 2015, Gin Mill filed timely Exceptions. Kearny did not file a response to Gin Mill's Exceptions. Gin Mill argued that its request to pay a monetary compromise in lieu of suspension was not one to be decided by the ALJ. Gin Mill concluded, "[c]learly, the appellant

is entitled to present mitigating circumstances to the Director in support of its request to pay a fine in lieu of a suspension and the recommendation of the ALJ – that the Director not entertain that request – should be ignored." Thereafter, Gin Mill did not present any mitigating circumstances for consideration.

LEGAL ANALYSIS

The principles articulated in Alibi Inn v. Woodbridge Township, 96 N.J.A.R. 2d (ABC) 91 (NJ Admin.1996) are applicable. In Alibi Inn, the parties agreed to a settlement prior to hearing. The ALJ forwarded the settlement to the Director for approval. Simultaneously, the licensee applied for permission to pay a monetary compromise in lieu of suspension pursuant to N.J.S.A. 33:1-31. The municipality opposed the application, arguing that the parties discussed the possibility of a monetary offer in lieu of suspension, but ultimately reached the settlement for suspension days. On a second remand, the ALJ noted that pursuant to N.J.S.A. 33:1-31, the decision to accept a monetary penalty is left solely to the Director after fact finding by the ALJ. In conclusion, the ALJ considered the facts, including any aggravating or mitigating factors, and recommended that the Director deny the request to pay a monetary compromise in lieu of suspension. The Director adopted that recommendation.

The facts of this case are distinguishable in that neither Gin Mill nor Kearny alleges that a monetary compromise in lieu of suspension was discussed during settlement. The transcript of the town council's hearing on May 27, 2014, is also silent on the issue. In Alibi Inn, the parties discussed a possible monetary offer in lieu of suspension in the course of negotiation, and the municipality opposed such a result both at that time and in filing Exceptions to the Initial Decision. Even so, in Alibi Inn, the ALJ concluded that he could neither prohibit the licensee

from petitioning to pay a monetary offer in lieu of suspension, nor the municipality from opposing it. Accordingly, the Director permitted the licensee to apply for a fine in lieu of suspension. Former Director Holl also determined that, although the ALJ has no authority to prohibit or grant the request of a fine in lieu of suspension, it was appropriate for the ALJ to consider the facts presented, as well as Division policy, and then recommend whether a monetary penalty was appropriate.

The historical context also warrants discussion. The Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. ("ABC Act"), is a remedial statute. N.J.S.A. 33:1-73. It provides the Director with authority to suspend or revoke a liquor license for violations of the ABC Act or the regulations promulgated thereto. N.J.S.A. 33:1-31. In addition, the ABC Act provides the Director sole authority to accept from any licensee an offer in compromise of any disciplinary action as the Director, in his discretion, deems proper. Ibid. (emphasis added).

Prior to 1971, the Director was limited to suspension or revocation of the license for violations of the ABC Act. However, in 1971, the Legislature recognized that, under certain conditions, the disruption caused by a suspension could unduly threaten the viability of the licensee as an ongoing business. For instance, license suspension inevitably has economic impacts on employees, vendors, and the municipality in which the license is sited. Accordingly, the Legislature amended N.J.S.A. 33:1-31 to authorize only the Director to accept monetary offers in compromise in lieu of suspensions "in such amount as may in the discretion of the [D]irector be proper under the circumstances." Thus, although the Director may exercise his discretion on a case-by-case basis to accept a monetary offer in lieu of suspension, he has no obligation to do so in any particular case.

The Division has long recognized that monetary offers in lieu of suspension should not present a financial advantage for the licensee. Rather, a monetary offer should reflect the policy that a licensee not profit from the privilege to sell alcohol during the period of suspension, while maintaining the viability of its license. Accordingly, as a starting point, the Division uses a standard formula to evaluate monetary offers in suspension cases. The amount will normally be calculated at one-half the per diem gross profit derived from the operation of the alcoholic beverage license multiplied by the number of suspension days imposed as the penalty. See A.B.C. Bull. 2453, Item 2 (October 1, 1988). This calculation is an estimate of the profits which the licensee would generate by operating when it would otherwise be suspended. It establishes the necessary deterrent to prevent future ABC violations while allowing the licensee to continue normal business operations, including paying employees and remaining open to the public.

The authority to accept a monetary compromise in lieu of suspension imposed by the municipality lies solely with the Director pursuant to N.J.S.A. 33:1-31. The Director's exclusive role ensures statewide uniformity and unbiased application of the principles considered in accepting or rejecting the compromise offer. The Director balances the economic impacts and the deterring effect that a license suspension would have upon a licensed business versus the nature of the offenses to determine whether it is appropriate to accept an offer in compromise or require suspension. Though the monetary compromise offer is generally intended to alleviate an extreme financial burden upon the licensee, there are cases where it is appropriate and necessary for the suspension to be imposed. When a municipality believes license suspension is appropriate despite the economic impacts, including upon the local government itself, its position should be taken into consideration and given substantial weight.

In this case, the record is silent on the issue of whether either party contemplated Gin Mill's application for a fine in lieu of suspension. Under Alibi Inn, Gin Mill is not precluded from making the application. However, it is clear that the parties agreed upon a penalty significantly less than what was originally sought by the town, a reduction from 127 to 60 suspension days. Implicit in the town's acceptance of that agreement is that the suspension would be served. Indeed, Kearny later objected to Gin Mill's application to pay a monetary compromise in lieu of the 60-day suspension.

Furthermore, under Alibi Inn, it was appropriate for the ALJ to consider the facts in recommending that I not accept a monetary compromise in lieu of suspension. The ALJ found that the parties reached the agreement for a 60-day suspension after discussion of all aggravating and mitigating factors, such as the seriousness of the offenses, the lack of prior violations, and the remedial actions taken by Gin Mill to avoid repeated incidents. In filing Exceptions here, Gin Mill did not present any additional mitigating factors or make any argument that would be a basis for me to accept a monetary compromise offer in this case.

Thus, **I ACCEPT** the ALJ's Initial Decision permitting Gin Mill to make an application to me for a fine in lieu of suspension. However, because no additional mitigating factors have been demonstrated to me, under the authority of N.J.S.A. 33:1-31, **I DENY** Gin Mill's application to pay a fine in lieu of serving the 60-day suspension imposed by Kearny.

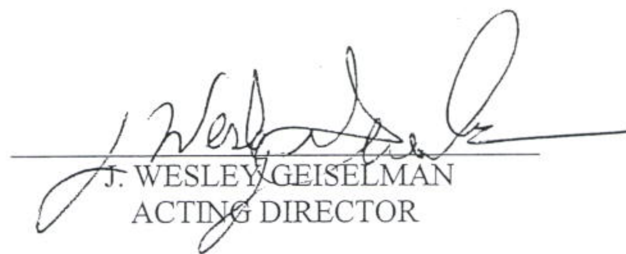
Furthermore, **I FIND** that if the town does not specifically state in writing, in the resolution or otherwise, its position regarding a compromise offer in lieu of suspension pursuant to N.J.S.A. 33:1-31 and/or N.J.A.C. 13:2-19.3(b)(1), there is a presumption that the town objects to such application. It is fundamental that a licensee intending to apply for a compromise offer negotiate, as part of any settlement, a written statement from the town that it will not object to an

application for a monetary compromise in lieu of suspension. Without such a statement from the town, the burden shall be on the licensee to demonstrate good cause why the Director should accept a monetary compromise in lieu of the suspension. Good cause may include, but is not limited to, economic hardship, the nature of the violations, and remedial action taken. However, because the discretion to accept a monetary offer lies solely with the Director, the municipality's position is not determinative on this issue.

Accordingly, it is on this day of September 8th, 2015,

ORDERED, the Initial Decision is affirmed in its entirety; and it is further

ORDERED, license number 0907-33-006-004 shall be suspended for a period of 60-days beginning at 2:00 a.m. on October 23, 2015, and ending at 2:00 a.m. on December 22, 2015.



J. WESLEY GEISELMAN
ACTING DIRECTOR

Attachment: Initial Decision Below

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

33 Washington Street
Newark, NJ 07102
(973) 648-6008

A copy of the administrative law judge's decision is enclosed.

This decision was mailed to the parties on APR 2 7 2015

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 09114-14

AGENCY DKT. NO. Appeal #7816

THE GIN MILL TAVERN, INC.,

Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF KEARNY,

Respondent.

John T. Ambrosio, Esq., for appellant (Ambrosio & Tomczak, attorneys

Salvatore G. Roccaro, Esq., for respondent (Castano Quigley, LLC, attorneys)

Record Closed: March 2, 2015 Decided: April 23, 2015

BEFORE **MUMTAZ BARI-BROWN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On April 30, 2014, the Township of Kearny (Kearny), the municipal issuing authority served a Notice of Hearing on Charges and alleged eight violations against appellant, the Gin Mill Tavern (Gill Mill), the license holder. Gin Mill pled not guilty and requested a hearing. Prior to the hearing, Gin Mill and Kearny executed a settlement

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agreement in which Gin Mill withdrew its plea of not guilty, pled non vult on charges and accepted a sixty-day suspension on the charges. Thereafter, Gin Mill applied to the Director of the Division of Alcoholic Beverage Control (ABC) for a fine in lieu of suspension and requested a stay of the suspension. The Director granted the stay, and transmitted the matter to the Office of Administrative Law (OAL) as a contested case. Thereafter, Kearny filed a Notice of Motion to Enforce Settlement. Gill Mill opposed the motion to enforce settlement and crossed-filed a -motion for summary decision.

ISSUE

Does the settlement agreement between Gin Mill and Kearny preclude Gin Mill from applying to the Director of ABC for a fine in lieu of suspension? If not, is a fine appropriate in lieu of a suspension, pursuant to N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.3(b)(1).

FACTS

Based on the moving papers **I FIND** as **FACT**:

1. Gin Mill is the holder of plenary retail license number 0907-33-006-004[1] issued by Kearny.

2. On April 30, 2014, Kearny charged Gin Mill with eight violations occurring on three dates.

3. The first charge alleges that on October 8, 2013, John Hodnett and James Hodnett, principles of Gin Mill, allowed narcotic activities on the premises in violation of N.J.A.C. 13:2-23.5(b).

4. The second charge alleges that on December 21, 2013, the principles of Gin Mill transported alcoholic beverages without proper documents

[1] The transmittal form lists the license number as 0907-33-006-005.

in violation of N.J.A.C. 13:2-23.12(b) and conducted the business in a manner to create a nuisance in violation of N.J.A.C. 13:2-23.6(b).

5. The third charge alleges that the principles of Gin Mill failed to provide a copy of the most recent twelve-page application, failed to maintain invoices, provided an incomplete employee list, and employed an unlicensed employee in violation of N.J.A.C. 13:2-23.13(a)(3).

6. Gin Mill pled not guilty and requested a hearing.

7. On May 27, 2014, the Town Council of Kearny held a hearing on the violations. Gin Mill appeared before the Board and was represented by James Madden, Esq. Also present were Mayor Alberto G. Santos, Municipal Prosecutor Theresa McGuire, Esq., Town Clerk Patricia Carpenter, Town Attorney Gregory Castano, and Council members Eileen Eckel, Laura Pettigrew, Susan McCurrie, and Albino Cardoso.

8. Gin Mill and Kearny discussed the circumstances underlying the charges, including the surveillances of controlled-dangerous-substance (CDS) activity. The parties also discussed Gin Mill's purchasing of alcoholic beverages from a prohibited source, Gin Mill's transporting alcoholic beverages without proper documentation, Gin Mill's conducting the business in a manner that created a nuisance, Gin Mill's failure to provide a copy of the application, Gin Mill's failure to maintain invoices, Gin Mill's providing an incomplete employee list, Gin Mill's employing an unlicensed employee, and Gin Mill's publishing an announcement on Facebook of a party at the tavern and inviting patrons to attend for an admission fee.

9. Kearny considered the seriousness of each particular incident and the fact that this was Gin Mill's first appearance on ABC violations.[2]

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[2]Aggravating and mitigating factors.

10. Kearny also took into account the statements from Township police officers and detectives, council members, Gin Mill's principles and their legal counsel.

11. Gin Mill, after consultation with counsel, waived its right to a full hearing, withdrew its not-guilty plea, submitted a plea of non vult, and accepted a sixty-day suspension on the charges.

12. The settlement agreement is silent on whether Gin Mill waived the right to petition ABC pursuant to N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.3.

13. By resolution, Kearny accepted the terms of the settlement agreement and imposed a sixty-day suspension, to commence on June 5, 2014, to August 4, 2014.

14. On June 4, 2014, Gin Mill applied to the Director of ABC seeking a monetary fine in lieu of suspension and requesting a stay of the sixty-day suspension that was imposed under the agreement entered into on May 27, 2014, between Gin Mill and Kearny.

15. The Director granted the application to stay the suspension and transmitted the matter to the Office of Administrative Law (OAL) as a contested case.

ARGUMENTS OF THE PARTIES

Kearny moves to enforce the settlement agreement between Kearny and Gin Mill. Kearny contends that the negotiated agreement disposed of all charges against the licensee on May 27, 2014. Thus, "what is before us now is a bad-faith attempt to renege on the settlement." (Respondent's Brief.) Kearny further argues, "The shortness of time between the settlement and the attempt to void it raises the inescapable inference that what the Gin Mill stated at the hearing before the Mayor and

Council was intended to perpetuate a fraud." (Ibid.) Additionally, Kearny maintains that Gin Mill misplaces reliance on N.J.A.C. 13:2-19.3(b)(1), and that the general principles of settlement should control. Specifically, "The Gin Mill misplaces its reliance on [N.J.A.C. 13:2-19.3(b)(1)] as an escape clause. It authorizes a petition to the Director to accept a monetary fine in lieu of a suspension." (Ibid.) Kearny further maintains, "The rule must be read in the context of the Supreme Court's public policy statement." (Ibid. [citing Nolan v. Lee Ho, 120 N.J. 465, 472 (1990), which remanded a trial court's decision to vacate a settlement agreement in a medical-malpractice case].) While acknowledging the applicable ABC statute and regulation, Kearny argues that public policy favors settlement:

> In certain circumstances [N.J.A.C. 13:2-19.3(b)(1)] might be appropriate, but not here. For instance, if the Gin Mill in the instant case had entered a plea of non vult to the charges and the Mayor and Council thereafter had unilaterally imposed a 60-day suspension which was not part of the plea submission, the rule would be applicable. This was not a two-step process.
>
> [Respondent's Brief.]

Kearny maintains, "An agreement is an agreement and the parties should be bound by its terms." Alibi Inn v. Woodbridge Twp., 96 N.J.A.R.2d (ABC) 90, 93.

Gin Mill opposes Kearny's Motion to Enforce Settlement. Gin Mill also moves for summary decision and argues that only the Director, not Kearny, is authorized to accept an offer in compromise. Moreover, Gin Mill distinguishes Alibi Inn, where the administrative law judge (ALJ) found that the license holder expressly waived the right to apply to the Director for a fine in lieu of a suspension, pursuant to N.J.S.A. 33:1-31. Here, the settlement is silent with respect to such waiver.

DISCUSSION

The pivotal question is whether the settlement agreement between Gin Mill and Kearny precludes Gin Mill from applying to the Director of ABC for a fine in lieu of

suspension. If not, it must be determined whether a fine is appropriate in lieu of a suspension, pursuant to N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.3(b)(1).

New Jersey has a strong policy favoring the settlement of lawsuits. Dep't of Pub. Advocate v. N.J. Bd. of Pub. Utils., 206 N.J. Super. 523 (App. Div. 1985). This policy is premised on "the notion that the parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone. In recognition of this principle, courts will strain to give effect to the terms of a settlement whenever possible." Id. at 528.

An agreement to settle a lawsuit is a contract. Pascarella v. Bruck, 190 N.J. Super. 118 (App. Div.), certif. denied, 94 N.J. 600 (1983). Courts must honor and enforce settlements as they do other contracts. Id. at 124–25. However, a court may refuse to enforce a settlement if the moving party can demonstrate, by clear and convincing proof, fraud or other compelling circumstances. De Caro v. De Caro, 13 N.J. 36 (1953). In determining whether the circumstances of the case are sufficiently compelling to vacate a settlement, the courts generally focus on the moving party's representation by competent legal counsel, his awareness of the terms of the agreement, and whether he knowingly and voluntarily entered into the settlement agreement. A showing of "deception, lack of independent advice, abuse of confidential relation, or similar indicia generally found in the reported instances where equity has declined to enforce, as unfair or unconscionable, an agreement voluntarily executed by the parties" may justify the setting aside of a settlement. Id. at 44. However, courts will not ordinarily look into the adequacy of the consideration underlying a compromise settlement that is fairly and deliberately made by the parties. Pascarella, supra, 190 N.J. Super. at 125. Second thoughts will fail to satisfy the test for vacating a settlement. Id. at 126. As the court indicated in Pascarella, "[i]f later reflection were the test of the validity of . . . an agreement, few contracts of settlement would stand." Ibid. In Bistricer v. Bistricer, 231 N.J. Super. 143 (Ch. Div. 1987), the court addressed the plaintiff's "afterthoughts" regarding the terms of a settlement agreement. The court noted that setting aside a settlement based on second thoughts would allow the plaintiffs to avoid a "fair agreement duly entered into to resolve pending and burdensome litigation." 231 N.J. Super. at 151. In upholding the validity of the settlement, the court stated that

"'second thoughts are entitled to absolutely no weight as against our policy in favor of settlement.'" Id. at 152 (citing Dep't of Pub. Advocate, supra, 206 N.J. Super. at 530). The only basis for vacating the settlement is on a showing of fraud or other compelling circumstances. Pascarella, supra, 190 N.J. Super. at 124–25.

The entire-controversy doctrine is also an important consideration in determining whether to vacate a settlement. In T.P. v. Bloomfield Board of Education, OAL Dkt. No. EDS 1042-90, Decision (January 15, 1991) (citations omitted), the administrative law judge noted:

> Even if the [settlement] agreement were silent on the particular point, petitioner would still not be allowed to raise potential claims known but not asserted at the time of the prior litigation. Under the . . . entire controversy doctrine, a party is prohibited from splitting his cause of action so as to subject the opposing party to a series of repetitive claims. The purposes of the doctrine include the needs of economy and the avoidance of waste, inefficiency and the reduction of delay, fairness to parties, and the need for complete and final disposition through the avoidance of "piecemeal decisions." Although court-made procedural techniques may not be imported wholesale into administrative adjudications, they do apply when relevant to common concerns of both branches of government, such as prevention of needless litigation, avoidance of duplication, and elimination of wasted time and effort.

With regard to settlements in ABC matters, Gin Mill relies on N.J.S.A. 33:1-31, which provides that:

> The director may, in his discretion and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may in the discretion of the director be proper under the circumstances in lieu of any suspension of any license by the director or any other issuing authority.

. Notably, the corresponding regulation further provides:

> (a) Within 30 days of service of the Notice of Charges on the licensee, the licensee shall enter a plea of guilty, not guilty or non vult to the charges.
>
> (b) If the licensee enters a plea of guilty or non vult, the charges shall be deemed sustained, but the licensee shall have the opportunity:
>
> > 1. To petition the Director to accept a monetary offer in compromise in lieu of all or part of the penalty or penalties (suspensions only) stated in the Notice of Charges, as provided in N.J.S.A. 33:1-31; and
> >
> > 2. To demonstrate mitigating circumstances, either by written statement or, in the sole discretion of the Director, by oral statement.
>
> [N.J.A.C. 13:2-19.3.]

Here, the parties agree that principles articulated in Alibi Inn are applicable. There, a municipality imposed a forty-five-day suspension against a license holder and the license holder appealed. Alibi Inn, supra, 96 N.J.A.R.2d (ABC) at 91. Prior to the hearing the parties agreed to a settlement, which the ALJ acknowledged and forwarded to the Director for approval. Simultaneously, the license holder applied to the Director for permission to pay a fine in lieu of suspension, pursuant to N.J.S.A. 33:1-31. The municipality opposed the license holder's application, and argued that the parties discussed the possibility of a fine in lieu of suspension but then reached the settlement agreement after substantial negotiation. The Director twice remanded the matter to the OAL to determine "whether there was a meeting of the minds, and therefore an enforceable settlement." Ibid. Additionally, the Director instructed the ALJ to determine the terms of the settlement, and "[i]f the licensee waived its opportunity to request a fine in lieu of suspension, or if the municipality waived its opposition to a fine in lieu of suspension, the decision should so state." Ibid. On remand, the ALJ determined that the parties agreed to the terms of the settlement and also discussed payment of a fine in lieu of suspension. On the second remand the ALJ noted that pursuant to N.J.S.A. 33:1-31, the decision to accept a monetary penalty is left solely to the Director after fact

finding before the ALJ. Therefore, the ALJ considered the facts presented, including any aggravating and mitigating factors, and "recommended that the Director not entertain a request to pay a fine in lieu of suspension in this matter." Ibid. The Director adopted the ALJ's recommendation. Id. at 94.

Here, Kearny relies on Alibi Inn to support its position that a settlement agreement forecloses the license holder's right to petition the Director for a fine in lieu of suspension. (Respondent's Br. at 1.) Kearny further maintains that Gin Mill's initial offer to enter a plea of non vult for a thirty-day suspension, which Kearny refused to accept, implicitly suggests that the parties considered a fine in lieu of suspension. (Respondent's Statement of Facts 1–3.)

I have carefully considered the positions of the parties. The record reflects that the parties reached the agreement to a sixty-day suspension after discussion of all aggravating and mitigating factors, such as the seriousness of the offenses, the lack of prior violations, and the remedial actions taken by Gin Mill to avoid repeated incidents. Notably in their moving papers the parties presented no additional assertions or retractions regarding the underlying settlement agreement reached on May 27, 2014.

With regard to Gin Mill's motions for summary decision, in an administrative proceeding, the ALJ must consider whether the pleadings are sufficient to allow a rational fact finder to conclude that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Zaza v. Marquess and Nell, Inc., 144 N.J. 34, 54 (1996); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). It is the movant's burden to exclude any reasonable doubt as to the existence of a genuine issue of material fact. Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954). Where there are no material facts in dispute and the only issue before the court is a matter of law, summary decision may properly be entered. Ibid.

CONCLUSIONS

Pursuant to N.J.S.A. 33:1-31, the Director has the sole authority to accept an offer of compromise. Thus, I **CONCLUDE** that a license holder who agrees to a

settlement is not foreclosed, as a matter of law, from applying to the Director for a fine in lieu of suspension. Consequently, Kearny's motion to enforce the settlement must be **DENIED**.

I further **CONCLUDE** that the relevant facts have been presented in the moving papers. Accordingly, summary decision is appropriate and Gin Mill may apply to the Director for a monetary fine in lieu of the sixty-day suspension that was agreed upon on May 27, 2014, between Gin Mill and Kearny.

Additionally, based on the whole of the record and having considered the undisputed facts presented, including any aggravating and mitigating factors, I recommended that the Director not entertain Gin Mill's request to pay a fine in lieu of suspension in this matter.

It is so **ORDERED**.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL**, who by law is authorized to make a final decision in this matter. If the Director of the Division of Alcoholic Beverage Control does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, 140 E. Front Street, 5th Floor, PO Box 087, Trenton, New Jersey 08625-0087**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 23, 2015

DATE

MUMTAZ BARI-BROWN, ALJ

Date Received at Agency: 4-23-15

Date Mailed to Parties: APR 27 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

dr

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

None

Exhibits

For Petitioner:

P-1 Audit of 2006, 2007, 2008, 2009 UI/DI Contribution Tax Law

P-2 Agreement of Assessment and Collection of Additional Tax and Acceptance of Overassessment

P-3 Letter from August N. Santore, Jr, Esq. to Mark Goldstein, IRS dated February 2, 2012

For Respondent:

R-1 Audit Report with supporting Documents

R-2 Letter sent to Subcontractors of Garden State

R-3 Documentation for Subcontractors

R-4 License Registrations