

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 2365

August 25, 1980

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STATE OF NEW JERSEY
Department of Law and Public Safety
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BULLETIN 2365

August 25, 1980

1. SPECIAL RULING - PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE
PETITION OF YORKVIEW CORPORATION,

In the Matter of the Petition of	:	
	:	CONCLUSIONS
Yorkview Corporation	:	
	:	AND
Holder of Plenary Retail Consumption	:	
License No. 0205-33-025-001 issued	:	ORDER
by the Mayor and Council of the Borough	:	
of Carlstadt.	:	
-----	:	

John J. Grillos, Esq., Attorney for Petitioner.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for Division

Initial Decision Below

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: October 26, 1979

Received: October 30, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision Below were filed by the parties in connection with the within application for relief, pursuant to N.J.S.A. 33:1-12.39.

The subject license is a plenary retail consumption license. This type license permits on-premises sales and consumption in open container or receptacle, with only limited package sales privileges. N.J.S.A. 33:1-12 and N.J.A.C. 13:2-35.1 et seq. Therefore, that portion of the Initial Decision which appears to give recognition and weight to the asserted plans of the petition to construct a package liquor store is without basis in law. Such operation, as described, would be outside the scope of the license's privileges.

In spite of the aforesaid, I am satisfied that serious, continuous efforts have been made to activate this license by sale to another party. While the prognosis is still speculative as to the actual ability to resume active use of this license within the 1979-80 license term, I do find that good faith efforts have been shown herein.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision, I concur in the findings and recommendations of the Administrative Law Judge, except as heretofore noted, and adopt same as my conclusions herein.

Accordingly, it is, on this 10th day of December, 1979,

ORDERED that the Mayor and Council of the Borough of Carlstadt be and the same is hereby authorized to consider the application for renewal of the subject license for the 1979-80 license term, and, to thereupon, grant or deny said application in the reasonable exercise of its discretion; and it is further

ORDERED that no further applications for extension of renewal privileges shall be granted in the event said license is renewed by the Mayor and Council for the 1979-80 license term and the license is not activated within such period.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

IN RE:)	<u>INITIAL DECISION</u>
PETITION FOR RENEWAL)	
OF LICENSE OF)	
YORKVIEW CORP.)	OAL DKT. NO. A.B.C. 3430-79
T/A ZIMMERMANN's)	

APPEARANCES:

John J. Grillos, Esq., for
Yorkview Corp., Petitioner

Mart Vaarsi, Esq.
Deputy Attorney General, for
Director of the Division of Alcoholic
Beverage Control, Respondent

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On September 10, 1979 a hearing was held on the verified petition of John J. Grillos, Esq. dated May 25, 1979, for the Yorkview Corporation, seeking authorization from the Director of the Division of Alcoholic Beverage Control to apply to the Mayor and Council of the Borough of Carlstadt for renewal of its Class C plenary retail consumption license for the 1979-80 license term. The statute applicable to the matter, N.J.S.A. 33:1-12.39, effective October 3, 1977, reads, in pertinent part:

"No Class C license, as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is filed unless the director, for good cause and after a hearing, authorizes a further application for renewal":

At the hearing the following exhibits were marked into evidence:

1. J-1, special ruling of the Director of the Division of Alcoholic Beverage Control, dated August 25, 1978, denying the petition of the Yorkview Corporation to authorize a further application for renewal of its plenary retail consumption license for the 1978-79 license term, the Director finding that good cause was not established to authorize a further application for renewal of the license.
2. J-2, letter of John J. Grillos, Esq. to the Division of Alcoholic Beverage Control, dated September 25, 1978, requesting a rehearing.
3. J-3, letter from the Director, Joseph H. Lerner, to Mr. Grillos, dated September 27, 1978, granting the rehearing.
4. J-4, Special Ruling of the Director dated October 23, 1978 finding that good cause was established to warrant a further application for renewal of the license for the 1978-79 license term. Included in the ruling was a special condition that the license must become operational before the end of the 1978-79 license period, or no further authorization for renewal would be granted.
5. P-1, contract dated May 23, 1979 between Yorkview Corp. and Mary Maguire whereby Yorkview Corp. agreed to sell and transfer and Mary Maguire agreed to buy the Class C plenary retail consumption liquor license located at 335 Hackensack Street in Carlstadt, New Jersey for \$25,000.
6. P-2, Memorandum dated June 15, 1979 from Mary Maguire to Hearing Officer, Alcoholic Beverage Control.

The matter was filed as a contested case on August 27, 1979 and the record was closed on September 24, 1979 with the receipt of a post-hearing letter memorandum of law from Mr. Grillos.

The first witness for the petitioner was Lorraine B. Zimmermann. She stated that she was the president of the Yorkview Corporation, her husband George V. Zimmermann having died and that Yorkview held a Class C license in Carlstadt, New Jersey. Counsel for petitioner indicated it is a plenary retail consumption license. Mrs. Zimmermann said Yorkview purchased the license in 1955. She said that prior to 1955 the license was owned by Zimmermann's, a family picnic grove and dance hall. The business was owned by her husband's family going back to the late 1700's. In 1955 her husband purchased the license from his uncle, John Zimmermann. Her husband, through Yorkview Corporation, operated the business until June, 1961 when a fire burned it down. A decision was made not to use the license at that area and an apartment house complex was built. She said they were going to transfer to the Meadowlands, that everything was held up over the years but that they had every intention of using the license elsewhere.

The witness said the license was transferred to their business office at 335 Hackensack Street, right next door to the original site of the lodge and Zimmermann's Bar.

She said that after the fire from 1961 until about 1976 the license was basically inactive but that it was renewed annually every June with the Borough of Carlstadt.

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Mrs. Zimmermann said that a decision to sell the license was made about 1976 but that her husband became sick and the matter lay dormant. The license was listed with Gabriel, a realtor. Quite a few people were interested but nothing concrete occurred. The license was then listed with another realtor, South Bergen Realtors, with the same results.

Mrs. Zimmermann said the license is located within the jurisdiction of the Meadowlands Commissioner. She stated her husband handled the affairs of the corporation prior to his death. As a result of his illness in 1977 she said the sale of the license kind of laid dormant.

Mr. Zimmermann died on March 24, 1978 and she and her son began to handle his affairs. She became president of the corporation and they discussed selling the license. They discussed opening up the place.

She stated that in June they heard that "you had to renew it within - - activate it within a two year period" and that was when they tried very hard to sell it,

They advertised in local newspapers and gave it to Gabriel. No firm commitments resulted. She said that in the summer of 1978 the corporation petitioned the ABC to have the license renewed pursuant to the statute.

On cross-examination, Mrs. Zimmermann said that as of May, 1979 there was a contract to sell the license and that there was a \$5,000 deposit held in escrow.

It was pointed out to the witness that the verified petition indicated that Yorkview purchased the license in 1959. Mrs. Zimmermann said she did not know this, she was going into Yorkview when it was incorporated. She said her husband was the president of the corporation and that Alfred Sanzari owned the stock of the corporation 50/50.

The witness said since 1961 the license has not been used and that 335 Hackensack Street was the family real estate office.

Mrs. Zimmermann was not active in the corporation until her husband died.

She was aware that the license was put up for sale with Gabriel in 1976. She wrote the letters to Gabriel and acted as her husband's secretary.

She said the asking price for the license when it was put up for sale was around \$75,000 but that there were no concrete offers.

Mrs. Zimmermann said Carlstadt is located in an area known as the Hackensack Meadowlands and that from 1961 to 1976 they were building up the track and the sports complex in the Meadowlands. She said she believed that it was fair to say that there was an expectation that the value of properties in that area would increase during this time.

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She said her husband's idea was to work the bar himself with his family. He owned half the business and Mr. Sanzari owned the other half. Mr. Sanzari and Mr. Zimmermann discussed selling the license. Mr. Sanzari advertised in the newspapers but he never took an active part in the liquor license end of it.

Following her husband's death, Mrs. Zimmermann said they immediately tried to sell the license because they wanted to sell the corporation. Her intention was to sell, not operate under the license.

She said the actual contract price that the license is being sold at now is \$25,000. Her interest was to now transfer the license to the seller.

The second witness was Alfred Sanzari. He stated he was treasurer of the corporation and 50% stockholder. Up until Mr. Zimmermann's death he was more or less not actively involved in the particular liquor license although from time to time he would consult with Mr. Zimmermann who was more active in handling the license.

He said he was familiar with those things that were done after Mr. Zimmermann's death in order to sell the license. His office put an ad in the Bergen Record. An ad was placed in the South Bergen News and there were dealings with Gabriel Realty.

He was asked if any difficulty was encountered in selling the license during the period of 1978 and he said he thought there was some talk about the decontrol of liquor and that this slowed down people who were interested in buying the license. He said this was told him, he being a builder by profession.

He said Mrs. Zimmermann's son, Allen, was taking the more active part in selling the license at that point in time.

He was asked if Allen Zimmermann ever indicated to him that there were problems as a result of the fact that a statute made the license unsure, that is, people were reluctant to buy not knowing whether or not the license would be renewed at that point in time. He said that was when he found out about the statute.

Referring the witness to September, 1978 when the corporation went before the ABC with plans for the operation of a retail liquor store at the licensed location, Mr. Sanzari said he recalled this. He said he recalled that there was an approval for the renewal of the license by the Division.

He was asked what happened after November, 1978 with regard to the implementation of the plan to open up a liquor store. He said Allen Zimmermann indicated to him that there was some difficulty in opening up a liquor store because of turmoil in the industry caused by an announcement by the Division regarding the decontrol of the liquor industry. He said in March, 1979 a decision was made to sell the license rather than open up the liquor store.

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Subsequently, a purchaser for the liquor license, Mary Maguire, was found. A contract was entered into for the sale of the license to Mary Maguire for \$25,000 and the Maguires put up a \$5,000 deposit.

Mr. Sanzari identified the contract of sale, dated May 23, 1979. It was marked P-1 in evidence.

On cross-examination the witness said he learned of the special ruling of October 23, 1978 that if the license did not become operational by June 30, 1979 that it would not be renewed. On October 23, 1978, it was the intention to open a package store on Hackensack Street with some renovations to the existing premises.

He said the reason they decided not to open the package store was because of the uncertainty introduced into the retail market because of price deregulation.

He said to the best of his knowledge it was about in March 1979 that the decision was made not to open a store but rather to try and sell.

He said, with respect to the intention to open a store, that Allen Zimmermann had been working on a plan to renovate the building and he had a manager to run the package store lined up. He thought the man's name was Joe Bartlett.

Mr. Sanzari was shown a letter which referred to a figure of \$94,500 for the license in 1976. He said he did not remember the exact figures but he knew it was up in the seventies and eighties.

He was asked why \$25,000, so much less than what was initially asked, was ultimately accepted and he stated because of the work that you'd have to go through and the less interest that was shown by prospective buyers because of the Meadowlands.

Mr. Sanzari said there were general expectations of an increase of values in business, property and land in the Meadowlands area because of what was going on there between 1961 and 1976. Things were on the upswing. The witness said the fire destroyed part of the property, the hall. Mr. Zimmermann kept operating the bar until 1961. He said he himself had no intention of operating under the license from 1961 through 1976. He said if the contract of sale went through, any and all interest that he had in the license would be disposed of.

Mrs. Zimmermann was recalled to the stand.

She said the fire in 1961 completely demolished the bar and that it never operated after the fire.

The witness said that difficulty was encountered in selling the license in the spring or summer of 1978. In speaking about N.J.S.A. 33:1-12.39, she stated that people would call and ask if they had a building that they could put the liquor license in. People wanted a whole complex of buildings,

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not just the license. If people had to build or buy a building they would become disinterested in the license because they felt that they did not know what the State was going to do, whether they would have a free hand after they had the license or whether the State would take it away if they had no place in which to put the license. People felt they were only buying paper and, she presumed, if they did not have a place to put the license in right away they would run into difficulties.

Mrs. Zimmermann said she believed the plan to go forward into the retail liquor store at that location was presented to the ABC at a hearing in September, 1978.

Her son Allen was taking the lead in this area. He solicited a manager. They hired someone with expertise to manage the liquor store and they were about to renovate the empty building. They became a little bit leery when the Attorney General said that he wanted to go on record of decontrolling the liquor prices. They became a little skeptical. They were going to make a big investment, invest all their funds and they did not know whether they could be able to compete with the market.

She said she believed everybody who ran a small liquor store was a little bit concerned because they did not know how competitive the big corporations would be by the decontrolling of liquor prices. She, her son and Mr. Sanzari then decided not to make the investment. She knew something had to be done with the license before the end of the 1978-79 license year. They advertised, found a buyer and a contract was signed on May 23, 1979.

Mary J. Maguire testified that she was the party under contract to purchase the license in question. She was shown P-1. She said it was the contract, that \$25,000 was the purchase price and that a deposit of \$5,000 was put up.

She signed the contract on May 23, 1979 and she knew at the time that there was some sort of problem with the renewal of the license. She knew that with the expiration of the license year, June of 1978, that the license could only be renewed with the approval of the ABC. She has worked with representatives of the Yorkview Corporation in an attempt to have the license renewed and she has gone through another hearing at the ABC. She said she was prepared upon renewal of the license to go forward to activate it. She has the funds to do so.

Mrs. Maguire said she has about \$45,000 in liquid funds. She indicated that she had selected a proposed site for the operation on Route 17 in Carlstadt.

She envisioned a restaurant that would serve light food and alcoholic beverages for off and on premises consumption. Also, a package store.

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She said her husband was legally giving her advice but that she was the sole owner and would be the manager.

Her husband has been helping with the locating of the business area. She said he had more knowledge than she regarding the location.

On cross-examination Mrs. Maguire said she did not currently own or have a lease on any specific property where she intended to locate the restaurant. She is negotiating at this point. She has not gotten an architect, engineer or designer to draw up any specific plans for a specific restaurant. She said she was aware when she signed the contract of the special ruling of October 23, 1978 indicating that no further authorization for renewal will be granted and that her contract was conditioned on the license being renewed.

She said it was her expectation that if approval is granted that a liquor license operation will be functional prior to June 30, 1980.

She imagined it would take quite a while from the planning stage to the actual opening of a restaurant and beverage operation.

This is her first restaurant and alcoholic beverage venture. Her husband had no prior experience in this.

She was aware, even if this application is granted, that she would have to have an operation under this license going no later than June 30, 1980.

As to the status of the negotiations for a premises, she said her husband would really be the one to give more information on that. She stated it was a purchase and that at present it is vacant land. She did not know whether they would buy the building or take vacant land and work from that. No cash has been paid out toward anything in connection with the restaurant operation.

John J. Maguire testified that he is the husband of Mary Maguire. He said he will assist his wife in the formation of plans and with the running of the business.

He stated he found a piece of property for the operation of a restaurant/pub type operation in the jurisdiction of the Meadowlands Commission, Hackensack Meadowlands Commission. The owner gave him a certain amount of time, realizing his situation that a license was not transferred to them at that time. She was willing to go into an agreement with him on a contingency that the A.B.C. and the Borough of Carlstadt would allow this kind of a transfer from person to person, location to location and that was a contingency of the purchase from her.

He said, however, a good deal of time had passed since May 23, 1979 and since then the owner of that property determined she did not want to continue that arrangement.

He has found another location not far from the first location.

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He stated he attended a hearing with his wife at the A.B.C. on June 15, 1979 and at the time they put forward a plan of implementation for the activation of the license at 265 Paterson Plank Road. This was introduced as P-2. Counsel for the Petitioner indicated that Mrs. Maguire had stated that subsequently these plans fell through. P-2 was marked into evidence.

The witness stated Mr. Grillos, possibly in July, told him that he had received a letter from the Division that the appeal for the extension was rejected by the Director and that an appeal for a rehearing would be filed. The witness said that since June 15, 1979 the owner of the property which was the subject of P-2, he believes, gave it to a realtor because she is anxious to sell.

However, he has located property on Route 17 on Division Avenue and he would purchase about 15,000 square feet. He believes that the business he envisions does not violate the zoning ordinances.

Mr. Maguire has discussed the purchase price with the owner, the amount of down payment and the owner's willingness to take back a very large mortgage, all being contingent on a successful transfer and approval of the State and Borough officials for that location.

He said they would be able to go forward with the purchase if the license were renewed and a successful transfer had.

Realizing he had about nine months to activate the license, he was asked if he believed he could establish a business and construct a building. He said he did not know. He said if he had the decision today (September 10, 1979) he could do so by June 30 but he did not know how much time it would take to make a decision here and also at the town level. He believed a building could be put up and in operation in four to five months. He said he was certainly willing and anxious to activate the license and that he was working with Yorkview Corporation to do so.

He said he and his wife have \$45,000 to \$50,000 to commit to the project.

The agreement for the new location was not in writing at the time of the hearing.

On cross-examination, Mr. Maguire stated he worked for Bergen County as an Inspector of Weights and Measures. His purpose is to develop the land and the building and put it in the condition that his wife wants as a restaurant and then he will divorce himself from the operation completely.

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He was asked if he would be eligible himself to hold the alcoholic beverage license. He said he was sure. It should be noted that a portion of the questioning of Mr. Maguire dealt with this subject. The matter was resolved by Deputy Attorney General Vaarsi in his letter of September 13, 1979 in which he stated, among other things, that, from the statutory description of the duties of Weights and Measures Inspectors, it did not appear that they are law enforcement officers within the meaning of that term under the A.B.C. regulations. Mr. Vaarsi indicated that, to the extent that the eligibility of Mr. Maguire for licensure was a possible issue in the matter, it no longer appeared to pose an obstacle.

Mr. Maguire believed the initial potential site at 265 Paterson Plank Road was a dead issue and that his expectations for operating now depended on the site on Route #17 at Division Avenue. He said currently there was no facility there to put in a restaurant operation.

He believed as a result of this hearing that he would go into the contract with the owner of the property. He would also have to put up a new building and outfit it for liquor sales prior to June 30, 1980. He was aware that if he did not have the operation going by June 30, 1980 that he would again have to come to the agency and get another renewal. Mr. Maguire said that time is passing and that initially they were looking a year ahead to do these things.

He said he planned a one-story cinderblock building of about three to four thousand square feet. He anticipated 90 to 100 days of construction time. He said four to five months was realistic.

The time for the decisions of the Office of Administrative Law and the A.B.C. to be made was pointed out to Mr. Maguire. He said that it was getting more difficult and he could only say that they continue to move on this as quickly as they can.

He stated that the \$25,000 license purchase price was included in the figure in excess of \$40,000 needed to get the operation going. They would have a fairly large mortgage.

Mr. Maguire was aware of his monetary risks. It was his current intention to build on the premises in the manner he described and he hoped the process would soon end and that Yorkview will succeed in getting its transfer to him so that they could move ahead.

He indicated that perhaps he would help his wife hire people.

He was asked if he realized there is an A.B.C. rule which prohibits any law enforcement officer from participating in any manner in any licensed beverage operation. Mr. Maguire said he had heard that, however, he did not feel he came under that classification and he asked Mr. Vaarsi

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if perhaps he could look that up. As previously stated, Mr. Vaarsi wrote with respect to this on September 13, 1979.

Mr. Maguire indicated that the funds in excess of \$45,000 cash are joint funds. He said it was his wife's desire to run a restaurant, not his.

He said he was currently negotiating with people for the purchase of land and that his wife does not know as much about the negotiations as he.

On re-direct examination, Mr. Maguire said it would be his intention that the family would own the property leased to his wife as the operator. His wife would run the business per se and the real estate would be retained by the family.

On re-cross examination, Mr. Maguire stated that his main function for the County of Bergen is the weighing and measuring of commodities. His connection with food is in a retail supermarket type of context. It is not in a restaurant context. His jurisdiction is limited to sale of food by the container or for off-premises consumption but he has never had occasion to visit restaurants in this capacity. He stated that short weight liquor commodities are not within his jurisdiction.

I have heard the testimony, observed the witnesses, reviewed the exhibits and the transcript of the hearing.

Factually, I FIND that:

1. With respect to the special condition contained in the final paragraph of the special ruling of the Director on October 23, 1978, the license did not become operational before the end of the 1978-1979 license period.
2. In September, 1978 Yorkview Corporation presented to the A.B.C. plans for the opening and operating of a retail liquor store at the licensed premises.
3. On October 23, 1978, the date of the Director's Special ruling, it was Yorkview Corporation's intention to open a package store.
4. Yorkview Corporation made plans to renovate the building.

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5. A manager was hired to run the package store.
6. Subsequent to November 1978, there was an announcement concerning the decontrol or deregulation of liquor prices.
7. As the result of this announcement, Yorkview Corporation, embarking on a large investment, became skeptical and did not know if it would be able to compete with larger liquor corporations.
8. In March 1979, Yorkview Corporation decided to sell the license rather than open a liquor store.
9. Yorkview Corporation advertised for and found a purchaser for the license.
10. On May 23, 1979, Yorkview Corporation contracted with Mary Maguire for the sale to her of its liquor license for \$25,000.
11. Mary Maguire deposited \$5,000 pursuant to the contract.
12. It is the intention of Mary Maguire, upon the renewal of the license, to activate it.
13. Mary Maguire plans a restaurant serving light food and alcoholic beverages. She also plans a package store.
14. Mary Maguire and her husband, John J. Maguire, have approximately \$45,000 to \$50,000 in joint, liquid funds to commit to the project. Included in these figures is the \$25,000 purchase price with Yorkview Corporation.
15. Mary Maguire originally planned to establish her business at 265 Paterson Plank Road, Carlstadt, New Jersey.
16. On June 15, 1979, a hearing was held at the A.B.C. on Mary Maguire's plans to activate the license at 265 Paterson Plank Road, Carlstadt, New Jersey.
17. Plans for the original site did not materialize, the owner deciding that she did not want to continue the arrangement she had with John J. Maguire.
18. A second site has been found by Mr. Maguire on Route #17 at Division Avenue in Carlstadt, New Jersey and about 15,000 square feet would be purchased from the owner.

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19. John J. Maguire has discussed with the owner the purchase price, the amount of a down payment and the owner's willingness to take back a very large mortgage, all contingent upon a successful transfer and approval of the State and Borough officials for that location.
20. The terms have been worked out but the agreement is only oral.
21. At the site there is no facility for a restaurant operation.
22. It is the intention of John J. Maguire, if the license is renewed and a successful transfer is made, to enter into a contract of purchase, construct a one-story cinderblock building of about 3000 to 4000 square feet, activate the license and establish a restaurant/pub type business.
23. John J. Maguire is aware, assuming Yorkview Corporation's application were granted, that he would have to return to the State A.B.C. and get another renewal if he did not have the business functioning by June 30, 1980.

N.J.S.A. 33:1-12.39, the statute applicable to the instant matter, became effective on October 3, 1977. There are no reported cases construing the term "good cause" which is used in the statute. It is my function to determine whether Yorkview Corporation has shown good cause for the Director to authorize a further application for renewal of its license.

In Wray v. Folsom, 166 F.Supp. 390,394 (U.S.D.C., W.D. Arkansas, 1958), a case involving the Social Security Act, it was stated that good cause is a relative and highly abstract term, and its meaning must be determined not only by the verbal context of the statute in which the term is employed, but also by the context of the action and procedures involved and the type of case presented.

The case of Wilson v. Morris, 369 S.W.2d, 402,407 (Mo. 1963) was a matter involving the revocation of a driver's license. There the court said that good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed.

In Pines v. District Court in and for Woodbury County, 10 N.W. 2d 574,583, 233 Iowa 1284 (Sup.Ct.1943), a criminal case involving delay in trial, the court stated good cause means a substantial reason - one that affords a legal excuse. It said whether substantial reasons exist is for the court to determine under the facts and circumstances.

Based on the totality of the circumstances which I have set forth herein, the facts which I have found and the law which I have applied to them, I CONCLUDE that Yorkview Corporation has shown good cause for the Director of the Division of Alcoholic Beverage Control to authorize a further application for renewal of its liquor license. I therefore recommend to the Director that he authorize a further application by Yorkview Corporation for renewal of its plenary retail consumption license for the 1979-80 license term.

This decision shall not become final until forty-five (45) days after the agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10(c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings..

JOSEPH H. LERNER
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - AMENDED ORDER VACATING, AS IMPROVIDENTLY ENTERED, EARLIER ORDER OF SEPTEMBER 17, 1979 WHICH DISMISSED CHARGES AND RESTORING ENTIRE MATTER AS A CONTESTED CASE FOR DISPOSITION.

In the Matter of Disciplinary
Proceedings against

Jay-Arvind, Inc.
t/a Club Spanky
160 Ocean Avenue
Long Branch, N.J. 07740

Holder of Plenary Retail Consumption
License No. 1325-33-044-002, issued
by the City Council of the City of
Long Branch.

S-12,214
X-55,279-B
AMENDED
CONCLUSIONS
AND
ORDER

Norman A. Cohen, Esq., Saul Wolfe, Esq., Frank Mandia, Esq.,
Attorneys for Licensees.

BY THE DIRECTOR:

On September 17, 1979 Conclusions and Order were entered herein dismissing the following charges:

1. from on or about August 2, 1978 to date, it knowingly aided and abetted Rod F. and Ron R., Inc., with stockholders of Gerard Faccione and Ronald Rosenzweig to exercise, contrary to N.J.S.A. 33:1-26, the rights and privileges of the plenary retail consumption license, in violation of N.J.S.A. 33:1-52;

2. from on or about August 2, 1978 to date, it failed to set forth in the license application a change in material facts, viz., a change of the corporate trade name and new corporate structure, and it failed to follow appropriate procedures for notice, in violation of N.J.A.C. 13:2-2.14, 13:2-2.15, and 13:2-2.16;

3. from on or about August 2, 1978 to date, it failed to disclose on the license application that Rod F. and Ron R., Inc., with stockholders of Gerard Faccone and Ronald Rosenzweig had an interest, directly or indirectly in the license and that the licensed business had been leased to them, such suppression and evasion of material facts being in violation of N.J.S.A. 33:1-25.

4. from on or about August 2, 1978 to date, it failed to have and keep a true book or books of account in connection with the licensed business, viz., a record of all monies invested in the licensed business and the source of all such investments, received other than in the ordinary course of business and of all monies expended from the receipts and the name of the person receiving such monies and the purpose for which such expenditures were made, in violation of N.J.A.C. 13:2-23.32; and

5. in August and September, 1978, it purchased or obtained alcoholic beverages from other than the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit obtained from the Director of the Division of Alcoholic Beverage Control, and in the passage of title in the alcoholic beverages, it failed to obtain a special permit from the Director of the Division, in violation of N.J.A.C. 13:2-23.12.

Further review of the file indicates that the within Order was improvidently entered, in consequence of misstatements and misrepresentation of facts; moreover, the violative condition has not been corrected as represented.

It is well-settled that, absent legislative restriction, administrative agencies have the inherent authority under the aforesaid circumstances, to reopen and modify previous orders. The within action is being taken within a reasonable time after exercise of reasonable diligence. It is predicated in part, upon the fraud or illegality in the original action, which was contributed to by the licensee, and upon the absence of any reasonable changed position or reliance by the licensee to the original Order. Indursky v. Bd. of Trustees, Ret. System, 137 N.J. Super. 335 (App. Div. 1975).

Therefore, I shall vacate my Order of September 17, 1979 and restore the entire matter to the hearing calendar as a contested case for disposition in accordance with law.

Accordingly, it is, on this 28th day of September, 1979,

ORDERED that my Order of September 17, 1979 be and the same is hereby vacated, and said matter be and is hereby restored to the hearing calendar of the Division as a contested case, for disposition in accordance with law.

JOSEPH H. LERNER
DIRECTOR

3. STATE LICENSES - NEW APPLICATIONS FILED.

Allwood Distributors, Inc.

83 Dorsa Avenue

Livingston, New Jersey

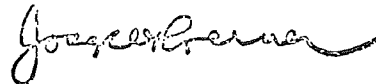
Application filed August 20, 1980
for place-to-place transfer of its
wine wholesale license from 654
Rahway Avenue, Union, New Jersey.

Good-Buy Beverage Company, Inc.

210 Vanderpool Street

Newark, New Jersey

Application filed August 21, 1980
for person-to-person and place-
to-place transfer of a state
beverage distributor's license
from American Beverage Company, Inc.,
242 West Runyon Street, Newark,
New Jersey.



Joseph H. Lerner
Director