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

BULLETIN 1585 October 29, 1964

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ITEM

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

BULLETIN 1585 October 29, 1964

1. COURT DECISIONS - LAKE, INC., v. OAKLYN AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-27-63

LAKE, INC., t/a KARL'S LIQUORS,

appellant,

vs.

MAYOR AND COUNCIL OF THE BOROUGH OF OAKLYN and THE STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

respondent.

Argued September 21, 1964 -- Decided October 5, 1964

Before Judges Goldmann, Sullivan and Labrecque.

Mr. Arthur E. Ballen argued the cause for appellant.

Mr. James G. Aiken argued the cause for respondent Borough of Oaklyn.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General, attorney).

The opinion of the court was delivered by

GOLDMANN, S.J.A.D.

(Appeal from Director's decision in Lake, Inc., v. Oaklyn, Bulletin 1531, Item 2. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

2. APPELLATE DECISIONS - LAKE, INC. v. OAKLYN.

Lake, Inc., t/a "Karl's Liquors",	)	
Appellant,	)	
v.	)	On Appeal
Mayor and Council of the Borough of Oaklyn,	)	SUPPLEMENTAL ORDER
Respondent.	)	

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Epstein & Fluharty, Esqs., by E. Stevenson Fluharty, Esq., Attorneys for Appellant.
Aiken & Lake, Esqs., by James G. Aiken, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

On September 3, 1963, Conclusions and Order were entered herein affirming the respondent's suspension of appellant's license for twenty days for sale of alcoholic beverages to minors. The penalty was reimposed to commence on September 10, 1963 and to terminate on September 30, 1963. Lake, Inc. v. Oaklyn, Bulletin 1531, Item 2.

Prior to the commencement of the suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension pending determination of the appeal.

The court affirmed the Conclusions and Order on October 5, 1964. Lake, Inc. v. Oaklyn and Division of Alcoholic Beverage Control (App. Div. 1964), Bulletin 1585, Item 1. Mandate on affirmance having been received on October 19, 1964, the suspension may now be reimposed.

Accordingly, it is, on this 21st day of October, 1964,

ORDERED that the twenty-day suspension of license heretofore imposed and stayed during the pendency of proceedings on appeal, be reinstated against Plenary Retail Distribution License D-3, issued by the Mayor and Council of the Borough of Oaklyn to Lake, Inc., t/a "Karl's Liquors", for premises 210-212 White Horse Pike, Oaklyn, commencing at 9:00 a.m. Wednesday, October 28, 1964, and terminating at 9:00 a.m. Tuesday, November 17, 1964.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - TASH v. PRINCETON.

Grover C. Tash, Jr.,
Appellant,
v.
Mayor and Council of the Borough of Princeton,
Respondent.

On Appeal

CONCLUSIONS and ORDER

Arthur A. Salvatore, Esq., Attorney for Appellant
Gordon D. Griffin, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report.

Appellant challenges by this appeal the action of respondent Mayor and Council of the Borough of Princeton (hereinafter respondent) whereby it found the appellant guilty of sale to an eighteen-year-old minor on April 3, 1964, in violation of R.S. 33:1-77, and suspended his license for twenty-five days effective June 8, 1964.

Upon the filing of the appeal an order was entered by the Director on June 8, 1964, staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

The sole issue in this case is the matter of the alleged good faith of the appellant in relying upon written representation by and the appearance of the said minor in making said sale which induced the appellant to believe that the minor was actually twenty-one years of age.

The appellant in his petition of appeal states that he has fully complied with the provisions of R.S. 33:1-77 which sets forth the following:

> "Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefore: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."

It has been stipulated by both appellant and respondent that this minor was actually under the age of twenty-one (i.e., eighteen years of age) at the time of said sale; that he purchased alcoholic beverages from the appellant; that at the time of the purchase he presented a spurious selective service card reflecting a fictitious name and which represented that the holder was twenty-

one years of age; that he signed a statement in the form prescribed by this Division setting forth that he was in fact twenty-one years of age, and that the sale was made upon such representations.

The respondent's answer sets forth that this minor's appearance was such that "an ordinary prudent person would not believe him to be 21 years of age or over ...."

This matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity to counsel to present testimony under oath and cross examine witnesses. However, it was agreed by counsel for both the appellant and the respondent that the matters to be determined were whether or not the appearance of the minor was such that it could be said that an ordinary prudent person would believe him to be twenty-one years of age or over; whether the appellant therefore acted in good faith, and that, further, whether or not the respondent acted in the valid exercise of its discretion in adjudging the appellant guilty of the said charge.

At the hearing before me the minor was produced and admitted the relevant facts. At this hearing I carefully observed the appearance of the minor in order to determine whether or not the action of the respondent was proper. I am frank to state that, in my judgment, the minor (a high school senior) appeared to be no more than eighteen or nineteen years of age. He was slightly built and had a particularly youthful appearance. However, I cannot say that in my own experience I have not seen many males of statutory maturity who did not also look much younger than their age, and I personally would have some difficulty in accurately determining the exact age of this individual.

As the court pointed out in Laurino v. State of New Jersey, Division of Alcoholic Beverage Control, 81 N.J.Super. 220, at p. 227:

> "Appearances can be deceiving to the most prudent person, especially when conditioned by prior or contemporaneous information. The phrase, 'that makes me see him in a new light,' is illustrative of this rule of human behavior. The certificates of the municipal authorities would have an almost inexorable tendency to make the appearances coincide with the representations."

The court further remarked:

> "Needless to say, determining the age of a person by his appearance is most often very speculative. As the court said in State v. Koettgen, 89 N.J.L. 678, 683 (E. & A. 1916):
>
> 'It is a matter of common knowledge, derived from observation and experience, that there is nothing more uncertain and highly speculative than that of attempting to fix the age of a person by his or her appearance.'"

However, the case sub judice differs from Laurino in that the police authorities in Laurino, who are primarily responsible for enforcement of laws relating to alcoholic beverages, were apparently satisfied that the minor girls in that matter were twenty-one years of age or over. The court held there that:

> "If these girls could, by their appearances, deceive experienced police officials in their false representations as to age, it would be unreasonable to hold that the licensee did not act as an ordinary prudent person in being equally

misled by those same appearances. Even were the appearances of their being 21 or over doubtful, the ordinary prudent person would believe them to be of that age upon learning that the local authorities had issued certificates which indicated such an age."

It was on that basis that the court found the defense therein meritorious.

This situation, of course, is not present here. The facts in this case adjudicata are almost exactly the same as that presented in Rosner & Greenwald v. Montclair, Bulletin 1533, Item 3 (decided on September 11, 1963, by the Acting Director of this Division). The appellants in Rosner complied with the statutory requirements except that the question of their good faith in serving the minor, after taking such precautionary measures, was brought into focus. The local issuing authority determined that the appearance of the minor indicated lack of good faith on the part of the licensees. The Director, in affirming the respondent's action, stated:

"Although I might personally have concluded otherwise, it is apparent from the physical appearance of the minor that reasonable men, acting reasonably, might properly reach the decision that this minor was under the age of 21 years."

The Director's function on an appeal of this type is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1. In other words, the Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the issuing authority.

In Abad v. Newark, Bulletin 619, Item 8, the then Commissioner Driscoll stated this principle in the following manner:

"The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant." State Regulation No. 15.

Absent improper motives (not alleged on this appeal), I am unable to conclude that the respondent acted arbitrarily and unreasonably in arriving at its judgment, viz., that the appearance of the minor was such that the appellant did not make the sale in good faith upon the reasonable belief that the minor was twenty-one years of age or over. I therefore find that the determination by the respondent now under attack is supported by substantial evidence and that the statutory defense was not fully established.

However, in view of all of the facts and circumstances herein, the penalty of twenty-five days suspension appears to be somewhat excessive. While the amount of the penalty is usually entrusted to the discretion of the issuing authority, it is within the sound discretion of the Director to revise the penalty

where warranted by the facts and circumstances. Mitchell v. Cavicchia, 29 N.J.Super. 11, 15 (App.Div. 1953). The Director has exercised his discretion in revising and reducing the penalty imposed by local issuing authorities in comparable situations. Cf. Kovacs v. South River, Bulletin 1008, Item 3; Howell v. Branchville, Bulletin 385, Item 5; Re Point Inn, Inc., Bulletin 1355, Item 5; Re Benny's Tavern, Inc., Bulletin 1177, Item 5.

Considering the fact that appellant has no prior adjudicated record, the facts and circumstances in this case warrant a reduction in the period of suspension from twenty-five days to ten days.

It is recommended, therefore, that an order be entered affirming respondent's action, finding the appellant guilty of sale of alcoholic beverages to the minor as charged, reducing the period of suspension from twenty-five days to ten days, vacating the order dated June 8, 1964, and fixing the effective dates for said suspension.

Conclusions and Order

Exceptions to the Hearer's Report were filed by both respondent and appellant and oral argument thereon was afforded pursuant to Rule 14 of State Regulation No. 15.

In conjunction with the oral argument, I personally observed the minor, who was produced by respondent at my request. From my observation, he definitely appears below the age of twenty-one.

Having carefully considered the transcript of testimony, the Hearer's Report and exceptions thereto, the matters asserted at the oral argument and the appearance of the minor, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein, except the recommendation with respect to the reduction of the penalty. This is rejected since, in fact, the licensee has a prior adjudicated record (contrary to the statement of the Hearer as to lack of such record), viz., suspension of license by the municipal issuing authority for five days effective November 29, 1954, and for fifteen days effective October 26, 1956, both for sale to minors. In that posture, the suspension of license for twenty-five days (for sale to an 18-year-old minor, with record of suspension for two previous similar violations more than five but less than ten years ago) is in exact accord with Division minimum penalty practice. See, for example, Re Carabelli, Bulletin 1428, Item 7.

I shall, therefore, affirm the action of respondent and reimpose the suspension of license for twenty-five days.

Accordingly, it is, on this 14th day of September, 1964,

ORDERED that Plenary Retail Distribution License D-3, issued by the Mayor and Council of the Borough of Princeton to Grover C. Tash, Jr. for premises 29 Lytle Street, Princeton, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m. Monday, September 21, 1964, and terminating at 9:00 a.m. Friday, October 16, 1964.

JOSEPH P. LORDI
DIRECTOR

4. APPELLATE DECISIONS - CLUB WARREN INC. v. NEWARK.

Club Warren Inc., Appellant,	)	
v.	)	On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	CONCLUSIONS and ORDER

Mayer and Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for Appellant
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This appeal challenges the action of respondent Newark Municipal Board of Alcoholic Beverage Control whereby, on June 10, 1964, it denied the application for place-to-place transfer of appellant's plenary retail consumption license from premises 141 Warren Street to 154 Warren Street, Newark, almost directly across the street.

The petition of appeal alleges that the denial was erroneous for the following reasons: (1) The Board, in reaching its decision, considered facts outside of the record and unknown to appellant; (2) its action was contrary to law and was arbitrary, capricious and an abuse of its discretion; and (3) its action was contrary to the weight of the evidence. Appellant has filed an application for renewal of its license for the current year; it requests that the action of respondent be reversed, and that it be ordered to grant the transfer of its license for premises 154 Warren Street and renew said license for the new licensing year.

Respondent in its answer denies the substantive facts of the petition and states that its decision was based upon factual testimony before the Board from which it, in its sound discretion, concluded that the transfer should be denied.

The attorneys for both parties agreed to submit this appeal upon the transcript taken in proceedings before respondent pursuant to Rule 8 of State Regulation No. 15. The transcript sets forth the following statement made at an adjourned meeting held on June 10, 1964, purporting to be respondent's decision:

"The Board heard this matter and reserved its decision on June 3, 1964.

"On that date it was carried for one week by a three to nothing vote in order that Commissioner Walsack may visit the licensed premises.

"In their executive session on June 10, 1964,

> the Board, after considering all the facts, and acquainting themselves with all of the facts surrounding the Housing Authority situation, voted three to nothing to deny the transfer."

This statement denying the transfer does not set forth any reason for such denial. The grounds upon which an administrative agency acts must be clearly disclosed and adequately sustained. Plainfield-Union Water Co. v. Board of Public Utility Com'rs, 57 N.J.Super 158, 174. In appeals from issuance or denial of liquor licenses by municipal issuing authorities, it has repeatedly been indicated that, in all fairness, a local issuing authority should state the reasons for its decision but that such failure is not fatal where the reasons are set forth in respondent's answer or fully developed at the appeal hearing. Rokay Wines & Liquors, Inc. v. Passaic, Bulletin 1198, Item 1; cf. Fanwood v. Rocco, et al., 33 N.J. 404.

In the instant case, that ruling was not followed in the hearing below. However, the apparent reason for denial was developed in some measure at this appeal de novo. Cf. Spring Manor, Inc. v. Newark, Bulletin 1319, Item 4.

An examination of the transcript of the hearing before respondent, together with the facts stipulated by both counsel at this hearing, reflects the following: This is a hardship case. On March 11, 1964, as a result of condemnation proceedings, the Housing Authority of the City of Newark took possession of the building in which appellant's licensed premises were located, and appellant was thereupon dispossessed from its premises. Therefore, this case comes within the provisions of the appropriate city ordinance relating to such cases, so far as appellant's application for transfer is concerned. The proposed location across the street is within the distance prescribed in said ordinance, the exact distance being 244.78 feet.

At the hearing before respondent, there were no objectors to appellant's application. However, before the adjourned date at which the decision was given, a letter dated June 3, 1964 (introduced in evidence herein) was received by respondent Board, addressed to it by Alfred J. Walker, Director of Urban Renewal of the Newark Housing Authority, objecting to the transfer in the following language:

> "Granting of the transfer would be incompatible with the environment sought in the above mentioned projects and would impede our subsequent redevelopment of the immediate area with compatible uses."

Apparently, this was the information alluded to in respondent's statement of June 10 upon which it grounded its denial of the said transfer.

It was further stipulated that subsequent to this action, a letter dated July 7, 1964 (also in evidence) was sent by the said Director of Urban Renewal to the Director of this Division. The letter first refers to his letter of June 3 and then states in its substantive part as follows:

> "As you will note, the basis of our objection was the proximity of the new location to two urban renewal projects.
>
> "Further investigation of the matter discloses that the two urban renewal projects will not be fully

developed for several years. This fact, in addition to the hardship being imposed on the holder of the license because of his relocation, impels us to withdraw our objection."

Thus it is clear that the basis implicit in respondent's determination was vitiated and nullified by the action of the Housing Authority, as reflected in its letter to this Division. It is quite apparent that if the respondent knew of the present position of the Newark Housing Authority, it presumably would have granted the said transfer. In this connection, respondent's attorney, in commenting upon the present status, said:

"I cannot say, this being a de novo appeal... that the board was erroneous in its decision. I think the board was correct in its decision as its decision was made on June 3 when it had the original communication from the Newark Housing Authority. Of course, this being a de novo hearing, this hearer has the right to take into consideration the factual situation as it is today."

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 or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1. As the court pointed out in Bivona v. Hock, et al., 5 N.J.Super. 118:

"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. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940)."

The court further pointed out that:

"the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

In Bivona, the court reversed the decision affirming denial of an application for a place-to-place transfer diagonally across the street from the original premises.

The City of Newark has recognized hardship situations and the record shows that it has approved transfers of licenses in those situations. In Helms v. Newark and Cardinal Wines & Liquors, Inc., Bulletin 1398, Item 3, the Board, acting within the proper use of its discretionary authority, approved a transfer to another section of the city notwithstanding substantial objections made thereto. Also, where the Board has denied such applications, the Director has not hesitated to reverse where he considered such action to be unreasonable and an abuse of its discretion. See Gruber v. Newark,

Bulletin 1071, Item 1; Geltzeiler v. Newark, Bulletin 1171, Item 1; Black v. Newark, Bulletin 1219, Item 1; Spring Manor, Inc. v. Newark, supra.

Accordingly, it is my opinion that respondent's denial of the transfer was unreasonable, arbitrary and an abuse of its discretion. I therefore recommend that its action be reversed. Since the 1963-64 license has expired, I further recommend that an order be entered reversing respondent's action in denying the transfer of the 1963-64 license, directing it to grant such transfer and to issue a renewal license for the 1964-65 period at the proposed premises.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript, the exhibits and the Hearer's Report, I concur in the finding of the Hearer and adopt his recommendation with respect to the transfer.

However, with respect to the recommendation of the Hearer as to the renewal license for the 1964-65 period, respondent should consider the still-pending application for such renewal in regular course, and take such action thereon consonant with the factual situation presently existing and in accordance with the applicable provisions of the Alcoholic Beverage Law and Regulations.

Accordingly, it is, on this 11th day of September 1964,

ORDERED that the action of the respondent be reversed, and the respondent is ordered to transfer the license in accordance with the application filed by the appellant.

JOSEPH P. LORDI
DIRECTOR

5. APPELLATE DECISIONS - R & B LIQUORS, INC. v. LOWER TOWNSHIP.

R & B Liquors, Inc., Appellant, v. Township Committee of the Township of Lower, Respondent.

On Appeal

CONCLUSIONS and ORDER

Robert W. Wolfe, Esq., Attorney for Appellant
Morton I. Greenberg, Esq., Attorney for Respondent
Perskie and Perskie, Esqs., by Marvin D. Perskie, Esq., Attorneys for Objectors

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the unanimous denial by respondent

on March 25, 1964, of its application for person-to-person and place-to-place transfer of a plenary retail consumption license from Cape May Fisheries, Inc., t/a Normandy Cafe, to appellant and from premises 1 Wilson Drive to North Cape May Shopping Center (Store #7), Bayshore and Lincoln Roads, Lower Township.

Appellant contends in its petition of appeal that:

"The action of the Respondent was unjustified, arbitrary, capricious and unreasonable and without legal basis, and based on the facts constituted an abuse of discretion."

Respondent in a resolution denying the application in question listed the following reasons for its action:

"a. The applicant has sought to transfer the license to the North Cape May Shopping Center. The Township Committee has been advised by the Chief of Police of the Township that the existence of the said premises will create a traffic problem and a public safety problem.

"b. The area in question is a shopping center and the committee believes there should be no license in a shopping center for the center is frequented by women and children.

"c. Public sentiment in the North Cape May area and in the Township of Lower as an entirety is strongly against the transfer.

"d. There is no public need or necessity to transfer the license to the new location as the entire Bayshore area is now adequately served by licenses.

"e. Said transfer is not in the best interests of the Township.

"f. The Committee has examined the plans of the premises and believes the premises if licensed though having a plenary retail consumption license will primarily be used for distribution purposes.

"g. Any of the aforesaid grounds would be deemed sufficient ground for a denial of the transfer."

It appears from the record herein that the licensed premises are now located in a section known as Schellinger's Landing which, according to the testimony of Raymond W. Adams (municipal clerk) is a summer resort area; that restaurants are operated in the area which specialize in seafood; that there are three marinas in the area with large docking facilities, and that numerous fishing boats leave daily; that the section is crowded practically all summer, and there are six liquor outlets in the area.

Mr. Adams further testified that the proposed site is located in a shopping center containing various business establishments; that there is a plenary retail consumption license approximately three-quarters of a mile from the shopping center where the proposed site is desired; that in the area there is a population of approximately 1,100 persons; that the distance between the present and proposed premises is one and one-half miles.

Voluminous petitions containing signatures of residents in the area (some opposed and others in favor of the transfer) were presented by the respective parties at the hearing before respondent.

Appellant called twelve witnesses who testified that they were in favor of the transfer as it would be a convenience to them if and when they desired to purchase alcoholic beverages. The said witnesses, according to their testimony, reside one-half mile to a mile away from the proposed site.

John F. Holland testified that he is an investigator in the Cape May County prosecutor's office, assigned as traffic safety coordinator, and that he made observation relative to traffic in the vicinity of the shopping center in which the proposed site of the liquor outlet is desired, and that in his opinion no traffic or public safety problem would be created.

Three objectors, including a clergyman, testified in opposition to the transfer of the license. Mayor Roop testified that he estimated approximately one hundred persons attended the hearing before respondent and, although he announced that those who desired could voice their opinion, no one other that the attorney representing appellant spoke for appellant. However, "ten or twelve," and some of those who were representing groups as a spokesman, spoke against the transfer. Mayor Roop further testified that the transfer to the shopping center, in his opinion, would create a traffic and public safety problem and the transfer would not be to the best interests of the township.

Committeeman Gompf testified that, based on his own observation, he opposed the transfer of the license. Moreover, he testified that he made an effort to ascertain the sentiments of the people residing in North Cape May concerning the transfer of the license in question and "it seemed almost unanimously against it;" that at the hearing before respondent no one spoke in favor of the transfer, and that the report of the Chief of Police submitted to the respondent expressed "in his opinion this would be a distinct detriment to the public safety of the township."

Although appellant's proposed premises in the shopping center would be three quarters of a mile distance from the nearest liquor outlet, this in itself would not compel the respondent to grant the transfer in question. In Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960), wherein the court sustained the denial by the local issuing authority of a place-to-place transfer of a liquor license, Judge Gaulkin stated:

> "The transfer of a license into an area in which there are no taverns or package stores is in the same category as the issuance of an original license. No person is entitled to either as a matter of law. R.S. 33:1-26; Zicherman v. Driscoll, supra, 133 N.J.L. at 588; Bumball v. Burnett, supra, 115 N.J.L. 254.
>
> "As we have indicated, when a municipality decides in good faith that a substantial area within its boundaries in which there are no taverns or package stores shall remain that way, the Director may not interfere. That there are no licenses in the area is no reason that there should be one. Cf. Mauriello v. Driscoll, 135 N.J.L. 220 (Sup.Ct. 1947). Nor does the municipality need to have any articulated reasons for keeping the area inviolate. It is sufficient if in good faith and not with the intention of oppressing

> the individual applicant the governing body wants it that way. If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial ...."

On appeal the New Jersey Supreme Court affirmed the Superior Court's decision in the denial of said transfer. Fanwood v. Rocco and Division of Alcoholic Beverage Control, 33 N.J. 404(1960).

Nothing appears in the instant matter which indicates or even suggests that respondent's refusal to grant appellant's application was inspired by improper motives. After an examination of the entire record, I find that the appellant has failed to sustain the burden of establishing that the action of the respondent in denying the transfer of the license in question was unreasonable, arbitrary, capricious or constituted an abuse of its discretionary powers. Rule 6 of State Regulation No. 15. There has been no proof presented by appellant to substantiate the fact that the respondent failed to conduct a proper and legal hearing on appellant's application. Furthermore, appellant failed to establish, as alleged in its petition of appeal, that the transfer of the license to the proposed premises would inure to the best interests of the township.

Under the circumstances in this case, I recommend that an order be entered affirming the action of respondent and dismissing the appeal.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument in support thereof were filed with me by the attorney for appellant. Answers to the exceptions and written argument in support thereof were filed with me by the attorney for respondent. Attorneys for the objectors concurred in the exceptions and argument filed by respondent.

After careful consideration of the record herein, including the transcript of the testimony, the exhibits, the arguments of counsel, the Hearer's Report, the written exceptions and argument thereto, and the answer to appellant's exceptions and argument in respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of September, 1964,

ORDERED that the action of respondent Township Committee be affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD OF LICENSEE AND STOCKHOLDERS - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Celtic Bar, Incorporated 559 Jackson Avenue Jersey City, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-332, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	)	

Jeremiah J. O'Callaghan, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 1, 1964, it sold a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license, in each instance for similar violation, as follows:

(1) License then held by Richard W. Sheehan and John E. Dunn, respectively holders of 50% and 49% of the stock of the licensee (Re C.A.R. Corporation, Bulletin 1574, Item 8), by the municipal issuing authority for five days effective January 15, 1951;

(2) By the Director for ten days effective May 18, 1959 (Re Celtic Bar, Inc., Bulletin 1281, Item 9);

(3) By the Director for thirty days effective August 1, 1960 (Re Celtic Bar, Inc., Bulletin 1352, Item 7; Bulletin 1354, Item 6); and

(4) By the Director for fifty-five days effective September 5, 1961 (Re Celtic Bar, Incorporated, Bulletin 1414, Item 8; Bulletin 1416, Item 7).

The prior record considered, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days. Cf. Re Elbar, Inc., Bulletin 1517, Item 5.

The licensee will be well advised scrupulously to avoid any future similar violation which may well result in outright revocation of the license.

Accordingly, it is, on this 14th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-332, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Celtic Bar, Incorporated, for premises

559 Jackson Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, September 21, 1964, and terminating at 2:00 a.m. Friday, November 20, 1964.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SERVING ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

John's Corner, Inc.
t/a Oasis Bar & Cafe
3511 Pacific Avenue
Wildwood, N. J.

Holder of Plenary Retail Consumption License C-27, issued by the Board of Commissioners of the City of Wildwood

CONCLUSIONS AND ORDER

Robert W. Wolfe, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 25, 1964, it served alcoholic beverages other than ordered, in violation of Rule 23 of State Regulation No. 20.

Reports of investigation disclose that at the bar, orders for mixed drinks containing an expensive whiskey were filled by using a cheaper whiskey instead.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Palladium Lanes, Inc., Bulletin 1569, Item 13.

Accordingly, it is, on this 11th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-27, issued by the Board of Commissioners of the City of Wildwood to John's Corner, Inc., t/a Oasis Bar & Cafe, for premises 3511 Pacific Avenue, Wildwood, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, September 15, 1964, and terminating at 3:00 a.m. Friday, September 25, 1964.

JOSEPH P. LORDI
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - POSSESSION OF CONTRACEPTIVES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Allner Corp. t/a Mansion House 200 Jersey Avenue Gloucester City, N. J. Holder of Plenary Retail Consumption License C-14, issued by the Mayor and Common Council of the City of Gloucester City	CONCLUSIONS AND ORDER

Licensee, by Thomas McNulty, Vice President, Pro se
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 17, 1964, it possessed contraceptives in a vending machine in the men's room of the licensed premises, in violation of Rule 9 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Wally's Tavern, Inc., Bulletin 1568, Item 2.

Accordingly, it is, on this 14th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-14, issued by the Mayor and Common Council of the City of Gloucester City to Allner Corp., t/a Mansion House, for premises 200 Jersey Avenue, Gloucester City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, September 21, 1964, and terminating at 2:00 a.m. Saturday, September 26, 1964.

JOSEPH P. LORDI
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Wilen Brothers, Inc.
250 W. Cambria Street
Philadelphia, Penna. 19133
Application filed October 29, 1964 for place-to-place transfer of Wine Wholesale License WW-18 to include a warehouse at 161 Frelinghuysen Avenue, Newark, N. J.

Joseph P. Lordi
Director