Ambrose

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

BULLETIN 1770 January 4, 1968

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1. APPELLATE DECISIONS - CHARMS LIQUOR INC. v. LONG BRANCH.

CHARMS LIQUOR INC., t/a MICKEY'S JOLINE BAR & GRILL,	)	
Appellant,	)	ON APPEAL CONCLUSIONS AND ORDER
v.	)	
CITY COUNCIL OF THE CITY OF LONG BRANCH,	)	
Respondent.	)	

Irving E. Keith, Esq., Attorney for Appellant.
Julius J. Golden, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent City Council (hereinafter respondent) whereby the members thereof unanimously voted to deny the application for renewal for the 1967-68 licensing term of appellant's plenary retail consumption license for premises 348-348½ Joline Avenue, Long Branch.

Upon the filing of the appeal the Director entered an order dated June 30, 1967, extending the term of appellant's 1966-67 license pending the entry of a further order herein.

At the conclusion of the hearing below, the chairman (Henry R. Cioffi) announced that the application for renewal of appellant's license for the 1967-68 licensing term should be denied for the following reasons:

> "...In view of the number of police calls made on the premises and in view of the recurring nature of the calls, and for failure to obtain improvements in this situation as shown by the increase in their police calls from 28 in 1965 to 67 in 1966, and in view of the testimony of the neighborhood residents that the public health protection and welfare and safety is adversely affected to a great degree by conditions and circumstances created by the operation of the licensed premises, and in view of the effect of the operation on the safety and welfare of the many schoolchildren who pass the subject premises and be exposed to undesirable conditions, I, therefore, move that the application of Charms Liquor, Inc. trading as Mickey's Joline Bar and Grille, 348, 348½ Joline Avenue for renewal of their liquor license for the year ending June 30th, 1968 be denied."

The appeal herein was heard *de novo* pursuant to Rule 6

of State Regulation No. 15. The transcript of the proceedings before respondent was received in evidence and, in addition thereto, testimony was presented by appellant and respondent in accordance with Rules 6 and 8 of said regulation.

Appellant in its petition of appeal alleges that the action of respondent be reversed and that the renewal of the license be granted based upon the following:

> "The action of the respondent was erroneous in that the appellant did not become the owner and holder of said liquor license until the latter part of 1965 and the appellant has improved conditions that may have existed on the premises prior to appellant's acquisition of said license; by appellant's constant supervision of the operations of the appellant's business and the elimination of any conditions detrimental to the general welfare of the public and the appellant's cooperation with the police authorities concerning any activities of individuals attempting to create disturbances upon the premises; the appellant has re-arranged the bar area in the premises to provide for better observation and supervision of customers; the appellant, even though not the owner of the lot adjacent to his premises does periodically clean said lot to keep the area in good condition; a great number of residents of the City of Long Branch, submitted a petition to the respondent in favor of appellant's renewal expressing in effect the fine condition of the premises and the fine operation of the licensed premises by the appellant; witnesses who testified as objectors refused to answer pertinent questions on cross-examination and the respondent permitted said refusals; one of the respondent's witnesses, a police official read from a report which he did not compile and he was unable to answer questions regarding said report; a number of the instances attributed to the appellant for occurrences outside of the licensed premises; the general area of the neighborhood has changed over the past couple of years which accounts for some of the activities that occurred outside of the licensed premises and over which the appellant has no control; the actions and conduct of the appellant in the operation of its premises is not contrary to the welfare of the public or the citizens of Long Branch nor does it adversely affect the school children in the area."

Respondent in its answer takes issue with the aforesaid allegations of appellant and asserts that appellant's application for renewal was denied "for good cause."

It appears from the transcript of the hearing held before respondent that there was testimony from divers municipal officials and also from objectors to and persons in favor of renewal of appellant's license.

Samuel DeBartolis (building inspector) testified that he visited appellant's licensed premises on an average of twice a week to check the rear exits to see that during their operation of the day and until closing time the doors remained unlocked, but during these visits he had never seen any overcrowding in the premises.

Charles Rockhill, Jr. (sanitary inspector) testified that he constantly cautioned persons in charge of appellant's premises about improper storage of garbage and refuse; that, although conditions were corrected for a short period of time, waste materials again were allowed to accumulate.

Police Captain C. Carroll Greene testified that from April to December 1966 there were sixty-seven telephone calls received from appellant's premises: 14 for persons being drunk and disorderly, 16 for fighting, 7 for loitering, 25 because of unruly persons, 2 for theft, 1 for vandalism, 1 underage patron and 1 for assault and robbery. Captain Greene further testified that between January 1 and July 26, 1967, twenty-seven calls were received which included a stabbing, five for persons being drunk and disorderly, four for fighting, one for a dice game in progress, eight because of unruly persons, a call for vandalism and seven for persons being disorderly. Captain Greene also stated that on Fridays, Saturdays and Sundays, from the middle of June 1967, a police officer is stationed on Joline Avenue "in the vicinity of the bar from eight at night until twelve midnight to try to suppress the loitering and the vandalism at the bar." Moreover, Captain Greene said that on other nights of the week two radio cars overlap to keep a constant check on appellant's premises but, as soon as the radio "car leaves, the patrons all flock out in the street again." Furthermore, Captain Greene testified there is a radar unit in front of appellant's establishment because of "numerous complaints of speeding and pulling out from in front of the bar at an excessive rate of speed and squealing of the tires." Captain Greene also testified there are no off-street parking facilities provided by appellant and hence cars are parked in front of the premises which creates a traffic hazard.

Captain Greene also stated that he is on duty from 4 p.m. until midnight and makes periodic inspections of the outside of appellant's premises, and the last time he visited inside the premises was about a month before the instant hearing (July 28, 1967) when he observed a gathering of people pushing and shoving and using "quite a bit of profanity." He also said that on the outside of the premises there were "between 5 to I'd say 25 people were out there at the time" and that "they were drinking in front of the bar. They were horsing around, running out in the road, pushing one another in front of the cars, using vulgar, insulting remarks to the cars and pedestrians going back and forth." Captain Greene, on cross examination, stated that he had never made any arrests in connection with appellant's premises.

Lenwood Gaynor (an objector) testified that on three occasions at lunch-time, when children were coming from school, they had to go out into the street and pass on the street side of cars because of persons congregated in front of appellant's premises. Furthermore, he testified that Joline Avenue has heavy and speeding traffic which makes it dangerous for the children to walk in the street. Mr. Gaynor also said that the conditions, in so far as operation of the premises is concerned, were worse than when the establishment was operated by the previous licensee.

Charles E. Polk (an objector) testified that, from his own personal observation, many women avoid passing appellant's premises because of insulting remarks made by persons congregated in front thereof, and also parents have a burden placed upon

them to either walk their children to school or transport them by car.

Annette Greenwood testified that she lives a block from the licensed premises, and her lawn and flower beds have been damaged by intoxicated persons which necessitated calls to the Police Department. She also stated that a short time previous to the hearing before the respondent, while on her way to business, she observed an intoxicated man "molesting some children and they ran right out into the path of a car." Also Mrs. Greenwood complained about whiskey bottles and beer cans being thrown on her property.

John F. Johnson (an objector) testified that he has a place of business about a block-and-a-half from appellant's premises and has observed police cars almost constantly being parked at appellant's premises both in the daytime and at night. He also stated that cars are parked double at times in front of appellant's place of business which creates a traffic hazard and, when a driver blows his horn in order to proceed through, he is insulted and cursed by the parking violator.

James F. Corey (a government employee) testified that he is opposed to renewal of appellant's license. He stated that he is chairman of the Long Branch Neighborhood Council and has visited the tavern on occasions. From his observation, although orderly at times when few patrons are there, when crowded there is "mass confusion" on the part of the patrons who are boisterous and noisy.

In addition to the objectors who testified at the hearing before respondent and the appeal herein, there were twenty-four persons who entered their names on the record as objecting to the renewal of the license because of the conditions existing around the licensed premises.

Councilman Katz testified that he voted to deny the renewal of appellant's license for the current licensing period because he was impressed by the testimony of the witnesses from the neighborhood who indicated the interference with children going to school and who testified as to the profanity used by persons congregating outside of appellant's premises. Councilman Katz stated that appellant may have made an investment in the premises "but the public has a right to be protected itself from what appears to be a business which is injurious and deleterious and has that effect upon the neighborhood, and for those reasons I voted to deny it."

Councilman Katz also stated that he took into consideration the numerous police calls coming from appellant's premises before arriving at his conclusion in this matter.

Councilman Ippolito testified that he voted to deny the application for renewal of appellant's license based on the testimony presented by the various people who gave testimony as to conditions and also from his own personal observations of the appellant's liquor establishment. He was of the opinion that it would be best for the welfare of the community to deny appellant's application.

Councilman Ippolito on cross examination stated that "I remember this bar for years and years where it was not a factor to be concerned with. It was well conducted, and I have

known the people who ran the bar, and I knew from observation and from, of course, the testimony that things had changed drastically, and I also thought the Joline Avenue Bar was not a hindrance for many years until recently when all of this came to my attention and I found out for myself. So, I would say, to answer your question, that certainly it appeared to be a detriment to the community."

Councilman Teicher testified that he voted to deny the application for renewal of appellant's license. He gave as reasons for his vote that:

> "I felt that this is sort of a privileged business, and these are my own reasons, and I felt that the owners of the building and the operators of the bar did not do their best job to maintain proper atmosphere that would be conducive for good living and that would benefit the community of Long Branch. I would like to relate one of my own experiences. There are many times I pass by the bar although I don't frequent the bar, I don't drink in that degree. But I have passed by it many, many times during the course of my working during the week and during the day. And I have had opportunity to stop across the street from the bar and parked my car to get a pack of cigarettes there. There is a little cigarette machine in the grocery store, and there were several times that I stopped to get my cigarettes which were during the time that the children would be letting out or possibly going to Gregory School, and I did notice that the children had to cross the street in order to get to the school. I think this is a dangerous condition."

He further stated that he seriously considered his decision because he was aware of the investment made by the appellant but he could not in good conscience as a public official vote to approve the renewal of this license because in his opinion it was a detriment to the community. He further stated that he took everything into consideration, especially the loitering in front of appellant's premises which necessitated children to cross the street at that location.

Councilman Cioffi (who was chairman of the City Council at the time the matter was heard before respondent) testified that he voted in opposition to the renewal of appellant's license because, after hearing the testimony presented, he was of the opinion that the operation of appellant's liquor premises is a public nuisance and is injurious to the public health, welfare and safety of the citizens in the area. Furthermore, he stated that the situation existing there was "beyond the control of the owner." Councilman Cioffi said it was further significant to him, although the respondent had voted to deny the application for renewal and the matter was on appeal, that he (Cioffi) as late as last Friday (July 21, 1967) observed "a congregation of six, seven in number leaning against the bar, sitting on cars, sitting in cars and, generally, not adding to the neighborhood, the conduct of business alongside or permitting people who lived in the area to generally enjoy a good neighborhood." He said that, based on his own observations and consideration of the testimony at the hearing before respondent, it was for the best interest of the City to deny the application for renewal of the license.

Thomas F. Moore, vice chairman of the Long Branch Neighborhood Council, testified that he was in favor of the renewal of the license. He stated that, although the conditions

were bad when appellant obtained a transfer of the license, there has been improvement in the operation of the licensed premises and that the loitering of patrons outside the premises has decreased and also that the juke box has been apparently turned down in volume. Moreover, Mr. Moore stated that, if appellant's license was not renewed, persons who patronize his establishment will go to other liquor establishments located in the "church district and to Long Branch's most heavily populated area, namely, the Liberty Street area."

Joyce Byrd, Thelma Roddy and Ada Booker, who on occasion visit appellant's licensed premises, testified that in their opinions the place is conducted in a proper manner and only occassionally is there anything which might be considered disturbing.

Nathan Ancel, president of appellant corporate licensee, testified that appellant obtained transfer of the liquor license in question on November 26, 1965. He stated that, since the time the license has been held by appellant, there were never any complaints made against appellant for any violation of the Alcoholic Beverage Law whatsoever. He stated that the license has "broad package" privileges, and there is a package store on the one side of the place with a door going into the bar on the other; that the establishment is located about three-quarters of a mile from the race track, and there is more business as a result thereof during the summer season. During the wintertime it is very, very slow and at any time there is a disturbance there is an attempt to settle the matter but, if it cannot be settled, a call is made to the police. Mr. Ancel stated that there is a man employed by appellant for the purpose of quieting any disturbance which may arise or profanity which may be used by patrons. He further testified that he spends most of the time in the evenings and, in addition thereto, a couple of hours in the daytime at the licensed premises. Mr. Ancel also testified that the people who congregate outside the premises are those who have been ordered out of the place and remained there. He said that there are "quite a few people that I had arrested for causing a disturbance in the premises, and we don't let them in the place. They were put out and they hang around outside. As far as outside is concerned, I have no jurisdiction out there." He stated that, when things get a little out of hand, the Police Department is notified. Mr. Ancel said that the man hired to take care of the floor goes out and asks the loiterers to leave and "stop hanging around the outside of the place which I didn't think I had the jurisdiction for actions outside of the place." Mr. Ancel testified that in his opinion, in so far as Joline Avenue is concerned, because of changing conditions he believed that the municipality "should put a police officer to patrol that vicinity now not only because of the bar vicinity."

When questioned as to whether appellant's premises is the reason for the congregating of people and the condition existing in front of the licensed premises, Mr. Ancel stated:

> "I wouldn't say because of my place of business only. It is the change of the vicinity too which would cause a lot of that. The change of the -- within a couple of years that would cause a lot of that too, just as well as you have things happen two, three, or more blocks away from any vicinity. This could happen anyplace. A bar is a bar."

He then said that the appellant's business might to some degree cause the existing conditions. When asked whether or not he was interested in disturbances with reference to the appellant's bar, he stated, "Am I supposed to know what goes on outside? Am I supposed to call the police headquarters and ask for a report on what goes on two or three blocks away?"

On cross examination, when asked if he (Ancel) could remember approximately the number of complaints registered with the police concerning the operation of appellant's premises, he stated that there were not too many and added that he has no idea as to the number of calls as "I don't sit down and count the calls if I do make it."

Mae Osterhuber (a stockholder and officer of appellant licensee) testified that she has occasion to be on appellant's licensed premises mostly every day and talks to the customers if they appear out of hand, or if they talk in loud voices she requests them to "cut it down. We don't like it in there, and it is conducted very nicely." She also testified that the conditions outside the building do not constitute anything wrong as "it is just thepeople that are loitering. They are still out there, and we walk over and we ask them to leave. Most times they will leave, and if they don't leave, we have to call the police department if they don't want to leave."

Robert Everett testified that he has been employed for a period of six months as janitor on weekends and also stands at the door to check identification of teenagers. Furthermore, he stated that, if there is any disturbance, he tries to quiet it down. He stated that sometimes the disturbance referred to consists of a "couple of guys just arguing, and he would jump back and square off, and tee off." He further said that he asks them to leave, reminding them, if they want to do something, "take it outside or take it down the street."

Charles Smith (a bartender employed by appellant) testified that, if any patrons "get a little loud", Bobby (Everett) directs them to quiet down or leave and, if they refuse, a call is made to the Police Department.

I have set forth somewhat in detail the testimony of the witnesses of the respective parties to this appeal. It might be advisable to enunciate the principle established by the Division from its inception -- that a licensee is responsible for conditions in and out of his licensed premises which are caused by patrons thereof. Conte v. Princeton, Bulletin 139, Item 8. This principle has been uniformly applied to date. Cf. Kaplan et als. v. Englewood, Bulletin 1745, Item 1. It appears from the testimony of Nathan Ancel (president of appellant corporate licensee) that he is under the impression that a licensee is only responsible for incidents which occur inside the licensed premises. Mr. Ancel testified that the municipality should have a police officer in the neighborhood of the appellant's premises at all times when the said premises are in operation. Of course, it is apparent that any such demand by appellant or other licensees would place a great burden upon the Police Department and, therefore, could not be countenanced. During the hearing before respondent, Mr. Ancel, on behalf of appellant, agreed to furnish a special police officer to keep order not only inside the licensed premises but on the outside thereof. Although Mr. Ancel did not hire a special officer, he testified that he employed a man to check conditions which may occur in the premises and who would attempt to straighten out any differences arising between patrons within the establishment.

Robert Everett, the employee in question, testified that he acted as janitor and did other duties during his presence in the licensed premises. Moreover, Mr. Everett testified that, if a disturbance occurred and he saw that two persons might engage in fisticuffs, he would ask that they leave and finish their fight "down the street." No doubt such advice at times had been taken in view of the police reports of fighting occurring outside the licensed premises.

An examination of the testimony concerning conditions at or near the licensed premises discloses that the operation of appellant's establishment has progressively become worse. I am mindful of the fact that during the time appellant has held the liquor license in question no disciplinary charges were filed against it. This in itself is quite understandable -- that local issuing authorities at times withhold institution of disciplinary charges in the hope that, where warranted, licensees will make a serious effort to improve the conditions in the operation of the licensed business. This appears to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately there are cases where the holder of a license, or an officer of a corporate licensee, is temperamentally unsuited to be engaged in the liquor industry. The lengthy police record with reference to the operation of appellant's premises, and the damaging testimony of conditions in the area given by people who reside in said neighborhood where the licensed premises are located, plainly establish that the officers and employees of appellant have been derelict in their duty. Cf. Pastrana's Bar, Inc. v. Buena, Bulletin 1630, Item 1, affirmed id.nom (App.Div. 1966), not officially reported, reprinted in Bulletin 1671, Item 1.

A liquor license is a temporary permit or privilege to conduct a business otherwise illegal. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Whether it is to be renewed rests in the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates an abuse of that discretion. 279 Club v. Mun. Bd. of Alcoh. Bev. Cont. of Newark et al., 73 N.J. Super. 15, 21 (App. Div. 1962).

It has been stated in Abad v. Newark, Bulletin 619, Item 8, by former Commissioner Driscoll that:

> "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."

In considering the public interest with reference to the renewal of a liquor license, I am also fully cognizant that a licensee is entitled to fair play. Thus a renewal of a license should not be denied arbitrarily or without sufficient reason. However, when an operator of a licensed premises fails to consider the rights of other persons residing and maintaining businesses in the area of the premises and the fact of the impact that such improper operation has on the lives of other persons, it is sufficient proof that the licensee is unworthy

to hold a liquor license. The members of the respondent have been tolerant of the bad condition existing in the neighborhood for a long time as a result of appellant's operation of its liquor establishment. There is no question from the evidence presented that the manner in which appellant's licensed premises were permitted to be conducted constituted a trouble-spot which was detrimental to the community. The excuses given by persons responsible for and in charge of the licensed premises with reference to the type of patrons to which the tavern catered cannot be accepted. There has been no evidence presented herein which in any way has indicated improper motivation on the part of members of the respondent Council.

I have examined all the other arguments advanced by appellant and find that they lack merit.

Under the circumstances herein and based on the evidence adduced, it is recommended that the action of respondent be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and argument in substantiation thereof were filed by appellant's attorney pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcripts of the proceedings, the exhibits, the Hearer's report and the exceptions thereto. I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 13th day of November 1967,

ORDERED that the action of respondent City Council be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on June 30, 1967, extending the term of appellant's license pending determination of the appeal, be and the same is hereby vacated effective immediately.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - BARRESI v. RIDGEFIELD.

ANTHONY BARRESI,	)	
Appellant,	)	ON APPEAL CONCLUSIONS AND ORDER
v.	)	
MAYOR AND COUNCIL OF THE BOROUGH OF RIDGEFIELD,	)	
	)	
Respondent.		

Okin, Pressler & Scherby, Esqs., by Michael L. Scherby, Esq., Attorneys for Appellant.
Major & Major, Esqs., by James A. Major, II, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal addresses itself to the action of respondent Mayor and Council of the Borough of Ridgefield (hereinafter Council) which unanimously denied appellant's application for a person-to-person transfer from Patrick J. Flynn, t/a Stone Hearth, to appellant of his plenary retail consumption license for premises 603 Broad Avenue, Ridgefield.

Appellant alleges in his petition of appeal that the action of the Council was erroneous and should be reversed for the following reasons: The Council based its action upon the fact that appellant has been convicted of assault and battery in the municipal court of Little Ferry, and "A corporation in which appellant had an interest, known as the Stage Coach Inn, had its License revoked in 1959."

Appellant asserts that the offense of which appellant was convicted was not a crime involving moral turpitude and should not have been the basis for such denial under the provisions of N.J.S.A. 33:1-25. He further alleges that since the revocation of the State Coach Inn license occurred in 1959, it "should not have been permitted to be a basis for denial of appellant's application, in accordance with the provisions of N.J.S.A. 33:1-31."

The answer of the Council admits the allegations of the petition in so far as they "set forth the basic reasons why respondent denied the application" but alleges that its action was not improper and did not constitute an abuse of discretion.

The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15.

It was stipulated at this hearing that after the hearing on the application for transfer, appellant was advised by Mayor Bell (who presided and spoke for the Council) that the application was being denied because appellant had been "convicted of assault and battery, a disorderly person offense, in the Little Ferry municipal court. They also said that another reason for their denial was the fact that a corporation in which Mr. Barresi had an interest had operated an establishment known as the Stage Coach Inn and had had its license revoked by the

Division of Alcoholic Beverage Control."

It was then pointed out to the Council that the statute "provided that such a revocation if it occurred over two years ago could not form the basis of a denial" and further that since "the disorderly person's offense of simple assault and battery was, one, not a crime and, secondly, not a crime involving moral turpitude", that also could not be given as a basis for denial.

Anthony Barresi (the appellant) testified that he was under the impression that he was entitled to apply or reapply for a license. He further testified that:

> "I went through the procedure of purchasing this place rather deeply and, in fact, almost--I have made some few changes in it, figuring I would run into no problem making it certainly a completely different operation from what it was, more or less clean-cut operation, and so forth, and certainly for the betterment of the town...
>
> Q I don't understand what you mean when you say you made changes and are operating it.
>
> A Not really operating it but I had been involved in it figuring I would run into no problems with the borough for any reason."

Questioned by his attorney with respect to the above statement, he insisted that Flynn was, in fact, operating the premises at the present time. He was then asked the following:

> "Q You have expended money for plans for re-decoration, etcetera?
>
> A Yes, but it is completely his operation. I have nothing to do with the operation."

On cross examination, he retracted his previous statement and stated that he did not invest any money in the improvement of the premises; that his only investment was for "legal fees and so on." Finally he admitted that his license had been revoked in 1959 (Re Great Arrow Investment Corp., Bulletin 1341, Items 1 and 2). Actually, the revocation was effective May 10, 1960.

No testimony was offered on behalf of the Council. The attorney for the Council admitted that it had failed to comply with the provisions of Rule 8 of State Regulation No. 2 requiring that the Council set forth a statement of reasons for its denial. Subsequent to this hearing, by leave granted, a resolution was adopted by the Council at its meeting on October 17, 1967, which resolution was submitted and considered as applicable *nunc pro tunc*, and was incorporated as part of this record. The resolution sets forth the specification of its reasons, as follows:

> "WHEREAS, Anthony Barresi has applied for the transfer of Plenary Retail Consumption License Number C-3 presently held by Patrick J. Flynn, to himself; and
>
> "WHEREAS, the application discloses that during the year 1959, the defendant was convicted in the

Municipal Court of Little Ferry, of assault and battery; and

"WHEREAS, the application also discloses that the applicant had an interest in Great Arrow Investment Corp., which corporation operated a restaurant and tavern known as the Stage Coach Inn, and that the applicant had an interest in the Great Arrow Investment Corp., in the year 1959, at which time, the license of the Stage Coach Inn was revoked by the Division of Alcoholic Beverage Control; and

"WHEREAS, the Borough Council of the Mayor and Council of the Borough of Ridgefield, for the reasons set forth above, is of the opinion that such transfer should not be granted;

"NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Mayor and Council of the Borough of Ridgefield, that the application of said Anthony Barresi, for the transfer of Plenary Retail Consumption License Number C-3, be and the same is hereby denied nunc pro tunc."

In evaluating the testimony on this appeal de novo, it would be appropriate to set forth certain applicable principles which guide us in the determination of this issue. 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. A license to vend intoxicating liquor is merely a temporary permit or privilege to do what would otherwise be illegal. Kravis v. Hock, 135 N.J.L. 259. It is not a contract. It is not property. R.S. 33:1-26; In re Schneider, 12 N.J.Super. 449 (App.Div. 1951). The unique position of a liquor licensee was outlined in Blanck v. Magnolia, 38 N.J. 484, 490:

"From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied."

No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Paul v. Gloucester County, 50 N.J.L. 585. To obtain a transfer of a license from person to person, the transferee must qualify as an original licensee. Neiden Bar & Grill, Inc. v. Newark, 40 N.J.Super. 24 (App.Div. 1956). The test in the establishment and issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, supra. In Zicherman v. Driscoll, 133 N.J.L. 586, 588, the court said:

"The common interest of the general public should be the guide post in the issuing and renewing of licenses."

Counsel for appellant asserts that the applicant was entitled to this transfer because the revocation of the corporate licensee in which he was a fifty per cent. stockholder and its president was revoked in 1959 and should not have been used as a basis for denial of appellant's application, in accordance with the provisions of N.J.S.A. 33:1-31.

R.S. 33:1-31 in its applicable part states:

> "A revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10% of the stock of a corporate licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of 2 years from the effective date of such revocation..."

A fair reading of this section would authorize subject applicant to apply for a license after the two-year period. That right to apply has not been denied to appellant. However, there is nothing in that section which makes it mandatory for the issuing authority to grant such application. There is no "must" in the Alcoholic Beverage Law. Each application must be considered on its own merits, based, among other factors, upon the worthiness of the applicant. The Council is invested with wide discretionary authority in making such determination. Biscamp v. Teaneck, 5 N.J.Super. 172. Such discretion will not be disturbed in the absence of a clear abuse. Paul v. Brass Rail Liquors, 31 N.J.Super. 211. It is quite apparent that the Council was seriously disturbed by the action of this appellant which resulted in the 1960 revocation, in its evaluation of appellant's qualifications and character.

An examination of Re Great Arrow Investment Corp., Bulletin 1341, Item 1, shows that this Division instituted a disciplinary proceeding against this corporate licensee (in which the present appellant was the president and fifty per cent. stockholder) on four charges: (1) that on December 19, 1959, it sold alcoholic beverages during prohibited hours in violation of local ordinance, (2) that it failed to keep its premises closed after hours on the said date in violation of the said ordinance, (3) that it committed assaults and batteries upon two agents of this Division in violation of Rule 5 of State Regulation No. 20, and (4) that it hindered an investigation of its premises by ABC agents in violation of R.S. 33:1-35.

The testimony at that hearing disclosed that Barresi assaulted both ABC agents and joined with the bartenders and other patrons in evicting the said agents from the premises. The then Director noted in his conclusions:

> "...there was introduced into evidence...some of the clothing worn by Agent S on this visit to defendant's premises. The clothing in question was badly ripped and stained with blood which indicates that the agent received a severe beating."

The Director then determined that the only proper remedy in that case was revocation and the license was accordingly revoked. On appeal, the order of revocation was temporarily stayed and the stay vacated; whereupon the revocation was reimposed on May 10, 1960 (Bulletin 1341, Item 2).

It is further significant to note that in the instant application, appellant failed to set forth suspensions of his license or licenses in which he had an interest prior to the date of the aforesaid revocation. When cross-examined about this, he stated that he failed to do so because "I would think

it was because of the fact that it had happened so far in the past. For some reason, not acquainted with the absolute rulings here, I thought this would suffice. That is the only answer I can give you." His prior record indicates that effective February 1, 1956, the license of the said Great Arrow Investment Corp. was suspended by the Director for forty days for an "hours" violation (Bulletin 1098, Item 9), and effective June 4, 1957, it was suspended by the Director for twenty days for an "hours" violation (Bulletin 1175, Item 5). Moreover, Barresi was a principal stockholder of Olympic, Inc., Maywood, whose license was suspended by the Director for thirty days effective July 14, 1958, for procurement for prostitution (Bulletin 1190, Item 4; Bulletin 1239, Item 5). His failure to include his entire previous record is adversely reflective of his veracity and worthiness, and could well have justified the action taken herein. Chathams and Oehme v. Wallington, Bulletin 1755, Item 2.

Appellant's attorney further argues that because appellant was merely convicted of assault and battery under the Disorderly Persons Act, such conviction is not one involving moral turpitude and, therefore, he is entitled to this license.

As stated hereinabove, a basic criterion in these applications is the worthiness of persons applying for a license, a matter which resides in the rational discretion of the issuing authority. Where, as here, the proof substantially establishes that the Council did not consider this applicant clearly worthy of holding a license, and was of the conviction that the public interest would best be served by denying his application for transfer, its decision will not be lightly disturbed. It was well within the Council's province to consider appellant's acts (including assaults on ABC agents) and the violations of the corporate licensees in which he was a major stockholder, in reaching its ultimate determination. Deola v. Millville, Bulletin 789, Item 12. There has been no proof that the Council's action was based upon any improper motives. Bumball v. Burnett, 115 N.J.L. 254. Since the Council has determined that a grant of the said application would be inimical to the best interests of the community, a reversal of its action is justified only where its refusal was the result of intentional discrimination or other arbitrary action. Such was not established herein. Cf. Federici's Hideaway, Inc. v. Belleville, Bulletin 1595, Item 2; Chestnut Wines & Liquor, Inc. v. West Orange, Bulletin 1740, Item 1.

The Director's function on appeal 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. Tumulty v. Dunellen, Bulletin 1487, Item 4. Or, to put it in another way, where reasonable men, acting reasonably, determine that the license should not be transerred, the Director should affirm such determination in the absence of a finding that the "act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

The ineluctable conclusion, based on the totality of the proofs, is that the respondent Council exercised its

discretion reasonably, circumspectly, and in the public interest. It is, therefore, recommended that the Council's action in denying appellant's application for the said transfer be affirmed and the appeal herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of November, 1967,

ORDERED that the action of respondent in denying appellant's application for transfer of license be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - HINDERING INVESTIGATION - PRIOR RECORD CONSIDERED AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Peoceedings against

Gerald Cohen
t/a Jerry's Royal Gardens
30 Bridge Street
Paterson, New Jersey

Holder of Plenary Retail Consumption License C-266 issued by the Board of Alcoholic Beverage Control for the City of Paterson

CONCLUSIONS AND ORDER

Goodman and Rothenberg, Esqs., by Robert L. Goodman, Esq., Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads <u>non vult</u> to charges alleging that (1) on January 3, 1967, he purchased a quantity of beer from another retailer, in violation of Rule 15 of State Regulation No. 20, and (2) on January 24, 1967, hindered investigation (by giving a false statement to investigating ABC agents), in violation of R.S. 33:1-35.

Licensee has a previous record of suspension of license by the Director (1) for ten days effective April 3, 1950, for sale to a minor (Re Cohen, Bulletin 871, Item 2), (2) for fifteen days effective April 27, 1953, for sale in violation of State Regulation No. 38 (Re Cohen, Bulletin 968, Item 2), (3) for ninety days effective July 5, 1961, for sale in violation of State Regulation No. 38, employing criminally disqualified person and employing minor bartender (Cohen v. Paterson, Bulletin 1404, Item 2), (4) for twenty-five days effective January 20, 1964, for sale in violation of State Regulation No. 38 (Re Cohen, Bulletin 1549, Item 5), and by the municipal issuing authority (5) for twenty-five days effective October 29, 1965, for conducting the licensed business as a nuisance, and (6) for fifteen days effective February 20, 1967, for sale to minors.

The minimum penalty for unaggravated first offenses of this kind is suspension of license for fifteen days on the first charge (Re Bruno Hardcastle, Inc., Bulletin 1767 Item 5) and for ten days on the second charge (Re Through Corp., Bulletin 1732, Item 2). However, deeming the violations aggravated by the prior record of six suspensions of license, the minimum penalty will be increased by thirty days (Re Scangarello, Bulletin 1751, Item 13), or a total of fifty-five days, with remission of five days for the plea entered, leaving a net suspension of fifty days.

In addition, the licensee is pointedly warned that any future violation may result in outright revocation of the license.

Accordingly, it is, on this 6th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-266, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Gerald Cohen, t/a Jerry's Royal Gardens, for premises 30 Bridge Street, Paterson, be and the same is hereby suspended for fifty (50) days, commencing at 3:00 a.m. Wednesday, December 13, 1967, and terminating at 3 a.m. Thursday, February 1, 1968.

Joseph P. Lordi
Director.

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