

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

January 2, 1963

BULLETIN 1487

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STATE OF NEW JERSEY
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1100 Raymond Blvd. Newark 2, N. J.

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BULLETIN 1487

1. COURT DECISIONS - RIGOLETTI v. WAYNE and DIVISION OF
ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-319-61

MARIE RIGOLETTI,)
t/a MOUNTAIN VIEW INN,)
Appellant,)
v.)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WAYNE and DIVISION)
OF ALCOHOLIC BEVERAGE CONTROL,)
DEPARTMENT OF LAW AND PUBLIC)
SAFETY, STATE OF NEW JERSEY,)
Respondents.)

Argued October 1, 1962 -- Decided October 3, 1962

Before Judges Goldmann, Freund and Foley

Mr. Albert L. Cohn argued the cause for appellant
(Messrs. David & Albert L. Cohn, attorneys).

Mr. Peter J. Van Norde argued the cause for respondent
Township Committee (Mr. John F. Evers, on the brief).

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

PER CURIAM

The order of the Director of the Division of Alcoholic Beverage Control (Rigoletti v. Wayne, Bulletin 1430, Item 2) is affirmed. A review of the record convinces us that there was substantial competent evidence to support his findings and conclusions. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504 (App. Div. 1956). The resolution of conflicting evidence rests with the administrative agency, and where the choice of the accepting or rejecting the testimony of witnesses is reasonably made, it is conclusive on appeal. Ibid., at page 506; Passaic v. Botany Mills, Inc., 72 N.J. Super. 449, 453-4 (App. Div. 1962).

Appellant argues that it was error to permit testimony as to the automobile accident which followed upon Vincent Bologna's three purchases of beer at the licensee's premises; and further, that it was error to admit into evidence the statements of the bartender, Francis Morris, and the testimony of Detective Convery of his conversation with Bologna regarding

Morris, in the latter's presence. There is nothing to indicate that the Director's conclusions were based upon this evidence. In fact, the evidence substantiating the licensee's guilt was plenary and entirely convincing. An administrative agency is not bound by the technical rules of evidence. The admission of allegedly incompetent testimony does not justify a reversal if there is substantial competent proof in the record to support the determination. Mazza v. Cavicchia, 28 N.J. Super. 280, 284-5 (App. Div. 1953), reversed on other grounds, 15 N.J. 498 (1954). And see R.R. 1:5-3(b).

Finally, plaintiff contends that the 90-day penalty imposed by the Director was excessive, arbitrary and discriminatory. We find no merit in this argument.

Affirmed.

2. APPELLATE DECISIONS - RIGOLETTI v. WAYNE.

MARIE RIGOLETTI,)	
t/a MOUNTAIN VIEW INN,)	
)	
Appellant,	)	ON APPEAL
	)	SUPPLEMENTAL
v.	)	CONCLUSIONS
	)	AND ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF WAYNE,)	
)	
Respondent.)	

 David & Albert L. Cohn, Esqs., by Albert L. Cohn, Esq.,
 Attorneys for Appellant.
 Peter J. Van Norde, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On December 12, 1961, I entered Conclusions and Order herein suspending the license of appellant for ninety days commencing January 2, 1962, based upon a finding on appeal of appellant's guilt of sale of alcoholic beverages to minors Ralph --- on November 16, 1960, Vincent --- on April 30, 1961 and Edgar --- on May 4, 1961. Rigoletti v. Wayne, Bulletin 1430, Item 2. Upon appeal filed, the Appellate Division of the Superior Court stayed the operation of said suspension until the outcome of the appeal. Said court affirmed my action on October 3, 1962, stating in part "...the evidence substantiating the licensee's guilt was plenary and entirely convincing." Rigoletti v. Wayne and Division of Alcoholic Beverage Control, Bulletin 1487, Item 1.

Following the court's affirmance, appellant filed with me on October 16, 1962 notice of motion returnable November 7, 1962 for an order granting a new trial and hearing on the charges with respect to the April 30, 1961 sale to Vincent --- and for an order vacating the previous order entered herein on the ground that the Conclusions and Order were "...based upon testimony that was false and perjurious (sic) and that there is newly discovered evidence on the charges filed." Annexed to the notice was an affidavit of one Charles Reynolds (stated to be of full age) dated October 11, 1962, to the effect that Vincent --- on an unspecified date had admitted

to Reynolds that he had falsely testified that he had purchased alcoholic beverages at appellant's premises.

In addition, I have been furnished by the attorney for respondent with (1) copy of affidavit by Vincent --- dated October 23, 1962, categorically denying that he had made any statement to Reynolds as attributed to him, and (2) copy of additional affidavit of Reynolds (indicating his age to be 16) dated October 18, 1962, stating that statements in his affidavit of October 11th are untrue; that, in fact, Vincent --- and a companion had told him that they had made the purchases at the Rigoletti premises on April 30, 1961; that he signed the October 11th affidavit "even though it was untrue because Mrs. Rigoletti had promised me that I would be well taken care of and also that she would lend me some money so that I could buy an automobile. In fact right after I signed the affidavit she gave me \$10.00 and promised that she would give me \$40.00 the next day", and (3) copy of affidavit of Wayne Police Department Detective Robert Pringle dated October 23, 1962, indicating that Reynolds "...is a tenant of Marie Rigoletti, residing in an apartment above the Mountain View Inn..."

To round out the picture, I have also been furnished by the attorney for the appellant with copy of affidavit of Marie Rigoletti dated October 24, 1962, categorically denying any promise to Reynolds or gift of any sum of money although admitting "I loaned him the \$10.00 which he agreed to repay to me" and suggesting that Reynolds' second affidavit of October 18th "has been made I believe under some sort of duress, threat or coercion."

It is well established that a verdict will not be upset on the basis of newly discovered evidence which is merely impeaching or contradictory. Further, it must appear that the evidence would probably alter the judgment. Ginnelly v. Continental Paper Co., 57 N.J. Super. 480 (App. Div. 1959). Again, a verdict should not be set aside because a principal witness made statements at trial conflicting with those made to an alleged newly discovered witness. Nightengale v. Public Service Co-ordinated Transport, 8 N.J. Misc. 238 (Sup. Ct. 1930). Still further, a new trial should not be granted on the ground of newly discovered evidence if such evidence would be improbable and untrustworthy. Allegretti v. Sensi, 2 N.J. Misc. 992 (Sup. Ct. 1924). And finally, a new trial will not be granted on the basis of newly discovered evidence which would merely affect the credibility of a single witness. In re Smith's Will, 47 N. J. L. J. 114. On the general question of reopening and rehearing on the basis of alleged newly discovered evidence, see also Great Notch Villa v. Clifton, Bulletin 92, Item 14, and cases cited therein.

It is apparent on the face of the notice of motion and the affidavits that the alleged newly discovered evidence is not sufficient to warrant reopening and retrial and hearing of the matter, particularly since there is no indication of probability of a change in the result, and further that the alleged newly discovered evidence merely goes to the credibility of only one of several witnesses who testified with respect to the occurrence.

Where, as here, the credibility of a witness who impugns the credibility of another witness is itself impugned by himself, there exists no basis for the requested reopening and rehearing. The motion is denied and the suspension will be reimposed.

Accordingly, it is, on this 1st day of November, 1962,

ORDERED that the ninety-day suspension heretofore imposed, and stayed during the pendency of proceedings on appeal, be reinstated against Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Wayne to Marie Rigoletti, t/a Mountain View Inn, for premises on Boonton Road, Wayne, commencing at 3:00 a.m. Thursday, November 8, 1962, and terminating at 3:00 a.m. Wednesday, February 6, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - RIGOLETTI v. WAYNE.

MARIE RIGOLETTI,)	
t/a MOUNTAIN VIEW INN,)	
)	
Appellant,)	
	)	ON APPEAL
v.	)	SUPPLEMENTAL
	)	ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF WAYNE,)	
)	
Respondent.)	

David & Albert L. Cohn, Esqs., by Albert L. Cohn, Esq., Attorney for Appellant.

Peter J. Van Norde, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On November 1, 1962, I entered Supplemental Conclusions and Order suspending the license of appellant for ninety days commencing November 8, 1962. Rigoletti v. Wayne, Bulletin 1487 Item 2.

On November 8, 1962, I received telegram from attorneys for appellant, Marie Rigoletti, reading as follows:

"Application for stay to be determined by full Supreme Court on Monday (sic) Nov. 12. Our papers to be filed by Nov. 8th. No action to be taken in interim against liquor license as per Francis, J."

In reliance upon the representation contained in the telegram, I advised the respondent Township Committee and Chief of Police that a stay of the suspension of the license had been granted and that the licensee could continue to operate pending further order.

It now appearing that the appellant's motion for a stay of the suspension was denied by the Supreme Court on November 12, 1962, the suspension may again be reimposed.

Accordingly, it is, on this 13th day of November, 1962,

ORDERED that the ninety-day suspension heretofore imposed be reinstated against Plenary Retail Consumption License C-15 issued by the Township Committee of the Township of Wayne to Marie Rigoletti, t/a Mountain View Inn, for premises on Boonton Road, Wayne, commencing at 3:00 a.m. Wednesday, November 14, 1962, and terminating at 3:00 a.m. Tuesday, February 12, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - TUMULTY v. DUNELLEN.

ANNE TUMULTY AND JAMES J. TUMULTY,)	
)	
Appellants,)	
v.	)	ON APPEAL
	)	CONCLUSIONS
MAYOR AND COUNCIL OF THE BOROUGH OF DUNELLEN,	)	AND ORDER
)	
Respondent.)	

 Robert W. Wolfe, Esq., Attorney for Appellants
 Henry Handelman, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent which, on the 28th day of June 1962, denied the appellants' application for renewal of their plenary retail consumption license for the 1962-63 licensing year for premises located at 316 North Avenue, Dunellen.

"The resolution denying the said application set forth no reasons upon which respondent based its action.

"Appellants in their petition of appeal contend that the action of respondent was 'arbitrary, capricious, unreasonable and unjust, and constituted an abuse of discretion and was contrary to law, and to the regulations of the Division of Alcoholic Beverage Control and the ordinances of the Borough of Dunellen.' They, therefore, seek to have such action reversed and the license accordingly issued.

"The petition further noted that subsequent to the application for renewal, and prior to the date of the resolution hereinabove referred to, the said license was under a suspension by this Division which commenced on June 21, 1962, and was to continue until September 4, 1962. The appellants, therefore, further sought an extension of the term of the license then in existence pending the determination of this appeal.

"The respondent in its answer denied the substance of the allegations in the petition in so far as they characterized the action of the respondent with respect to the resolution. The answer further sets forth some of the reasons which it now considers as the inducing factors precipitating its refusal to renew the said license. These may be summarized as follows:

- (a) Previous record of convictions which included a suspension of sixty days effective February 24, 1947, by this Division for possession of illicit alcoholic beverages (Bulletin 742, Item 8; Bulletin 749, Item 2); a suspension of twelve days by the respondent for sale to minors, which was affirmed on appeal and reimposed by this Division effective July 7, 1954 (Bulletin 1024, Item 3); suspension of twenty-five days on July 19, 1954, for indecent entertainment and hostess activities

(Bulletin 1024, Item 5), and a suspension of ninety days effective June 13, 1962, for permitting homosexual activity upon the licensed premises and permitting said premises to remain open after the closing hour of 1 a.m. (Bulletin 1466, Item 1);

- (b) A substantial record of police calls to the licensed premises totaling thirty-nine since June 1, 1957, which respondent asserts demonstrates that said premises as presently conducted renders it 'undesirable and unsafe for the residents of the Borough of Dunellen;'
- (c) The filing of an incomplete application for failure to set forth in detail a record of prior conviction
- (d) Objection by citizens of the Borough to said renewal
- (e) The inability of the licensees to adequately police said premises so as to prevent the congregation of homosexuals;
- (f) Attitude of the licensees which would manifest an absence of any effort in the future to control such activity;
- (g) Testimony of the appellant James Tumulty in the disciplinary proceedings that he was not interested in 'personalities, regardless of the character of same, but on the contrary only in his business;'
- (h) that to permit the continuance of the type of operation conducted by the licensees would be detrimental to the health and welfare of the residents of this Borough;
- (i) That the issuance of such license would appear to reflect a continuation of such activity in the future.

"Following the filing of the appeal the Director entered an order on August 27, 1962, extending the term of the appellants license until further order herein. R.S. 33:1-22.

"This was an appeal de novo, with a full opportunity for counsel to be heard and to present evidence under oath and cross examine the witnesses. Rule 6 of State Regulation No. 15. N.J.S.A. 33:1-22; 33:1-39. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598; Cino v. Driscoll, 130 N.J.L. 535. The hearing on both the order to show cause and the hearing on the appeal were heard concurrently. The same evidence was produced for the determination of both issues. Sideroff et al. v. Jersey City and Niebanck, Bulletin 1310, Item 1.

"The burden of proof in these cases which involve discretionary matters rests upon the appellants and, in order to prevail in this appeal, it must be demonstrated that the local issuing authority clearly abused its discretion and committed manifest error. Nordco v. State, 43 N.J. Super. 277, at 287; Downie v. Somerdale, 44 N.J. Super. 84, at 87. Thus the crucial issue in this case is whether the respondent, invested with the initial authority in matters involving renewal of licenses

acted so unreasonably, capriciously, arbitrarily and unjustly as to constitute an abuse of discretion.

"The elementary and fundamental operative principle should be restated. In the issuance of renewals, just as in the issuance of new licenses, the applicant must satisfy the issuing authority that it is worthy of the issuance of such license. As commissioner Burnett stated:

'*** it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy.' Hodanish v. Trenton, Bulletin 121, Item 6.

See also The Florence Methodist Church et als. v. Florence et al., Bulletin 1074, Item 2.

"Decisional authority expressed throughout the adjudicated opinions of this Division add force to the established doctrine that there is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586; Kleinberg v. Harrison, Bulletin 984, Item 2; Bumball v. Burnett, 115 N.J.L. 254. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, at 92:

'*** There is no inherent right in a citizen to thus sell intoxicating liquors by retail ***. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. ***'

"The feeling appears to be implicit in the argument of counsel for appellants that, because this Division imposed a suspension in a disciplinary action against the appellants (which action was initiated by this Division); the respondent is, or should be, bound by that penalty; therefore, it should not impose what it conceives to be the 'additional severe penalty' in its action taken herein. This would have logical force if the penalty imposed in the disciplinary action were so imposed by the respondent which then took the summary action complained of in refusing to renew. However, it is clear that, if the evidence justifies the same, the action of the respondent thus taken should not be barred by the penalty imposed by this Division. Cf. Downie v. Somerdale, supra.

"The following picture has been developed by the evidence presented at this hearing: The appellants have operated a tavern in this community for many years. During the past five years they have had three violations for which their license was suspended both by the respondent and by this Division. During this time it has been found necessary for the Police Department of the respondent Borough to act upon incidents involving law enforcement in and upon appellants' licensed premises. Nevertheless, the license had been renewed until the current year. However, on June 13, 1962, appellants' license was suspended for a total of seventy-five days as a result of disciplinary proceedings instituted by this Division. A full report of such disciplinary action is contained in Re Tumulty, Bulletin 1466, Item 1. Briefly, the appellants were found guilty

of the following charges:

- (a) that on July 8, 9, 16, 21, 22, August 12, 25 and 26, 1961, they conducted their place of business in such manner as to become a nuisance in that they permitted and suffered persons who appeared to be homosexuals in and upon their premises, and otherwise conducted their premises in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20;
- (b) that on July 16 and 22, 1961, they failed to keep the licensed premises closed and permitted and suffered the sale and consumption of alcoholic beverages.

The report sets forth in detail the incidents complained of and the experiences of this Division's agents at the premises on those occasions. The Director found as a fact that there was not merely a passive congregation of apparent homosexuals but that they acted in an aggressive and carnally offensive manner in the presence of the appellant James Tumulty and his employe. Such actions included the making of indecent proposals by these apparent homosexuals; the open touching of the bodies, buttock and thighs of patrons and other homosexuals; hugging and kissing both at the bar and at other places in the barroom in the presence of the bartender, and other actions pervertedly suggestive and patently immoral.

"The testimony further shows that the appellant James Tumulty refused the invitation of the Division agent to accompany him around the bar and listen to the conversations of these apparent homosexuals. Tumulty is quoted as saying, 'I'm not looking for that. All I'm looking for is business.' At another point the said appellant is quoted as replying to a question with respect to these homosexuals: 'Why don't you shut up. Suppose there is an ABC man in here.' This testimony was adduced to indicate he had clear knowledge of the nature of the activity complained of. It should be added that appellant denied making these statements at the hearing on those charges.

"It appears that, after the Director's order was received by the respondent, it was widely circulated in the local press, aroused strong feelings on the part of some residents against the continuance of these premises and against the renewal of such license. A hearing was held because of written objections to the said renewal, and a full opportunity at that time was given to both the appellants and the objectors to produce evidence both in support and in opposition. As a result of this hearing the resolution of June 28 was adopted denying said application for renewal.

"At the hearing before me the appellants produced John C. Mann, the Chief of Police of the Borough of Dunellen, who testified that he was appointed Chief of Police in January 1962 but that he was familiar with liquor licensees in the community. He stated that at the time of the local hearing he had not completed his investigation of this renewal application and, therefore, was in no position to state any affirmative opinion with respect to approval or disapproval. However, at this hearing he stated that his present opinion was that the renewal application was properly denied. He was asked specifically whether this place in his opinion constituted a trouble

spot and he answered in the following way:

'It seems to attract an undesirable element. It was not in the state numerous brawls or anything there. It didn't get to that stage. No fights in the place. Occasionally but no big brawls, nothing to be classified as wild or anything, but there was a constant undercurrent of undesirables.'

"Louis Block (a proprietor of an adjacent delicatessen and liquor store), Aaron Van Syckel, Kingman Waterhouse (patrons) and Lawrence B. Kerwin (a patron and nearby hotel proprietor) all testified that they are familiar with the appellants' licensed premises and that in their opinion the reputation of appellants was good.

"The appellant Anne Tumulty testified that, during the time she has been a licensee (1956 until the present time), the only violation ever charged against her was the last violation hereinabove adverted to. She stated that she was not present on the date enumerated in those charges and, therefore, has no personal knowledge thereof. On cross examination she reaffirmed the fact that, notwithstanding the finding of guilt on the various charges (particularly the charge that on the eight dates mentioned on which homosexual activity was alleged to have occurred on the licensed premises), she knew nothing about them and saw nothing which would indicate to her that there was any violation of the rules and regulations of this Division. She was questioned about the failure to note in the application executed by her and her husband the fact that her husband had been convicted of a crime. Her explanation of said omission was that the attorney for the respondent advised her to answer the application in the manner in which it was done in 1936 when he was her personal attorney and all subsequent applications have been executed in that form since that time.

"James Tumulty (the appellant herein) testified that, since the charges of June 1962 were preferred, he has scrupulously avoided serving any apparent homosexuals. He was questioned closely on cross examination about this and stated that he had tried to abide by the law prior to June 1962 but 'I guess I will do a lot better if I get the license back.' He admitted that in 1947 his license was suspended by this Division for possession of illicit alcoholic beverages; that effective July 7, 1954, his license was suspended for sale to a minor; that effective July 19, 1954, his license was suspended by this Division for permitting indecent entertainment and hostess activity. He insisted that his failure to answer the question with respect to conviction of crime in the application for renewal was occasioned by the early advice which the present attorney for respondent had given him many years ago when he was the attorney for appellants.

"At this juncture of the proceedings a motion was made on behalf of the respondent for dismissal because of the alleged failure of the appellants to show that the actions of respondent were in any way unreasonable, discriminatory, arbitrary, capricious or an abuse of its discretion. Respondent further advocates that there was no testimony to show any abuse of discretion or unreasonableness. In support of this motion he cites State v. Briggs, 62 N.J.L. 150; Zicherman v. Driscoll, supra; Paul v. Gloucester, 50 N.J.L. 585. He also relies upon the statement

of Justice Jacobs in Borough of Fanwood v. Rocco, 33 N.J. 404:

'In establishing New Jersey's system of liquor control, the Legislature wisely stipulated for recognition of varying local sentiments. ***'

(This does not precisely apply to the issue herein.) However, he further cites The Florence Methodist Church et als. v. Florence et al., supra, for the general accepted principle in these cases that this Division may not reverse a municipal governing body's decision in the absence of a manifest mistake or other abuse of discretion.

"I am satisfied from the argument of counsel for appellants that the respondent should be required to develop its defense as set forth in its answer, and that the motion at this point should, accordingly, be denied.

"George J. Bache, recalled on behalf of the respondent, testified that the appellants were present during the hearing on their application for renewal and the objections thereto before the respondent, and heard the members of the respondent Council specifically state the reason during the course of those hearings. Thus, while the resolution itself omitted the specific reasons upon which it was grounded, substantially all of the reasons were expressed at that time.

"James N. Durham (councilman of the respondent) testified that he is the councilman in charge of the Police and is the Police Commissioner of the Borough of Dunellen. He stated that, after the last suspension by this Division, he became aware of the true conduct and activity in the appellants' premises and he then formed the conviction that it was not the type of 'establishment that I so care to see conducted in our town.' He vigorously defended the position of the respondent and strongly asserted that he was opposed to the type of operation conducted because he thought it would attract undesirables to the community. Upon cross examination he admitted that he had not received a complete report from the Chief of Police at the time the resolution denying this application was adopted, but that he voted for the resolution notwithstanding. He denied that his decision was influenced by any newspaper reports but was based upon his judgment after hearing the expressions of various objectors, and his independent determination of the facts. He further asserted that, while the resolution itself may not have contained the specific reasons upon which it was based, the reasons motivating the action of the respondent were expressed verbally both in conference and at the open meeting. On re-direct this witness stated that he discussed with the appellants the conviction of the charge of service and sale of alcoholic beverages after 1 a.m. on July 16, 1961, and they continued to deny those charges despite the fact that they had been convicted of the same. The fact that appellants denied these charges in the face of the convictions created a strong impact in this witness' consideration of the said application.

"Norman L. Gray (a councilman) testified that he was satisfied after listening to all the testimony at the hearing before the respondent that in his opinion appellants were not entitled to renewal of their application. He expressed it in the following language:

'In my opinion, when one obtains a license, whether a liquor license or a license to drive an automobile, regardless of the license, it is a privilege that they receive, the same as an attorney has a privilege to practice law. When one abuses that privilege then I believe this should be taken away from him. In the case we are hearing today this was not only abused one time but it was abused four times. I think the worst charge you can get is the charge we are talking about where morals are involved.'

He further stated that he felt that, as he understood it, the appellant testified in the hearing on appeal of his former conviction before this Division that fifty or sixty or seventy per cent. of his business was out of town business. It was this witness' opinion that the type of individual he has been drawing was not a desirable type and was contrary to the best interests of the community. He was particularly influenced by the testimony relating to the refusal of the appellant James Tumulty to accompany the ABC agent through the bar and listen to the conversations of the apparent homosexuals. He felt that this was unforgivable and indicated a state of mind which was not deserving of the license at issue. On cross examination he stated that, while he did not know of the true situation that existed prior to the report handed down by this Division on the July 1961 charges, he would certainly not have approved issuance of a license to these appellants had he known of the condition before then.

"Rev. Henry W. Heaps, Pastor of the First Presbyterian Church in Dunellen, an objector to the issuance herein, testified that, as a resident of Dunellen and the father of five sons, he was opposed to favorable action on this application because he had heard that these licensed premises were known as a 'drawing center of many undesirables from outside the community.' He further asserted that there was no place in that community for the type of operation disclosed by the public records and now widely published in the newspapers. On cross examination he insisted that he had received information from other residents even before the newspaper articles appeared; in fact, the general reputation of these premises was made known to him (except for the specific charge of homosexual activity) almost immediately after he arrived in the community to assume a pastorate.

"Rev. R. Donald Clare, Pastor of St. Luke's Lutheran Church, testified substantially to the same effect. He had read about the conviction of appellants on the last charges in the local press and was of the opinion that their application for renewal should be denied.

"Warren Vincent Law (a local resident) testified that he had heard about the operation from friends of his and had also read about the conviction in the local press. He, therefore, was of the opinion that the respondent acted reasonably and properly in denying the said application.

"Appellants called Councilman John A. Golday, who testified in effect that, in his opinion, since this Division had suspended the license and did not revoke the same, the respondent should have accepted that decision as its own decision.

"Downie v. Somerdale, supra, adequately answers the argument advanced and the reasoning of Councilman Golday. The basic principle established in that case, and in Zicherman and other cases, is that the mere fact that a plenary retail consumption license has been suspended because of offenses committed by the licensee would not necessarily mean that the subsequent refusal to renew the license because of the same offenses constituted a double jeopardy and, therefore, was invalid.

"It is significant to note that the original suspension in the final disciplinary action was initiated by the action of the Director of this Division and not by the respondent. Therefore, the argument cannot be logically raised that the respondent considered the ninety-day suspension as adequate. As the local issuing authority, representing the local sentiment and the views of that particular community, it need not necessarily be controlled in a matter involving the reasonable exercise of its discretion by the action of the Director in the prior proceeding.

"Indeed, there are other factors which the respondent may take into consideration at the time of its consideration of renewal that are not necessarily involved in a disciplinary action. The test is one of reasonableness, not rightness. Thus the respondent should be judged on that basis even though its action may differ from that of the Director.

"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 views. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Weiss v. Newark, Bulletin 1079, Item 7. See also Rule 6 of State Regulation No. 15.

"The point has also been raised that no reasons were advanced in the resolution denying the application for renewal herein. The better practice requires that reasons be given for the action of the local issuing authority. But, as the court stated in Fanwood v. Rocco, supra:

'No formal statement of reasons by the governing body accompanied the denial of Mr. Rocco's application although two councilmen did express themselves at the time. The statute is silent (see R.S. 33:1-24) and the Director has not thus far imposed any specific requirement for a formal statement of reasons although there seems to be little doubt as to his power to do so (R.S. 33:1-23; cf. X-L Liquors v. Taylor, supra, 17 N.J. 444) or as to the wisdom of such a requirement generally. See 2 Davis, Administrative Law ss 16.01 et seq. (1958); cf. Family Finance Corp. v. Gough, 10 N.J. Super. 13, 24 (App. Div. 1950); Wharton Sand & Stone Co. v. Township of Montville, 39 N.J. Super. 278, 283 (App. Div. 1956). In the instant matter, the Director did state, in the Conclusions and Order filed by him pursuant to R.S. 33:1-38, that in fairness to the applicant the municipal governing body should have given its reasons at the time of its denial of the application. But he did not remand the matter and the record before him, which included an answer by the municipal

governing body formally setting forth its reasons and individual testimony by all of the councilmen as to their reasons, is now before this court. We are satisfied that the applicant may fairly be considered to have suffered no prejudice by the absence of a formal statement of reasons by the municipal governing body at the time of the denial of his application. ***

"Professor Davis, in discussing the subject of Findings, Reasons and Opinions, 2 Davis Administrative Law Treatise, sec. 16.14, states that the requirement of findings is based upon adequate, practical reasons, one of which is that reviewing tribunals are in a better position to develop their ultimate findings where the administrative findings are specific. These findings should be supported by reasons, although the reviewing agency is not necessarily bound by the reasons assigned but may, particularly in an appeal de novo, upon accepting new evidence and reviewing the entire case, base its finding upon its own sound reasons. The theory of making specific findings is perhaps best delineated in the words of Mr. Justice Douglas:

'Unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion. Absolute discretion, like corruption, marks the beginning of the end of liberty.' New York v. United States, 342 U.S. 882.

7 "The additional practical reason for stating the reasons and making findings is to help parties plan their case for rehearing and judicial review. Sec. 16.05, supra. However, in the instant case there was no surprise to the appellants because the views of the members of the respondent Council were made expressly known at the time of the hearing. There is no serious issue with respect to the opportunity of the appellants to present their case and to be fully heard prior to the action of the respondent herein.

"It is, therefore, clear that the reasons set forth in the answer of the respondent in this appeal are substantially the same as expressed in the hearing below and, in any event, reflect the thinking of the respondent in making its determination.

"It is my considered judgment that the respondent acted reasonably and in a fair exercise of its discretion in acting as it did herein. The applicable principles dispositive of the substantive issues raised by appellants were enunciated by Justice Oliphant in Zicherman v. Driscoll, supra:

'*** A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the

sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses.'

See Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

"Where, as here, the violation was such that shocked the conscience of the community, according to the testimony of witnesses for the respondent, including two ministers, and where, as here, many undesirable persons from other communities were being attracted to the operation, which was clearly one calculated to degenerate public morals, it was well within the discretion of the respondent to determine that the appellants' premises constituted a nuisance and were conducted improperly, in violation of the Rules and Regulations. This would be sufficient to warrant the denial of the renewal of the license. Nakrosis v. Harrison, Bulletin 885, Item 3. N.J.S.A. 33:1-19; 33:1-24; 33:1-26; 33:1-35.

"My careful consideration of all the evidence presented, the exhibits, and the well-reasoned and articulate briefs submitted by counsel herein, lead me to the inescapable conclusion that respondent exercised its discretion reasonably, circumspectly, and in the best interests of the community in refusing to renew the appellants' license for the current licensing period. In view of this finding it is unnecessary to discuss the point raised relating to the execution and filing of appellants' renewal application.

"Accordingly, it is recommended that the respondent's action in denying appellants' application for the renewal of the appellants' license be affirmed and the appeal herein be dismissed."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by appellants' attorney pursuant to Rule 14 of State Regulation No. 15. An answer to the said exceptions, accompanied by written argument, were filed by the attorney for the respondent. Request for oral argument was considered, found to be unwarranted and is, accordingly, denied.

Having carefully considered the record herein, including the transcript of testimony, the Hearer's Report, the written exceptions and argument with respect thereto, and the argument contained in the answer to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of November 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FAILURE TO HAVE COPY OF LICENSE APPLICATION AVAILABLE FOR INSPECTION - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 EDWARD J. POWER, INC.)
 t/a EIGHTEEN CLUB)
 18 Paulison Avenue)
 Ridgefield Park, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Township of Ridgefield Park.)
)

 Licensee, by Edward J. Power, President, Pro se.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

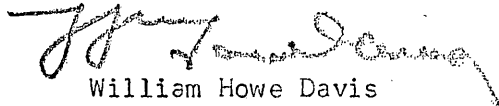
Licensee pleads non vult to charges alleging that on October 20, 1962 (1) at 1:50 a.m. it sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, (2) it failed to have on the licensed premises copy of application for license available for inspection, in violation of Rule 16(b) of State Regulation No. 20, and (3) it hindered an investigation, viz., bartender refusing to furnish requested information and so advising patrons, in violation of R.S. 33:1-35.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective November 11, 1958, for sale in violation of State Regulation No. 38.

The prior similar record within five years considered, the license will be suspended on the first charge for thirty days (Re Lopez, Bulletin 1476, Item 3), on the second charge for ten days (Re Friedman, Bulletin 1448, Item 1) and on the third charge for ten days (Re Restivo, Bulletin 1480, Item 2; cf. Re 32 Club, Inc., Bulletin 1471, Item 2), making a total suspension of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 13th day of November, 1962,

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Township of Ridgefield Park to Edward J. Power, Inc., t/a Eighteen Club, for premises 18 Paulison Avenue, Ridgefield Park, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. Tuesday, November 20, 1962, and terminating at 3:00 a.m. Friday, January 4, 1963.



William Howe Davis
Director