

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 MARKET STREET: CN 087  
TRENTON, NEW JERSEY 08625

BULLETIN 2439

FEBRUARY 26, 1985

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[\*Please note that each of the above noted determinations is being appealed  
to the Superior Court of New Jersey, Appellate Division. The results of  
each appeal will be published when finalized.]

1. APPELLATE DECISION: INN OF WOODBRIDGE INC. V. WOODBRIDGE, (ORDER REVERSING ACTION BELOW AND DIRECTING ISSUANCE OF LICENSE UNDER THE HOTEL/MOTEL EXCEPTION PROVISION OF N.J.S.A. 33:1-12.20.)

APPEAL NO. 4942	)	ON APPEAL
INN AT WOODBRIDGE, INC.,	)	FINAL CONCLUSIONS AND FINAL ORDER
	)	REVERSING ACTION BELOW AND DIRECTING
APPELLANT	)	THE ISSUANCE OF A LICENSE UNDER THE
	)	HOTEL/MOTEL EXCEPTION PROVISION
V.	)	
TOWNSHIP COUNCIL OF THE	)	OAL DKT. NO. ABC 4991-84
TOWNSHIP OF WOODBRIDGE,	)	
	)	
RESPONDENT	)	

Richard M. Salsburg, Esq., Attorney for Petitioner  
(Mandelbaum, Salsburg, Gold & Lazris, Attorneys)

Burton J. Jacowitz, Esq., Attorney for Respondent

INITIAL DECISION BELOW

HONORABLE THOMAS E. CLANCY, ADMINISTRATIVE LAW JUDGE

DATED: September 14, 1984

RECEIVED: September 19, 1984

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed on behalf of the Respondent and Written Answers were filed by the Appellant pursuant to N.J.A.C. 13:2-17.14. In its Exceptions Respondent takes issue with the conclusions drawn by the Administrative Law Judge in this case and argues that the decision is without factual basis. The Respondent also submits that since the Appellant was able to obtain another license and have same transferred to its premises, these proceedings are now moot. The Appellant argues to the contrary and suggests that the denial of the requested transfer was arbitrary, capricious, and unreasonable and therefore was an abuse of the issuing authority's discretion. In light of same the Appellant states that the Initial Decision should be adopted. The time limit for the Director's review and rendering of a final decision was extended from November 2, 1984 until December 24, 1984 by properly executed Orders of Extension.

For the reasons stated below I find that the Exceptions are without merit and I shall reject them and adopt the basic factual and legal findings made by the Administrative Law Judge in this case. In arriving at my determination, I believe that the facts leading up to the license issuance denial are of import to the proper resolution of this case and I shall hereafter summarize the operative facts as I view them. My findings with respect to these facts are based upon the transcripts provided concerning the hearings held before the local issuing authority as well as the hearing conducted by the Administrative Law Judge and the documents of record submitted to me for my review.

Appellant appeals from the denial of its requested issuance of a license under the hotel/motel exception contained in N.J.S.A. 33:1-12.20. It appears that the concept concerning the hotel project was developed approximately ten years ago, although formalized plans were not presented to the town until 1978. Over \$15 million dollars has been invested to date in the entire hotel and restaurant complex and without question same was always visualized by all parties as being licensed to serve alcohol on its premises. There can be little question that the Township felt there was a need for this facility and was keenly interested in its development and location in the town. Although the indications are that Appellant, from the context of its dealings with various officials throughout the life of this project, believed the license would be issued under the hotel/motel exception provision (N.J.S.A. 33:1-12.20), the current members of the issuing authority (since there were changes occurring through the election process during the development and construction phase of this project) state that no such issuance was ever contemplated by them. Rather the members of the issuing authority now suggest that the hotel should purchase an existing license instead of having a new license issued to it under the exception provision of the law.

Although it is true that the issuance of a license under this exception provision has been held to be permissive in nature, nevertheless in exercising its discretion, the local issuing authority must do so reasonably. See, Emston Corp. v. Brigantine, Bulletin #2091, Item #4. Thereafter on appeal the Director must abide by the issuing authority's actions as long as its exercise of judgment and discretion was reasonable. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (1960). In appeals the burden of proving that the action of the issuing authority was unreasonable rests on the Appellant. N.J.A.C. 13:2-17.6.

Since I have also adopted the basic factual conclusions of the Administrative Law Judge, I need not recount them herein. Nevertheless, I note that the licensee is fully qualified, the facility fully meets the conditions required by N.J.S.A. 33:1-12.20, there were no objections to the issuance of the license raised by objectors at the local hearing, and that the local issuing authority is not unwilling to license this facility, as long as it purchases an existing license rather than obtain one under the exemption.

The leading cases cited in the Initial Decision which would appear to support the denial of a license under N.J.S.A. 33:1-12.20 are Rauoly v. Lakewood, Bulletin 1653, Item #2, and Emston v. Brigantine, Ibid. In Rauoly there were indications that numerous rooms in the previously existing facility were either unfit for use or violated municipal ordinances. In addition, the Chief of Police testified that the premises (even without a license) was the subject of a number of police calls dealing with noise and other nuisance violations, and five (5) objectors also appeared and personally testified against the issuance of this license. In Emston there was a dispute as to whether or not the previously existing facility contained a sufficient number of rooms to meet the statutory exception, and there were also numerous objectors to this issuance of the license, albeit

on grounds that sufficient numbers of licenses already existed in the city. However, it also appears that there was testimony that the type of patrons using such facilities in Brigantine did not desire alcoholic beverages. Consequently, there was no need found for such licensure. Given the underlying facts of these cases, it was entirely reasonable to deny licensure to the two requested premises. In the present case the facts are completely opposite.

To summarize, in the case under consideration we have a facility which was newly constructed on the premise that it would be licensed and it without question meets the conditions for licensure under N.J.S.A. 33:1-12.20. The complex was welcomed and encouraged by Township officials who also believed it should be licensed, but they state now that the Appellant should purchase an existing license. The basic reasons given for the denial of the issuance of this license are that the issuing authority did not wish to issue an additional alcoholic beverage license but in fact wished to reduce the licenses available to 30. As a result of the Township's determination the purchase price of an existing license was increased from \$50,000 or \$60,000 to \$160,000 with other licensees asking \$200,000 to \$450,000. Given the history of the development of this hotel complex, I find it difficult to believe, had the Appellant prior to construction said to the Town "before we locate here we would require the issuance of a license under N.J.S.A. 33:1-12.20," that the town would not have granted same. To allow the hotel to now be held hostage to the situation it finds itself in and to have to pay a present license holder an exorbitant amount for a license, would not only be unfair and unreasonable, but it would also violate the spirit and intent behind the passage of the hotel/motel exemption. See, e.g. Hackensack Motel Corp. v. Little Ferry, Bulletin #1648, Item #1.

Accordingly, it is on this 24th day of December, 1984,

ORDERED that the action of the issuing authority below be and the same is hereby reversed and the appeal therefrom be and is hereby dismissed; and it is further

ORDERED that the Township Council of the Township of Woodbridge be and the same is hereby directed to issue a new license to the Appellant pursuant to N.J.S.A. 33:1-12.20, in accordance with the original application filed and fees paid by the said Appellant.



JOHN F. VASSALLO, JR.  
DIRECTOR

APPENDIX: INITIAL DECISION BELOW



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. ABC 4991-84**  
**APPEAL NO. 4942**

**INN AT WOODBRIDGE, INC.,**  
**Petitioner,**

**v.**

**MUNICIPAL COUNCIL OF THE**  
**TOWNSHIP OF WOODBRIDGE,**  
**Respondent.**

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**Richard M. Salsburg, Esq., for petitioner**  
**(Mandelbaum, Salsburg, Gold & Lazris, attorneys)**

**Burton J. Jacowitz, Esq., for respondent**

**Record Closed: August 9, 1984**

**Decided September 14, 1984**

**BEFORE THOMAS E. CLANCY, ALJ:**

In this matter the respondent denied the petitioner's application pursuant to N.J.S.A. 33:1-12.20 for a plenary retail liquor consumption license. The petitioner appealed from that decision and the matter was transmitted to the Office of Administrative law for resolution as a "contested case."

Accordingly, hearings were held on August 1, 1984 and August 9, 1984, at which time the record was closed.

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PROCEDURAL BACKGROUND AND UNCONTROVERTED FACTS

In August 1978, the petitioner applied to the respondent's Board of Adjustment for variances and site plan approval concerning its plan to build a multi-story office building and hotel complex with related appurtenances, including a restaurant, bar, lounge, meeting rooms and guest rooms (see Exhibits A-1 and A-1(a)). The site plan approval request (Exhibit A-1(a)) noted that a liquor license was to be applied for. Following hearings held in November and December of 1978, the Board of Adjustment denied the petitioner's applications on January 22, 1979 (see Exhibit A-3). An appeal was then taken to the respondent, the Municipal Council of the Township of Woodbridge. This body reversed the Board of Adjustment's denials and approved the variances and the site plan sought by petitioner (see Exhibit A-6) in June 1979. In so doing, the Council specifically found, among other things, (a) that ". . . testimony overwhelmingly establishes the need for the proposed facility . . .", and (b) that the petitioner "presented evidence of the need for this type of facility, not only in the general location where proposed, but also the need for such facility in the community as a whole." (See Exhibit A-6). In 1983, appropriate permits and approvals were obtained (see Exhibit A-8) from the respondent and the construction of the \$15 million, 100 room (plus) hotel portion of the building was substantially completed.

On May 9, 1984, the Municipal Clerk of the Township of Woodbridge wrote a letter to the petitioner as follows:

"The Municipal Council of the Township of Woodbridge has reviewed your request for a new liquor license and has determined that it is not in the best interests of the township. The Municipal Council unanimously felt that the purchase of an existing license is the appropriate course to follow. There were several licenses advertised for sale recently.

Similar requests for the hotel license were rejected in prior years and the council regrets that they must continue this policy.

About six weeks ago someone from your organization spoke to me about the above request and I advised that they proceed with haste in writing to the council, and further advised that the Municipal Council in all probability would reject this type of proposal." (Exhibit A-9)

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Next, a public hearing was held on July 31, 1984, pursuant to proper notice and publication (see Exhibits A-10 and A-11), regarding the petitioner's application for a plenary retail liquor consumption license pursuant to N.J.S.A. 33:1-12.20. No written or verbal objections were made to the respondent Township Council concerning the petitioner's application, (see Tr. of August 9, 1984 hearing, pp. 35, 36), and on August 7, 1984, the Council adopted a Resolution denying said application (see Exhibit R-3). This appeal resulted therefrom.

#### STATEMENT OF ISSUE

Should the respondent Municipal Council of the Township of Woodbridge have issued a plenary retail liquor consumption license to the petitioner, pursuant to N.J.S.A. 33:1-12.20?

#### DISPOSITION

The immediate and initial focus of this case is N.J.S.A. 33:1-12.20, which reads as follows:

"Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel or motel containing 100 guest sleeping rooms or who may hereafter construct and establish a new hotel or motel containing at least 100 guest sleeping rooms."

The petitioner has urged for acceptance the notion that the Statute mandates the issuance of the plenary retail liquor consumption license, since it has been stipulated that the hotel portion of the building herein contains more than 100 guest sleeping rooms. Simply stated, this assertion is untrue. It is well settled that "There is no inherent right to a liquor license. \* \* \* Nor is a bona fide hotel which meets the minimal requirements of the State limitation law or a municipal ordinance ipso jure entitled to a license merely because it is such a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license . . . ." (See Rauoly, Inc. v. Township of Lakewood, A.B.C. Bulletin #1653, item #2 (1965) and also Emston Corporation v. City of Brigantine, A.B.C. Bulletin #2091, item #4 (1973).

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Accordingly, the underlying issue to be determined in this case is whether or not the respondent properly and reasonably exercised its discretion in denying the petitioner's application for a license. In this vein I FIND that the respondent supported its action (as required by N.J.A.C. 13:2-2.9) by stating the following reasons in the Resolution (Exhibit R-3) it adopted on August 7, 1984:

1. a local ordinance limits the number of plenary retail consumption licenses in Woodbridge Township to 70;
2. in June 1984, Woodbridge Township renewed 69 of the 70 authorized licenses;
3. the number of plenary retail consumption licenses should presently be about 30 for a Township the size of Woodbridge and the Township should be attempting to achieve this goal;
4. the existing licenses in Woodbridge Township are sufficient to meet the needs of its citizenry for the purchase of alcoholic beverages;
5. the Township Council was aware that N.J.S.A. 33:1-12.20 allowed it to issue a license to the petitioner;
6. there is at least one plenary retail consumption license available for purchase in Woodbridge Township to allow the petitioner to meet its needs; and
7. the issuance of an additional plenary retail consumption license would be detrimental to the desires of the citizenry of Woodbridge for temperance and good order.

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In assessing the validity of the reasons advanced for the action taken, I am mindful of the guidelines contained in Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970):

The conclusion is inescapable that if the legislative purpose is to be effectuated, the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record [emphasis supplied]

Nevertheless, with respect to the respondent's reasons for denial, N.J.S.A. 33:1-12.21 in effect declares that any consideration given to the number of licenses authorized for Woodbridge Township is irrelevant when application is made pursuant to the "hotel exemption" statute:

"This act is in addition to and not in exclusion of municipal regulations limiting the number of licenses to sell alcoholic beverages at retail, duly adopted pursuant to the authority granted by section 33:1-40 of the Revised Statutes" N.J.S.A. 33:1-12.21. [emphasis supplied]

It follows then that reasons #1 and #2 noted above do not constitute valid grounds for the action taken.

Regarding reason #3 (which is really an acknowledgment by the Township that it should be reducing the number of authorized licenses pursuant to N.J.S.A. 33:1-12.14), while the Township's intent is laudatory, the statute enables the Township to reduce the number of licenses only "except as otherwise provided" by the Alcoholic Beverage Law; N.J.S.A. 33:1-12.20 provides otherwise. Therefore, reason #3 falls by the wayside.

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Concerning reasons #4 and #7, these are conclusionary statements not supported by factual data. In the first instance, the "sufficiency of existing licenses" to meet the needs of the citizenry is contradicted by the specific findings of the respondent Township Council in 1979 relative to a need for this type of unique facility in the community (see Exhibit A-6). No attempt was made to reconcile these two inapposite conclusions. Similarly, not one iota of evidence was considered vis-a-vis the desires of the citizens to promote temperance and good order; in fact, not one member of the public objected to this application in writing or in person. In short, these two summary "findings" couched in conclusionary language are inadequate to sustain the action of the Woodbridge Township Council.

On its face, above noted "reason #5" is not really a reason at all. It is merely a statement with respect to one factor that the Township Council took into account in reaching its determination.

Finally, reason #6 goes to the heart of this case. The net effect of requiring the petitioner to purchase one of the authorized licenses already in existence is to escalate the cost of such a license almost beyond comprehension. As testified to by Joseph Nedlin, a principal in the Inn at Woodbridge, Inc., extensive efforts to secure a license have been made since early 1984. Before that he had been under the impression that the grant of a license would be no problem since his corporation had complied with all Township directives since 1978, and it was always his understanding that the license was going to be issued; however, he acknowledged that no one associated with Woodbridge Township had ever represented to him that this would be so. In any event, he now finds himself faced with the purchase of a license in the \$200,000 to \$450,000 range, a price which his corporation cannot afford. Without the license, the Inn at Woodbridge cannot operate on a reasonable or profitable basis.

Thus, the policy of Woodbridge Township requiring the petitioner to purchase an existing license is seemingly at loggerheads with the ostensible purposes of the Statute, i.e. to encourage hotel development and to foster the aims of a free enterprise system with respect thereto. Absent an explanation other than "the purchase of an existing

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license is the appropriate course to follow" (see Exhibit A-9), to permit the subversion of statutory intent and purpose would be unconscionable. In short, the position of the Township is untenable with respect to reason #6.

In summary then, based on the foregoing, I **CONCLUDE** that all of the "reasons" stated for the Township's denial of the petitioner's license application translate into an arbitrary and unreasonable exercise of the Township Council's discretion. This becomes more readily apparent when one takes into account the following **FINDINGS OF FACT**:

- (a) that the Township has permitted and encouraged the construction of this office and hotel complex since 1979;
- (b) that more than \$15 million has been invested in this six-year building project to date;
- (c) that since 1978, the petitioner has been "above board" and "up front" with regard to the nature and extent of the facility's proposed usages;
- (d) that the respondent Township Council has had actual knowledge of petitioner's intentions to seek a liquor license for the facility since 1979;
- (e) that prior to May 1984, the petitioner was never informed of the Township "policy" requiring hotel license applicants to purchase an existing license;
- (f) that the Township's policy requiring the purchase of an existing license has never been embodied in a writing, formally adopted, or published - so as to put the public-at-large "on notice";
- (g) that the respondent Township Council specifically found a community need for this type of facility in 1979 (see Exhibit A-6) and has never reversed the position it took then; and

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- (h) that the full operation of the entire facility will benefit the citizens of both Woodbridge and New Jersey by providing tax revenues, jobs and economic intercourse.

In reaching the above CONCLUSION, the undersigned specifically rejects the petitioner's argument to the effect that the respondent Township Council is estopped from denying the grant of the plenary retail consumption license. While "Equitable principles of estoppel will be applied against municipalities 'where the interests of justice, morality, and common fairness clearly dictate that course'" (see Palisades Properties v. Brunetti, 44 N.J. 117, 131 (1965), citing other cases), the petitioner has failed to demonstrate that it justifiably relied on a misrepresentation by Woodbridge Township which resulted in detriment: According to the testimony of one of the petitioner's principals, Mr. Joseph Nedlin, no one associated with Woodbridge Township ever represented that a liquor license would be issued at any point in time.

Simply put, on the strength of the evidence adduced, I am constrained to finally CONCLUDE that the Municipal Council of the Township of Woodbridge abused its discretion in the matter at hand by denying the petitioner's application for a plenary retail liquor consumption license pursuant to N.J.S.A. 33:1-12.20. The implied attitude of the Township Council, i.e. "we will cooperate if you buy a license, but not if you apply as a matter of right pursuant to N.J.S.A. 33:1-12.20" should not be condoned.

Accordingly, I ORDER that the Director of the New Jersey Division of Alcoholic Beverage Control, John F. Vassallo, Jr., in the conscientious exercise of his discretion, GRANT the issuance of a plenary retail consumption license to the petitioner pursuant to N.J.S.A. 33:1-12.20.

This recommended decision may be affirmed, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who by law is empowered to make a final decision in this matter. However, if JOHN F. VASSALLO, JR. does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

2. APPELLATE DECISION: TARRY INN INC. V. SAYREVILLE (FINAL CONCLUSION DETERMINING NUISANCE EXISTED AND ORDER IMPOSING SUSPENSION OF LICENSE FOR 6 MONTHS.)

APPEAL NO. 4899  
TARRY INN, INC., T/A AL'S  
SILVER DOLLAR,  
PRCL NO. 1219-33-008-003

PETITIONER,

V.

MAYOR AND COUNCIL OF THE  
BOROUGH OF SAYREVILLE,

RESPONDENT.

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ON APPEAL  
FINAL CONCLUSIONS DETERMINING NUISANCE  
EXISTED AND FINAL ORDER IMPOSING SUSPENSION  
OF LICENSE FOR 6 MONTHS.

OAL DKT. NO. ABC 8380-83  
MUN. REV. NO. 8384

Clark W. Convery, Esq., Attorney for Petitioner  
(Convery, Convery & Shihar, Attorneys)

Robert A. Blanda, Esq., Attorney for Respondent

INITIAL DECISION BELOW

HONORABLE BERNARD GOLDBERG, ADMINISTRATIVE LAW JUDGE

Dated: October 25, 1984

Received: October 29, 1984

BY THE DIRECTOR:

Written Exceptions were filed on behalf of the Appellant and written Cross-Exceptions and Replies were filed on behalf of the Respondent Issuing Authority, as is provided by N.J.A.C. 13:2-17.14. The Appellant takes exception to the Initial Decision in regard to the following five issues wherein it argues that the Administrative Law Judge erred: (1) In not considering that the local issuing authority violated the Open Public Meetings Act; (2) In concluding that the hearing before him cured the improper notice by Respondent and cured Respondent's failure to set forth a written statement of reasons for the penalty imposed; (3) In finding Appellant operated its business as a nuisance; (4) In not considering the history of the case and the fact that Respondent and witnesses were hostile; and (5) In not finding that the principle of res judicata applied. Respondent in its Replies argues to the contrary of the Appellant's Exceptions. Moreover, Respondent suggests that the Administrative Law Judge's recommended decision was in error when he recommended that the penalty imposed by the local issuing authority should be reduced from six (6) months to a fifteen (15) day suspension of license. The time provided for the Director to make the Final Decision in this case was extended, by a properly Executed Order of Extension, until January 11, 1985.

Appellant appeals from a suspension of its alcoholic beverage license for a period of six (6) months. The suspension was based on a finding of guilt that the Appellant allowed its licensed place of business to become from on

or about August 17, 1982 until June 27, 1983, a nuisance by ". . . allowing and permitting loud patron noise, loud music noise, fighting, brawling, a shooting of firearms (sic), vandalism of private properties, littering of beer bottles and other debris, patrons urinating on neighborhood residential properties and loud motor vehicle noises, including motorcycles." Initial Decision, p.2. The Administrative Law Judge while finding that the Petitioner did operate its business so as to become a nuisance during the 1982-83 license year, also concluded that the Respondent's penalty of a six (6) months suspension was too harsh and unfair. The Judge recommended that the penalty should be reduced in light of his official notice that the facts complained of were also the basis for the Respondent Issuing Authority's attaching special conditions to Appellant's license. The Judge also found that the licensee had responded to many of the complaints by taking action to address same and therefore mitigation of the penalty was warranted. I disagree as will be further discussed below.

Except as I have noted with respect to the penalty, I otherwise agree with and hereby adopt the basic factual findings and conclusions of law reached by the Administrative Law Judge in his Initial Decision. I further note that the Initial Decision properly resolves Appellant's Exceptions made with respect to Exception (2) concerning the de novo hearing curing alleged improper notice and failure to set forth a written statement of reasons for the penalty imposed, and (3) concerning the factual findings made by the Administrative Law Judge in that the licensee allowed the premises to be operated as a nuisance. I find no merit with respect to Appellant's Exception (5) that the principles of res judicata apply to the instant situation to the extent that same would prevent bringing of disciplinary charges against this license. As Appellant states in its Exceptions, for the principle of res judicata to be applicable, it ". . . requires identity in things sued for as well as identity of cause of action, of persons and parties to action, and of quality in persons for and against whom the claim is made." Appellant's Exceptions dated November 8, 1984, p. 12, quoting from Black's Law Dictionary, 5th Edition, p. 1174. In the instant case it is clear that prior proceedings dealt with imposition of special conditions upon the license whereas the instant proceedings deal with the imposition of a penalty for allowing the premises to become a nuisance. Therefore, it is clear that the principle of res judicata does not apply because of the lack of all necessary identities. See, too, Lubliner v. Board of Alcoholic Bev. Con., Paterson, 59 N.J. Supra 419 (App. Div. 1960), modified on other grounds, 33 N.J. 428 (1960).

I also find no merit with respect to Exception (4) which alleges that neither the local issuing authority nor witnesses were impartial. It is well settled that bias, prejudice, or improper motivation cannot be presumed, but must be established by convincing proof. Gentile v. Manalapan, Bulletin 1514, Item 2. My review of Appellant's Exception and the record fails to disclose any proof of such disqualification. Instead, I find that the local issuing authority was, in respect to this licensee, merely exercising its statutory and regulatory duties, both concerning the imposition of special

conditions as well as with regard to taking disciplinary action. The proper exercise of its mandated duties by a local issuing authority cannot be said to constitute a per se disqualification which would prevent it from hearing and deciding other matters concerning the same license. Rest Camp v. Bd. Alc. Bev. Con., Paterson, Appeal #4880, Bulletin \_\_\_\_\_, Item # \_\_\_\_\_ (decided February 22, 1984). Since the witnesses against the Appellant were generally neighbors who bore the burden of the established nuisance violations, it is hardly logical to either expect or require them to be impartial to this licensee.

Finally, Appellant in Exception (1) argues that the issuing authority violated the Open Public Meetings Act (N.J.S.A. 10:4-6, et seq.) when it took disciplinary action against the licensee. It does not appear that Appellant is arguing that the Respondent did not give "adequate notice," either by not posting a notice of its meetings in the proper public place, or in placing same in two area newspapers, or filing same with the appropriate clerk. N.J.S.A. 10:4-8.d. See, e.g. Sisco Inc. v. Ocean Gate, Appeal #4804, Bulletin \_\_\_\_\_ Item # \_\_\_\_\_, (decided January 17, 1984). Rather Appellant argues that a discussion of the instant matter took place between some council members at some time prior to the making of the decision to suspend and without giving notice of same to Appellant.

I note that the Open Public Meetings Act does not require personal notice to be given to any specific party, but rather that proper public (i.e., "adequate") notice must be given. Moreover, it is clear that closed discussions which do not result in an official action being taken, can take place without subsequent official action taken at a public meeting being rendered invalid. Cf. Schuts v. Bd. of Ed. of Teaneck Tp., Bergen City, 86 N.J. Super. 29 (App. Div. 1964). Aff'd 45 N.J. 2 (1965). In this particular case the record identifies that over a period of time there have been numerous meetings held concerning this license. In the license term during which most of the nuisance situations occurred such meetings were held first regarding the placement of special conditions on the license, and later with respect to the instant disciplinary proceedings. Further in light of the numerous complaints made and hearings conducted in prior license years, council members were intimately acquainted with this license. Therefore, it appears reasonable, in light of this history of prior proceedings concerning this license, to conclude that no lengthy public discussion was necessary before the local issuing authority reached a decision as to what action it believed was appropriate. In addition I note that neither transcripts nor minutes of the local meetings were introduced into evidence before the Administrative Law Judge. Instead the record contains only the clearly vague recollections of one councilman. However, the evidential documents at hand indicate that the decision to impose a six month suspension occurred at a properly noticed public meeting. Therefore on the record before me I cannot find that there was a violation of the provisions of this act. I find the case of Serra v. Mountainside, 188 N.J. Super. 134 (Law Div. 1983) to be inapplicable to the instant proceedings, both in law as well as in fact. Cf. also N.J.S.A. 10:4-12.b.(9).

It appears, moreover, that Appellant's arguments again focus on a violation of the ABC regulations which may have taken place concerning the lack both of proper notice and a statement of reasons for the suspension being given to the licensee. Nevertheless, as has been indicated, supra, such alleged violations have been found not to operate to the prejudice of the Appellant. Therefore, I find all of Appellant's Exceptions to be without merit I shall hereby reject same.

With respect to the proper penalty to be imposed, as noted I differ with the Administrative Law Judge. The Judge has rather tersely and without much elucidation indicated that he found the penalty too harsh and patently unfair. Therefore he recommended that it be reduced from a suspension of six months to a period of 15 days. I reject this recommendation. My review of the facts and the penalty when compared against other relatively recent nuisance cases reflects in no sense any element of unfairness. For example in Moon Star v. Bd. ABC, Jersey City, Bulletin #2200, Item #1, a revocation was upheld for nuisance activities taking place over one year's license term. Moreover, in that case, such as in the instant proceedings, Appellant went to great lengths, including appealing to the Appellate Division, in an attempt to prevent the imposition of special conditions upon its license which conditions were designed to reduce the likelihood of a continuing nuisance. In Dagoberto Azcuy v. Bd. Com. of Union City, Bulletin #2274, Item #3, the licensee was charged with permitting an act of violence, allowing its premises to be a nuisance, and in hindering an investigation. In this case, these charges were a first offense for the licensee and the licensee ultimately cooperated in the subsequent criminal investigation arising out of the events which led to the charges. In consideration thereof, the Director reduced the penalty from a revocation of the license, but nevertheless he imposed a suspension of 150 days.

In the instant case, there is testimony that over the license term cited, neighbors were kept awake by noise continuing into the early hours of the morning on an average of three to four times a week (T., p.72.) Moreover there is an indication by one witness that he called the police 40 or 50 times over this license term (Initial Decision, p.4). Although there were only 18 police operation reports submitted, it was represented that the police department at times may merely fill out a green card rather than an operation's report. (T., pp. 56-57.) Moreover, although six of ten operation reports dealing with noise complaints issued by the police indicated they found no noise, same does not dissuade me from believing that the complainant heard noise when the complaint was originally called in. A witness's testimony is competent evidence in and of itself and the fact that the noise may have abated by the time the police arrived, is not persuasive that noise did not originate the complaint. There is also an instance which indicated that patrons fired shot guns at the licensed premises as well as two instances where it was testified that the license holder himself was involved in beating up persons outside of his premises (T., pp. 71, 85, 100.) Moreover, the record is replete with testimony concerning parking problems, public urination by patrons and other nuisance activities occurring during the one particular licensed term.

The power to impose a penalty for a violation of the law or regulation rests within the sound discretion of the adjudicating authority. Beneditti v. Bd. of Com. Trenton, 35 N.J. Super. 30 (App. Div. 1955). Absent a clear abuse of discretion the penalty imposed should not be disturbed. Id. Although some jurisdictions might choose to impose a lesser suspension upon the licensee for similar nuisance violations, given the extent of the nuisances occurring in the instant case, it cannot be said that the imposition of a suspension of license for six months was a clear abuse of discretion. Therefore, I shall affirm the action of the local issuing authority.

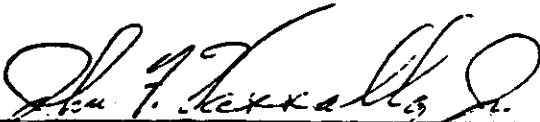
Accordingly, it is on this 11th day of January, 1985,

ORDERED that the action of the Mayor and Council of the Borough of Sayreville be and the same is hereby affirmed and the Appeal therefrom be and is hereby dismissed; and it is further

ORDERED that the Order entered September 29, 1983 staying the suspension of license pending determination of the Appeal, be and is hereby vacated; and it is further,

ORDERED that the Plenary Retail Consumption License No. 1219-33-008-003 issued by the Mayor and Council of the Borough of Sayreville to Tarry Inn, Inc., t/a Al's Silver Dollar, for premises at Rideway and Scott Avenues, Sayreville, N.J. be and is hereby suspended for the balance of its term, to wit, midnight, June 30, 1985 commencing at 3:00 a.m., Tuesday, February 19, 1985, and it is further

ORDERED that in the event Appellant's license is renewed for the 1985-86 license term, said license be and the same is hereby suspended until 3:00 a.m., Sunday, August 18, 1985 for a total period of 180 days.

  
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JOHN F. VASSALLO, JR.  
DIRECTOR

APPENDIX: INITIAL DECISION BELOW



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 8380-83

AGENCY DKT. NO. Appeal No.

4899, Mun. Rev. No. 8384

TARRY INN, INC., T/A AL'S  
SILVER DOLLAR,

Petitioner,

v.

MAYOR AND COUNCIL OF THE  
BOROUGH OF SAYREVILLE,

Respondent.

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Clark W. Convery, Esq., for petitioner (Convery, Convery & Shihar, attorneys)

Robert A. Blanda, Esq., for respondent

Record Closed: October 10, 1984

Decided: October 25, 1984

BEFORE BERNARD GOLDBERG, ALJ:

The petitioner, Tarry Inn, Inc., t/a Al's Silver Dollar, appeals the September 21, 1983 action of the local issuing authority, Mayor and Council of Sayreville Borough, suspending its Plenary Retail Consumption License for a period of six months on the charge that the licensed place of business was conducted in such a manner as to constitute a nuisance. Petitioner appealed the suspension by written notice of September 28, 1983, to the Division of Alcoholic Beverage Control (ABC). On September 29, 1983, the Director of the ABC issued an order staying the suspension pending resolution of the appeal. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

OAL DKT. NO. ABC 8380-83

A hearing was held on September 10, 1984, in the Middlesex Borough Municipal Building. Post-hearing memoranda and replies were received and the hearing record was closed on October 10, 1984.

#### ISSUE TO BE DETERMINED

Respondent's resolution of September 21, 1983, imposed a six-month suspension of petitioner's license for violation of N.J.A.C. 13:2-23.6(a)2 and (a)3 in that:

On or about August 17, 1982 to June 27, 1983, the licensee has engaged in, allowed, permitted and suffered the licensed place of business known as Al's Silver Dollar, to be conducted in such a manner as to become a nuisance to the adjoining property owners and residence in violation of N.J.A.C. 13:2-23.6(a) 2 and N.J.A.C. 13:2-23.6(a)3, that is, allowing and permitting loud patron noise, loud music noise, fighting, brawling, a shooting of fire arms, [sic] vandalism of private properties, littering of beer bottles and other debris, patrons urinating on neighborhood residential properties and loud motor vehicle noises, including motorcycles.

#### CHRONOLOGY OF EVENTS

On June 27, 1983, the local issuing authority, Mayor and Town Council, conducted a hearing as to whether petitioner's liquor license should be renewed. Three days later on June 30, 1983, the local issuing authority adopted a resolution placing special conditions on the renewed license. Petitioner immediately notified respondent that it would appeal the special conditions and requested a stay pending the appeal. Respondent denied the stay. The ABC Director affirmed an initial decision of an administrative law judge, OAL Dkt. ABC 5496-83 (Feb. 22, 1984), imposing four special conditions as follows:

- That the licensee at the said licensed premises shall be prohibited from having live entertainment in the form of 'go-go' dancers or disco entertainment.
- That the licensee is to maintain full-time necessary personnel to keep order and control, not only within the licensed premises but in its parking lot and on the sidewalks surrounding the building and the licensee shall have at least one employee as an outside attendant during all hours of operation up to one-half hour after closing on every day the licensed establishment shall be open for business.

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- That accoustical [sic] materials or other soundproofing devices must be installed in the building or the juke boxes and the sound system is to be removed so that no sound from within the building can be heard outside of the building.
- That the licensee is to be held responsible for littering, not only upon its premises but any littering in the adjoining properties and neighborhood which can be directly attributed to the conduct of the business and that the licensee must clean up said litter on a daily basis.

The ABC Director and the New Jersey Superior Court, Appellate Division, subsequently did stay the conditions pending appeal.

One day later, July 1, 1983, the local issuing authority served petitioner with a notice of charges and it (the licensee) was directed to show cause why its license should not be suspended or revoked. The Notice to Licensee of Charges and Hearing alleges that the licensee conducted its business in such a manner as to become a nuisance to the adjoining property owners and residents. A hearing on the charges was held on August 25, 1983, at which the hearing record of June 27, 1983, was placed into evidence. The hearing adjourned without decision and without a new hearing date. On September 21, 1983, respondent issued its order suspending petitioner's license for six months.

The special conditions of licensure and the six-month suspension arise out of the same actions of the petitioner over the same period of time.

#### SUMMARY OF TESTIMONY

Al's Silver Dollar is located at Scott and Ridgeway Avenues in Sayreville Borough. It is a nonconforming use in a residential zone. The premises contains 30 bar stools and there is off-street parking for approximately 35 vehicles. The bar is open seven days a week from 11:00 a.m. to 3:00 a.m.

At the hearing, respondent offered the testimony of three witnesses who live near the licensed premises.

Mary and Michael Garrone, who have lived directly across the street from the bar for 26 years, testified that between August 1982 and June 1983, they telephoned

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numerous complaints to the police regarding noise emanating from inside and outside the bar, fighting, cursing, and bar patrons urinating outside the licensed premises, in the streets and on other nearby properties. These disturbances occurred when petitioner employed go-go dancers. The Garrones claimed that they were awakened almost every morning by noise from cars and motorcycles leaving the bar's parking lot after 3:00 a.m. and, also, by the garbage truck picking up the bar's refuse every Tuesday and Friday mornings. The witnesses were also unhappy when they found broken beer and liquor bottles on their driveway.

Mr. and Mrs. Garrone admitted that they were signatories on two petitions protesting petitioner's employment of go-go dancers. Mrs. Garrone also acknowledged that she testified at the June 27, 1983 hearing of the local issuing authority against the employment of go-go dancers. Mr. Garrone offered that the noise during summer 1982 when petitioner employed go-go dancers, i.e. cursing, hollering, slamming of car doors, and fighting, prevented him and his wife from sleeping. He added that he called the police 40 or 50 times.

Eleanor Jones, a neighbor of the tavern for 29 years, testified that she also protested go-go dancing in the bar. She complained that bar patrons park in her driveway and that she has been disturbed frequently by the noise in the bar parking lot, by the foul language of bar patrons, by male patrons urinating in public and by fights and yelling that involved bar patrons. She maintained that the problems intensified when petitioner began to employ go-go dancers. On cross-examination, Mrs. Jones acknowledged that the bar owner paid for the replacement of her damaged hedges.

Petitioner subpoenaed Margaret T. Hahn, Borough Clerk, who testified that the Mayor and Town Council met in closed session on September 7, 1983, to discuss petitioner's situation. Mrs. Hahn recalled that the complaints of the Melrose Improvement Association were referred to Council's Excise Committee.

The testimony of Alan G. Dalziel, president of petitioner Tarry Inn, Inc., was characterized by forthright and frank statements. He denied knowledge of his neighbors' complaints of fighting, noise and public urination, although he was aware of the concerns of the Melrose Improvement Association. He acknowledged attending a meeting at the

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Melrose Firehouse in August 1982, at which time he agreed to remedy the garbage pickup, the parking and the noise problems. Garbage dumping time was changed to the daylight hours. He painted street gutters yellow to alleviate parking problems. In addition, Mr. Dalziel bricked up four windows, insulated the inside walls and covered loudspeakers with lead to reduce noise. He claimed parking lot noise was controlled and that there were only two fights requiring police services. The witness did admit seeing public urination two or three times.

#### DOCUMENTARY EVIDENCE

Respondent submitted eighteen Police Department Operations Reports (R-1 through R-18). Ten of the reports concern complaints of noise. Of the ten, police found no noise on six occasions. On one call police asked the licensee to lower the noise volume. Four operations reports relate to parking problems and two involve routine checks of the premises. One complaint involved a suspicious person in the area. None of the complaints was used by police to cite petitioner for any violation of ABC regulations.

Respondent also offered into evidence a petition objecting to the employment of go-go dancers by Al's Silver Dollar, which was signed by 94 residents of the Melrose section (the bar neighborhood). The petition cites the discharging of guns, parking problems, noise and lewd dancing.

Respondent's imposition of a six-month suspension of petitioner's license is based almost entirely upon the testimony of witnesses who appeared at the Council meeting of June 27, 1983 (R-19). Said Council meeting was convened in order to determine whether the license should be renewed and it resulted in the imposition of special conditions of licensure, the purpose of which was to correct the very conditions cited in respondent's notice of suspension.

#### LEGAL ARGUMENTS

Petitioner contends that respondent's suspension of its license should be overturned because respondent's action was taken without notice and, therefore, petitioner's due process rights were violated. There can be no question that respondent issued a notice of the charges on or about July 1, 1983. There is, however, a problem relating to whether petitioner was provided an opportunity to be heard on the charges.

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Council met on September 7, 1983, and decided in closed session to suspend the license. Petitioner was not afforded an opportunity to be heard.

Does this denial of petitioner's due process right fatally affect respondent's case? I think not.

The procedural due process guaranteed to parties involved in cases before state judicial bodies by virtue of the Fourteenth Amendment to the United States Constitution is also applicable to contested cases before state administrative tribunals. David v. Strelecki, 97 N.J. Super. 360, 368 (App. Div. 1967), rev'd on other grounds, 51 N.J. 563 (1968) cert. den. 3939 U.S. 933 (1967). That is, procedural due process applies when an administrative body is acting in a quasi-judicial capacity. Juzek v. Hackensack Water Co., 48 N.J. 302, 314 (1966). Generally speaking, procedural due process requires that a party be given adequate notice and a reasonable opportunity to be heard. Id. It is clear that a party before an administrative tribunal, which stands to have its rights affected by a decision of that body, is, at a minimum, entitled to a specification of the charges against it. Mal-Bros. Contracting Co. v. Kohl, 113 N.J. Super. 144, 147 (App. Div. 1971) certif. den. 58 N.J. 94 (1971). This gives the party a reasonable opportunity to know what claims must be defended against and what consequences are proposed. In re Suspension of Heller, 73 N.J. 292, 311 (1977).

Although failure of respondent to give the required notice to petitioner constituted a denial of due process, it does not automatically follow that the local authority's action must be overturned on that basis alone. A constitutional error of the local authority is harmless if there has been no denial of substantial justice in the dispute. See, Boots 'N Saddle v. Newark Municipal ABC Bd., 44 N.J. Super. 38, 41 (App. Div. 1957); Robert Stetser, Inc. v. Camden ABC Bd., OAL DKT. ABC 6068-81 (July 1, 1982).

In Boots 'N Saddle, the licensee appealed nonrenewal of its license, arguing, in part, that the local board's refusal to allow the licensee to adduce proofs before it when applying for renewal constituted a denial of due process. The New Jersey Superior Court Appellate Division affirmed the ABC order, which supported the local issuing authority's decision on the ground that "after the adequate opportunity afforded before the Division [on de novo appeal] for the adduction of proofs [it appears] that there is in reality no factual controversy." Id. at 41. The court went on to say that "[t]he magnificent concept of due process would seem to have acquired a most perverse function if it could

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be made use of in order to reverse a case where substantial justice has plainly been rendered." Id.

In Robert Stetsner, Inc. v. Camden ABC Bd., OAL DKT. ABC 6068-81 (July 1, 1982), a licensee appealed from a local resolution denying renewal contending that the license must be renewed because respondent's action was not reduced to writing and no written notice was issued. Id. at 2. The administrative law judge found that the respondent had violated the regulation providing that the issuing authority shall not disapprove a license renewal application without giving notice and an opportunity to be heard to the applicant. Id. The administrative law judge went on to say, however, that there had been no substantial denial of justice since the Director had ordered a de novo hearing and had extended the license pending return of his Order. Id. In addition, the administrative law judge emphasized that petitioner continued to operate the tavern pending the Director's final decision and had not been injured by the local board's regulatory omission. Id.

The petitioner in the present case is now presented with the same opportunity for a de novo hearing before an administrative tribunal, at which time he presented evidence concerning the charges on which his license suspension was based. Furthermore, since the Director has stayed the penalty pending this appeal, petitioner has not been injured by any lack of notice, although he alleges otherwise.

In ABC litigation, the term "nuisance" is defined as "those activities which constitute a breach of the public peace, require substantial official police and other municipal intervention and/or amount to continuous or regular infractions of other specific Division violations, e.g., fights and brawls." Parrillo's Inc. v. Belleville, A.B.C. Bulletin No. 2328, Item No. 1 (March 14, 1979) at 17.

Finally, the responsibility of a licensee to maintain his premises in an orderly and lawful fashion also includes conditions not directly attributable to his conduct, but which conditions would render continuance of a tavern in a particular location something that is against the public interest. Queen City Lounge, Inc. v. Common Council of Plainfield, 2 N.J.A.R. 238, 243 (1979) (citing Nordo, Inc. v. State, 43 N.J. Super. 277, 282 (App. Div. 1957); Lyons Farms Tavern v. Municipal ABC Bd., 55 N.J. 292, 306-307 (1970)). The licensee is responsible for conditions both inside and outside the licensed premises

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that are caused by the patrons thereof. Queen City Lounge. The Director has used the "trouble spot" concept in finding that a licensee's conduct of business amounts to a nuisance. See, e.g., Tyrone's Haven, Inc. v. South River, A.B.C. Bulletin No. 2214, Item No. 1 (June 30, 1975) at 6-7, aff'd, A.B.C. Bulletin No. 2242, Item No. 2 (App. Div. 1976).

CONCLUSIONS

From the testimony of the witnesses and the documentary evidence submitted, including the record of the June 27, 1983 Council meeting, I must CONCLUDE that petitioner operated its business so as to have been a nuisance during the 1982-83 license year.

However, I also CONCLUDE that respondent's penalty of a six-month suspension is much too harsh and is patently unfair when official notice is taken of the fact that special conditions of licensure have been attached to the license for precisely the same circumstances which resulted in respondent's decision to suspend.

I further CONCLUDE that the licensee's responses to its neighbors' complaints in that inside noise was eliminated, the garbage pickup schedule was changed and litter was policed are actions which mitigate against the severity of the penalty.

Therefore, I ORDER that respondent's Resolution and Order of September 21, 1983, suspending petitioner's liquor license for six months be modified to require a suspension of 15 days.

This recommended decision may be affirmed, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who by law is empowered to make a final decision in this matter. However, if John F. Vassallo, Jr., does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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PUBLICATION OF BULLETIN 2439 IS HEREBY DIRECTED THIS

26TH DAY OF FEBRUARY, 1985.



JOHN F. VASSALLO, JR.  
DIRECTOR