MR. ZEMEL

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

BULLETIN 1588 November 18, 1964

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1. APPELLATE DECISIONS - HENDERSON v. TEANECK and STANLEY'S INC.

Daniel H. Henderson, Appellant, v. Township Council of the Township of Teaneck, and Stanley's Inc., t/a Stanley's, Inc., Respondents.	On Appeal CONCLUSIONS and ORDER

Sidney Cohn, Esq. and Max Rosenbloom, Esq., Attorneys for Appellant
Jacob Schneider, Esq., by E. Dennis Brod, Esq., Attorneys for Respondent Township
Robert W. Wolfe, Esq., Attorney for Respondent Stanley's Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of the respondent Township of Teaneck (hereinafter Township) whereby on the 19th day of May 1964, by a three-to-one vote, it granted the application of the respondent Stanley's Inc. (hereinafter Stanley's) for a place-to-place transfer of its plenary retail consumption license to premises located at 1435 Teaneck Road in Teaneck. The new premises are located approximately 1,500 feet from the original premises.

Appellant in his petition of appeal contends that the action of the Township was "arbitrary, capricious, unreasonable and an abuse of its discretion" for reasons which may be summarized as follows:

(1) The area to which the license was transferred is "saturated with and congested by existing licensees;"

(2) There are other areas in the community which would be more "suitable, desirable and appropriate;"

(3) The transfer was not in the best interest of the community;

(4) The area to which the transfer was granted contains predominantly Negro residents, and the effect of said transfer would be to "degrade" the same and "diminish" their values; also the said residents may "suffer indignities and be confronted by persons loitering in or about the taverns or saloons;"

(5) The transfer was opposed to the feelings and sentiments of the residents in the immediate area who are "unsympathetic, hostile or opposed to the sale of alcoholic beverages;"

(6) The Township made no findings of fact in writing as required under the amendment to the ordinance dated March 22, 1964, nor did it file written reasons for approval of the transfer "in accordance with the decisions of our State."

For these reasons appellant requests that the action of the Township be reversed and that the license be cancelled and rescinded.

The answer of the Township denies the substance of allegations of the appellant and enters three separate defenses:

(1) That it acted lawfully and reasonably;

(2) A finding of fact in writing was made by its resolution adopted on June 2, 1964;

(3) That the introduction of the racial issue "as such an issue is irrelevant, prejudicial and inflammatory" and serves to obfuscate the merits of the case.

In a further explanation of its action it adds a statement in its answer that it determined that a strict application of the distance requirement of the ordinance would have constituted unwarranted hardship to Stanley's and that waiver of said distance requirement was not detrimental to the "health, safety, morals and general welfare of the community."

Stanley's also filed a separate answer in which it denies the substantial allegations of the petition and sets forth separate defenses which in substance assert that the action of the Township was taken after a full public hearing; that such action was in accordance with its statutory authority; that its action was a proper exercise of its discretionary powers.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony herein. The genesis of this action is as follows: Stanley's operated a tavern under its plenary retail consumption license under a non-conforming use in a residential section of the Township. In fact, the tavern was located directly across the street from a public elementary school.

As a result of a fire which practically destroyed the entire building, Stanley's was unable to continue its operation of these premises. It received notice from the building inspector of the Township that the building would have to be completely demolished. Because of the non-conforming use it is agreed that Stanley's would be unable to rebuild the premises at that location for the resumption of its tavern operation. Accordingly it made application for a place-to-place transfer to the proposed premises.

At the time of the hearing three of the seven councilmen disqualified themselves from participating for good and sufficient reason and, after a full public hearing participated in by witnesses for both the appellant and the respondent, the following resolution was adopted by the Township:

"WHEREAS, Stanley's Inc. is the holder of Plenary Retail Consumption License No. C-1; and

WHEREAS, the premises located at 216 Fycke Lane at which Stanley's Inc. was doing business have been destroyed by fire; and

WHEREAS, application has been made by Stanley's Inc. to the Township Council as Issuing Authority for relief from the distance requirement of Section 1 of Ordinance No. 1195 in order to effectuate a place to place transfer of said license to premises located at 1435 Teaneck Road; and

WHEREAS, a public hearing has been held on such application, on notice thereof duly published; and

WHEREAS, the Township Council has duly deliberated and considered said application and has found that strict application of the said distance requirement would constitute unwarranted hardship; and

WHEREAS, 216 Fycke Lane is situated in a residential zone and 1435 Teaneck Road is situated in a commercial zone; and

WHEREAS, the premises at 1435 Teaneck Road are located in excess of 100 feet from other licensed premises; and

WHEREAS, waiver of the 500 foot distance requirement of said Ordinance will not be detrimental to the health, safety, morals and general welfare of the community;

NOW THEREFORE BE IT RESOLVED by the Township Council of the Township of Teaneck as Issuing Authority, that the distance requirement of the said Ordinance herein be hereby waived;

BE IT FURTHER RESOLVED that the application of Stanley's Inc. is hereby approved and that permission to transfer Plenary Retail Consumption License No. C-1 from the premises located at 216 Fycke Lane to the premises located at 1435 Teaneck Road is hereby granted, all in accordance with Section 1 of Ordinance No. 1195."

At the Hearing on appeal before me Councilman Max A. Hasse, Jr., who cast the dissenting vote against the adoption of the resolution, testified that he was still opposed to the granting of this application because he felt that it would not be in the best interests of the community. He personally resides about two blocks away from the proposed location, and stated that there are four D licenses and three C licenses in the area; that the area is sufficiently serviced by liquor establishments. He gave as additional reasons for his objection a possible increase in traffic; that there are inadequate parking facilities, and that there were other locations in the community where it would be more desirable to locate this transfer. But one of the primary reasons for his opposing the transfer was that he felt that there would be a problem created among the "Negro homeowners in this area [who] have made every effort that they could to maintain a fine residential area that they have." He was then asked by me the following:

"The Hearer: Just so that the record will be clear, I assume it wouldn't make any difference to you whether the people who complained about this were Negro or White?

"The Witness: Absolutely not, none whatsoever.

"The Hearer: And color would not enter into the fact as to whether they wanted to keep this residential in character or whether they were opposed to it?

"The Witness: No, none whatsoever. The fact is, I opposed it, and I'm White. So I believe that's about all I have to say on that."

Finally he felt that, while Stanley's regrettably suffered the loss of its building by fire, the transfer nevertheless would not be in the best interests of the community. On cross examination he admitted that the transfer was in fact made from a residential area to an area zoned for business, and the proposed premises were surrounded by such businesses as auto service stations, a plumbing supply shop, and other commercial establishments.

Charles L. Tarter, a minister who also is employed as a county probation officer, testified that he was one of the signers of the petition because he is opposed generally to taverns. He felt that the introduction of the tavern in this area would depreciate property values; would create traffic congestion and would have an adverse effect on the community as a whole. He was particularly concerned with its effect upon children because he felt that, if they saw taverns, "they get the idea that it's all right for them to drink." On cross examination he expressed an apprehension that a number of undesirable people would be attracted to the tavern because they have "a tendency to hang around taverns."

Rev. Harold G. VanOorte expressed substantially the same feeling as that theretofore voiced by Tarter. On cross examination he admitted that he was under the impression that this was a new license and not the transfer of a license, but insisted, nevertheless, he was opposed to the license being transferred to this area even if the licensee were to comport himself according to the rules and regulations of this Division and in full compliance with the Alcoholic Beverage Law.

Sherwood Menkes (one of the councilmen who voted in favor of the transfer) stated that in his opinion the total destruction of the licensed premises by fire authorized a favorable action under Paragraph B of the pertinent ordinance of the Township. He stated that he had fully considered the objections made at the time of the public hearing and felt that there was sufficient reason shown by the applicant for favorable action on his application. He emphasized that he was not motivated in any way by any racial factors. On cross examination the witness admitted that there would be a moderate increase in the traffic and in the parking problem, and that this was taken into consideration at the time of the granting of the license. He further explained that this licensee would, of course, have to comply with the requirements of the other municipal agencies before it would be permitted to operate at the proposed premises. He finally stated that, in evaluating the needs of the community, "it implies a choice, a possible choice, as against putting this license somewhere else in the community, increasing the proportion in another part of the town, yes, I think the need here is greater than elsewhere... because I think the proportion is greater elsewhere." Finally this witness stated that he took into full consideration the sentiments of the residents who are both sympathetic and unsympathetic in arriving at his final decision.

Mrs. Mary Michael, testifying on behalf of the appellant, added her objections which may be summarized as follows: Her children use the local library and have to pass this area; the passing of a bar and grill will not be "aiding her either in her education development, her welfare, and would certainly be detrimental to her as a young lady;" also that people will be

attracted to this area from other sections of the community; that home valuations will be depreciated; that other problems may be created because "there is racial imbalance in the northeast section." On cross examination she further elaborated on this by stating that the addition of this tavern in this area would create a "welfare" problem for the community.

Mark G. Birchette also was apprehensive that the valuations of the property in the surrounding area would be depreciated and that children might be placed in danger because of people "lurking and hanging around on corners." He also repeated some of the other arguments voiced by the prior witnesses. On cross examination it was developed that this witness' apprehension was based upon the fact that he was once attacked by a patron coming out of a tavern in Atlanta, Georgia, about seven years ago. He also admitted that there was sufficient street parking facilities in the immediate area, and at least one municipal parking lot located almost diagonally across the street from the proposed site. The witness was finally asked whether, when he moved to this area seven years ago, he was aware of the fact that there were liquor outlets in the community. This he admitted. He was then asked whether, in his opinion, by the addition of this license in that area, five would create a potential danger as against four. His answer: "I did not know at the time that there were those outlets there."

Mrs. Ida McCollin also was concerned that this outlet might create a danger to her child and voiced some of the other objections noted by the prior witnesses. On cross examination she admitted that, although there were these other taverns and licensees located in the area, she was not now apprehensive when her children played or went to the store, even at night, but that the introduction of this new outlet would create a new, dangerous situation.

Mrs. Charles Kramer testified that she is a librarian and felt that the creation of this establishment would "tear down all the good that may be accomplished in other areas." She too voiced some of the objections set forth by the prior witnesses. On cross examination she admitted that she had heard that the operators of Stanley's were fine people and that she is not objecting to them personally, but that she does not approve of any tavern being in a "residential area." However, upon further questioning on this point, she admitted that the proposed site is in fact located in an entirely commercial and business area.

Harold Bertelsen, a real estate and insurance broker, called by the appellant, referred to several of the locations which he thought would be suitable for such establishment. However, on cross examination it was pointed out that one of the locations mentioned by him was directly opposite a church. The witness admitted that he was unaware of any rulings relating to distance restrictions with respect to church property.

It was stipulated at the conclusion of Bertelsen's testimony that nine remaining witnesses called by the appellant would testify to the same effect as detailed by the witnesses called on behalf of the appellant.

William Dunlop (the building inspector of the Township) described the proposed site as a commercial area and stated that it was adjacent to such businesses as a plumbing supply house, an

exterior storage yard, a restaurant, parking lot, auto steam-cleaning establishment, a commerical art studio, a service station and a telephone building. There is also a supermarket located nearby, as well as a parking lot and a group of other stores. He stated that the premises in which Stanley's was previously located were totally destroyed, and that he would not have issued a permit for the reconstruction for the purpose of permitting the licensee to rebuild because he was proscribed from so doing under the existing ordinance. On cross examination he described the parking facilities, although he was not too familiar with the parking ordinances and regulations. He further stated that, before the licensee would be permitted to operate at the new premises, he would be required to submit plans and specifications which would show the plan for the interior, and that the licensee would have to comply with the regulations of the health, fire and all other municipal departments concerned with its lawful operation.

At the conclusion of the hearing it was stipulated that Stanley's had not been charged with any violation of any kind; that its premises were totally destroyed; that this was a hardship case and that, in particular, it had suffered economic hardship.

In order to afford a proper perspective with respect to the action of the respondent in this matter, it might be well to restate the basic operative principles which provide the guidepost for an evaluation and determination of its action. The burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed rests with the objectors. Rule 6 of State Regulation No. 15. No one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 5 N.J.Super. 172 (App.Div. 1949).

The decision as to whether or not the license will be transferred to a particular locality rests within the sound discretion of the local issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et al., Bulletin 997, Item 2. Each municipal authority has wide discretion in the transfer of a liquor license, subject to review by this Division in the event of any abuse. Passarella v. Board of Commissioners of Atlantic City et als., 1 N.J. Super. 313. And such action, based upon such discretion, will not be disturbed in the absence of a clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484.

As Justice Jacobs pointed out in Borough of Fanwood v. Rocco et al., 33 N.J. 404, at p. 414:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him... Under the settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable...."

See also Essex County Retail Liquor Stores Assn. v. Newark et al., 77 N.J.Super. 70 (1962).

The Director's function on appeals of this kind 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. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In other words, the action of the municipal issuing authority may not be reversed by the Director unless he finds the "act of the board was clearly against the logic and effect of the presented facts." Hudson-Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, supra.

And further, in evaluating the action of the respondent herein it might be well to state the view which was expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle:

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct.148, 151, 58 L. Ed. 319, 324 (1913) ...."

The logic and the sense of reality which characterized the Township's action appear so abundantly unarguable that it seems hardly necessary to elaborate upon the basis for its action. Stanley's was operating a tavern in a residential neighborhood, on a zoning variance as a non-conforming use. It was being operated directly across the street from a public school where hundreds of children were required to congregate and pass during the school year.

The building was destroyed by fire and totally demolished. The city inspector testified that under no circumstances could that building be reconstructed so as to permit the licensee to resume operations as a tavern. All of this is articulately set forth in a resolution adopted by the Township after a full and fair public hearing. The license is to be transferred from the residential section to a business or commercial section of the Township.

While it may be true that there might have been other suitable locations for the transfer of this license, one of the councilmen, Councilman Menkes, expressed his conviction, which apparently was shared by the majority of the councilmen, that in his judgment the desirability for a license in this particular area outweighed that of any other area in the community. It was his opinion that this was an economic hardship case and, in the absence of a deliberate intent to reduce the number of licenses in the community, he felt that the interests of the individual, as well as the interests of the community, justified the appropriate action taken. He, as well as the majority of the members of the respondent Township, felt that an owner of a license or privilege acquires through his investment therein an interest which is entitled to some measure of protection in connection with a transfer. R. S. 33:1-26; Township Committee of Lakewood

Township v. Brandt, 38 N.J.Super. 462. It is also apparent that they took into consideration the good character of the applicant, its umblemished record as a licensee, and the hardship circumstances. Cf. Watson and Hardeman v. Camden et al., Bulletin 1010 Item 1.

The appellant produced a number of witnesses who reside in the area. Through these witnesses appellant advocates that the introduction to this area of this additional license may make the difference between a moral and immoral character of the said area; that this transfer may be the straw that breaks the camel's back with respect to the moral constancy of its youth, the evil influence on its children and the potential incidence of crime. These arguments must be rejected because it is fantastic to believe that, in the overall complex of this community, the removal of a tavern from a site immediately opposite a public school in a residential area to a site in a commercial or business area distant from such public school or churches would have the effect on school children as apprehended by the appellant's witnesses. This is not a neighborhood where no licenses presently exist; in fact, there is testimony that a total of at least eight or nine licenses of various types already exist.

One further argument advanced by Councilman Hasse, who was the lone dissenter on the Council in the vote on the resolution and who was supported by several of the witnesses, seems to be as follows: This is a predominantly high grade negro neighborhood. This community has had recent racial problems involving school integration and so forth, which has made it particularly sensitive to these problems. The proposed transfer of this tavern would attract undesirable white people from other parts of the community and, indeed, from the surrounding area which would increase control problems. Said transfer also would tend to decrease the property values of this high-class neighborhood. I believe that these arguments are more fanciful than real. I do not believe that the introduction of another license in an area which already has a number of similar licenses would lower its moral tone or would have any appreciable effect on the valuation of neighboring properties.

I also state, with full sympathy to the apprehensions of the witnesses, that the deleterious conditions which they fear might result therefrom are the result perhaps of more sensitivity than could be logically developed from the Township's action. As stated hereinabove, it has been stipulated by both counsel that Stanley's has never been involved in any action detrimental to the municipality, nor has any charge been preferred against it at any time during its operation of its business. It must be assumed that it will continue to operate its business in a decent and law-abiding manner. If in fact it does continue to operate its business in such manner, then appellant or other objectors have nothing to fear. If, on the other hand, the licensed business is permitted to be operated in violation of the Alcoholic Beverage Law or municipal ordinances pertaining thereto, the licensee will subject its license to possible suspension or revocation. Cf. Monmouth County Retail Liquor Stores Assn. et al. v. Middletown, Bulletin 1572, Item 1.

I have also found from the testimony that there has been no evidence to support the contention of the appellant that there will be an actual devaluation of the residences in the area as a result of the said transfer.

With respect to the argument raised by the appellant concerning a possible increase in traffic, there again was mere speculation without any affirmative support thereof. Indeed, any new business enterprise would attract additional traffic, so this argument is untenable. A corollary of this was the argument advanced that there were insufficient parking facilities which the licensee quite candidly had not considered at this juncture. However, I am satisfied that the area provides adequate off-the-street parking, including municipal parking lots, so that this should not be an impediment. Furthermore, it is always implicit, in this connection, that the licensee will not be able to operate until it has satisfied the statutory requirements of the appropriate agencies of the municipality.

I am also mindful of the fact that a number of witnesses have appeared at the hearing and a petition has been signed in opposition to the said transfer. If the action of the Township is right, then the fact that the number of witnesses on behalf of the objectors outweighs that of the applicant is not the determinant. In these cases the touchstone of the administrative process is, and always has been, fairness and equity for the parties concerned.

Additionally, it should be observed that petitions are always influential and persuasive. However, the counting of noses cannot serve as a substitute for the considered determination of the local issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way in which petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Therefore, the weight to be given a petition must, in large measure, depend upon what the petition states, who signs it and how it accords with the policy and common sense of the officials responsible for the administration of law and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

It should finally be stated that, in matters of this kind, the responsibility of a municipal issuing authority is "high," its discretion "wide" and its guide the public interest. Lubliner v. Paterson, 33 N. J. 428 (1960). The Township has, in my opinion understood its full responsibility and there has been no suggestion made that any of its members has been improperly motivated.

I have considered the other matters raised in the petition of appeal and do not find them of sufficient merit.

After reviewing the evidence and the well prepared memoranda of counsel and arguments therein, I conclude that the appellant has failed to sustain the burden that the action of the respondent Township was arbitrary, unreasonable and an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent Township and dismissing the appeal.

Conclusions and Order

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

Having carefully considered the entire record herein,

including the transcript of the testimony, the exhibits, the memoranda of counsel in summation, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of September 1964,

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

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - ANDREW C. KLESS ENTERPRISES INC. v. EAST ORANGE.

Andrew C. Kless Enterprises Inc., Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of East Orange, Respondent.	)	

Donald Karrakis, Esq., Attorney for Appellant
William L. Brach, Esq., by Norman E. Scull, Esq., Attorney for Respondent
Abraham J. Isserman, Esq., Attorney for Objector

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This appeal is from the unanimous action of respondent in denying a person-to-person and place-to-place transfer of a plenary retail consumption license from Josephine M. Katz and Milton Katz to appellant and from premises 93 Main Street to premises 18-20 Washington Street, East Orange.

The following resolution was approved by respondent:

"WHEREAS, Andrew C. Kless Enterprises, Inc., A New Jersey corporation, filed an application on March 11, 1964 for permission to transfer the plenary retail consumption license #C-6 to it from Josephine M. Katz and Milton Katz, from premises 93 Main Street, East Orange, New Jersey to 18-20 Washington Street, East Orange, New Jersey; and

"WHEREAS, said applicants have complied with the requirements of Chapter 3 of the 'Compiled and Revised Ordinances of The City of East Orange (Revision of 1947)' as amended, in the submission of said application; and

"WHEREAS, the Municipal Board of Alcoholic Beverage Control of The City of East Orange did on April 7, 1964, con-

duct a full and impartial public hearing after objections to said transfer had been received to the proposed transfer; and

"WHEREAS, the Board has heard and considered all the testimony and other evidence offered by proponents and objectors in connection therewith; and

"WHEREAS, the transfer of said plenary retail consumption license will constitute a transfer to different premises within 1,250 feet of other licensed establishments; and

"WHEREAS, the Municipal Board has the authority and power to waive the application of said 1,250 foot restriction in proper cases, it is on this 5th day of May, 1964

"RESOLVED, That the Board has made the following findings of fact:

"1. That due to the number of plenary retail liquor licenses, both for consumption and distribution near the location proposed to be licensed to wit: 18-20 Washington Street, that approval of this transfer will result in an undue crowding and concentration of licensed establishments, and

"2. That the proposed transfer will not render a convenience in service to an extent not otherwise available to persons in the area of the proposed location, and

"3. That there are sufficient available licensed establishments to persons living in and utilizing the facilities located in and around the proposed location, and

"IT IS FURTHER RESOLVED, That the application of said Andrew C. Kless Enterprises, Inc. for a transfer of plenary Retail Consumption License #C-6 from Josephine M. Katz and Milton Katz and from 93 Main Street, East Orange, New Jersey to 18-20 Washington Street, East Orange, New Jersey, be and the same is hereby denied."

Appellant contends in its petition of appeal that:

"The action of the respondent was erroneous in that it was arbitrary, unreasonable and capricious. The appellant did, by competent evidence and proof, establish that approval of the transfer would not result in an undue crowding and concentration of licensed establishments, would render a convenience and service not otherwise available to persons in the area of the proposed location and it would be consonant with and an asset to the neighborhood."

Respondent in its answer denies the aforesaid allegations set forth in the petition of appeal.

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

Ordinance No. 31, which is applicable to the matter now under consideration, was adopted by the City Council of East Orange on October 22, 1962, and approved by the Mayor on October 23, 1962. It amends Chapter 3 (Alcoholic Beverages) of the municipal ordinances by adding Section 4(b) as follows:

"No plenary retail distribution license or retail consumption license shall be issued nor shall any plenary retail distribution license or plenary retail consumption license be transferred to different premises within 1,250 feet of any other licensed establishment as aforesaid, provided, however, nothing herein shall prevent renewals or transfers to another licensee of licenses heretofore issued for use on the same premises on which the license is presently in operation. Notwithstanding the foregoing provision, the Municipal Board of Alcoholic Beverage Control of this City may, after hearing and upon review of the location and availability of other licensed establishments to persons living in and utilizing the facilities located in and around the proposed location and of general neighborhood characteristics and boundaries, determine that approval of the transfer shall not result in an undue crowding and concentration of licensed establishments, shall render a convenience and service to an extent not otherwise available to persons in the area of the proposed location and shall be consonant with and an asset to the neighborhood, and upon making findings substantiating the foregoing, may waive the application of the foregoing restriction and approve the transfer.

"The 1,250 foot requirement, as provided herein, shall be measured radially in all directions from the main entranceway of the new proposed location of the licensed establishment seeking a transfer to the main entranceway of existing licensed premises."

It appears from the evidence adduced herein that appellant entered into a formal contract to purchase the building at 93 Main Street and to make application for the person-to-person and place-to-place transfer of the license theretofore issued for said premises to Josephine and Milton Katz, so as to cover part of premises 18-20 Washington Street. The said contract was made contingent upon approval of the application for transfer.

Andrew C. Kless, secretary of appellant corporation, testified that appellant had no intention to apply for a liquor license when the premises for the service of food was opened in October, 1963; but soon thereafter it was observed that many persons would not patronize the establishment because of the failure to obtain alcoholic beverages with meals.

William L. Fischer, president of appellant corporation, testified that appellant has a substantial luncheon business, serving luncheon to "about a thousand" persons. Mr. Fischer presented petitions containing approximately 586 signatures (marked as an exhibit in evidence), which petitions he said were circulated at the restaurant under his supervision.

Harry Stevenson, treasurer of appellant corporation, testified that based on records prepared by him, 10,102 patrons are served each week at appellant's establishment and that 49% of those who signed the petitions are residents of the municipality.

Edward T. Bowser, Jr., an architect, testified that in his opinion, based upon his observations, within a radius of 1250 feet from the entrance to the premises for which the transfer is sought, there are insufficient eating establishments where liquor might be served with meals to accommodate people desiring same.

Morton Kapelsohn, an objector, testified that he is president of the Living Room Corporation which holds a plenary retail consumption license and, in conjunction therewith, a restaurant is

operated at 21 No. Harrison Street; that although liquor is now being principally sold, the said place of business is being enlarged in order that the premises will accommodate one hundred persons for dinner each day; that the said licensed premises is located between 100 and 150 feet from appellant's premises and at present there are eight liquor outlets within a 1250-foot radius of appellant's restaurant.

Eighteen objectors, among whom were eleven licensees or persons having an interest in a liquor license, testified that they either sent letters to the respondent or signed petitions opposing the transfer of the license in question.

Frank J. Tullio, president of respondent Board, testified that he voted against the transfer of the license because there are presently seven or eight licensed premises within the 1250-foot radius of appellant's establishment and, therefore, he was of the opinion that the transfer to the proposed premises would tend to constitute an undue concentration of licensed establishments therein. Moreover, Mr. Tullio testified that appellant's business would not render a service to the people in the area which is not already there.

Walter M. Maple, secretary of respondent Board, testified that the principal reason he voted against the transfer of the license was that another license would result in an undue concentration of liquor licenses in the area.

Edward T. Freeman, a member of respondent Board, testified that he voted to oppose the transfer of the license because "there were sufficient licenses to adequately serve the area in question."

In order for appellant to succeed in the instant appeal, it is incumbent upon it to show an abuse of discretion on the part of respondent in denying the application for transfer. To meet this burden appellant must show manifest error or an abuse of discretion on the part of respondent. Nordco v. State, 43 N.J.Super. 277 (App. Div. 1957); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J.Super. 598 (App. Div. 1955).

It has consistently been ruled by this Division and the courts that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Gentes v. Middletown, Bulletin 1327, Item 1; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp and Hess v. Teaneck, et al., 5 N.J.Super. 172 (App. Div. 1949), where the issuing authority was upheld in denying a transfer of liquor license because it was of the opinion that no need existed for a liquor outlet at that location in the community. Also in Fanwood v. Rocco, et al., 59 N.J.Super. 306, 321, Judge Gaulkin stated:

> "The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfer thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the

local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511."

In Jersey City Retail Liquor Dealers' Ass'n, et als. v. Jersey City and Dal Roth, Inc., Bulletin 976, Item 4, it was stated:

"Provisos and exceptions in an ordinance are to be strictly construed and in keeping with the measure's principal purpose. N. J. State Board of Optometrists v. S. S. Kresge Co., 113 N.J.L. 287 (Sup. Ct. 1934); modified in 115 N.J.L. 495 (E. & A. 1935); United States v. Dickson, 15 Pet. 141; 59 Corpus Juris, sec. 639(2), notes 42, 43 and 44. Manifestly the basic purpose of the ordinance in question is to effect a stricture upon place-to-place transfers (Finbar et al. v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City and Commuters Bar, Inc. et al., Bulletin 917, Item 1)."

In Dal Roth, Inc. v. Div. of Alcoholic Beverage Control, 28 N.J.Super. 246, 255, Judge Goldmann stated:

"Restrictive liquor regulations may, and ofttimes do, result in individual hardships. However, where larger social interests justify a restrictive policy, private individual interests must give way."

There is no contention that the members of the Board were improperly motivated in arriving at their decision. Under the circumstances and after careful examination of the evidence presented, there appears to be no abuse of discretion on the part of the respondent in denying the transfer of the license in question. Therefore, it is recommended that the action of the respondent be affirmed and that the appeal herein be dismissed.

Conclusions and Order

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

Having carefully considered the record herein, including the transcripts of the testimony, the exhibits, the argument of the attorneys representing the parties herein, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of September 1964,

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

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

K & K Corp.
t/a Val's Bar
114 S. New York Ave.
Atlantic City, N. J.

Holder of Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the City of Atlantic City

CONCLUSIONS AND ORDER

Albert J. Perrella, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 21, June 27-28 and July 18, 1964, it conducted the licensed place of business as a nuisance, viz., permitting apparent male homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question, the licensed premises was patronized by large numbers of apparent male homosexuals, i.e., on June 21 and June 27-28 forty out of a total of fifty male patrons and on July 18 approximately 90% of a total male patronage of one hundred twenty-five.

Licensee has a previous record of suspension of license by the municipal issuing authority for twenty-five days effective February 8, 1953, for sale to minors. In addition, the license of V. M. & S. Inc., t/a Famous Bar, 501 Pacific Avenue, Atlantic City, of which corporation Valentine and Mildred Kusek (principal stockholders of K & K Corp.) were then officers, was suspended by the municipal issuing authority for ten days effective April 30, 1956, for sale to a minor and to an intoxicated person.

The prior record of suspensions of license for dissimilar violation occurring more than five years ago disregarded, on the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals) the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Murphy's Tavern, Inc., Bulletin 1563, Item 4.

Accordingly, it is, on this 29th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the City of Atlantic City to K & K Corp., t/a Val's Bar, for premises 114 South New York Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m. Tuesday, October 6, 1964, and terminating at 7:00 a.m. Monday, November 30, 1964.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - NUISANCE - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - FOUL LANGUAGE - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Ta Ta Enterprises, Inc. t/a Wishing Well 178 Hackensack Street Wood-Ridge, New Jersey Holder of Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Wood-Ridge	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging:

> "On Saturday night June 6, Saturday night June 13 and early Sunday morning June 14, 1964, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner, to use and engage in foul, filthy and obscene language and conduct and to sing songs, recite stories and utter words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that the entertainment, in the language of Re Sadrak, Bulletin 1451, Item 8, consisted of unquestionably obscene, vulgar and disgusting references to sex and sexual behavior. No purpose would be served in repeating herein the language, expressions and comments which punctuated the performance, except to state that the entertainers used indecorous language to impart indecorous concepts and their performance was geared on a pornographic level with "dirt for dirt's sake".

Absent prior record, the license will be suspended, as it was in Re Sadrak, supra, for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 29th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Wood-Ridge to Ta Ta Enterprises, Inc., t/a Wishing Well, for premises 178 Hackensack Street, Wood-Ridge, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, October 6, 1964, and terminating at 2:00 a.m. Monday, November 30, 1964.

Joseph P. Lordi
Director