

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2351

May 12, 1980

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
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U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2351

May 12, 1980

1. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

In the Matter of the Petition of )

The Great Atlantic & Pacific )  
Tea Company, Inc. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution )  
License No. 0251-44-008-001 issued by the )  
Mayor and Council of the Village of )  
Ridgewood. )

-----  
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Petitioner  
David Griffiths, Esq., Deputy Attorney General, for Division

INITIAL DECISION BELOW

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: November 2, 1979                      -                      Received November 7, 1979

BY THE DIRECTOR:

No Exceptions were filed to the Initial Decision herein pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein including the transcript of the testimony and the Initial Decision of the Administrative Law Judge, I conclude that the petitioner has failed to establish good cause for my authorization of petitioner to apply for renewal of the license. Therefore, I reject the conclusions and recommendations of the Administrative Law Judge set forth in the Initial Decision herein.

From my reading of the record, it is quite apparent that there is no suitable location in Ridgewood for the transfer of this license, nor does it seem likely that such location will be found before the end of the 1979-80 license term.

As Stefano Massi, an industrial and commercial real estate broker testified, Ridgewood has a very slow turnover in commercial space; and he has been unable to find for the petitioner a suitable retail liquor outlet location in this community.

It is, therefore, unrealistic to believe that the said license will become operational during the 1979-80 license period. Therefore, it would be a meaningless gesture and a futile exercise to authorize the petitioner to make an application for renewal of the said license for the current term, even if its application to renew said license were granted by the Mayor and Council of the Village of Ridgewood.

Accordingly, it is, on this 11th day of December, 1979,

ORDERED that the Petition of the Great Atlantic and Pacific Tea Company, Inc. for authorization by the Director to apply to the Mayor and Council of the Village of Ridgewood for renewal of its plenary retail distribution license for the 1979-80 license term be and the same is hereby denied.

IN RE: THE PETITION OF THE	)	<u>INITIAL DECISION</u>
GREAT ATLANTIC AND PACIFIC	)	
TEA COMPANY, INC. (RIDGEWOOD, NEW JERSEY),	)	OAL DKT. NO. ABC 2445-79
Pursuant to <u>N.J.S.A. 33:1-12.39</u>	)	

APPEARANCES:

Saul A. Wolfe, Esq., Skoloff and Wolfe, Esqs. for Petitioner  
 David S. Griffiths, Esq., for the Division of Alcoholic Beverage Control

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On September 13, 1979 a hearing was held on the petition of the Great Atlantic and Pacific Tea Company, Inc., pursuant to N.J.S.A.33:1-12.39 seeking authorization from the Director of the Division of Alcoholic Beverage Control for a further application for renewal of its plenary retail distribution license for the 1979-80 license term.

Initially, it is suggested that this decision be read in conjunction with that in the A&P Linden matter, the "lead" case, in so far as the testimony of Mr. Thomas P. Quinn with respect to general historical background is concerned. That testimony is incorporated herein by reference.

Secondly, on October 26, 1979 counsel for the petitioner requested permission to serve and file his post hearing memorandum out of time. Permission was granted but I determined that I should continue writing the individual decisions in these cases, the record having been closed on October 25, 1979.

At the outset of the Ridgewood matter, I read into the record a letter dated August 22, 1979 from Charles C. Collins, Jr., Esq., who represented the Village of Ridgewood and who advised that the Village did not intend to appear or participate but would abide by whatever decision ensued.

Exhibits marked into evidence were:

1. J-1, Affidavit of service of verified petition for renewal on the Municipal Clerk of Ridgewood.
2. P-1, Zoning map of the Village of Ridgewood.
3. P-2, Map of Village of Ridgewood.

QAL DKT. NO. ABC 2445-79

Mr. Quinn testified that the license in question has been inactive since May of 1977 when the A&P food market in conjunction with which it was operated closed.

In February, 1977 A&P considered the possibility of the liquor operation-and/or party center (the latter is a mid-western term denoting 5,000 to 10,000 square feet of space in which alcoholic beverages are sold and party accessories are rented. Additionally, bulk teas, cold cuts, kegs of beer and napkins are sold) taking over the entire store, approximately 12,000 square feet. A&P had a lease obligation through 1981. An in-depth study or liquor analysis led A&P to conclude it could convert and have a profitable liquor business under a trade name. Layout work started about September 1, 1977. However, right after the first of the year (1978), A&P discovered that the landlord was not willing to convert to a party center and that A&P had a non-conforming use. The area had been zoned for office business. P-1, a zoning map of the Village of Ridgewood, was admitted into evidence. It showed the A&P in an OB2 (Office Building District) zone.

The Village of Ridgewood would not permit the utilization unless 50% of A&P's business was in non-alcoholic, deli-bakery items. The witness stated that A&P could not do this and about February, 1978 A&P realized it could not use the location as a party center.

One Stefano Massi, an industrial and commercial real estate broker with offices in Paramus, bordering Ridgewood, was contacted by the witness and requested to find A&P another building in Ridgewood with approximately 6,000 square feet for a party center.

A&P surveyed all the packaging stores in Ridgewood and a detailed map of the Village (P-2 in evidence) was drawn. In an effort to place the license in operation in Ridgewood A&P wanted to know where its competition was located. Each of the licensed locations in the Village was investigated and inspected and a report was given to Mr. Quinn.

Prior to Mr. Massi being brought in, Mr. Quinn had driven through Ridgewood on numerous occasions. Mr. Massi informed him of a location which he investigated only to find an old house which would have had to be knocked down. This would not have been profitable.

The witness said that Mr. Massi has been unable to show him an existing facility which could have been occupied profitably by A&P as a retail liquor outlet. In April or May, 1979 the witness found a building behind the former A&P store but Mr. Massi told him the Village would not approve placing a small liquor store there.

The witness said that A&P has absolutely not abandoned its intention to go on selling alcoholic beverages in Ridgewood. A&P plans and hopes to operate a party center somewhere in Ridgewood. It merely needs a feasible location. He stays in contact with Mr. Massi who knows exactly what A&P is seeking.

OAL DKT. NO. ABC 2445--79

On cross-examination, Mr. Quinn ventured the opinion that if A&P did not have a location in roughly a year or the next renewal period that probably a decision would be made to sell the license. However, on re-direct, he said company policy at present is only aimed at active use of the license by A&P.

Mr. Massi testified that A&P informed him of its problem in Ridgewood. He said Ridgewood enjoys a very good commercial climate. There is a very slow turnover in commercial space. He said he has been unable to find A&P a suitable retail liquor outlet location in Ridgewood. It was his opinion, absolutely, that A&P has sought and used his services in good faith for the purpose of relocating its license.

On cross-examination he said he hoped that A&P would be able to find a suitable location within the next year. He said they were still working on it. It seemed to him that if a location were not found in the downtown area of Ridgewood, that there was one other possible area which had some older buildings. He said this was on the Hohokus border and that it would be very likely that something would be found there within the next nine months.

The hearing was closed.

The following day, September 14, 1979, the proceedings were reopened to permit Mr. Quinn to give his opinion of the value of the A&P's license in Ridgewood. He stated that it was approximately \$90,000 to \$100,000.

After cross-examination, the Ridgewood hearing was closed.

Under the applicable statute, N.J.S.A.33:1-12.39, the A&P has the burden of establishing good cause for the Director to authorize a further application for renewal of its license. From the detailed facts I have set forth, I am satisfied that good cause has been established. A&P possesses a valuable license which it wants to use in Ridgewood. Only a very small portion of Ridgewood is zoned for retail business as can be seen from P-1 and P-2. Commercial space turnover is very slow. A&P's efforts to find a location are sincere and continuing.

The Director has indicated that he will determine whether good cause has been established on a case by case basis. He will apply recognized judicial concepts associated with the term. He will also apply, in so far as they are applicable, prior decisions of the Division on the subject. Bulletin 2289, July 27, 1978, dated April 14, 1978.

In Pines v. District Court in and for Woodbury County, 10 N.W. 2d 574,583, 233 Iowa 1284 (Sup. Ct. 1943), the court stated that good cause means a substantial reason, one that affords a legal excuse. It said whether substantial reasons exist is for the court to determine under the facts and circumstances.

OAL DKT. NO. ABC 2445-79

The court, in Wilson v. Morris, 369 S.W. 2d 402, 407 (Mo. 1963), stated that good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed.

Finally, in Wray v. Folsom, 166 F. Supp. 390, 394 (U.S. D.C., W.D. Arkansas, 1958), good cause was conceived to be a relative and highly abstract term. Its meaning must be determined not only by the verbal context of the statute in which the term is employed, but also by the context of the action and procedures involved and the type of case presented.

I therefore recommend to the Director of the Division of Alcoholic Beverage Control that he authorize the A&P to apply for a renewal of its plenary retail distribution license for the 1979-80 license term.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A.52:14B-10(c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
GERALD T. FOLEY, JR., A.L.J.

Receipt Acknowledged:

\_\_\_\_\_  
DATE

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AGENCY HEAD

Mailed to Parties:

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DATE

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FOR OFFICE OF ADMINISTRATIVE LAW

2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

In the Matter of the Petition of :  
:  
The Great Atlantic & Pacific :  
Tea Company, Inc. :  
:  
Holder of Plenary Retail Distribu- :  
tion License No. 0215-44-040-001 :  
issued by the Common Council of :  
the City of Englewood. :

CONCLUSIONS  
and  
ORDER

.....  
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys  
for Petitioner  
David Griffiths, Esq., Deputy Attorney General for Division

Initial Decision Below

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: November 9, 1979 - Received: November 15, 1979

BY THE DIRECTOR:

No Exceptions were filed to the Initial Decision herein pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein including the transcript of the testimony and the Initial Decision of the Administrative Law Judge, I conclude that the petitioner has failed to establish good cause for my authorization to petitioner to apply for renewal of the license. Therefore, I reject the conclusions and recommendations of the Administrative Law Judge set forth in the Initial Decision herein.

I specifically reject the Administrative Law Judge's conclusion at Page 4 that "A & P's liquor license is a valuable asset ...". A license does not embody any property right. It is a temporary privilege to conduct business in a sensitive and strictly regulated industry. See, Butler Oak Tavern v. Director of Alcoholic Beverage Control, 20 N.J. 373, 381 (1956).

This license has been inactive since July 1975. My Special Ruling of July 5, 1978, part of the record herein, provided relief to the licensee pursuant to N.J.S.A. 33:1-12.39 based on representations incorporated therein; i.e. essentially that transfer to an active site was imminent. To date the record reveals that a location has yet to be found. Speculation is that one may be found within periods ranging from six months to two years. Even if a location were found within the shorter period, by May 1980, it is unrealistic to accept the proposition that the license would become fully operational during the 1979-

80 term in light of probable renovations and contractual negotiations. Therefore, it would be a meaningless gesture and a futile exercise to authorize the petitioner to make an application for renewal of the said license for the current term, even if its application to renew said license were granted by the Common Council of the City of Englewood.

Accordingly, it is, on this 19th day of December, 1979,

ORDERED that the Petition of the Great Atlantic and Pacific Tea Company, Inc. for authorization by the Director to apply to the Common Council of the City of Englewood for renewal of its pleantry retail distribution license for the 1979-80 license term be and the same is hereby denied.

Joseph H. Lerner,  
Director

Appendix - Initial Decision Below

IN RE:	)	<u>INITIAL DECISION</u>
PETITION OF THE GREAT ATLANTIC AND	)	OAL DKT. NO. ABC 2442-79
PACIFIC TEA COMPANY, INC.	)	AGENCY DKT. NO. -
PURSUANT TO N.J.S.A. 33:1-12.39	)	
(ENGLEWOOD, NEW JERSEY)	)	

## APPEARANCES:

Saul A. Wolfe, Esq.; Skoloff & Wolfe, Esqs.,  
for Petitioner

David S. Griffiths, Esq., Deputy Attorney General,  
for the Division of Alcoholic Beverage Control

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On September 14, 1979 a hearing was held on the petition of the Great Atlantic and Pacific Tea Company, Inc. seeking authorization from the Director of the Division of Alcoholic Beverage Control for a further application to the Common Council of the City of Englewood for renewal of its plenary retail distribution license for the 1979-80 license term.

It is suggested that this decision be read in conjunction with that in A&P, Linden, New Jersey, ABC-2445-79, previously filed. The record in the present case closed on October 25, 1979.

At the hearing in the instant matter a special ruling of the Director dated July 5, 1978 was admitted into evidence as R-1. In this ruling the Director found that the A&P had established good cause to warrant a further application for renewal of its license for the 1978-79 license term. Additionally, inadvertently, an affidavit of service of a copy of the verified petition for renewal authorization on the Municipal Clerk of Englewood was not admitted into evidence during the Englewood hearing. Rather, at the outset of the Tenafly hearing the Englewood matter was reopened to admit the affidavit into evidence as P-1.

Thoms P. Quinn testified that the A&P store in which the license was located was on West Street in Englewood and that the store was about 12,500 square feet. When it was decided to close the food operation in Englewood it was also decided to continue the liquor, wine and beer operation. Consideration was given to taking over the entire store on West Street for the liquor, wine and beer operation but the latter only required between 3,500 to 6,000 square feet.

OAL DKT. NO. ABC 2442-79

A&P attempted to find other locations in Englewood for its liquor, wine and beer operation. Mr. Quinn stated that in March, 1978 he contacted Mr. Rubenstein of A&P's New Jersey real estate office and asked him to put him in touch with a broker to attempt to find a suitable location in Englewood. He could not take the total existing A&P store and operate it.

He commenced working with a Mr. Kerbeykian who reviewed his files. There was not much available. They drove the Englewood market and could not locate anything. Mr. Quinn said that they ended up back at the former A&P on West Street.

The witness said at present negotiations are on going between A&P's plus chain and the landlord of the building on West Street for a lease on the building and leasing space next door to the plus store for a liquor store. A&P has approved the liquor division occupying a portion of the premises with the plus store occupying the remainder.

Mr. Quinn stated that there are other negotiations going on with a drug chain that is willing to take a portion of the building and that the liquor division has approval to locate adjacent to the drug chain should the plus store decide not to go in.

He said the negotiations between the plus division and the landlord have encountered an obstacle. The existing building in West Street has a wooden floor and the plus operation requires a concrete floor. The negotiations, however, are ongoing. He said the liquor division will continue its present intention to seek to operate in Englewood whether or not the plus lease is consummated. Although he preferred to attach to a plus store, he stated that A&P would attach to a well known drug chain, CVS. If that was not feasible, he said A&P wanted to continue to find a location in Englewood at which to operate.

Mr. Quinn, over the objection of Mr. Griffiths, opined that the value of the Englewood plenary retail distribution license was in the vicinity of \$45,000 to \$50,000.

Prior to cross-examination, Mr. Griffiths introduced into evidence as R-1 the special ruling of the Director of July 5, 1978. He asked Mr. Quinn about the references to various sites in the ruling. Mr. Quinn said he did not know about the site where the requisite variance for a supermarket was denied. He felt the second site, suitable for a supermarket, was a lumber yard which was rejected by the company. The third site, suitable for a liquor store, he felt was the West Street A&P. He could not remember any other location.

Edward Kerbeykian testified that he is the sales manager for the Hekemian and Company Realty firm in Hackensack. He said in March or April, 1978 he was contacted by Mr. Rubenstein of A&P in order to locate a premises where A&P could conduct a plenary retail distribution license business in Englewood. He also met Mr. Quinn in order to look for a location in Englewood

OAL DKT. NO. ABC 2442-79

for a retail liquor outlet for A&P. He stated that they had not been able to come up with a suitable location for the store which requires about 3,000 to 6,000 square feet.

The witness said that his office manages the West Street property and that it has been involved in attempting to lease a portion of the premises to CVS. He has reported to his office that the A&P liquor department is available as a tenant for the balance of the premises. There are ongoing negotiations in regard to developing a joint occupancy of the property. He said that the negotiations concerning the plus store are continuing through his office.

The witness said that A&P continues to monitor the market in Englewood for alternate locations but nothing has been found.

On cross-examination Mr. Kerbeykian said that CVS and the plus store are Mr. Sam Hekemian's clients. He has been dealing with Mr. Quinn pertaining to the liquor division.

As to the likelihood that a property will be located in Englewood suitable for an A&P retail liquor outlet, the witness said he is constantly looking and it is possible that in six months or to a year or possibly sooner, something will come up. He said that the type of location in Englewood that A&P seeks is hard to come by. He again said that within six months to a year, certainly something should become available.

On redirect, the witness said he doubted very much whether the landlord of the West Street property would immediately enter into a lease with A&P for a portion of the premises for a liquor store without having the remainder of the premises rented because of the cost of alternations. He explained that this type of negotiation is very difficult because prospective tenants must be satisfied with their respective square footage.

On recross, he further explained that it takes time to develop two occupancies. There must be the right square footage and the right price for both parties. He said it was more likely than not that a deal will develop at the West Street property in the future.

The hearing was closed.

Under N.J.S.A. 33:1-12.39, the applicable statute, the burden is that of the A&P to establish good cause for the Director to authorize it to apply for a renewal of its license.

The Director has indicated that he will determine whether good cause has been established on a case by case basis. He will apply recognized judicial concepts associated with the term. He will also apply, in so far as they are applicable, prior decisions of the Division on the subject. Bulletin 2289, July 27, 1978, dated April 14, 1978.

Good cause means a substantial reason, one that affords a legal excuse. Whether substantial reasons exist is for the court to determine under the facts and circumstances, Pines v. District Court in and for Woodbury County, 10 N.W. 2d 574, 583, 233 Iowa 1284 (Sup. Ct. 1943).

OAL DKT. NO. ABC 2442-79

I have observed the two witnesses, have reviewed the record and have detailed the facts herein. In my judgment, the A&P has established good cause for the Director to authorize it to apply for a renewal of its license. A&P's liquor license is a valuable asset which it intends to operate in Englewood either in a portion of the former A&P store on West Street where rental negotiations are ongoing or at a suitable alternative location in Englewood, the availability of which A&P continues to monitor.

I therefore recommend to the Director of the Division of Alcoholic Beverage Control that he authorize the A&P to apply to the Common Council of the City of Englewood for renewal of its plenary retail distribution license for the 1979-80 license term.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10 (c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
GERALD T. FOLEY, JR., A.L.J.  
Receipt Acknowledged:

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AGENCY HEAD

Mailed to Parties:

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DATE

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FOR OFFICE OF ADMINISTRATIVE LAW

3. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

In the Matter of the Petition of

The Great Atlantic & Pacific  
Tea Company, Inc.

Holder of Limited Retail Distribution  
License No. 0910-43-224-001 issued by  
the Board of Commissioners of Union  
City.

-----  
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Appearing  
for Petitioner.  
David Griffiths, Esq., Deputy Attorney General, Appearing  
for Division.

CONCLUSIONS  
AND  
ORDER

Initial Decision Below

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: November 9, 1979 - Received: November 15, 1979

BY THE DIRECTOR:

No Exceptions were filed to the Initial Decision herein pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein, including the transcript of the testimony, and the Initial Decision, I concur in the findings and adopt them as my conclusions herein. I find that the petitioner has failed to establish good cause, as required by the aforesaid statute.

Accordingly, it is, on this 19th day of December, 1979,

ORDERED that the petition of the Great Atlantic and Pacific Tea Company, Inc. requesting the Director's authorization to apply to the Board of Commissioners of the City of Union City for renewal of its Limited Distribution License for the 1979-80 license term be and the same is hereby denied.

JOSEPH H. LERNER  
DIRECTOR

Appendix

Initial Decision Below

IN RE: PETITION OF THE GREAT	)	<u>INITIAL DECISION</u>
ATLANTIC AND PACIFIC TEA COMPANY, INC.,	)	OAL DKT. NO. ABC 2442-79
PURSUANT TO N.J.S.A. 33:1-12.39	)	AGENCY DKT. NO. -
(UNION CITY, NEW JERSEY)	)	

## APPEARANCES:

Saul A. Wolfe, Esq., Skoloff and Wolfe, Esqs.,  
for Petitioner

David S. Griffiths, Esq., Deputy Attorney General,  
for the Division of Alcoholic Beverage Control

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On September 14, 1979 a hearing was held on the petition of the Great Atlantic and Pacific Tea Company, Inc. seeking authorization from the Director of the Division of Alcoholic Beverage Control for it to apply to the Board of Commissioners of the City of Union City for renewal of its limited retail distribution license for the 1979-80 license term.

It is suggested that this decision be read in conjunction with that in the A&P, Linden, New Jersey matter, ABC 2445-79, the "lead" case in this series. The record in the present case closed on October 25, 1979.

At the hearing the following exhibits were admitted into evidence:

1. P-1, Affidavit of service of a copy of the verified petition for renewal authorization on the Municipal Clerk of Union City.
2. R-1, Special ruling of the Director dated July 5, 1978 wherein he found that the A&P had established good cause to warrant a further application for renewal of its license for the 1978-79 license term.

Thomas P. Quinn testified that subsequent to the closing of the Union City A&P store efforts were made to relocate the license in order to place it in operation in Union City. The company was actively working on a new location but the deal fell through. The license was advertised for sale but there were no responses. Additionally, he said the Union City store was one of the priority stores for the plus operation. Then a decision was made that it would not become a plus store. He stated that, basically, that was all A&P did on it. He said subsequent to the April, 1979 decision of the Plus Division not to open in Union City, A&P has no intention to hold on to its license. Rather, it has applied in the instant proceeding so that it might attempt to sell and place the license with a retailer for use in Union City for \$5,000.

On cross-examination Mr. Quinn stated that he has not contacted any specific potential users. He said he guessed he would have to say he had other priorities in the company. He stated that as of today (September 14, 1979), he was not actively seeking to see that the license was activated. He preferred to wait for the outcome of the instant hearing. He said there was a 90% chance the license would be sold in the next year.

On redirect, the witness said that from April, 1979 until June, 1979 efforts were made to locate a buyer for the inactive warm beer license which A&P held in Union City.

The hearing was closed.

A&P has the burden under N.J.S.A. 33:1-12.39 of establishing good cause for the Director to authorize it to apply for renewal of its warm beer license for the 1979-80 license term.

Good cause means a substantial reason, one that affords a legal excuse. Whether substantial reasons exist is for the court to determine under the facts and circumstances, Pines v. District Court in and for Woodbury County, 10 N.W. 2d 574, 583, 233 Iowa 1284 (Sup. Ct. 1943).

The Director has indicated that he will determine whether good cause has been established on a case by case basis. He will apply recognized judicial concepts associated with the term. He will also apply, in so far as they are applicable, prior decisions of the Division on the subject. Bulletin 2289, July 27, 1978, dated April 14, 1978.

In this case, after reviewing the record, I have concluded that the A&P has failed to establish good cause for the Director to authorize a further application for renewal of its limited retail distribution license. There was no interest in the license by others as is seen by the lack of response to the sale advertisement, a plus store was not going to be opened in Union City and A&P has no intention or plans to hold on to its license. Instead it wants to sell the license to a retailer for use in Union City but the record is devoid of the identity of any specific prospective purchaser. No one has been contacted. At the time of the instant hearing, A&P was not actively seeking to see that its license was put back into active status. It preferred to wait for the outcome of the hearing.

I therefore recommend to the Director of the Division of Alcoholic Beverage Control that he enter a special ruling finding that the A&P has failed to establish good cause for him to authorize it to apply to the Board of Commissioners of the City of Union City for renewal of its limited retail distribution license for the 1979-80 license term.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10(c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

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DATE

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GERALD T. FOLEY, JR. A.L.J.

Receipt Acknowledged:

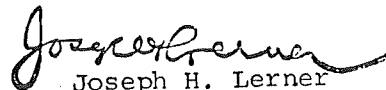
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Mailed to Parties:

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FOR OFFICE OF ADMINISTRATIVE LAW

  
Joseph H. Lerner  
Director