

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 2408

July 27, 1981

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STATE OF NEW JERSEY
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July 27, 1981

1. APPELLATE DECISIONS - MOCKINGBIRD, INC. v. ATLANTIC CITY.

#4424

MOCKINGBIRD, INC.,

APPELLANT,

VS.

BOARD OF COMMISSIONERS OF THE
CITY OF ATLANTIC CITY,

RESPONDENT.

ON APPEAL

CONCLUSIONS

AND

ORDER

Supnick, Mitnick & Vogelsson, Esqs., by M. Allan Vogelsson, Esq.,
Attorneys for Appellant.
Jerome A. Ballarotta, Esq., Deputy Attorney General, for Division.

INITIAL DECISION BELOW

Hon. Sybil R. Moses, Administrative Law Judge

Dated: April 24, 1980 - Received: April 28, 1980

BY THE DIRECTOR:

The appellant has retained this inactive license since March 4, 1976. Upon prior petition, and after hearing, I authorized a further application for renewal of this license for the 1978-79 license term pursuant to N.J.S.A. 33:1-12.39 (Special Ruling dated June 23, 1978).

The affidavit submitted by appellant on May 11, 1978 and proofs thereupon in support of the appellant's request for the 1978-79 license term is almost identical to the affidavit of November 9, 1979 and proofs submitted in support of the appellant's request for the 1979-80 license term. In essence, there is an almost total absence of documented efforts to activate this license during the 1978-79 license term. Subsequent applications under N.J.S.A. 33:1-12.39 must evidence supplemental additional facts exhibiting continued substantial efforts to activate a license. Re Petition of Garrison, Bulletin _____, Item _____ (decided 10/16/79). I do not find same, sub judice.

The appellant has never operated under this license, nor does it intend to do so. It merely seeks to sell the

license, as if it were a marketable asset or property, to help recoup an indebtedness. This type of speculation in a license was specifically indicated as one of the objectives sought to be eliminated by the legislature, and the adoption of N.J.S.A. 33:1-12.39. While the first extensions applied for under N.J.S.A. 33:1-12.39 were given a liberal expense, due basically to the policy change and minimal prior notice to licensees, subsequent applications require closer scrutiny.

Considering the absence of good faith efforts to activate this license, in conjunction with the averred objective to only sell this license, the appellant has not satisfied the statutory requirements for relief.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision, I reject the conclusion of the Administrative Law Judge. I shall affirm the action of the Board of Commissioners and their denial of appellant's application for renewal for the 1979-80 license term.

Accordingly, it is, on this 9th day of June, 1980,

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and the same is hereby affirmed, and the appeal be and is hereby dismissed, and it is further

ORDERED that my Order of November 14, 1979 extending the subject license for the 1979-80 license term pending determination of the appeal be and the same is hereby vacated.

JOSEPH H. LERNER
DIRECTOR

APPENDIX - INITIAL DECISION BELOW

In the Matter of:)	
MOCKINGBIRD, INC.)	<u>INITIAL DECISION</u>
vs.)	OAL DKT. NO. A.B.C. 0945-80
COMMISSIONERS OF ATLANTIC CITY)	Agency Dkt. No. 4424
)	

Appearances:

M. Allan Vogelsson, Esq.
 SUPNICK, MITNICK & VOGELSON
 35 Kings Highway East
 Haddonfield, New Jersey
 for Appellant, Mockingbird, Inc.

Jerome A. Ballarotto, Esq.
 Deputy Attorney General
 Division of Law
 Room 316
 1100 Raymond Boulevard
 Newark, New Jersey 07102
 for Respondent, Division of Alcoholic Beverage Control

BEFORE THE HONORABLE SYBIL R. MOSES, A.L.J.:

This is an appeal by Mockingbird, Inc. to the Director of the Division of Alcoholic Beverage Control from the denial of Appellant's application for renewal of an inactive Plenary Retail Consumption License for the period, 1979-1980. Said application for renewal of its Plenary Retail Consumption License was filed by the Appellant notwithstanding the fact that such license has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the licensed period for which the renewal application was filed.

The application for renewal was filed on May 25, 1979. R-1, in evidence, Vacation of Order, Findings and Special Conditions, at pgs. 9-10, indicates that the Director of the Division of Alcoholic Beverage Control found renewal of certain inactive licenses, including Mockingbird, Inc., to be contrary to the public interest. Said Order was entered on September 26, 1979. On October 11, 1979 the Board of Commissioners of the City of Atlantic City denied the application stating it was contrary to the public interest. Said denial was mandatory pursuant to N.J.A.C. 13:2-3.10(e), which states, "Upon a finding by the Division that the granting of the application would be contrary to the public interest, the Board of Commissioners shall deny the application". N.J.A.C. 13:2-3.10(f) states, "The applicant shall retain the right conferred by N.J.S.A. 33:1-22 to appeal to the Director from the denial of an application by the Board of Commissioners and shall be afforded

a plenary hearing." Timely application for appeal was made on November 9, 1979. The response of the Commissioner of Atlantic City was forwarded to Appellant's counsel on November 26, 1979. In January, 1980, having heard nothing further, Mr. Vogelson wrote to the Division of Alcoholic Beverage Control asking for a hearing date. He received notice of hearing on March 18, 1980. A plenary hearing was held on Tuesday, April 15, 1980 at the Office of Administrative Law, 185 Washington Street, Newark, New Jersey. Appearances are noted above.

The Appellant, Mockingbird, Inc., presented testimony and evidence to establish that good cause existed for authorization to be granted for a further application for renewal of the license.

Harold Pearl, President of Gold Star Vending, (the owner of Mockingbird, Inc.), testified on behalf of Appellant. In 1975, when Mockingbird, Inc. defaulted on its obligations to Gold Star, and as a result of an action in Superior Court, Gold Star Vending was awarded the assets and Plenary Retail Consumption License of Mockingbird, Inc. Since that time Mr. Pearl has been attempting to sell the license. He does not want to activate the license since he does not want to be in competition with taverns in Atlantic City that are customers of his vending machine business.

Mr. Pearl testified several people have been interested in purchasing the license since 1975, but each prospective buyer has been unable to consummate the purchase. For example, in 1977 a Joseph Simms gave a deposit for the license but the deal fell apart. Mr. Pearl indicated he has listed the property with business brokers in Atlantic City, as well as all over the shore area. These open listings included listings with the brokerage firms of Tanenbaum and Milask, Pavulak and Green and Philip Guber, which specialize in taverns. In addition, Mr. Pearl testified he has advertised the availability of the license in the Atlantic City Press, the Camden Courier Post, the Philadelphia Bulletin, the Philadelphia Inquirer and the New York Times. Mr. Pearl has paid the debts and obligations of Mockingbird, Inc., a total of \$23,531.29, in order to get the license released to him. He has not advertised since May of 1979 because of the pending application for renewal and subsequent denial by the Commissioners of the City of Atlantic City.

The sale of the license is presently being negotiated as there is an agreement of sale, A-5 in evidence, which is conditioned upon renewal of the license. The purchasers have a diner on Atlantic Avenue, Atlantic City and will have to ask for a transfer of the license from its present assigned address, 1301 Absecon Boulevard, Atlantic City.

Cross examination revealed that Mr. Pearl had been told that the market price was approximately \$30,000. However, there were no customers at that price and he will accept \$10,000. The original debt owed to Gold Star by Mockingbird was \$4,500.78, which is far less than the cost, to date, of receiving and maintaining the license. Mr. Pearl testified that he had been under the impression his license had been renewed for 1979, since his checks were accepted by both the City and the Division. Cross examination also showed that the license was listed with the aforementioned brokers through

1978-1979, and up to the present time. Since January of 1980 Mr. Pearl has made many phone calls to various brokers to pursue a sale. The newspaper ads were placed on his own and he paid for them out of his own pocket. The testimony showed that Mr. Pearl's application for renewal was timely and made after receiving notice to do so on May 17, 1979 from the local Alcoholic Beverage Control Board.

The following items were marked into evidence during the course of the hearing:

- A-1 Letter from Tanenbaum and Milask
- A-2 Letter from Mr. Pearl to Joseph Simms
- A-3 Affidavit of Mr. Pearl
- A-4 Letter from Pavulak and Green
- A-5 Proposed Agreement of Sale
- A-6 Letter from the Alcoholic Beverage Control Board of Atlantic City
- R-1 Vacation of Order, Findings and Special Conditions by Joseph H. Lerner, Director, Division of Alcoholic Beverage Control

After having observed the witness and listened to the testimony presented on behalf of Mockingbird, Inc., and after having reviewed the evidence, and after having considered the entire record, and after having heard the arguments of counsel, the Court makes the following findings of fact:

1. In 1975 Mockingbird, Inc., license No. 0102-33-159-001, was indebted to Harold Pearl, and Gold Star Vending. As a result of the default of the obligation Mr. Pearl and Gold Star received the assets, including the Plenary Retail Consumption License, of Mockingbird, Inc.
2. The license was renewed in 1976, 1977, and 1978 in the hopes that Joseph Simms, or other persons, would be able to purchase the license.
3. The license is presently assigned to an address at 1301 Absecon Boulevard, Atlantic City, New Jersey.
4. Mr. Pearl has paid a total of \$23,531.29 to cover debts and obligations of Mockingbird, Inc.

5. Mr. Pearl has advertised the license for sale in the Atlantic City Press, the Camden Courier Post, the Philadelphia Bulletin, the Philadelphia Inquirer and the New York Times.
6. Private individuals have been contacted in regard to sale of the license.
7. Various business brokers, active in the sale of taverns, have listed the license for sale, including the firms of Tanenbaum and Milask, Philip Guber and Pavulak and Green. These are open listings and have continued from 1977 to date.
8. Gold Star Vending and Mr. Pearl have no intention of activating the license, as they wish to avoid competition with taverns in Atlantic City that are customers of Gold Star Vending.
9. A Proposed Agreement of sale has been negotiated in April, 1980, between Mockingbird, Inc. and Aristotle Moumas and Constantine Moumas, Country Squire Diner, Inc., to purchase said license for \$10,000, subject to the approval of the various regulatory agencies.
10. Mr. Pearl and Gold Star Vending, on behalf of Mockingbird, Inc., have made active and good faith efforts to sell the license to reputable buyers.

The controlling statute governing a further application for renewal when a license has not been used within a period of two years is N.J.S.A. 33:1-12.39, which says, in pertinent part:

"No Class C license. . . shall be renewed if the same has not been actively used in the connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is filed unless the Director, for good cause and after a hearing, authorizes a further application for renewal;. . ."

The Petitioner has the burden of proof, by a preponderance of the evidence, to show that good cause for authorization by the Director of the Division of Alcoholic Beverage Control for a further application for renewal to the Board of Commissioners of Atlantic City. The interpretation of the phrase, "good cause", depends upon the circumstances of the particular case as judged by the Court hearing the issue. It should be substantial or legal cause as distinguished from an assumed or imaginary pretense. Any act which would be contrary to good cause should be one which adversely affects public decency, sobriety and good order. See Appeal of Ohio Sportservice, Inc. 387 N. E. 2d 498, (Ohio 1976).

The circumstances of this case clearly establish that Mockingbird, Inc. has made good faith efforts to sell its "C" license. Neither the City of Atlantic City nor the Division of Alcoholic Beverage Control has brought forth any testimony or evidence which shows that a renewal of said license would adversely affect the public decency, sobriety and good order. The license had, in fact, been renewed for the years 1976, 1977 and 1978.

I therefore CONCLUDE that the Appellant, Mockingbird, Inc. has established, by a preponderance of the evidence, that good cause exists for the Director to grant authorization to Mockingbird, Inc. to apply to renew its class C Plenary Retail Consumption License for a period of one year, said license to expire on June 30, 1980.

Accordingly, it is HEREBY ORDERED that authorization be granted to Mockingbird, Inc. to make a further application for renewal of its license even though it has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the licensed period for which the renewal application is being filed.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control 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.

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.

2. DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE THAT 2
DISQUALIFIED PERSONS HAD BENEFICIAL INTERESTS IN THE LICENSE -
LICENSEE FOUND NOT GUILTY.

In the Matter of Disciplinary
Proceedings against

Jack's Tavern, Inc.,
t/a Towne Tavern
18 Bloomfield Avenue
Montville
P.O. Pine Brook, N.J.

S-11,540

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption
License No. 1421-33-004-001 issued by
the Township Committee of the Township
of Montville.

Taigman & Ahto, Esqs., by Robert Taigman, Esq., Attorneys for
Licensee.
Mart Vaarsi, Esq., Deputy-Attorney General, Appearing for
Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads "not guilty" to charges alleging that:
(1) in its application for its alcoholic beverage license of
June 13, 1977, it failed to disclose that John Bock and Thomas
Catanzaro had a beneficial interest in the license; and (2)
that John Bock was disqualified from exercising an interest in
a liquor license because he is a police officer and is prohib-
ited from holding an interest in such license, and that Thomas
Catanzaro was disqualified from exercising an interest in a
liquor license because he has been convicted of a crime invol-
ving moral turpitude; in violation of N.J.S.A. 33:1-25.

At the outset of the hearing, certain facts were stipu-
lated. The licensed business was purchased at a price of
\$180,000.00 of which \$140,000.00 was advanced and secured by a
purchase money mortgage. The mortgage was divisible: \$55,000.
on the realty and \$85,000.00 on the business. The amount paid
as balance, \$40,000.00 was made up by two contributions, each
in the amount of \$20,000.00 furnished by Mrs. Catanzaro and
Mrs. Bock, respectively. Mrs. Bock secured her \$20,000.00 by
way of a mortgage on the family home and the remainder from
savings.

It was further stipulated that eleven documents relating to the business as well as the conviction of Catanzaro would be admitted into evidence.

The Division introduced the testimony of ABC Agent D. He investigated the ownership of the licensed premises and, on November 29, 1977, had a conversation with Linda Bock and Veronica Catanzaro, the two stockholders of the licensee corporation. A statement was then taken from both, based upon a recorded interview with them.

The agent indicated that Mrs. Catanzaro obtained her share of the cash needed for purchase, i.e., \$20,000.00, by way of \$5,000.00 from her parents in law, \$5,000.00 as a loan from a friend (John Pinto) and \$10,000.00 from her husband, Thomas. Of the aforesaid \$10,000.00, \$6,000.00 was represented by a check from Catanzaro and Sons, and made payable to Linda Bock. The John Pinto from whom she received the \$5,000.00 loan had a refuse disposal business and parked some of his trucks on her property.

The business check referred to in the amount of \$10,000. was from a business in which her father and husband are joint owners.

Agent D. stated that Veronica Catanzaro operates the business and during his investigation he has never seen John Bock or Thomas Catanzaro on the premises. The agent also stated on cross-examination that his investigation disclosed no participation in the operation of the business by either John Bock or Thomas Catanzaro.

The licensee called upon Melvin Liebeskind, Veronica Catanzaro, Francis Catanzaro, Anthony Palumbo, Linda Bock, Clarence Smith, Richard Campanalong and Bernie Dooley to testify in defense of the charges.

Liebeskind, the former owner, testified that, during the negotiations for the sale and the closing of title, he never met the buyers' husbands. The women, Veronica and Linda, were the only participants to the purchase. Veronica Catanzaro testified that she and her family had been connected with Biase's Restaurant in Newark which has a long history in the restaurant business. After doing bookkeeping work for her father and husband in their business, she longed for return to the restaurant business. Her aunt and uncle (of Biase's Restaurant) promised to assist her in operating any restaurant she would purchase. Her life-long friend, Linda Bock, agreed to come into the prospective business venture with her.

Francis Catanzaro testified that her daughter-in-law, Veronica, is a very bright girl and had expressed a desire to purchase the subject license and asked her for a loan of \$5,000.00. She admitted the check was made payable to her son, but was immediately endorsed over to Veronica and Linda. She was firm in denying that her son had anything whatever to do with the business.

Veronica Catanzaro's father, Anthony Palumbo, testified that he was owed \$9,000.00 from his business and, when his daughter wanted to purchase Jack's Tavern, he advanced to her a loan in that amount. Veronica's husband had nothing to do with the business. He confirmed that his daughter had been oriented to the restaurant business for most of her life.

The accountant for the licensee, Clarence Smith, testified that the prospective purchasers of the subject license contacted him for the purpose of examining the books of the business they were interested in purchasing. The two women did so without any participation whatever by their husbands. Thereafter, when the purchase of the business was consummated, he was retained as accountant for the new owners as well. It was his belief that, as he had never heard of either husband interjecting himself in the operation of the business, the business was the sole property of the women.

Richard Campanalunga testified that he was contacted to construct a walk-in box in the subject tavern and did so. His agreement was made solely with Veronica Catanzaro and, during the construction, he did see Linda Bock in the premises. He never saw either husband there, nor heard any reference to either.

The bartender, Bernie Dooley, testified that he was a long acquaintance of both owners of the licensed premises. The husbands of neither have any connection with the business whatever. The only times that he sees either, whom he has known for years, is on rare occasions when either might visit for lunch or for a drink. On those occasions they would pay as would any other patron.

The other owner of the capital stock of the licensee corporation, Linda Bock, testified that she is a marketing assistant for the Bell Telephone Laboratories. She described her associate, Veronica Catanzaro, as a lifelong friend who on an occasion spoke to her about the possible purchase of a restaurant. She became interested, and in consequence, joined in the opportunity to buy the subject licensed business.

Linda Bock further testified that she visits the premises almost every night just to keep an eye on the operation and to assist wherever she can. Her husband does not accompany her nor does he participate in the business whatsoever. He is a full-time police officer and has no outside business activity. She knows without having made prior inquiry of this Division that her husband is prohibited from having any connection with the licensed premises and he has none.

In adjudicating matters of this kind we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnett, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

From the evidence presented, it is manifest that the licensees became the owners of the licensed business as their own act and without any active participation by their disqualified husbands. Veronica Catanzaro has had a long family relationship with a well-known Newark restaurant and has long cherished the hope of having her own restaurant one day. Towards that goal she, with her girlhood friend who has independent earnings and assets, joined in her ambitious project.

The Division presented no evidence whatever in support of the charges, other than part of the money needed to acquire the business flowed through the husband of Veronica Catanzaro when he endorsed his mother's check for use in the purchase. In respect to the total purchase price of the business, i.e., \$180,000.00, this one check of \$5,000.00 passing through the husband's account, can hardly be accepted as proof that the husband had an interest in the business. With respect to the other husband, a policeman, there was no evidence whatsoever that he had any interest in his wife's business.

In consequence of the total lack of proof in support of the charges, I recommend that the charges be dismissed.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed by the parties pursuant to N.J.A.C. 13:2-19.6.

The circumstances set forth in these charges and the proofs adduced warrant close scrutiny inasmuch as spouses of disqualified individuals have acquired an interest in a liquor license. The classical situation for a "fraud and front" exists.

I specifically reject that portion of the Hearer's Report which indicates only \$5,000.00 of the \$180,000.00 purchase price possibly constitutes the participation of the disqualified spouses. I find that, of Linda Bock's investment, \$17,500.00 of the \$20,000.00 came from joint funds of the husband and wife, with the husband assuming contractual responsibility to repay \$15,000.00 (second mortgage on residence). Of the \$20,000.00 Linda Cantanzaro contributed, all were the result of loans which were not evidenced by promissory notes, had no repayment schedules, were unsecured, and are directly related to her disqualified husband. Specifically, her father-in-law and mother-in-law lent \$5,000.00; her father-in-law and husband's business lent \$10,000.00, and her husband's friend lent \$5,000.00. Clearly, the majority of the funds actually needed to acquire the license and licensed premises originated from the disqualified spouses or their family and friends.

I am also cognizant of statements from the principals of the licensee which indicate that the corporation formed to acquire the licensed premises, Cantanzaro & Bock, Inc. have engaged the services of John Bock for alleged carpentry work on the licensed premises, and Thomas Cantanzaro for alleged demolition and fill services. Checks for these services came from the corporate liquor licensee's account. It is quite apparent that a vehicle to funnel receipts from liquor related revenues to the disqualified individuals has been established.

However, while I disagree with the Hearer's statement that there is a "total lack of proof in support of the charges", I am cognizant that the purchasers apparently negotiated the agreement without the participation of their spouses. Nor is there any proof that the disqualified spouses perform any day-to-day services in the operation of the licensed business. Lastly, I recognize that the \$140,000.00 purchase money mortgage taken back by the seller is the sole obligation of the corporate stockholders, with no obligation on the part of the disqualified spouses.

In balance, I am not satisfied that the proofs disclose a violation by a preponderance of the evidence. My conclusion is solely based upon the record before me at this time. I can perceive myriad problems and violative situations if the licensee continues or expands the practice of retaining the disqualified spouse for services allegedly necessary to the licensed premises. In addition, the specific contractual relationship between the licensee corporation and the realty corporation should be defined and embodied in writing to prevent diversion or commingling of funds.

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

Accordingly, it is, on this 13th day of June, 1980,

ORDERED that the licensee be and the same is found "not guilty" of the charges preferred; and said charges be and are hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

- 3. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF JOHN W. WRIGHT, ET ALS.

In the Matter of the Petition of

John W. Wright, Helen G. Wright,
John W. Hand, Jr., Elizabeth T.
Hand, John A. LaGross

CONCLUSIONS
AND
ORDER

} Holders of Plenary Retail Consumption License No. 0502-33-026-001 issued by the City Council of the City of Cape May.

OAL DKT. NO. ABC 2832-79

George M. James, Esq., Attorney for Petitioner.

INITIAL DECISION BELOW

Hon. Norman D. Smith, Administrative Law Judge

Dated: May 8, 1980

Received: May 9, 1980

BY THE DIRECTOR:

No Exceptions to the Initial Decision Below were filed by the petitioners herein.

Having reviewed the facts and circumstances herein, including the transcript of testimony and the Initial Decision, I concur in the findings and recommendation of the Administrative Law Judge, and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of June, 1980,

ORDERED that the petition filed by the petitioner herein be and the same is hereby denied.

IN THE MATTER OF THE APPLICATION
 OF JOHN W. WRIGHT, HELEN G. WRIGHT,
 JOHN W. HAND, JR., ELIZABETH J. HAND,
 AND JOHN A. LA GROSSE for authoriza-
 tion to renew P.R.C. License #C-3
 issued by the City of Cape May, Cape
 May County, for the License Year
 Commencing July 1, 1979.

: INITIAL DECISION
 :
 : OAL DKT. NO. ABC 2832-79
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 :
 :
 :
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APPEARANCES:

George M. James, Esq., on behalf of the
 Petitioners John W. Wright, et al.

WITNESSES:

John W. Hand, Jr.,

EXHIBITS:

- P-1 Leter of 6/28/78
- P-2 Philadelphia Enquirer article 8/1/78
- P-3 The Press article 8/1/78
- P-4 Cape May Star & Wave article 8/16/79
- P-5 Cape May Star & Wave article 7/12/79

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

The petitioner filed a verified petition with the Division of Alcoholic Beverage Control requesting permission to renew his class C liquor license even though it had not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application was filed (1979-1980 license term), pursuant to the provisions of N.J.S.A. 33:1-12.39. 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.

The hearing scheduled for October 30, 1979 was continued until November 30, 1979 at the request of petitioner's attorney, George M. James, Esq., when it appeared that certain proofs would be required to be presented to meet the good faith criteria of the statute. Three points were required by the undersigned to be presented to meet the 30, 1979 conference. On November 3, Mr. James wrote to the undersigned and promised to file a memorandum on those three points "within the next ten days." At the conclusion of the hearing on October 30 Mr. James apologized for not having filed the memorandum and requested an additional two weeks

within which time he would prepare and file it. The request was granted and Mr. James agreed to file the memorandum by December 15.

On March 20, 1980, as a result of a call from my secretary, Mr. James' secretary promised that the brief would be on its way. On March 28, 1980 Mr. James' secretary wrote a letter to my secretary that the brief would reach me by April 15 at the latest. I closed the record on April 15, 1980. However, as of May 7, 1980 I have not received the memorandum from Mr. James.

I find the following facts from the representations of Mr. James and the evidence before me:

The petitioner filed a similar application the previous year for permission to renew his license for the license term of 1978-79. That application was denied by Director Lerner in a letter dated June 28, 1978 (P-1). The license for the 1977-1878 license term expired on June 30, 1978 by force of statute. N.J.S.A. 33:1-26. Therefore, no valid license existed for the license term 1978-1979.

Since there is no license to renew, petitioner's application for permission to renew is denied.


This recommended decision may be affirmed, modified or rejected by the head of agency, Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency 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.

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

4. STATE LICENSES - NEW APPLICATION FILED.

Jaybee Supply Corporation
230 Tonnele Avenue
Jersey City, New Jersey

Application filed July 24, 1981
for place-to-place transfer of
a limited wholesale license from
326 62nd Street, West New York,
New Jersey.



Joseph H. Lerner
Director