STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2126 January 2, 1974

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2126

January 2, 1974

1. APPELLATE DECISIONS - BLUE NOTE LOUNGE, INC. v. PATERSON - E A V LIQUOR & BAR, INC. v. PATERSON.

Blue Note Lounge, Inc., t/a Edimac, Appellant, v. Board of Alcoholic Beverage Control for the City of Paterson, Respondent.	On Appeal
E A V Liquor & Bar, Inc., Appellant, v. Board of Alcoholic Beverage Control for the City of Paterson, Respondent.	CONCLUSIONS and ORDER

Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq., Attorneys for Appellants
Adolph A. Romei, Esq., by Ralph L. De Luccia, Jr., Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is a consolidated report respecting two appeals by both appellants who allege that the action of the Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) was arbitrary in denying renewal of their respective licenses for the current license period. A common question of law and fact exists in both appeals and both appellants are represented by the same attorneys who filed the appeals in joint effort.

The petitions of appeal in both matters contended that the Board denied renewal of licenses upon the sole ground that the license fees were not paid when in fact the fees were paid in both instances, albeit the checks used in payment were incorrectly marked "insufficient funds" by the same bank. Although the Board denied the contentions, it was apparent from the context of the denying resolutions that the failure of appellants to have paid the appropriate fees was the sole ground for denial of renewal of the licenses.

The appeals were heard de novo in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded all parties to present evidence and to cross-examine witnesses.

Testifying upon behalf of the Board, William W. Harris, Secretary of the Board, described the custom and procedure used by the Board in collecting and disposing of the annual license fees received. He indicated that license fees received by him are turned over to the tax receiver; when checks are not honored, the tax receiver advises him and he in turn contacts the licensee by telephone. Of the more than three hundred fifty licensees in his city, a few each year pay by dishonored checks; however, almost all licensees subsequently make valid payments. The Board has considered requiring licensees to pay by cash or certified check, but did not adopt such policy because it felt that the custom would cause inconvenience to the great majority of compliant applicants.

In reference to the applications of appellants, he received, with each application, check in the requisite amount from one Lawrence Bland in the form of a check payable from his individual account drawn on the Franklin Bank. These checks were presented to this witness about June 11, 1973, and four or five days thereafter he learned from the tax receiver that both checks had been returned marked "insufficient funds." He thereupon made a telephone call to a Corrine Kline, the sole stockholder of appellant Blue Note Lounge, Inc., and advised her of the dishonored check. Two days later Lawrence Bland visited him and informed him that sufficient funds were then in the account. Bland did not then make a payment but indicated that he would speak to a bank officer. Shortly thereafter an officer of Franklin Bank called Harris and indicated that Bland's account had been closed out because of "irregularities." At no time thereafter was the check made good or redeposited for collection; at the time of the Board's meeting and consideration of this application the fee had not been paid.

In conjunction with appellant E A V Liquor & Bar, Inc., Harris indicated that he knew Bland had some connection with it, and the circumstances surrounding the check for E A V Liquor had the same pertinency as the companion check given for Blue Note. In any event, he made no contact to anyone concerning the invalid check of appellant E A V Liquor.

Lawrence Bland testified that he is a businessman of Paterson and is a friend of the principals of both Blue Note Lounge and E A V Liquor, appellants. He is neither an employee nor did he have any business connection with either appellant. However, Corrine Kline of Blue Note received her license and redecorated the premises a short time ago and Bland assisted her because his son is employed in her establishment. He received a check of $1,000 from Kline which was repayment for funds he had expended on her behalf and for the amount of the license fees. He also has a long-standing friendship with Gaetano Verducci, the principal stockholder of appellant E A V Liquor. Verducci recently suffered a heart condition, so Bland advanced the license fee from his own funds.

He recounted a lengthy series of bank visits in an attempt to overcome what he alleged to be a bank's mistake in dishonoring his checks. His bank statement for June was offered into evidence in support of his contention that there were adequate funds on deposit from which both checks could be paid. Additionally, he advised that he had on deposit in escrow with his attorney a sum in excess of $6,500 from which any needed funds could be instantly paid. He explained that he expected that the dishonored checks would have been redeposited well within time and such redepositing would have resulted in complete payment. A series of checks was offered into evidence, showing that the Franklin Bank had honored checks of his subsequent to one that had been marked "account closed;" he related that his son has an account which was closed and the two accounts were confused by the bank.

It is axiomatic that the requisite fee must accompany a license application. From the inception of this Division, its Director (then Commissioner) Burnett ruled that an application unaccompanied by the fee was empty, saying, "The [Borough Council] is right. It should not have accepted the application at all unless it was accompanied by the proper fee. The Statute expressly so provides. The wisdom of the Statute is exemplified by the present controversy. In the absence of such statutory provision the applicant could gamble on the issuance of a license - if not granted, the municipality would do all the work but could not collect its investigation fee." Bulletin 15, Item 1.

Shortly thereafter Commissioner Burnett in a similar matter held, "Appellant failed to submit the license fee either with his application as required by Section 22 of the Control Act, or thereafter.... This of itself was sufficient to justify respondent in denying the license." Dries v. Hsinesport, Bulletin 191, Item 6. Cf. Bodine v. Hope, Bulletin 769, Item 10.

The rule was again enunciated in Blackwell & Teitge v. North Plainfield, Bulletin 779, Item 8, which held, "... full fee ... was not deposited with the issuing authority at the time of filing the application, or at any time thereafter. Either or both of the foregoing reasons are sufficient to justify the respondent's denial of the appellants' application."

The broad principle enunciated relates to the non-payment of the required fees and, since its last enunciation in 1947, has not thereafter been restated or further clarified.

In the matters sub judice, the payment of the expected fees was made, albeit the checks representing payment were thereafter uncollectible. The issuance of a check carries with it a presumption of payment, rebuttable upon dishonor.

> "The legal concept that a check (duly honored thereafter) is payment upon its delivery to and acceptance by the payee is in accord with common business understanding. See Abeles v. Guelick, 101 N.J. Eq. 180, 182 (Ch. 1927); Mackie v. Bayonne, 10 N.J. Misc. 1055, 1059 (Sup.Ct. 1932)."

Hayes v. Federal Shipbuilding & Dry Dock Co., 5 N.J. Super. 212, 214 (App.Div. 1949).

Hence, concurrent with filing of the applications, the fees were offered and accepted. The Board's custom to accept non-certified checks leads to the possibility that from time to time, for one or another reason, checks offered would prove valueless. Board Secretary Harris candidly admitted that, in situations where worthless checks were presented, a mere call to applicants resulted usually in immediate validation.

Bland, the voluntary agent of both appellants, unquestionably believed adequate funds were available to meet the checks and, when advised of the bank's intention not to honor the checks, allowed himself to be deluded as to the time-requirement to arrange restitution. His assurances to both appellants that adequate funds were available in turn compounded the problem.

Certainly the situation here presented is that of a well-intentioned businessman who had ample funds and so delayed payment as to place in terminal jeopardy the licenses of his friends. Had the Board's custom of informal notice to improper check-writers been balanced by severe written notice of consequences, the irregularities here would not have happened.

It is beyond question that the payment of required fees, at the time of the filing of an application, is a requisite to the grant of license. Appellants believed that the fees were paid and, although that belief was founded upon a misconception, appellants'

good faith is not in controversy. Referring again to an early decision of Commissioner Burnett, he held that, "... It would be utterly unfair under these circumstances and at this juncture either to refuse them licenses, Berkelhammer v. Trenton, Bulletin 28, Item 5, or to declare their present licenses void and to condemn good citizens as unwitting criminals.... No punishment should or will be inflicted on honest licensees who without fault on their part have been placed in this invidious position." Goldberg and Taylor v. Lincoln Park and Marshall, Bulletin 733, Item 1.

Following that early determination, the Legislature in 1947 enacted N.J.S.A. 33:1-12.18 which permits of renewal for license applications which were not filed in time because of circumstances "beyond control" within sixty days of the expiration of the license renewal period.

In a matter obliquely similar to the matter sub judice, the Director determined that a failure to renew because of a misconception of the statutory requirements should not debar a licensee from effectuating renewal beyond the renewal date. See Albert C. Wall, Inc. v. Gloucester City, Bulletin 1997, Item 2. In that matter the Director said: "Without intending to suggest a course of action in similar situations, a short letter from the City Clerk to the licensee indicating its name was not included in the initial renewal resolution, and that such loss of license could be irretrievable might well have obviated this appeal or the difficulties in which the licensee found itself."

In the instant matter, the Board's action was technically proper in accordance with the clear statutory mandate. However, fairness is the touchstone of the administrative process. I find that appellants acted in good faith and had no intention to evade the statutory requisite with reference to the payment of the requisite fees.

The Board presently has appellants' applications, presumably in proper form, in hand and presently holds the requisite license fees in escrow pending determination of these appeals.

For the reasons aforesaid, it is recommended that the action of respondent Board be reversed, and that it be directed to accept the fees held by it in escrow and renew appellants' licenses for the 1973-74 license period nunc pro tunc in accordance with the applications filed therefor.

Conclusions and Order

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

Having carefully considered the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 30th day of October 1973,

ORDERED that the action of respondent in denying renewal of appellants' plenary retail consumption licenses be and the same is hereby reversed; and it is further

ORDERED that the Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby directed to renew appellants' plenary retail consumption licenses for the 1973-74 license period nunc pro tunc in accordance with the applications filed therefor.

Joseph H. Lerner,
Acting Director.

2. APPELLATE DECISIONS - MARILYN CORPORATION v. PATERSON ET ALS.

Marilyn Corporation, t/a Marilyn Liquors,

Appellant,

v.

Board of Alcoholic Beverage Control for the City of Paterson, and Anthony De Nova, Jr. and Nicholas De Nova,

Respondents.

On Appeal

CONCLUSIONS and ORDER

Frank Catania, Esq., Attorney for Appellant
Adolph A. Romei, Esq., by Ralph De Luccia, Jr., Esq., Attorney for Respondent Board
Raff & Passero, Esqs., by Robert J. Passero, Esq., Attorneys for Respondents De Nova

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which on July 11, 1973 adopted a resolution granting a person-to-person and place-to-place transfer of a plenary retail distribution license from Milton Eisner, t/a Ross Drugs, to appellants and from premises 220-222 West Broadway to premises 424 - 6th Avenue, Paterson.

The resolution conditioned the place-to-place grant on subsequent approval of the Board of Health of Paterson for the new location.

The petition of appeal directed its attention to the place-to-place transfer; no challenge was advanced as to the person-to-person transfer to respondents De Nova. The resolution was attacked upon the grounds that (a) the Board considered its action of approval to be mandatorily required of it; (b) the action was contrary to the best interests of the public, and (c) an undue hardship to present licensees in the area would result.

The Board denied appellants' substantive contentions.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to present evidence and cross-examine witnesses. By stipulation, the transcript of testimony taken at the hearing before the Board was admitted into evidence pursuant to Rule 8 of State Regulation No. 15, together with a copy of the resolution adopted, a map of the pertinent area of the City, and a set of petitions offered in support of the Board's action.

No witnesses other than William W. Harris, Secretary of the Board, were called. He testified simply in explanation of the condition imposed on the license, indicating that approvals of the health, fire and other municipal departments are often sought prior to the action of the Board and, where an opinion has not been received, a grant of license is sometimes conditioned upon approval received thereafter.

Appellant advanced two particular contentions. The first concerned itself with a statement made by one of the members of the Board who, at the conclusion of the hearing before it, made the following statement:

> "Commissioner Hawk: I propose the following resolution, that the transfer be granted and that by law, as we see it, there is no foundation to deny it inasmuch as they have met all of the requirements of the department ... as to that license. We would be without legal standing if we were to deny it...."

The statement of the Board member must be read in context with the full proceedings before the Board. That hearing consisted mainly of oral argument by the respective counsel for the applicant and the objectors, expressing the opinions of their clients. The objectors were competing licensees in the area. Their objections were directed toward the possible loss of business to them. No testimony was elicited from them or others concerning the statements given by their counsel relative to parking and traffic problems that could develop by reason of the proposed transfer. Hence the member's statement that "there is no foundation to deny it" can only refer to the absence of any support to the argument against the transfer. Conversely, applicant provided the Board with the required data upon which its determination could be made. Thus the member's statement, supra, will not be viewed in the manner suggested by appellant.

A remaining contention advanced by appellant concerns a prior action of the Board rejecting the proposed site as a location for a liquor license. Appellant's counsel advanced the thesis that, as the Board previously rejected the same site and, on appeal to this Division, the Director affirmed that action, the Board could not now approve it as the previous determinations were res adjudicata. This contention is manifestly unfounded. The prior action, A. & N. Enterprises, Inc. v. Paterson, Bulletin 1915, Item 3, was initiated in 1969 by an application for transfer to the subject premises. The Board denied the application and the Director affirmed. That affirmance was predicated on the then determination of the Board that the area was adequately served by liquor facilities and, having thus concluded, its determination should not be disturbed. The Director followed long precedent established by the courts, citing such doctrinal decisions as Blanck v. Magnolia, 38 N.J. 484 (1962); Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App.Div. 1955); Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960); Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970). That precedent requires the Director to affirm the actions of the local issuing authority as long as those actions are neither arbitrary nor unreasonable.

A fundamental difference exists between the A. & N. Enterprises, Inc., supra, situation and the present matter. In the former an objector persuaded the Board that the location would not be advantageous to the area and he, as a neighbor,would be negatively affected. In the instant matter there were no objectors other than two licensees (the appellant being one), whose businesses may suffer economic losses if the application were approved. However, it is a well established principle that, in any conflict between a licensee's financial concern and the public interest, the latter must prevail. Smith v. Bosco, 66 N.J. Super. 165 (App.Div. 1961).

In addition, in the almost four years that have elapsed since the rejecting resolution was adopted, the Board may well be guided by a different philosophy and view the sociological conditions with a different perspective. Whatever thought-processes were engaged in by the Board is immaterial as long as there was a basis of logic and concern for the public good as a motivating factor. Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949).

The burden of establishing that the action of the issuing authority was erroneous and an abuse of its discretion rests solely with appellant. Rule 6 of State Regulation No. 15. Appellant has not proved that the resolution adopted was the result of any unreasonableness or improper motivation by the Board. In short, appellant has established nothing further than the uncontroverted fact that the approved transfer may result in some financial disadvantage to appellant and other licensees in the area.

I therefore find that appellant has not met its burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be affirmed, and the appeal 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 entire record herein, including transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 1st day of November 1973,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner,
Acting Director

3. APPELLATE DECISIONS - FELICETTA v. WALLINGTON.

Joseph Felicetta, t/a Papa Joe's, Appellant,	)	
v.	)	On Appeal
Mayor and Council of the Borough of Wallington, Respondent.	)	CONCLUSIONS and ORDER

Teltser, Byrne, Greenberg, Margolis & Franconero, Esqs., by Herbert S. Ford, Esq., Attorneys for Appellant
Gruen, Sorkow and Sorkow, Esqs., by Donald R. Sorkow, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of respondent Mayor and Council of the Borough of Wallington (hereinafter Council) which on June 13, 1973 denied the application of appellant Joseph Felicetta for a place-to-place transfer of his plenary retail consumption license from premises 54 Lester Street to 70 Wallington Avenue, Borough.

Appellant alleges that the action of the Council was erroneous in that it was unreasonable, capricious and arbitrary. The Council denied this contention and defended that it acted for

the reasons set forth in its adoptive resolution as follows: (1) the present licensed premises was the scene of numerous disturbances requiring police intervention, (2) forty citizens petitioned against the transfer being granted, (3) there are inadequate off-street parking facilities, (4) excessive traffic problems would be created, and (5) appellant's present facility constitutes a nuisance.

At the outset of the de novo hearing in this Division pursuant to Rule 6 of State Regulation No. 15, the Council noted that the submission of aforesaid resolution constituted its answer to the petition, and expressed the reasons for its determination.

By stipulation, a sketch of the area showing the existing and proposed location of appellant's premises, police records pertaining to appellant's existing premises, and photographs of the proposed site and adjacent area were admitted into evidence.

The testimony of appellant Joseph Felicetta revealed that his present location at 54 Lester Street is located in a building whose landlord has refused to renew the lease unless the rent was trebled. The licensed business cannot afford such rental, hence he sought other premises. The search resulted in a lease he entered into for the proposed premises, rental for which is $200 monthly, one hundred dollars a month more than he now pays but one hundred dollars a month less than the rent demanded at his present location.

Upon learning that an objection to his proposed site was inadequacy of parking, he obtained a written commitment to have parking accessible on the grounds of a neighboring tavern, a half-block away from the proposed location. The expected monthly cost to him of this additional parking area is to be forty-five dollars. He further stated that he obtained his present license during the 1967-68 license period; the place was run-down and catered to an objectionable patronage. Before he was able to "clean out" undesirable customers, he was subjected to a three-months suspension. There was a further complaint arising out of excessive noise from a juke box in the establishment. He has had no difficulties in the operation of his establishment during the past four-and-one-half years.

Respondent produced testimony of Lieutenant John Sondey of the Wallington Police Department; Walter M. Slomieski, owner of an adjacent tavern; Jasper Morici, owner of an apartment house directly across the street from the proposed location; Sophie Toloczko, superintendent of that apartment house; Genevieve Van Varick, a resident of that apartment; Julian Kolanski, owner of a travel bureau located diagonally across the street from the proposed location, and Stephen J. Cesar, owner of a TV repair service located diagonally opposite the proposed location.

The totality of the testimony adduced on behalf of the Council can be distilled into a major allegation in support of its action, viz., that there is no adequate parking available on the street or for off-street parking at the present time. Moreover, the proposed location, which did house a consumption license for many years, has no parking available to it. Additionally, the building in which the proposed license would be located has tenants on the second floor who have automobiles for which there is inadequate parking. There is no parking permitted whatever on the side of the street on which the location is proposed.

In addition to the tavern located a short distance from these premises, and on the same block, there is another licensed facility on the nearby corner at which appellant secured a parking concession; but that establishment is so located on the plot it occupies that there is insubstantial parking availability. Testimony introduced respecting the remaining grounds for denial of appellant's application was completely without force.

The burden of establishing that the action of the Council was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et al., Bulletin 997, Item 2; Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (1949). Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director who may reverse its action in the event of any abuse thereof. However, action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store 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 his 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...."

This guiding principle has been more recently restated in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970):

> "... Once the municipal board has decided to grant or withhold approval of a ... application ... its exercise of discretion ought to be accepted on review in the absence

> of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

The parking situation, so onerous to the neighborhood, as well as the vehement objections raised, were considered by the Council in its determination. The attempt of appellant to correct the obvious parking deficiencies appears to be little more than a palliative and certainly not a cure. Wallington Avenue, the street upon which the proposed site is located, is a major thoroughfare of the municipality and, as such, is kept free of parking on one side at all times. The restoration of a licensed premises on that street, almost adjacent to another tavern and among other commercial enterprises, would not be a benefit or a convenience to the community; this the Council found. It is elementary that concern for the licensee's own financial problem will not be elevated above the public interest. Bosco et al. v. Jersey City et al., Bulletin 1353, Item 1, aff'd 66 N.J. Super. 165 (App.Div. 1961); DeCarlo v. Cliffside Park, Bulletin 1144, Item 3; cf. Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App. Div. 1957); Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502, 510 (1947).

Public interest and welfare transcend any financial burdens or concerns of an individual licensee. Nardone v. Jersey City, Bulletin 2103, Item 3.

Following the hearing in this Division, counsel for appellant submitted a memorandum of law contending, among others, that the facts of this matter fell within the scope of one sentence in Smith v. Bosco, 66 N.J. Super. 165 (1961), at p. 169, in which the court stated:

> "... While there might be circumstances in which a landlord's insistence on maintaining past rentals, in the face of depressed local conditions, could arguably be characterized as an 'exorbitant' demand and possibly be held grounds for granting the licensee a transfer, no such situation has been presented by appellant in her proofs."

Counsel argues that appellant's allegation that his rental having been increased from $100 to $300 a month was an exorbitant charge and caused grounds for granting transfer. No proofs, beyond the bare assertion by appellant that such demand was in fact exorbitant, were adduced. Contrarily, the proposed rental of the new premises at $200, coupled with an additional $45 monthly for parking spaces, made available a half-block away, coupled with $10 a month per car in the lot directly across the street, could easily bring the month-

ly rental costs above the $300 demanded by the present landlord. Hence appellant's complaint that his landlord's proposed rental is exorbitant falls in the face of the facts as he has presented them.

Additionally, counsel contends that his patrons would not be transients and many would not come by car. Proofs of the parking difficulties presently experienced by the neighboring tavern owner as well as the business people and residents in the area belie the bland assertion made in the memorandum that the transfer, if granted, would not aggravate the existing problems.

The Council has understood its full responsibility and has acted circumspectly and in the reasonable exercise of its discretion in denying the transfer. I thus conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report were filed within time by appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the transcript of testimony, the exhibits, the memoranda in summation submitted by the attorneys for the respective parties, the Hearer's report, and the exceptions with supportive argument filed thereto which I find were either adequately covered in the Hearer's report or are lacking in merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of November 1973,

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

Robert E. Bower,
Director.

4. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - NO APPEARANCE BY LICENSEE FOR HEARING - PRIOR SIMILAR AND DISSIMILAR VIOLATIONS - ON EX PARTE HEARING LICENSE SUSPENDED 30 DAYS.

In the Matter of Disciplinary Proceedings against	)
Jack London t/a Adventure Inn 201 East Delialah Road Pleasantville, N. J.,	) CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-7, issued by the Common Council of the City of Pleasantville.)	)

- - - - - - - - - - - - - - - - - - - -

No Appearance on behalf of Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The following charge was preferred against the licensee:

"On May 4, 1973, you failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by an investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35."

A copy of the charge and a notice that a hearing thereon was scheduled for August 29, 1973, at 11 a.m., mailed to the licensee on July 27, 1973, by certified mail, was returned unclaimed. Subsequently an envelope addressed to the licensee, containing the above-referred to charge and notice, again sent by certified mail, was returned unclaimed on August 23, 1973. Inquiry at the office of the Clerk of the City of Pleasantville revealed that the licensed premises were closed; that the licensee had not picked up his renewal license for the year 1973-74, and that the said renewal license had been picked up by the former licensee.

Thereafter, on September 5, 1973, the Division mailed a copy of the charge, the original notice of hearing and a notice rescheduling the hearing to September 19, 1973, at 11 a.m., to the home address of the licensee as disclosed in his license application, by regular mail. Another copy was sent by regular mail to the licensed premises. Neither was returned to the Division office, and were apparently received by the licensee.

No plea was entered by the licensee, nor did he, or anyone in his behalf, communicate with the Division, nor did he, or anyone in his behalf appear at the date and time set for the re-scheduled hearing.

Accordingly, the hearing was held and proof was presented ex parte.

Agent S testified that, pursuant to specific assignment to investigate an allegation that the licensee was employing a criminally disqualified individual in his business and to make a routine inspection, he arrived at the licensed premises on May 4, 1973, at 10:35 a.m. The licensed premises were closed. He observed two cars parked in the parking lot. Both the front and rear doors were closed. After ringing a bell at the rear door, he again proceeded to the front door. A male, who identified himself as the licensee Jack London, opened the front door. The agent identified himself and stated he was there to make a liquor inspection in behalf of the State ABC. London's denial of entrance to the licensed premises by the agent was punctuated by the use of foul language and the shutting of the door in the agent's face. Thereupon the agent departed the area without carrying out his assignment.

I conclude and find that the Division has established the truth of the charge by a fair preponderance of the credible evidence and that the licensee is guilty of the said charge.

Licensee has a prior record of suspension of license by the Director for fifty days effective May 12, 1973, for permitting unlawful activity on the licensed premises, viz., a lewd show (Re London, Bulletin 2107, Item 3) and by the municipal issuing authority for twenty days effective July 6, 1973, for sale to minors. In view of the recency of the aforesaid record, this may be considered an aggravated circumstance for penalty purposes and I shall suspend the license for thirty days.

Recent investigation by an agent of this Division discloses that the licensed premises are now closed and not in operation. Thus no effective penalty can be imposed at this time.

Accordingly, it is, on this 13th day of November 1973,

ORDERED that Plenary Retail Consumption License C-7, issued by the Common Council of the City of Pleasantville to Jack London, t/a Adventure Inn, for premises 201 East Delialah Road, Pleasantville, be and the same is hereby suspended for thirty (30) days, the effective dates to be fixed by subsequent order.

Robert E. Bower,
Director.

5. STATE LICENSES - NEW APPLICATIONS FILED.

Cosmopolitan Wine & Liquor Corp.
591 Spruce Lane
Franklin Lakes, New Jersey
Application filed December 14, 1973 for place-to-place transfer of Limited Wholesale License WL-46 to include a warehouse at 112 Greenwood Avenue, Midland Park, New Jersey.

Monsieur Henri Wines, Ltd.
200 Riser Road
Little Ferry, New Jersey
Application filed December 28, 1973 for place-to-place transfer of Wine Wholesale License WW-2 from 131-151 Morgan Avenue, Brooklyn, New York & 6 Sellers Street, Kearny, New Jersey.

Castle Imports, Ltd.
101 Park Avenue
New York, New York
Application filed December 28, 1973 for wine wholesale license.

Robert E. Bower
Director