

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

BULLETIN 2188

June 24, 1975

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ITEM

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A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. Additionally, a transcript of the proceedings held by the Board were received in evidence, in accordance with Rule 8 of State Regulation No. 15.

At the hearing before the Board, two objectors, Edward Smith and Willie Ward, asserted that there were wine and whiskey bottles strewn by patrons and that the noise caused by patrons departing during the early hours of the morning is particularly disturbing. Further, Ward was concerned that, if the premises-enlargement were to be granted, the business would be carried on all night.

In substantiation of its application, Shelton Samson, a principal officer of the corporate appellant, testified that the minister of the church located nearby, came to him and praised him for keeping the grounds clean, and for the lessening of problems in the area since he acquired the establishment from the prior licensee. Neither Smith nor Ward had complained to him concerning the operation of the tavern.

At the hearing in this Division, the appellant submitted the testimony of John Newsome, pastor of appellant Church; Robert Broadnax; Lawrence Jerman; and Isaac Kelly. These persons reside near the respondent's tavern. None of them imbibe alcoholic beverages.

The thrust of their objections centered upon exterior noise by young people congregating about appellant's premises, and that any enlargement of such premises would exacerbate the present noisy conditions. Kelly identified himself as a member of the appellant Church. It may be inferred that the other two witnesses were also members of the appellant Church.

In particular, Reverend Newsome, objected to the proposed premises-enlargement because it would attract more patrons and thereby increase the traffic in the neighborhood. The church, which is approximately two hundred feet distant from the tavern was established in the year 1970. The tavern had been in operation at least thirty years prior thereto.

The pastor conceded that he had commended Samson for his cooperation.

Kelly feared that the enlargement would cause the second and third floors to become nuisance areas.

It appeared that none of the witnesses objected to the enlargement of the premises to include a restaurant; they only objected to the enlargement of the premises as it would entail the sale of alcoholic beverages.

Reverend Newsome further testified that, when he saw the notice of the meeting scheduled by the Board to consider the subject premises enlargement application he called the Board and found out that the meeting would be at 7:00 p.m. Thereupon, he requested several members of his church to attend the meeting at 7:00 p.m. Inasmuch as the meeting was held at 5:00 p.m. only two members attended the meeting. The pastor referred to Ward and Smith.

Proof of publication of the notice of application for the place-to-place transfer was received in evidence. I find that publication of the notice was in proper form and, as a matter of fact, no argument was advanced to the contrary.

However, appellant did argue that as a result of being misadvised as to the hour of the meeting to be held by the Board, only two members of appellant Church appeared to articulate their objections to the place-to-place transfer. Thus, it was contended that the action of the Board was procedurally improper. However, appellant has suffered no harm or prejudice since, at this de novo hearing, full opportunity to present evidence and to cross-examine witnesses was accorded. See Cino v. Driscoll, 130 N.J.L. 535 (1943); Rule 6 of State Regulation No. 15.

I find that the reasons expressed by the objectors at the meeting held by the Board to consider place-to-place transfer were, in the main, similar to the objections articulated by the objectors at this de novo hearing. The well-settled principle relating to the grant of a premises-enlargement application is set forth in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970):

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

The following quote from the recent case of Margate Civic Ass'n, v. Board of Com'rs of City of Margate, 132 N.J. Super. 58, 63 (App. Div. 1975) is appropriate:

"The responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-

place or to cover enlarged premises is primarily committed to municipal authorities. N.J.S.A. 33:1-19, 24; Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, Supra. Local boards considering application for such transfers are invested by our Legislature with wide discretion, and their principal guide in making a determination is the public interest. Id., 303; Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). See Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).

Once the local board has made its determination, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control who conducts a de novo hearing of the appeal, making the necessary factual and legal determinations on the record before him. Fanwood v. Rocco, 33 N.J. 404, 414 (1960). However, the rule is well established that the Director will not substitute his judgement for that of the local board or reverse the ruling if reasonable support for it can be found in the record. On judicial review the court will generally accept the Director's factual findings as well as his ultimate determination unless unreasonable or illegally grounded. Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, Supra, 55 N.J. 303; Fanwood v. Rocco, supra, 33 N.J. 414-415."

Therefore, upon consideration of all of the evidence herein, including the transcripts of the testimony and the argument of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Hence, I recommend that an order be entered affirming the action of the Board and dismissing the appeal.

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 the transcript of the testimony, the exhibits, the argument of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of May 1975,

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

LEONARD D. RONCO
DIRECTOR

2. APPELLATE DECISIONS - PENNISI and SILKOWSKI v. GARFIELD.

Salvatore Pennisi and Fred)	
Silkowski, t/a The Midnight)	
Sun,)	
)	On Appeal
Appellants,)	
)	CONCLUSIONS
v.)	and
)	ORDER
Mayor and Council of the City)	
of Garfield,)	
)	
Respondent.)	
-----))	
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for)	Appellant
Anthony J. Sciuto, Esq., Attorney for Respondent)	
Ryan & Sommers, Esqs., by Charles Sommers, Esq., Attorneys for Objectors)	

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants appeal from the action of respondent (Council) whereby it denied appellants' application for the renewal of their Plenary Retail Consumption License C-12, for premises 323 Semel Avenue, Garfield, for the 1974-75 licensing year. The resolution denying renewal was not introduced in evidence.

Upon the filing of the appeal, an order dated June 26, 1974 was entered by the Director extending the term of appellants' 1973-74 license until the determination of this appeal and further order herein.

In their petition of appeal, appellants allege that the action of the Council was erroneous in that it was arbitrary, contrary to the weight of the evidence and an unreasonable exercise of discretion. They also allege that no disciplinary proceedings were instituted by the Council against appellants during the 1973-74 licensing period.

In its answer, the Council justified its action in denying the renewal of the license on the basis of the following finding of fact:

"(a) Excessive noise and nuisance exists in the early morning hours, namely 11:00 p.m. to 3:00 a.m., which has caused great concern and disturbance to nearby and adjoining property owners and residents.

(b) Frequent urinating outside of the premises, on the sidewalks, streets, and adjacent properties.

(c) frequent, illegal parking in crosswalks and in the driveways of neighbors, in and around the licensed premises.

(d) Arguments and fights on sidewalks and streets outside of the licensed premises.

(e) Beer cans and whiskey bottles found in and about the adjacent properties.

(d)(sic) Loud, profane, obscene and abusive language of patrons entering and leaving the licensed premises and outside the licensed premises."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony, and cross-examine witnesses.

At the de novo hearing, the Council relied solely upon the testimony of Carmine J. Perrapato, the Chief of Police. He testified from the police records, which contained entries of various incidents, either relating to appellants' premises or in the general area thereof. The premises are located at the corner of Semel and Steinberg Avenues.

The entries in the police blotter as testified to by the chief and as culled from the reports which were received in evidence, are as follows:

(1) November 6, 1973. A telephone call was received at 11:32 p.m. in which a Mr. Allenfort of 10 Steinberg Avenue, reported malicious mischief to his property, and that the damage was allegedly caused by a patron of appellants' premises.

(2) November 9, 1973. Pursuant to a call made, a summons was issued because a motor vehicle was blocking a driveway in the area of appellants' premises after appellants' premises were closed.

(3) November 18, 1973. A call was received from 10 Steinberg Avenue, wherein it was complained that Allenfort's house was splattered with eggs.

(4) November 20, 1973. A call was received alleging that a car was improperly parked at the corner of Semel and Steinberg Avenues. The police found no violation upon arrival at the scene.

(5) November 24, 1973. An anonymous call was received at 7:50 a.m. alleging that there was a fight in progress in front of 57 Steinberg Avenue. Upon arrival, the police officers found no combatants at the scene.

(6) December 10, 1973 at 1:09 p.m. A resident of 322 Semel Avenue (across the street from the tavern) reported that shrubbery was destroyed sometime during the night. It was alleged that the perpetrator may have been a patron of the tavern.

(7) December 27, 1973 at 11:50 p.m. Mrs. Allenfort of 10 Steinberg Avenue reported that she found a box of pills in the rear yard of appellants' premises. The pills were brought in for analysis. They were found not to contain a narcotic substance.

(8) February 18, 1974 at 11:05 p.m. A call reported a disturbance at the Midnight Sun (trade name of licensee establishment). Upon arrival, patrol units found everything was in order.

(9) March 5, 1974, 12:40 a.m. Report of a fight outside of Midnight Sun. Upon arrival, patrol units found no activity and were directed to recheck the area.

(10) March 5, 1974, 11:55 p.m. An "injured man" fell on the sidewalk at Semel and Steinberg Avenues. He was identified as a resident of Elmwood Park and was taken to a local hospital.

(11) March 21, 1974, 10:20 p.m. A call was received from Allenfort of 10 Steinberg Avenue, reporting torn summons were found at the corner of Steinberg and Semel Avenues. The information was relayed to the Court Clerk.

(12) April 8, 1974, 6:15 a.m. A resident of 22 Steinberg Avenue reported that a car which he had borrowed was stolen from in front of his house. The car was found and alarm was cancelled.

(13) April 16, 1974, 4:50 p.m. Report of a truck improperly parked at subject intersection. Upon arrival, police officer reported that vehicle had departed area.

(14) April 17, 1974, 12:20 a.m. Report made of fight in progress at Steinberg and Semel Avenues. Upon arrival, patrol unit witnessed no activity.

(15) April 18, 1974, 11:48 p.m. Report made of congregating of people and excessive noise at said corner. Upon arrival patrol unit reported corner was "clear and peaceful".

(16) April 22, 1974, 12:31 a.m. This entry is similar to the entry recorded immediately prior hereto.

(17) April 27, 1974, 12:50 a.m. Complaint of noise of cars starting engines in parking lot of Midnight Sun. Patrol cars requested to check cars frequently.

(18) May 1, 1974, 11:35 p.m. This entry is similar to the entry of April 18, 1974, No. 15, above.

(19) May 4, 1974, 2:59 a.m. This entry is similar to the entry of April 27, 1974, No. 17 above.

(20) May 21, 1974, 10:32 p.m. Report made of a car blocking driveway at 31 Semel Avenue. A summons was issued by police.

(21) May 24, 1974, 11:40 p.m. Report made of excessive noise at Midnight Sun. Police unit reported that a male was "pushed to the ground" by a car operated by another male.

(22) May 25, 1974, 12:40 a.m. Husband and wife dispute reported in area of Midnight Sun, and that neighborhood was being disturbed.

(23) May 27, 1974, 11:50 p.m. A patrol car was assigned to check the area of Midnight Sun and other taverns when they close due to problems at closing time.

(24) May 28, 1974, 10:12 p.m. Allegation that motorcycles with motors running congregated at Semel and Steinberg Avenues. The patrol unit dispatched to the intersection reported that eleven motorcycles were legally parked at that intersection, none of the motors were running. The police chief sent a copy of this report to the City Manager on the following day.

(25) May 29, 1974, 2:55 a.m. A patrolman on duty at the subject intersection reported a fight in progress at the intersection as a result of which four persons were arrested.

(26) May 30, 1974, 11:25 p.m. A report was made of horseshoe playing in the area of the Midnight Sun. Officers who responded to the call reported they observed no such activity. A police officer was specially assigned to check the area until 3:15 a.m. A copy of this report was ordered to be forwarded to the City Manager on May 31.

(27) June 8, 1974, 1:15 a.m. A complaint was made of congregating at subject area. The patrol units reported that there was a special officer on duty at the Midnight Sun and that the area was clear.

(28) June 10, 1974, at 12:30 a.m. Police unit dispatched to Midnight Sun to investigate the nature of an alleged problem. The officers reported "dispersed".

(29) June 13, 1974, at 1:40 a.m. A complaint was made of excessive noise at the subject intersection. Patrol unit reported that individuals involved had departed from the area.

(30) June 27, 1974, at 3:00 a.m. A call was received reporting noises in area of subject intersection. The patrol units reported the area was clear.

(31) October 19, 1974, at 1:32 a.m. Mrs. Allenfort of 10 Steinberg Avenue reported there were 10 cars parked in the lot of the Midnight Sun. Patrol units dispatched to scene reported "all peaceful, no violations". (It is noted that this call was logged three weeks prior to the hearing herein which was held on November 7, 1974.)

The police chief stated that, on two or three occasions, neighbors complained of parking, noises and alleged urination by patrons upon leaving the premises. On one occasion, when he drove through the area, he observed parking violations.

Police Chief Perrapato conceded that none of the reports related to incidents inside the licensed premises, and that the noises, disturbances and allegations of illegal parking were not connected with the operation thereof. Furthermore, most of the numerous incidents reported to the police were found to be unsubstantiated upon arrival of the patrol units.

None of the items logged resulted in charges being filed against appellants.

The witness added that he was aware that, at some time prior to the hearing held by the Division to consider this appeal, appellants had voluntarily offered to maintain a uniformed guard on duty on the premises from 11:00 p.m. until closing on Wednesday, Friday and Saturday, and that they would limit their patronage to no more than seventy-five persons at any one time.

Upon being called as a witness by the attorney for the objectors, Salvatore Pennisi stated that he and his co-licensee, Fred Silkowski, commenced operating the licensed premises in June 1973. He recalled having a conference with some of the neighbors wherein they complained of noise, parking, broken hedges and beer bottles and cans in the street. He denied to them that these problems arose through the operation of the tavern. The neighbors suggested that he station a constable outside the premises. Pennisi requested that the neighbors notify him as soon as they observed a violation, so that the perpetrator may be identified and barred as a patron.

Appellants hired a constable for a period of seven months to patrol the exterior of the premises from 9:00 p.m. to closing. A group of motorcyclists patronized their premises only once. Thereafter, he barred them from the premises by placing a sign in the premises to that effect.

During the seven months that the constable was on duty, he did not find it necessary to summon the police. The constable was instructed, as part of his duties, to promote good will with the neighbors.

Prior to the hearing held by the Council to consider appellants' application for renewal of the license he was not informed of, and he had no knowledge of fights, disturbances or urination in the area which impelled him to hire a constable. Most of the bottled or canned items that he found discarded on his steps were products that he never handled.

John Allenfort who resides in a house adjacent to the corner plot whereon the licensed premises are situated, complained of "noises, littering, urinating and that his hedges were disrupted". Several residents met with the licensees in September 1974. The licensees were informed of the aforesaid complaints. Shortly thereafter, a constable was hired by the appellants.

On the night of November 6, 1973, Allenfort observed two patrons, who had exited from the tavern, shove each other which resulted in damage to his hedges. He called the police.

On the morning of November 18, 1973 he summoned the police because he saw eggs splattered on the side of his house. However, he had no knowledge concerning the identity of the person or persons responsible for that condition.

On April 12, 1974 he observed a car parked in front of his house, a male stepped out and urinated and then entered the tavern. Upon exiting therefrom, this male started unzipping his trousers and upon seeing Allenfort with some neighbors the male stopped, crossed the street and disappeared into a dark area.

On May 24, 1974 he heard a commotion in front of the tavern. The constable attempted to disperse the persons involved and one of the individuals knocked down a man, identified as Mr. Costello who resides in the area.

Allenfort next testified that on June 6, 1974 "...this man came along and urinated..." through the gate of a neighbor.

On June 15 or 16, he observed a male sleeping in his yard. He summoned Silkowski (one of the appellants) who awakened the male. The male said that he had been out to a party, and thereafter went to the subject tavern, and he had a compelling desire to sleep.

On August 10, 1974 he observed an individual exit the tavern and urinate in his hedges.

On August 22, 1974 he observed a male urinate in his hedges and thereafter enter the tavern.

Rubbish that had accumulated in the rear yard of the tavern was not removed for a period of two to three months.

Cars have blocked his driveway and he has seen discarded bottles and cans in the area. These conditions did not exist prior to the transfer of the license to the appellants.

In behalf of appellants, Linda Nichols testified that she has patronized the Midnight Sun frequently during the past year and a half; that she is acquainted with other patrons, many of whom reside in Garfield and walk to the tavern; and that, on none of the occasions that she entered or departed the premises in the late night or early morning hours, did she witness disturbances, arguments or urinating outside the tavern or in the area thereof.

Barbara Osborne, who resides around the corner from appellants' tavern, testified that she has patronized it once or twice a week since appellants first acquired ownership thereof. She is acquainted with most of the patrons because they reside in Garfield, and she "grew up with them".

Her testimony concerning the conditions in the area of the subject tavern was similar to that adduced from the previous witness. Additionally, Osborne testified that she has witnessed no litter problem. Parking has always been a problem in the area because the residents have two cars and don't use their own driveway. She has never heard any abusive language or arguments or profanity upon entering or leaving the premises.

Ronald Menhart, who resides one block distant from the subject tavern, testified that, from July 1, 1973 to June 30, 1974, he has had occasion to walk or drive past the tavern in the early morning hours. He has not been exposed to excessive noise or disturbances, nor has he ever observed people urinating or fighting in the streets in the area.

Menhart has been employed as a special officer for the appellants since October 2, 1974. His hours are from 10:00 p.m. to closing. Since that date, there have been no incidents in the area which required his attention except that, on one night, recently, Allenfort reported to him that "...someone down the block took a beer can from his car and put it on the curb." Menhart denied that the beer can came from the Midnight Sun and advised Allenfort to call the police. Minutes later a police car arrived and an officer informed Menhart that he had received a call that "...people are throwing beer cans here". Menhart denied the occurrence of any such incident.

Anthony D. Roskowsky, who is employed as a police officer in Garfield, testified that he responded to a police call reporting a disturbance at the Midnight Sun the date of which he did not recall. Upon arrival he found everything in order. Again, on April 18, 1974 he responded to a call to the premises and, upon arrival, he found everything in order. On another occasion (the date of which he did not recall), while on patrol in front of the Midnight Sun, he received a report of a disturbance at the Midnight Sun. He was speaking to the constable at that time. Roskowsky testified that the report was false.

The attorney for the appellants submitted the names and addresses of four residents of the City of Garfield who were in attendance at the hearing. They were not called to testify. It

was stipulated that their testimony would be similar to the testimony of Osborne and Nichols.

A petition, containing seventy-one signatories, filed with the governing body on May 21, 1974 protesting the operation of the facility and requesting the denial of the renewal of its license was received in evidence.

Also received in evidence was a petition containing approximately two hundred sixty signatories, which states that the signatories are patrons of the establishment and that it is operated in an orderly manner. This petition was prepared subsequent to the denial of the renewal of the license.

The crucial issue in this appeal is whether the action of the Council in denying renewal of appellants' plenary retail consumption license was reasonable under the circumstances presented. It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Council in the first instance and, in order to prevail on this appeal, appellants must show that the action of the Council was unreasonable and a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962).

The dispositive issue is whether the evidence herein justifies the action of the Council in refusing to renew appellants' license. Nordco Inc. v. Newark, Bulletin 1148, Item 2. The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957). A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

It is basic that the action of the municipality must be reasonable in equating the rights of the licensee with the paramount rights of the public. Rajah Liquors v. Div. of Alcoholic Bev. Control, supra.

"It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local issuing authority. Common fairness to the licensee has been the basis for this policy. If undesirable conditions develop...the local issuing authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired."

Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2.

In matters relating to the denial of renewal of licenses, the Director has unhesitatingly affirmed the denial of renewal by the local issuing authority particularly in situations where the licensees have an extensive record of suspensions of license, (Starshock, Inc. v. Pennsauken, Bulletin 2131, Item 1; Greenstein v. Elizabeth, Bulletin 2135, Item 4; The Back Street Lounge, Inc., v. Newark, Bulletin 2138, Item 1.) or when the licensee failed to correct intolerable situations outside the licensed premises. (Delroz, Inc. v. West Orange, Bulletin 2027, Item 2; Silver Edge Corp. v. Newark, Bulletin 2083, Item 2.)

Conversely, the Director has reversed the local action denying renewal of license where the exterior conditions have not been attributable to the licensee. Double E., Inc. v. Jersey City, Bulletin 2137, Item 5; Burks v. Passaic, Bulletin 1967, Item 4; Cf. B&L Tavern, Inc. v. Bd. of Com'rs of Bayonne, 42 N.J. 131 (1964).

Additionally in matters wherein licenses have not been renewed due to inability of the licensee to control the patronage or for many and varied reasons, the Director has reversed the action of the local issuing authority and directed renewal of license for the purpose of permitting the licensee to effectuate a sale of the licensed premises. Red Ranch, Inc. v. Wall Twp., Bulletin 1773, Item 2; Walker v. Newark, Bulletin 1756, Item 1.

Following the doctrine laid down by the court in Lakewood v. Brandt, 30 N.J. Super. 462 (App. Div. 1955) wherein the court stated:

"An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection"

the Director has held that a new owner who is learning the rudiments of managing licensed premises should be accorded a more favorable position where he endeavors to prevent possible infractions. To-Jon Inc., v. Watchung, Bulletin 1946, Item 1.

I have made specific reference to all of the police calls referred to in the testimony of Police Chief Perrapato and which were entered as an exhibit herein. In arriving at a determination herein, I feel compelled to consider Chief Perrapato's testimony (corroborated by a perusal of police blotter entries) that none of the calls made to the police referred to conditions respecting the interior of the premises. Although an inference may be drawn that some of the noises and disturbances in the general area of the tavern may have been caused by patrons who had exited therefrom, I am, nonetheless, mindful that there was no substantial evidence presented to buttress this inference. There was a complete lack of direct evidence relating to the exodus of unruly patrons.

Further, I find that none of the allegations of illegal parking were directly connected with the operation of appellants' premises. Additionally, I have noted that during the one year that appellants have been operating the subject premises no disciplinary charges were instituted against them.

In arriving at a determination herein, I am also mindful that the appellants have not been insensitive of the complaints of their neighbors. The Chief was aware of an offer made by them to maintain a uniformed guard on certain nights of the week and that they would limit their patronage to seventy-five persons. Although the neighbors should not be required to tolerate nuisances of a kind caused by patrons either inside or outside of the licensed premises, I am persuaded that appellants have made good faith efforts to operate their establishment in a satisfactory manner. Thus, they should be given one more opportunity to prove their worthiness to continue operation of their licensed premises upon certain conditions. They are further pointedly advised that they must not allow their patronage to conduct themselves either inside or outside the licensed premises in a manner that may be deemed offensive or illegal.

Thus, having fully considered and evaluated all of the facts herein, I am persuaded that appellants should be afforded an opportunity to prove their worthiness to retain their license. If undesirable conditions develop in the future, the Council always has the authority, which it should promptly exercise, to institute disciplinary proceedings even before the renewed licensing period has expired.

I conclude that the appellants have met their 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.

Thus, it is recommended that the action of the Council be reversed, and that the Council be directed to grant the license to appellants for the 1974-75 licensing period, in accordance with the application filed therefor, subject however, to the following special conditions.

- (a) Appellants shall be required to procure the services of a special police officer or uniformed guard to patrol the exterior of the premises, and keep the same free of loiterers, litterers and of other nuisances. Such special police officer or uniformed guard must be employed by and remain on duty from Wednesday through Saturday from 8:00 p.m. to closing;
- (b) That during all other hours when the said licensed premises are open and in active operation, appellants shall be required to keep the exterior of their premises free of

litterers, loiterers and of other nuisances, and shall be held strictly accountable therefor; and

- (c) That appellants shall limit occupancy of their premises to seventy-five persons.

It is, further, recommended that the said special conditions may be imposed by the respondent upon any subsequent renewals of the said license which may be granted.

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 the transcript of the testimony, the exhibits, the argument of Counsel, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 12th day of May 1975,

ORDERED that the action of the respondent Council be and the same is hereby reversed; and it is further

ORDERED that the Mayor and Council of the City of Garfield be and is hereby directed to renew the subject license for the 1974-75 license period nunc pro tunc, expressly subject to the following special conditions:

- (a) Appellants shall forthwith procure the services of a special police officer or uniformed guard to patrol the exterior of the premises, and keep the same free of loiterers, litterers and of other nuisances. Such special police officer or uniformed guard must be employed by and remain on duty from Wednesday through Saturday from 8:00 p.m. to closing;
- (b) That during all other hours when the said licensed premises are open and in active operation, appellants shall keep the exterior of their premises free of litterers, loiterers and of other nuisances, and shall be held strictly accountable therefor; and
- (c) That appellants shall limit occupancy of their premises to seventy-five persons; and it is further

ORDERED that the said special conditions shall be continuing conditions which the Mayor and Council is directed to reimpose upon any renewals of the said license which may be granted.

Leonard D. Ronco
Director

3. STATE LICENSES - NEW APPLICATION FILED.

Orchan, Inc.

Route 68 & Springfield Road

Jobstown, New Jersey

Application filed June 17, 1975
for limited wholesale license.


Leonard D. Ronco
Director