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

BULLETIN 2228 June 2, 1976

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ITEM

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

BULLETIN 2228 June 2, 1976

1. DISCIPLINARY PROCEEDINGS - FRONT - IMPROPER BOOKS - PAYMENT OF FINE ACCEPTED IN LIEU OF 10 DAYS SUSPENSION OF LICENSE.

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| In the Matter of Disciplinary Proceedings against | ) | |
| Belba, Inc.<br>t/a Mingle and Starr Cocktail Lounge<br>Browning Road and Black Horse Pike<br>Bellmawr, P.O. Mt. Ephraim, N.J., | ) | CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Bellmawr. | ) | |

Avena and Hendren, P.A., by Salvatore J. Avena, Esq., Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to the following charges:

"1. In your short-form application dated May 19, 1975, filed with the Mayor and Council of the Borough of Bellmawr, upon which you obtained your current plenary retail consumption license; in answer to Question No. 9 you listed Michael Di Salvio as the holder of 50% of your issued and outstanding stock, whereas in truth and fact, Albert Di Salvio, has such an interest, in that he is the real and beneficial owner of the 50% shares of stock listed in the name of Michael Di Salvio; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

2. From on or about May 27, 1975, to on or about July 17, 1975, you have employed, or allowed, permitted or suffered the employment in and upon your licensed premises of Albert Di Salvio, a person who has been convicted on May 27, 1971, of a crime involving moral turpitude, viz., Carrying a Revolver; in violation of Rule 1 of State Regulation No. 13.

3. From on or about May 27, 1971, to-date, you knowingly aided and abetted the said Albert Di Salvio to exercise, contrary to N.J.S.A. 33:1-26, the rights and privileges of your plenary retail consumption license; in violation of N.J.S.A. 33:1-52.

4. From on or about January 1, 1973, to-date you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed premises, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20."

Charge 2 was amended to allege that Albert Di Salvio was convicted of a crime involving moral turpitude on May 27, 1975 instead of May 27, 1971 as alleged therein.

On behalf of the Division, ABC Agent C testified that, during the course of the subject investigation, he interrogated Richard Musselman, president of the corporate licensee, on October 9, 1974, relative to the organization and purchase of the corporate licensee. The licensed business including the real estate was purchased by the corporate licensee in May 1971. The principals are Richard Musselman, a 49% stockholder, Clarence Musselman, a 1% stockholder, and Michael Di Salvio, a 50% stockholder. Richard Musselman informed Agent C that he invested the sum of $45,000.00 toward the purchase price of $150,000.00, the sellers taking back a purchase-money mortgage.

Of the sum of $90,000.00, required partly for the purchase of the business and partly for payment of renovations, $30,000.00 was money he had saved. He borrowed the sum of $30,000.00 from his brother, Clarence Musselman and the sum of $30,000.00 from his parents.

Neither his brother, Clarence Musselman, nor Michael Di Salvio invested any money in the business. No instruments were drawn relative to the monies advanced by his brother or his parents. His brother resides in London, England and is expected to be there for approximately five years in connection with his employment. His parents were residents of Texas.

On April 25, 1975, Agent C continued his investigation and visited Musselman, who then produced a Federal Tax return for Richard N. Musselman, Inc. which operated a bar in Camden. He further produced W-2 forms for several years and a savings account record.

Agent C further testified that, in the spring of 1975, he interviewed Michael Di Salvio at the licensed premises and questioned him concerning his interest in the premises. De Salvio explained that he was twenty-three years of age at the time he became connected with the corporate licensee, and that, prior thereto, he had worked as a clerk in a liquor store. Additionally, Di Salvio explained that "he had made no personal investments, but he was given 50% of the business because Musselman 'likes and trusts him' and Musselman is teaching him the business."

Prior to the several official visits made to the licensed premises in order to procure the various documents admitted in evidence, this witness made some visits in his undercover capacity. On one such visit on the night of September 19, 1974, he observed Di Salvio seated in a booth. That was the sole occasion in which he observed Di Salvio's presence in the premises of the approximately eight visits thereto. On three occasions, he observed Di Salvio in possession of the vehicle owned by the corporate licensee.

A voluntary statement of Richard Musselman together with various exhibits referred to in the statement were received in evidence with the consent of the licensee. A voluntary statement taken from Michael Di Salvio was also received in evidence.

On cross examination, Agent C testified that Musselman informed him that he first became interested in the subject liquor license which was then held by Stamin, Incorporated in January 1971. He conferred with its corporate stockholders Mingle and Starr relative to the purchase of the property and the license.

The licensee was incorporated on April 29, 1971 and the transfer from Stamin to Belba was effected in May, 1971.

Agent C also conferred with Mingle and Starr relative to the circumstances of the transaction. They related that the original purchase price was $145,000.00 with adjustments. Previously, the premises had been on the market for sale for a long period of time. Neither Mingle nor Starr indicated that Albert Di Salvio participated in any part of the transactions leading to the consummation of the transfer.

Concerning the acquisition of the funds required to close the transaction, Richard Musselman informed the witness that he had borrowed the sum of $30,000.00 from his parents and a similar sum from his brother; that he borrowed the sum of $30,000.00 from Midlantic National Bank; and approximately $12,000.00 from General Acceptance Corporation.

Agent C conceded that on the occasion of his first confrontation with Musselman, he stated that he had expended $90,000.00 for the purchase of the business and for renovations. The loans from General Acceptance and Midlantic, made in the name of Belba, Inc. were documented by Agent C. The amount of cash required in order to effect the closing as shown on the settlement sheet was $25,581.12.

The agent acknowledged there was nothing to prevent Albert Di Salvio from becoming a 50% stockholder instead of Michael Di Salvio, in 1971. He has no knowledge of Albert Di Salvio expending any of his funds in connection with the licensed premises.

Agent C admitted that Musselman explained to him that he was giving Michael Di Salvio an opportunity to come into the business and that he was willing to advance whatever funds were required because the business would, in time, have a greater value than the funds he advanced.

The witness learned that Musselman had an interest in a licensed premises other than Belba. He visited Belba approximately eight times in connection with the subject investigation. Belba employed approximately seven or eight persons. Albert Di Salvio was listed as a manager. His salary was $150.00 weekly. Agent C saw him at the licensed premises on one occasion and observed him driving a Chevrolet Impala purchased by the corporate licensee on approximately three occasions. Musselman explained to the agent that the employees could use the motor vehicle and that Di Salvio was accorded the more frequent use of the car.

The settlement sheet prepared at the time that the title to the business and the premises was closed on May 27, 1971, from the seller, Mingle and Starr to Belba was executed on Belba's behalf by Richard Musselman, as president and by Michael Di Salvio, as secretary. They also executed the instruments obligating the licensee to pay the purchase money mortgages.

Charles A. Janetti, an automobile salesman, testified that Belba purchased a Chevrolet automobile in June 1974. A used car owned by an Alexander Di Salvio, an uncle of Michael Di Salvio and a brother of Albert Di Salvio was traded in as part payment and the balance was financed. Michael Di Salvio had purchased a car from the salesman in 1973.

The attorney for the licensee stipulated that Albert Di Salvio was convicted in Camden County on May 27, 1975 of possession of a concealed weapon; that the licensee permitted the employment of the said Albert Di Salvio until July 17, 1975; that when he first became aware that Albert Di Salvio was still on the licensee's payroll on July 17, 1975,

he directed Musselman and Di Salvio to discontinue Albert Di Salvio's employment.

In defense of the charges, Richard Musselman testified that, in addition to his interest in Belba, he owns another liquor establishment, and assists his wife in the operation of a tavern business which she owns.

Upon ascertaining that Mingle and Starr, the owners of the liquor business which Belba finally acquired, desired to retire from business, he entered into negotiations which culminated in the transfer of the business and property, in May 1971.

In connection with the circumstances leading to Michael Di Salvio becoming a 50% shareholder in Belba, Musselman testified that:

> "Well, I knew Mike from coming into the bar, and I needed somebody that I could trust, and Mike, I have 100% confidence in his honesty, and I saw somebody young to put the hours in, and I just couldn't afford to stay there all the time. We're opened from 10 in the morning until 3 a.m."

The business was operated seven days a week. Musselman was acquainted with Michael Di Salvio and his entire family, including his father and uncles, and went out socially with Michael.

Musselman recalled being questioned by Agent C in October 1974. With reference to the $90,000.00 figure, he testified that he informed that agent that he had borrowed the sum of $30,000.00 from his parents and a like sum from his brother.

Relative to Michael Di Salvio's duties in the business, the witness testified:

> "He makes the bank deposits, supervises the bartenders, makes the orders, and the main thing to keep an eye on the bartenders and waitresses."

Musselman explained the employment of Albert Di Salvio as manager:

> "I knew him. He comes from a fairly large family with a lot of relatives. He knows a lot of people, and he would bring in a lot of customers."

Albert Di Salvio was an asset to the business and was paid a salary of $150.00 weekly until he was separated

from his employment. At the start, Michael Di Salvio received $100.00 weekly. This was increased to $125.00 weekly. Upon payment of the indebtedness each month, the equity in the premises increases.

Albert Di Salvio's employment was discontinued in July 1975 when the licensee's attorney notified him that Di Salvio had been convicted of a crime.

Concerning the purchase of a new Chevrolet automobile in 1974 by Belba, Musselman explained that he and Michael Di Salvio had been using their own cars. Michael Di Salvio owned two cars, a 1973 Chevrolet and another car given to him by his uncle, Alexander, who had lost his driving privilege. That car was traded in as part of the purchase price for the new car.

In addition to the purchase money mortgage executed by Musselman and Michael Di Salvio, officers of Belba at the time of closing title, Belba also borrowed $30,000.00 from Midlantic National Bank.

Albert Di Salvio had no part in the negotiations involving the purchase of the licensed business by Belba. In 1971, when the business was purchased, Michael Di Salvio was single and living at home. Upon having arrived at a decision to ask Michael Di Salvio to come in as a partner, he informed Michael's father and uncles thereof.

Musselman testified, as follows:

"Q Other than the salary that you paid Albert Di Salvio and in the instances that he is permitted to use the car, was he given a priority to use the car?

A He was.

Q Is there any other renumeration or benefit or interest invested in or entitled that Albert Di Salvio is entitled to?

A No."

Albert Di Salvio was introduced to Musselman approximately eight years ago. Although friendly during that period of time, he maintained no business relationship with him. He met Michael Di Salvio through his father and by reason of the fact that he patronized the bar which he (Musselman) owned at that time. Michael Di Salvio also serviced the cigarette vending machines in Musselman's bar. He and Michael Di Salvio attended football and baseball games together, and met at least once a week.

On cross examination, the following testimony was elicited of the witness:

"Q How exactly did you approach Michael with the thought in mind of he being your partner?

A I sat down with him and asked him if he would be interested in going into a partnership in an establishment. He said, 'Yes.' and was very interested. I said I had a place in mind that would take a lot of work, but the value was there. The grounds alone were worth almost what we were going to pay for the place, so I asked him, then, if he had any money to invest in it. He said that he didn't, but that he would like to, but he didn't have any money. I could understand it with his age.

I asked if he would be interested in it if I could get the money, borrow it, and that he would pay the place off and work at a lower salary until it was all cleared and then it would be ours; but for eight, ten years he was going to have to work on a real tight budget. He agreed with it, and that's when I went out to see if I could get the money.

Q Why did you offer a partnership for?

A I have other businesses to run, and it's a business where you have to have somebody around from the time you open until the time you close, or you won't come out with anything.

Q Michael isn't there 24 hours a day, is he?

A No, he covers -- I cover mainly in the daytime and he takes care of at night. He closes. I can't stay up until 3, 4 o'clock in the morning.

Q Why would you have to give somebody an interest in the bar to do that?

A Well, you can't get people to do a job and work the hours he would have to work for that money that he would have to work for without giving him something other than just saying that I would give him a salary."

Concerning Albert Di Salvio's use of the Belba car on an occasion in October 1975, Musselman testified that it was loaned to him as a friendly gesture; he was not using it on business for Belba.

Concerning a contemplated transfer of the stock held by Michael Di Salvio to Michael's mother, the witness explained that Michael was about to get married and he was not acquainted with his bride-to-be. However, after meeting with Michael's bride-to-be and talking with her, he decided against any transfer.

Michael Di Salvio testified that he was present at the transaction when Belba, of which he is a 50% stockholder, acquired the licensed business and signed the settlement sheet. Prior to becoming a stockholder, Musselman assured him that it was a favorable transaction.

The witness denied that his father, Albert Di Salvio, has any interest in the business.

Questioned relative to Musselman's approach in connection with the acquisition of an interest in the subject liquor establishment with him, the witness responded:

> "Well, I would come into the bar once, maybe twice a week; and like I said, we got to be good friends socially. We went to football games and all. Like I said, he asked me that he inquired about a business in Bellmawr, and if I liked the set-up. There was only one problem, that he needed somebody to handle the bulk of the work because he had other businesses to attend to. I agreed to work on a small salary until the place was cleared off and I agreed on that."

During the course of the hearing, the attorney for the Division requested a continuance in order to afford him an opportunity to present a final witness, a Division employee who was on vacation and who would testify relative to Charge 4. The attorney for the licensee objected to a continuance stating that he and his witnesses are ready to proceed and that the hearing had been previously adjourned at the request of the Division for the reason that one of its witnesses was ill and another witness was on vacation.

This Hearer ruled against a continuance because the non-appearance of a witness due to his being on vacation was a forseeable event; it was not the same as a witness being taken suddenly ill. I find that the request for an adjournment made during the course of the hearing for the reason stated is not valid.

The denial of the continuance and the subsequent motion made to the Director by the attorney for the Division to review the Hearer's recommendation therein was denied by the Director. I, therefore, recommend a dismissal of Charge 4.

I.

In considering Charge 2 first, I find that the licensee's admission that it employed Albert Di Salvio subsequent to his conviction of possession of a concealed weapon (a crime involving moral turpitude) on May 27, 1975 to the date of his discharge on July 17, 1975, is fully dispositive of that issue. I, therefore, recommend that the licensee be found guilty of this charge.

II.

By their nature, Charges 1 and 3 may be considered jointly.

In considering these charges, it is apparent that the major point in inquiry is factual. In this case, as in all disciplinary proceedings, the Division has the burden of proving the truth of the charge by a fair preponderance of the believable evidence.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 A C.J.S. Evidence, sec. 1042.

Charges 1 and 3 contain specific statements concerning Albert Di Salvio's alleged interest in the corporate licensee. I have carefully reviewed the voluminous testimony, a large quantum of which I have hereinabove detailed.

It appears to me that the Division's case is based upon inferences, and not upon specific direct or circumstancial evidence in support of these charges.

Mere suspicion, no matter how reasonably inferable such suspicion may be, may not be substituted for a fair preponderance of the credible evidence in arriving at a finding of guilty. Re Doyle, Bulletin 469, Item 2; Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Luisi v. Orange, Bulletin 1814, Item 3.

Since there appears to be a lack of the necessary preponderence of evidence to find the licensee guilty of these charges, I recommend that Charges 1 and 3 be dismissed.

III.

Relative to Charge 2, I recommend that the license be suspended for ten (10) days.

## Conclusions and Order

Written exceptions to the Hearer's report were filed on behalf of the Division pursuant to Rule 6 of State Regulation No. 16.

The attorney for the licensee advises that no answer to the said exceptions will be filed.

I have carefully analyzed and evaluated the said exceptions and find that they are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed with respect thereto on behalf of the Division, I concur in the findings and recommendation of the Hearer and adopt them as my conclusions herein.

Licensee has made application for the imposition of a fine in lieu of the recommended suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having carefully considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $200.00 in lieu of suspension of license for ten days.

Accordingly, it is, on this 24th day of March 1976,

ORDERED that the payment of a $200.00 fine by the licensee is hereby accepted in lieu of suspension of license for ten (10) days.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - THE MINT, INC. v. ATLANTIC CITY.

| | | |
|---|---|---|
| The Mint, Inc., t/a Grand Central East, | : | |
| Appellant, | : | On Appeal |
| v. | : | CONCLUSIONS AND ORDER |
| Board of Commissioners of the City of Atlantic City, | : | |
| Respondent. | : | |

Samuel Epstein, Esq., Attorney for Appellant
Murray Fredericks, Esq., by Bertram M. Saxe, Esq., Attorney for Respondent City
Emanuel L. Levin, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The Board of Commissioners of the City of Atlantic City (hereinafter Board) denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Ed Sacks to appellant, The Mint, Inc., and from premises 1406 Pacific Avenue to 1500 Westminster Avenue, Atlantic City.

The resolution of the Board denying the transfer application referred solely to the place-to-place transfer in setting forth its reason for denial; hence, the implication develops that the appellant is concerned only with the place-to-place transfer being granted and, if it is denied, the person-to-person application is then withdrawn. Such implication is drawn solely from the pleadings and omission of counsel, in their arguments, to refer to the person-to-person denial.

Appellant, in its petition of appeal, contends that the Board, in determining that the proposed premises are situated one hundred ninety-five feet from the nearby licensee known as "The Unicorn", and hence, within the two hundred feet, as proscribed by the local ordinance, is in error for the reason that the distance is in excess of two hundred feet; therefore, it is not violative of the said ordinance. Both the Board and objectors deny this contention.

A de novo appeal was heard in this Division with full opportunity afforded all of the parties to introduce evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

Appellant introduced the testimony of a surveyor, Robert J. Catalano, who produced a survey showing the distances between appellant's proposed entranceway and an entranceway of another licensed facility located around the corner, on New York Avenue, identified as "Unicorn". He calculated the distance to be one hundred ninety-nine feet.

Although other witnesses testified both for and against appellant and varied photographs, sketches, plans and survey were introduced, the survey prepared by Catalano appears dispositive.

By this survey, it is apparent that the doorways of the proposed establishment and the existing licensed premises are within the two hundred feet limitation. Additionally, it further appears that another licensed premises, identified as "Entertainer's Club" is located on the same street as appellant's proposed premises. The subject street, Westminster Avenue, starts at New York Avenue and runs westerly one hundred sixty-two feet when it makes a right-angle turn and continues northwardly, roughly parallel with New York Avenue. The entrance to the "Entertainer's Club" is located forty-eight feet past the aforesaid right-angle turn of Westminster Avenue.

Using the Catalano survey, which identifies the doorway of the proposed premises to be erected by appellant, and the doorways of both the "Unicorn" and the "Entertainer's Club", it is apparent that the pedestrian proceeding westerly along Westminster Avenue from the entrance of appellant's proposed premises, to the point where Westminster makes its its right-angle turn, crossing at that point which is a logical, proper and legal crosswalk, and then proceeding along the sidewalk to the entrance of the "Entertainer's Club", a total walking distance of one hundred thirty feet is involved.

If a pedestrian proceeded from the entrance of appellant's proposed premises, turned right on Westminster Avenue to its juncture with New York Avenue and thence proceeded southeastwardly to the entrance of the "Unicorn", he would have travelled one hundred ninety-nine feet. These distance calculations are reflected on the Catalano survey.

The applicable legal principle has been clearly set forth in Petrangeli v. Barrett, 33 N.J. Super 378, 384 wherein the court stated:

"It has long been established that a local governing body has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Bachman v. Inhabitants of the Town of Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902). The rule is aptly stated in Tube Bar, Inc. v. Commuters Bar, Inc., supra (18 N.J. Super. at page 354):

> 'When a commission, board, body or person is authorized by ordinance, passed under a delegation of legislative authority, to grant or deny a license or permit, the grant or denial thereof must be in conformity with the terms of the ordinance authorizing such grant or denial. 9 McQuillen, Municipal Corporations (3d ed. 1950) § 26.73; Bohan v. Weehawken Tp., 65 N.J.L. 490, 493 (Sup. Ct. 1900). Nor can such commission, board, body or person set aside, disregard or suspend the terms of the ordinance, except in some manner prescribed by law. Public Service Ry. Co. v. Hackensack Imp. Com. 6 N.J. Misc. 15 (Sup. Ct. 1927); 62 C.J.S. Municipal Corporations § 439.' "

In view of the total absence of evidence indicating circumstances under which the mandate of the applicable ordinance could be set aside or disregarded, the Board properly concluded that appellant's application for transfer of its license must be denied.

In view of the fact that I find that the Board's action denying a place-to-place transfer for the reason above stated is fully dispositive of the within controversy, I deem it less crucial to consider the uncontroverted and compelling evidence presented by three witnesses who were either managers or owners of licensed premises in the immediate area. In sum, their testimony indicated that there is a saturation of licensed premises in the immediate area of the proposed premises; one of the bars had recently gone through a Chapter XI Bankruptcy proceeding; others were having financial difficulties and were marginal operations; some had rooms larger than the proposed premises that were not in use; and the opening of a new establishment would significantly intensify the economic instability of the existing liquor establishments.

It is basic that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in its exercise of reasonable discretion. If denied on reasonable grounds,

such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), aff'd 33 N.J. 404 (1960):

> "... No person is entitled to [the transfer of a license] as a matter of law ...."

and

> "... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial ...."

In this connection it may be well to quote further from Fanwood v. Rocco, supra:

> "The primary purpose of the act is to promote temperance (R.S. 33:1-39) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson-Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs of City of Hoboken [135 N.J.L. 502 (E. & A. 1947)]. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent.
>
> "The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' " Hudson-Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, 135 N.J.L. 502 (1947).

Appellant urges that the Board is attempting to regulate the business economics of appellant by denying the transfer while simultaneously protecting other taverns in the local area.

The short answer to this allegation is that it is cardinal that, unlike other businesses, the dimension of competition is inapplicable to the liquor industry and cannot be used as a basis for the issuance or transfer of liquor licenses.

The court in Fanwood v. Rocco, supra (33 N.J. at p. 14) noted this distinction citing Eckert v. Jacobs, 142 S.W. 2d 374, 377 (Texas Civ. App. 1940) where the court, in sustaining a zoning ordinance which excluded the sale of beer from a designated area, pointed out that it is common knowledge that the sale of intoxicating beverages is accompanied by "objections not common to other types of commercial enterprises." From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied. Paul v. Gloucester, 50 N.J.L. 585 (1888). This field is peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup. Ct. 1938). Unlike other businesses, the liquor traffic has been singled out for peculiar limitation. See Hudson-Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, supra. Thus the test for the establishment of a liquor facility is whether there is a public need or convenience to be served. Cf. Blanck v. Mayor & Borough Council of Magnolia, 38 N.J. 484 (1962). Therefore this contention lacks merit.

Appellant next urges that since the Board, in its resolution denying the grant of the transfer, based its denial solely upon the reason that the proposed transfer would be violative of the distance ordinance, this Division, upon appeal, may not consider any new matter or matters not contained within the scope of the resolution. Not so.

Except as specified in Rule 8 of State Regulation No. 15, Rule 6 of the said regulation provides that all appeals are heard de novo. It has been the practise in this Division to provide all parties to an appeal a plenary hearing. This has included not only matters considered at the local level, but also, all other matters not raised below but which may properly be justiciable by this Division. Therefore, this contention lacks merit.

It is, therefore, concluded that the appellant has failed to sustain 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.

It is, accordingly, 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 the transcript of the 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 31st day of March 1976,

ORDERED that the action of the respondent Board of Commissioners of the City of Atlantic City, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

LEONARD D. RONCO
DIRECTOR

3. STATE LICENSES - NEW APPLICATION FILED.

Schieffelin & Co.
30 Cooper Square
New York, New York
Application filed June 2, 1976
for place-to-place transfer of
Plenary Wholesale License W-21
to include a licensed premise
and salesroom at 2414 Morris Avenue,
Union, New Jersey.

Joseph H. Lerner
Acting Director