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

BULLETIN 2130 January 31, 1974

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ITEM

STATE OF NEW JERSEY
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1. COURT DECISIONS - RAINES ET AL. v. BENEL ET AL. - DIRECTOR AFFIRMED.

ELEANOR RAINES, JOYCE CROSSLAND, WILLIAM WALKER, LEOLA SAPP, HAYWOOD EUTSEY and FRED VREE,

Appellants,

v.

BENEL, INC., t/a GLENDALE LIQUOR STORE, CITY OF TRENTON, a municipal corporation, and DIRECTOR OF DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Argued November 7, 1973 - Decided November 26, 1973.

Before Judges Carton, Seidman and Goldmann.

On appeal from State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control.

Mr. Herbert T. Posner argued the cause for appellants (Messrs. Coleman, Lichtenstein, Levy & Segal, attorneys).

Mr. Leon M. Robinson argued the cause for respondent, Benel, Inc., t/a Glendale Liquor Store (Messrs. Teich Groh and Robinson, attorneys).

Statement in lieu of brief filed on behalf of respondent, City of Trenton, by Mr. Robert A. Gladstone, City Attorney of the City of Trenton; Mr. George T. Dougherty, Assistant City Attorney, of counsel.

Statement in lieu of brief filed on behalf of respondent, Division of Alcoholic Beverage Control, by Mr. George F. Kugler, Attorney General of New Jersey; Mr. David S. Piltzer, Deputy Attorney General, of counsel.

PER CURIAM

(Appeal from the Director's decision in Re Raines, et als. v. Trenton et al., Bulletin 2094, Item 3. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. APPELLATE DECISIONS - SANDERS v. ASBURY PARK.

Willie Sanders, t/a Bill's Liquors, Appellant, v. City Council of the City of Asbury Park, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant
Manna and Kreizman, Esqs., by Ira E. Kreizman, Esq., Attorneys for Objectors
Norman H. Mesnikoff, Esq., Attorney for Respondent

BY THE DIRECTOR:

This is an appeal from action of the City Council of the City of Asbury Park (hereinafter Council) which denied renewal of appellant's plenary retail consumption license for the 1973-74 license period.

The petition of appeal alleges that appellant received recent approval for transfer of said license to its location at 932 Bangs Avenue, Asbury Park, and, despite such approval and without either protest or grounds, the renewal of the license for the current license period was disapproved. The Council partially denied the appellant's contentions and asserted specifically that the location of appellant's premises, although in a manufacturing zone, is in a primarily residential area and, as so located, is "against the general public well-being and interest of citizens of Asbury Park."

Following filing of appellant's petition of appeal, the Director, by order of June 28, 1973, extended the term of appellant's license for the 1973-74 license period pending determination of his appeal or sooner order of the Director.

A copy of the adopted resolution, offered into evidence, disclosed that substantially all of the plenary retail licenses were voted upon favorably but, upon roll call, in voting assent, the individual councilmen excluded certain licenses for which they were not in favor. To the subject license of appellant one of the councilmen abstained to avoid any possible conflict of interest, two voted favorably, and two voted against. No reasons were ascribed to either the favorable or unfavorable votes.

A de novo hearing, pursuant to Rule 6 of State Regulation

No. 15, was conducted in this Division, with full opportunity afforded to the parties to introduce evidence and to cross-examine witnesses. Photographs of the area and interior of appellant's premises, appellant's application for place-to-place transfer, and opinion letter of the Police Chief were admitted into evidence.

A condensation of testimony elicited at said hearing reveals the factual background leading to the offending resolution as follows: In 1972 appellant received approval for a place-to-place transfer of his license to premises 932 Bangs Avenue. There were then no objectors to his application, and four of the five voting officials signified approval. Councilman English then voted in the negative. Appellant had at the time of the application for the place-to-place transfer indicated he desired to use the new premises as a package store, implying the absence of any consumption bar.

The premises to which the license was transferred had been a tiny grocery store for thirty years located on a predominently residential street, although the building lot was zoned for manufacturing purposes. Following the approval, appellant began a total interior rebuilding project which was completed on May 11, 1973, at a total cost to him approximating $20,000. Five weeks later the Council rejected approval of his application to renew.

Three of the five Council members testified at this Division. Dr. Lorenzo W. Harris (one of the councilmen) testified that he has his office and resides diagonally opposite appellant's premises, was not a councilman when the transfer of appellant's premises to that location was approved, but appellant had indicated that he was going to have a package store and, instead, he constructed a bar. He admitted that he had never entered appellant's premises nor did he know that a plenary retail consumption licensee was required to have a bar within the premises. He further admitted, upon being shown the photographs of the interior of appellant's premises, that, had he known that a bar was required, he probably would not have voted against renewal.

Councilman Edward R. English testified that his negative vote resulted only from his determination that the application for the place-to-place transfer to appellant's location should never have been approved, and that his vote to deny renewal was simply consistent with his negative vote on the application to transfer.

Mayor Ray Kramer testified that he had voted affirmatively for the renewal in that there was no negative reasons advanced to deny said transfer. There was no negative police report, no disciplinary charges, nor any complaints respecting the unlawful use of the premises by appellant. He admitted that appellant and

five other licensees had been called before the Board in an earlier session in an effort to have their respective premises upgraded and appellant had been called in to be advised of and cautioned about litter complaints in the general area. He added that littering is a problem indigenous to the area and cannot be attributed solely to appellant.

Two housewives residing nearby appellant's premises complained of loitering and littering which they attributed to patrons of appellant's premises. On cross examination, however, it appeared that the problems described were a growing characteristic in the area long before appellant started operating at his premises.

The Chief of Police, Thomas S. Smith, testified that there was no record of any police action against appellant's premises. However, other premises in the area, the licenses for which had been renewed, had several calls.

Appellant Willie Sanders testified that, when he applied for a transfer of the license to its present location, he did intend and so advised the Council that he intended to use the license for a package store but, immediately thereafter, he learned that, as the holder of a plenary retail consumption license, he could not restrict the beverage sales for off-premises consumption only. Hence he had constructed a small six-stool bar simply to comply with the regulations. He is careful to keep the area in front of his store as free of debris as possible, and prohibits any loitering in or in front of the premises. He described two large residences nearby as containing roomers who, in warm weather, sit on outside porches and drink. This condition existed long prior to his establishment being opened.

Charles A. Holland testified that he is employed by the City of Asbury Park and passes appellant's premises enroute to work. He affirmed that littering is a problem throughout that part of the City.

It is quite apparent from their action that the councilmen who voted against appellant's application for renewal were acting in the mistaken belief that the issue before the Council was the appropriateness of appellant's location for place-to-place transfer purposes and not to the issue whether appellant was or was not entitled to the renewal of his license.

It has been long held that "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." Lakewood v. Brandt, 38 N.J. Super. 462, 466 (App.Div. 1955). Further, "It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings.... Common fairness to the licensee has been the basis for this policy." Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2.

The paucity of evidence indicating that appellant improperly managed his licensed premises or permitted conditions inimical to the public interest to exist in or at the licensed premises leads to the conclusion that the refusal to renew his license by the negative voting Council members was an improper exercise of their discretionary authority.

Although it is firmly established that the grant or renewal of an alcoholic beverage license rests in the sound discretion of the Board, in the first instance (Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App.Div. 1955)), it is equally clear that such discretion must be properly exercised. Where there is a manifest abuse of its discretion, the Director is authorized to reverse the action of the Council. The Florence Methodist Church v. Florence Twp., 38 N.J. Super. 85 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962); Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (App.Div. 1958).

The record of the licensee during the prior license period was obviously not considered in the determination of the license renewal, nor was there an evaluation of the merits of the application. Cf. Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Salmanowitz v. Hightstown, Bulletin 807, Item 2.

At the conclusion of the hearing in this Division, all counsel stipulated that the Hearer's report is waived and that the matter shall be determined by the Director.

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

ORDERED that the action of respondent City Council of the City of Asbury Park in denying appellant's application for renewal of his plenary retail consumption license be and the same is hereby reversed, and the Council be and is hereby directed to grant renewal of appellant's plenary retail consumption license for the 1973-74 license period, in accordance with the said application filed therefor.

Robert E. Bower,
Director.

3. APPELLATE DECISIONS - MOON STAR, INC. v. JERSEY CITY.

Moon Star, Inc., Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	On Appeal CONCLUSIONS and ORDER

Salvatore Perillo, Esq., Attorney for Appellant
Raymond Chasan, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which on June 12, 1973 denied appellant's application for renewal of its plenary retail consumption license for premises 268 Duncan Avenue, Jersey City, for the current license period.

Appellant's petition of appeal contended that the Board's action was arbitrary, capricious and unreasonable and its determination was without basis in fact or in law.

The Board denied the contentions of appellant, averring that the testimony of the objectors before it, upon hearing of the renewal application, was overwhelming in support of its determination that appellant's premises were operated in such a manner as to constitute a nuisance and, therefore, its action was reasonable.

The hearing in this Division was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity accorded the parties to present evidence and cross-examine witnesses.

Testifying on behalf of the Board, Joseph M. McNally stated that he resides at 433 Mallory Avenue, Jersey City, where he has lived for the past fifteen years. His home is located on a dead-end street which abuts Duncan Avenue, on the corner of which appellant's premises are located. He believed appellant took over the management of the licensed premises before the beginning of 1973 and since then there have been numerous incidents.

He recounted the specific incidents which included a gathering of police cars about the premises on April 16, 1973 and another, two days later. On May 19, 1973, a male was arrested for fighting on the corner where appellant's tavern is located. On June 29, 1973 (albeit two weeks subsequent to the denial here appealed from) an elderly woman was knocked down on the sidewalk across the street from his home.

He described other difficulties during the early part of the year which included the continual barking of appellant's dog, broken bottles from the tavern lying in the street, and varied patrons urinating against the trees of his street. Additionally, large trailer-trucks, whose drivers patronize appellant's premises, park their trucks and run the motors noisily to the annoyance of the neighbors.

Parking is a problem on his dead-end street, and some of the patrons double-park in the narrow street giving rise to fears that fire equipment could not reach the homes in the event of fire outbreak. A large congregation of patrons continuously loiter outside of the premises as well as at a park entrance directly opposite. Those loiterers annoy passersby and use foul language. Those loiterers are seen drinking from beer cans, glasses, bottles and paper cups.

Captain Raymond V. Blasczak, Commanding Officer of the Seventh Police Precinct of Jersey City, testified that appellant's tavern is within the area of his command and it represents a definite trouble spot. Consequently, he has had to assign a special patrol. Numerous complaints have been made to the police respecting the corner where appellant's tavern is located, and have been precipitated by the loiterers on the corner.

He listed a chronologic sequence of events from March 28, 1973 to June 5, 1973, where persons were either dispersed or arrested for disorderly conduct and other offenses, at the intersection.

On cross examination, the captain admitted that he had been inside the premises on only one occasion when appellant's president applied for a gun permit. This occasion was shortly after appellant secured the license. While alleging that he had thrice attempted to invite a representative of the licensee to visit his office, and extended such invitations by telephone calls to the premises, no one responded. He believed that all of the incidents he recounted took place as a result of the arrested persons having been in appellant's premises; the police reports to which he referred, however, failed to reveal a direct connection between the individuals arrested and the appellant.

Elio P. Scarpa, a neighbor who resides on Mallory Avenue directly behind the building housing the licensed premises,

testified concerning an incident in March of 1973, when the police arrested a man in front of appellant's tavern after a scuffle. Another time an ambulance arrived to treat a person who was stabbed, or was bleeding. His further testimony was in general corroboration of that of McNally in its description of loiterers, urination, double-parking and general disorder. Except to purchase cigarettes on one occasion, he had never been in the tavern. Like McNally, he had to replace a damaged tire because of broken bottles left in the street.

Elizabeth Lynch testified that she is a housewife and a political district leader and, in this latter capacity, has investigated the complaints of her neighbors relative to the disorderly operation of these premises. Those complaints have led her to appellant's premises where loiterers have congregated in such numbers as to give rise to fears by pedestrians. She has been accosted while walking by the premises, enroute to church, and described the neighborhood as being spoiled by the tavern. She admitted that she had visited a package store-delicatessen located at the same intersection and on the opposite corner and there implored the owner of that establishment not to sell bottles of wine for off-premises consumption. It was her belief that wine drinkers contribute to the problem. She explained that she did not complain to appellant's employee because she did not know who managed appellant's premises.

A local attorney-at-law, John W. Yengo, whose office is a few doors away from appellant's premises, complained that appellant's premises are within his observation at least twice each day, and that he has frequently seen three, four or five persons in front thereof at all hours of the day. A patrolman has been observed standing at the intersection; when he is present the loiterers disappear. He has observed patrons emerging from the premises with brown bags and has watched them remove bottles from the bags from which gulps are taken both in front of the premises and across the street. He has repeatedly called the police and the office of the Mayor requesting that the situation be corrected. As a result, some steps have been taken toward that end.

The secretary of the Board, Leonard L. Greiner, testified that the record of the Board respecting appellant's premises contains three complaints. The first concerned an incident in September 1972 in which appellant was charged with permitting a brawl on the licensed premises which charges were later dismissed. Thereafter, in January of 1973, the appellant was charged with permitting unnecessary noise. This charge was abandoned by the complainant following agreement that the sound level would be lowered. In April 1973, complaints were lodged against appellant and the owner of the adjacent package store concerning the continual loitering in the area. The appellant was not properly served, and while appellant's president did appear following the conclusion of the hearing, he was advised that the charges would not be pressed at that time.

He admitted that the owner of the premises, prior to its acquisition by appellant, had a series of suspensions resulting from varied complaints which covered a three year period. He further admitted that no thorough investigation of the numerous complaints the Board received concerning appellant's management could be pursued because the Board then had no adequate investigative staff. The appellant was, thus, first notified of the complaints made before the Board at the hearing on its renewal application.

There are two stockholders of the corporate appellant, both of whom testified on its behalf. Daniel W. Blue, one of the stockholders stated that he is the secretary-treasurer of the licensee and spends about thirty hours a week in the premises. He tends bar in the evening hours, assisted by a bartender. He has been aware of the problems described by the Board's witnesses but vigorously denied that they are indigenous to his tavern.

He contended that he has endeavored to have the group of congregants in front of his tavern disperse and has elicited the help of the police almost daily. None of the neighbors ever visited him to complain but learning of the broken bottle incidents, as an example, he immediately placed the trash in containers inside the premises where no one could extract bottles and break them in the streets. The only off-premises sales are cans of beer; no wine is so sold.

He recounted attempts to obtain information from Captain Blasczak and the messages he left seeking aid. He stated that he was formerly a detective in the Police Department of Newark, and presently serves as secretary or Director of the Newark Human Rights Council. As a former police officer, he is alert to the problems related to tavern ownership and has tried to maintain an orderly establishment. The police have never been required to visit in connection with trouble within his establishment, but he had made a dozen or more calls concerning the loiterers in front of it.

The other stockholder, William Moore, testified that he is in charge of the premises during the daylight hours and returns in the evening on occasions to assist. His emphatic denial that the loiterers in front of his establishment was based upon the assertion that, firstly, no off-premises wine bottles are sold; and secondly, a can of beer sold at his bar is forty-five cents, whereas the package store on the opposite corner charges but eighteen cents for a similar can.

Hence, he maintained, no drinking outside of the premises stems from off-premises sales at appellant's premises. Likewise, the licensed premises are warm in winter and air-conditioned in summer; if persons pay for alcoholic beverages, they would remain indoors while drinking and would not consume them outside the facility.

He further recounted an incident when he visited Captain Blasczak's office by appointment, and after a wait of almost an hour without meeting the captain, returned to his tavern. His assertion that there was a direct connection between the loiterers and the wine selling activity of the plenary retail distribution licensee on the opposite corner was substantiated by the almost total absence of loiterers at the present time when the package store is presently closed.

Attorney John W. Yengo, recalled in rebuttal, denied that there has been any change in the number of loiterers despite the alleged closing of the nearby package store.

I

The dispositive issue in these matters is: Did the Board act reasonably and in the best interests of the municipality with due regard to fundamental fairness? 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, 33 N.J. Super. 598 (App. Div. 1955).

Hence, the issue can be narrowed to a determination whether the evidence herein justified the action of the Board in refusing to renew appellant's license. The applicable legal principles pertinent to a determination require the burden of proof in all cases which involve discretionary matters where 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); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970). The denial of renewal has been held not to represent a forfeiture of any property right. A liquor license is a privilege and a renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor at retail. No licensee has a vested right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (1946).

As early as in Conte v. Princeton, Bulletin 139, Item 8, the well established principle was cited to the effect that a licensee is responsible for conditions both in and outside his licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1.

A licensee must keep his place and his patronage under control and is responsible for conditions both outside and inside his premises. Galasso v. Bloomfield, Bulletin 1387, Item 1. In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. Blanck v. Magnolia, 38 N.J. 484 (1962). In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion is "wide" and its

guide is "the public interest". Lubliner v. Paterson, 33 N.J. 428 (1960) at 446. Thus, entirely apart from the consideration as to the appellant's culpability for the above-described conditions existing at this establishment, the broad question posed before the Board on appellant's application for renewal was whether, in the light of the surrounding circumstances and conditions it was in the public interest for this tavern to continue to operate. The objective judgment of the Board was that its continuance would be inimical to the public interest. R.O.P.E. Inc. v. Fort Lee, Bulletin 1966, Item 1.

It is apparent from the testimony that appellant has failed to maintain order outside the premises. However, the proofs are not preponderantly clear that the persons who congregate outside of the premises are, in fact, patrons of appellant's establishment. The adjacency of a source of off-premises liquor sales at the same corner, together with uncontroverted testimony that appellant does not sell wine, and that beer purchasers would not consume the same outside the premises, gives rise to a conclusion that a substantial part of the exterior problem is not of appellant's making. Hence, the issue differs from a long line of cases in this Division which have held that a licensee is required to maintain order outside of the premises where disorderly crowds consist of his patrons. Cf. Bayonne v. B & L Tavern, Inc., Bulletin 1509, Item 1; Kaplan and Buzak v. Englewood, Bulletin 1745, Item 1; R.O.P.E. Inc. v. Fort Lee, supra; The Caje, Inc. v. Passaic, Bulletin 2063, Item 2. The crucial test is the failure of a licensee to prevent disorderly activity outside of the premises which are caused by patrons thereof. (underscore added.) Conte v. Princeton, supra.

It is further undeniable that part of the problem that motivated the refusal of the Board to renew appellant's license stemmed from the licensed premises itself. However, the Board had listed a hearing on the same issue that eventually resulted in denial of appellant's license which, had such hearing been consummated, would have brought in one forum both appellant and the plenary retail distribution licensee, whose premises are located on the adjacent corner. That aborted hearing, scheduled in April of 1973, might well have resulted in a determination that not only appellant contributed to the local disorder but the companion licensee was also a major contributor. No evidence was adduced at the de novo hearing in this Division that an investigation of the root cause of the problem at the intersection was ever initiated. To have held that the situation which admittedly requires correction is the sole responsibility of appellant, when the proofs reflect that the conditions exist by reason of off-premises drinking without identity of the source, defies the logic of the proofs.

"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 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.

Nevertheless, as the Division noted in R.B.& W.Corporation v. North Caldwell, Bulletin 1921, Item 1:

> "Appellant alleges that it did not violate any State regulation governing the conduct of licensees and use of licensed premises and that no disciplinary proceedings were instituted by the Council against it. It would have been a more satisfactory procedure for the Council to initiate such proceedings, upon specific charges, and to base its refusal to renew on an adjudicated record. However, it is understandable that local issuing authorities, at times, withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the business. This would appear to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint and consider that the failure of the issuing authority to take specific action as license for continued profligacy."

See Downie v. Somerdale, supra.

The testimony of Board Secretary Greiner indicated that from the commencement of appellant's tenure of license there has been no adjudicated record in which a violation has been determined to have occurred in its premises. It should be noted that the prior owner had a record of suspensions which record did not impel the Board to deny renewal of that license.

I find on the totality of the record herein, that appellant has sustained the burden required by Rule 6 of State Regulation No. 15 of showing that the Board acted erroneously and should be reversed. It is further recommended that appellant be given another opportunity to demonstrate its worthiness to hold a license, subject to the special condition that a special police officer or uniformed guard shall be forthwith employed by appellant and that the public area in front of and alongside of the licensed premises be kept free of loiterers, debris, illegal parking and loud noise. In the event of appellant's failure to comply with the said special condition, it is expected that, prior to the time of renewal, the Board will institute disciplinary proceedings formally to effect the suspension or revocation of the said license, in accordance with the provisions of N.J.S.A. 33:1-31.

It is, accordingly, recommended that an order be entered reversing the action of the Board and directing it to renew the said license for the current licensing period, expressly subject to the special condition hereinabove set forth.

Conclusions and Order

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 entire record herein, including transcript of the testimony, the exhibit, the Hearer's report, and the exceptions filed with respect thereto which I find either to have been considered and resolved by the Hearer in his report or are lacking in merit, I concur in the findings and conclusions of the Hearer.

However, respecting the recommendation that the said renewal be made subject to the special condition requiring appellant to procure the services of a special police officer or uniformed guard to patrol the exterior of the area and keep the same free of loiterers or litterers, I direct that such special officer or officers be employed if such special policemen are available in the City of Jersey City; if not, then, and in that event, that a uniformed guard of a reputable private agency offering such services be retained. However, no regular police officer may be so employed.

Accordingly, it is, on this 16th day of November 1973,

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

ORDERED that respondent is hereby directed to renew the subject license for the 1973-74 license period, expressly subject to the special condition that appellant forthwith employ a special police officer or uniformed guard (not a regular police officer) to aid in the orderly conduct of the premises and to keep the exterior of the premises free of loiterers and litterers.

Robert E. Bower,
Director.

4. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against Vito Enterprises, Inc. t/a Danny's Cocktail Lounge 771 Palisade Avenue Cliffside Park, N.J., Holder of Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Cliffside Park.	AMENDED ORDER

Fierro, Fierro & Mariniello, Esqs., by Joseph R. Mariniello, Esq.
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

On November 7, 1973 Conclusions and Order were entered herein suspending the subject license for eighty days, commencing Tuesday, November 20, 1973 and terminating Friday, February 8, 1974, after licensee was found guilty of two charges alleging that it permitted and suffered lewdness and immoral activity on its licensed premises, in violation of Rule 5 of State Regulation No. 20; and a third charge alleging that it permitted and suffered the sale and service of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20. Re Vito Enterprises, Inc., Bulletin 2127 , Item 2 .

Prior to the effectuation of the said suspension, investigation by agents of this Division on November 16, 1973, disclosed that the subject premises were substantially destroyed as a result of a fire, and that the facility is presently closed and not in operation. Thus, no meaningful suspension can be imposed at this time.

I shall, therefore, enter an amended order deferring the suspension until such time as the premises reopen and the licensee resumes operation at these premises on a substantial full-time basis.

Accordingly, it is, on this 19th day of November 1973,

ORDERED that my Order dated November 7, 1973 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Cliffside Park

to Vito Enterprises, Inc., t/a Danny's Cocktail Lounge for premises 771 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for eighty (80) days, the effective dates of which shall be set by further order herein after the licensee resumes operation therein on a substantial full-time basis.

Robert E. Bower
Director