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

BULLETIN 2177 March 19, 1975

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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 2177 March 19, 1975

1. COURT DECISIONS - MARGATE CIVIC ASSOCIATION v. MARGATE, ET ALS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-794-73

MARGATE CIVIC ASSOCIATION,

Plaintiff-Appellant,

v.

BOARD OF COMMISSIONERS OF THE CITY OF MARGATE, GEORGE NAAME and MANAAM, INC.,

Defendants-Respondents.

Argued: October 7, 1974 - Decided January 16, 1975.

Before Judges Michels, Morgan and Kentz.

On appeal from the Division of Alcoholic Beverage Control, Department of Law and Public Safety.

Mr. Stephen Hankin argued the cause for appellant.

Mr. David R. Fitzsimons, Jr., argued the cause for respondent Board of Commissioners of the City of Margate.

Mr. Robert H. Davisson argued the cause for respondents George Naame and Manaam, Inc. (Mr. Elias G. Naame, attorney).

Mr. William F. Hyland, Attorney General of New Jersey (Mr. David S. Piltzer, Deputy Attorney General, of counsel), submitted a statement in lieu of brief on behalf of respondent Division of Alcoholic Beverage Control).

The opinion of the Court was delivered by

MICHELS, J.A.D.

(Appeal from the Director's decision in Re Margate Civic Association v. Margate, et als., Bulletin 2128, Item 3. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - FORSTER v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL and PASSAIC.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1232-73

GEORGE FORSTER and EVELYN FORSTER,

Appellants,

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL and BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PASSAIC,

Respondents.

Submitted December 16, 1974 - Decided January 28, 1975.

Before Judges Lora, Handler and Tarleton.

On appeal from Division of Alcoholic Beverage Control.

Mr. Harry Kampelman attorney for appellants (Mrs. David Senders on the brief).

Mr. Michael A. Konopka attorney for respondent Board of Alcoholic Beverage Control of the City of Passaic.

Mr. William F. Hyland, Attorney General of New Jersey, attorney for respondent Division of Alcoholic Beverage Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Forster v. Division of Alcoholic Beverage Control and Passaic., Bulletin 2134, Item 1. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

3. APPELLATE DECISIONS - PARKER INN, INC. v. HAWTHORNE.

Parker Inn, Inc., t/a Parker Inn, Appellant, v. Board of Commissioners of the Borough of Hawthorne, Respondent.	On Appeal CONCLUSIONS and ORDER

Fischer, Guston & Sala, Esqs., by A. William Sala, Jr., Esq., Attorneys for Appellant
Evans, Hand, Allabough & Amoresano, Esqs., by Douglas C. Borchard, Jr., Esq., Attorneys for Respondent

BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the Borough of Hawthorne (Board) which, on May 22, 1974 found appellant guilty of three charges, alleging that: (1) on November 12, 1973, it permitted and suffered the presence, in its licensed premises of an individual who possessed with intent to sell, and did sell a controlled dangerous substance, in violation of Rule 4 of State Regulation No. 20; (2) on November 21, 1973, it permitted and suffered the presence in the licensed premises of an individual who possessed with intent to sell, and did sell a controlled dangerous substance in violation of Rule 4 of State Regulation No. 20; and (3) on November 21, 1973, it sold and allowed the consumption of an alcoholic beverage to a minor. In consequence thereof, appellant's license was suspended for ninety days on each of the first two charges, and for thirty days on the third charge, or a total of two-hundred and ten days.

In its petition of appeal, appellant contended that the Board's action was erroneous in that its findings were contrary to the evidence; the suspension imposed was excessive; and the Board was biased against appellant.

In its answer, the Board denied the substantive allegations contained in the petition of appeal.

Upon the filing of this appeal, an order was entered by the Director on May 31, 1974, staying the Board's order of suspension until the determination of this appeal and the entry of a further order herein.

A Hearer's report was waived by the parties hereto, as permitted by Rule 14 of State Regulation No. 15. I shall,

therefore, determine the matter on the total record before me.

The stenographic transcript of the hearing below was submitted by the Board pursuant to Rule 8 of State Regulation No. 15. This was supplemented by testimony of witnesses produced by the appellant at this de novo hearing, pursuant to Rule 6 of State Regulation No. 15.

At the hearing held by the Board, Kenneth Shelton, an investigator in the Bergen County Prosecutor's Office, testified that he was seated at the bar in appellant's licensed premises on November 12, 1973. He described the premises as containing a horseshoe-shaped bar, approximately thirty-five to forty feet in length so that the furthest distance that the bartender could have been positioned would be nine to eighteen feet distant.

On that date, at approximately 10:30 p.m., a male, identified as Charles Sedergren, entered the barroom and positioned himself next to Shelton, and asked him whether he wanted to purchase some marijuana. Shelton replied affirmatively and Sedergren offered to sell him an ounce thereof. The conversation took place while both were positioned at the bar.

Although the bartender was behind the bar and served them drinks, he could not give the exact location of the bartender during the several minutes that he and Sedergren were engaged in conversation relating to the purchase of the marijuana. The conversation was carried on in normal tone.

The sale of a bag containing an ounce of marijuana was actually consummated when both males proceeded to the parking lot. Sedergren took the bag out of his car and handed it to Shelton in exchange for $20.00 paid by Shelton.

After the sale was consummated, both males returned to the barroom and positioned themselves at the bar. The fact that the marijuana had been purchased was discussed by them "slightly". Shelton requested Sedergren to save another bag for him on the following night.

On November 19, 1973, while in the licensed premises positioned at the bar next to a male identified as James Dimick, he overheard a minor, identified as James L-- offer to sell Dimick ten tablets of phencyclidine, a controlled dangerous substance. Shelton asked L -- whether he could buy some phencyclidine. L-- offered to sell, and Shelton agreed to buy fifty tablets of phencyclidine for $40.00. An employee was tending bar at the time of the aforesaid conversation.

On November 21, 1973, Shelton proceeded to appellant's premises. Upon the arrival of L-- he greeted him at the corner of the bar adjacent to the telephone booth. Upon ascertaining that L-- had the aforesaid tablets in his possession, both males proceeded into the men's room where Shelton purchased forty-six

tablets from L-- for the sum of $40.00. Thereafter, Shelton and L-- returned to the bar.

L-- ordered a blackberry brandy. He observed the bartender pour the drink from a bottle behind the bar. After engaging in further conversation with L-- concerning the sale of drugs, Shelton overheard Dimick question L-- as to why he sold all of the tablets to Shelton. At the commencement of the conversation between Dimick and L--, they were positioned near the beer cooler. Shelton was positioned near the pool table, a distance of fifteen feet.

James L--,who was born on June 6, 1956 and was seventeen years of age on November 21, 1973, testified that in November 1973 he entered appellant's licensed premises, sat at the bar and was "approached by the undercover agent." The undercover agent asked him in the open bar area whether or not he had the drug. Upon replying affirmatively, both entered the men's room where he handed the undercover agent the tablets in exchange for the money.

Additionally, James testified that he consumed blackberry brandy which he ordered and received from the bartender. Upon being requested by the bartender to furnish proof of age, James exhibited a driver's license and a draft card which indicated that the true owner of that card and license was over the age of eighteen years. He was never requested to sign a statement certifying that he was of the statutory legal age.

On cross examination, James denied that he had any discussion concerning drugs while the bartender was serving him, or that the bartender ever heard any conversation relating to drugs. He "spoke in a low enough tone" so that the bartender couldn't hear.

In behalf of appellant, Joseph Parente, who was employed by appellant as a bartender in November 1973, testified that Kenneth Shelton frequently patronized the establishment during that month. He did not observe or hear anyone attempting to sell marijuana to Shelton, nor did he hear Shelton engage in any conversation concerning the sale of marijuana. He denied hearing James discuss the sale of drugs of any nature with Shelton. He had checked James' age by examining a driver's license and a draft card and accepted those items as proof of age. He did not request James to sign a statement verifying his age.

At the de novo hearing, Mildred Piltzecker, sole stockholder of the corporate appellant, testified that, as soon as she ascertained that there was an investigation being conducted in her licensed premises in November 1973, she contacted local police officials and offered to cooperate with them. No one had, prior thereto, informed her of any alleged unlawful activity being conducted in her establishment.

Pastor Gerard R. Gaeta of Lord of Life Lutheran Church testified that, in his opinion, Piltzecker has a good reputation as a law-abiding person.

In order to fairly arrive at a determination reference must be made to the nature of the charges preferred against appellant.

The following are the charges relating to the alleged narcotics activity:

> "(1) That on November 12, 1973, you allowed, permitted, or suffered in or upon the licensed premises one Charles R. Sedergren to unlawfully possess, with intent to sell, and to sell, a controlled dangerous substance, namely, one ounce of marihuana, in violation of New Jersey Administrative Code 13:2-21.5 (formerly Rule 4 of State Regulation No. 20).
>
> AND,
>
> (2) On November 21, 1973 you allowed, permitted or suffered in or upon the licensed premises one James L. - - --, to unlawfully possess, with intent to sell, and to sell, a controlled dangerous substance, namely, forty six tablets of phencyclidine (PCP), in violation of New Jersey Administrative Code 13:2-21.5 (formerly Rule 4 of State Regulation No. 20)."

It is uncontroverted that, on both dates hereinabove mentioned, conversations relating to the sale of narcotics took place in the licensed premises. However, no proof was adduced, in substantiation of the first charge, that Sedergren had a narcotic in his possession while in the licensed premises or that the sale was consummated therein as charged. Shelton, who testified in behalf of the Board, asserted that the sale of the narcotic was consummated when Sedergren took the bag containing the marijuana out of his (Sedergren's) car and there received payment therefor.

I further note that, although Shelton testified that he did engage in conversation relative to the purchase of a narcotic at the bar, he did not set forth the location of the bartender during the course of the conversation, or that the bartender was located at a distance or location where he could have heard the said conversation, or that some other overt act occurred in the licensed premises which could have been viewed by and should have alerted the bartender concerning an illegal activity therein being carried on.

With respect to the second charge, I note that the minor, James, who was produced as a witness by the Board, testified that he spoke in a low tone, so that he would not be heard by the bartender. Obviously, he did not want the bartender to view the

transaction either, since he and Shelton proceeded into the men's room to consummate the sale.

It is axiomatic that, in disciplinary proceedings, a charge must be established by affirmatively satisfactory evidence. A finding of guilt must be established by a fair preponderance of the credible evidence, and may not be based upon mere suspicion, no matter how reasonably inferable such suspicion may be. Re Doyle, Bulletin 469, Item 2. Doubtful questions of fact must be resolved in appellant's favor. Club Zanzibar Corp. v. Paterson, Bulletin 1408. Item 1; Wasserman v. Newark, Bulletin 1590, Item 1; Luisi v. Orange, Bulletin 1814, Item 3.

Thus, after carefully examining all of the evidence herein, I find that the first two charges have not been proved by a fair preponderance of the believable evidence and I shall enter an order reversing the Board's action with respect thereto.

In considering the third charge which relates to the sale and the permitting of the consumption thereof of an alcoholic beverage to a minor, I find the factual complex is not at all in dispute. The minor was served and allowed to consume a blackberry brandy after displaying a draft card and a driver's license which the bartender accepted as proof of age. No written representation was obtained with respect to his age.

Obviously, appellant failed to take the minimum precaution required by N.J.S.A. 33:1-77, Rule 1 of State Regulation No. 20 and the Special Note in explanation of said rule (p.86 of the Rules and Regulations). The showing of a driver's license and draft card does not constitute a representation in writing, as required by the statute. Sportsman 300 v. Nutley, 42 N.J. Super. 488 (App. Div. 1956). Thus, appellant has not satisfied the minimum applicable requirements. I, therefore, shall affirm the Board's action with respect to this charge.

Accordingly, it is, on this 14th day of January 1975,

ORDERED that the action of respondent in finding appellant guilty with respect to the first and second charges herein be and the same is hereby reversed, and the aforesaid charges be and the same are hereby dismissed; and it is further

ORDERED that the action of respondent Board with respect to the third charge be and the same is hereby affirmed, and that the appeal herein relative thereto be and the same is hereby dismissed; and it is further

ORDERED that my order of May 31, 1974 staying the Board's action pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-1, issued by the respondent Board of Commissioners of the Borough

of Hawthorne to Parker Inn, Inc., t/a Parker Inn for premises 448 Lincoln Avenue, Hawthorne, be and the same is hereby suspended for thirty (30) days, commencing 3:00 a.m. on Monday, March 3, 1975 and terminating 3:00 a.m. on Wednesday, April 2, 1975.

Leonard D. Ronco
Director

NOTE: The commencement of the suspension herein follows the termination of a prior license suspension presently in effect.

4. APPELLATE DECISIONS - SCUDERI v. PAULSBORO.

Anthony Scuderi, t/a Cozy Corner Bar, Appellant, v. Borough Council of the Borough of Paulsboro, Respondent.	On Appeal CONCLUSIONS and ORDER

Falciani & Di Muzio, Esqs., by Angelo J. Falciani, Esq., Attorneys for Appellant
Granite, Chell and Camp, Esqs., by Eugene P. Chell, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Borough Council of the Borough of Paulsboro (hereinafter Council) which, on July 2, 1974, denied appellant's application for renewal of Plenary Retail Consumption License C-13, for premises 815 Delaware Street, Paulsboro, for the 1974-75 licensing year.

The petition of appeal contends that the Council's action was erroneous and against the weight of evidence. In its Amended petition of appeal, appellant added that the action of the Council was also grounded on passion and prejudice; was politically motivated, and was taken in executive session from which the public was excluded.

The Council, in its answer, defends its action on grounds set forth in the accompanying resolution, which averred that appellant's premises had become a "hang-out" for young people who were found to be drinking alcoholic beverages obtained from appellant and consumed on the sidewalk in front of appellant's premises. It thus determined that the continuation of the license was against the public interest.

The term of the said license was extended by Order of the Director dated July 2, 1974, pending determination of this appeal.

The appeal was heard de novo in this Division with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15. Additionally a transcript of the hearing before the Council was supplied pursuant to Rule 8 of State Regulation No. 15.

The transcript of the testimony of the hearing before the Council reflects the following: The chief of police of that Borough, Nick Miskofsky, described the premises as a "trouble spot" in that more than twenty calls were received by the police relating to disturbances in front of, or in the parking lot of appellant's premises. However, no disciplinary proceedings of any kind were instituted against appellant. Several calls to the police originated from appellant's premises or from his patrons.

Other witnesses testified before the Council that the area in which the premises are located has deteriorated. Crowds of young people mingle in front of, or nearby appellant's premises, to the annoyance of passersby. Fights and rowdyism are commonplace; groups of motorcyclists cause abrasive noise; and there has been frequent drinking of alcoholic beverages on the sidewalk.

Delaware Street, on which appellant's premise is located, is extremely narrow and parking is restricted to one side. It is a main east-west artery that becomes snarled at times because of the congestion near appellant's premises. These conditions gave rise to a nine-page petition signed by residents and addressed to the Council protesting renewal of appellant's license and the license of a neighboring tavern.

At the appeal hearing in this Division, Judith A. DeMuro, a Juvenile Probation Officer of Gloucester County, related that she passes appellant's premises almost daily and has seen a number of young people "hanging-out" in front of the premises or nearby. Among these people are some of the probationers with whom she has had contact professionally.

Councilwoman Mary R. Knestaut testified that the complaints of many of the citizens who contacted her revolved about the crowds and general disorder occasioned by them in the area of appellant's premises. She added, however, that since the neighboring tavern has been closed, the overall situation has been substantially remedied. She detailed the gradual deterioration of

Delaware Street and described the stores adjacent to appellant's premises as being boarded up or substantially reduced in business volume. She referred to a recent newspaper article which termed that area of Delaware Street as "plywood alley" an apt characterization of the numerous stores and building presently boarded up.

One of the property owners in the area, Emma Hahn, testified that following the closing of the nearby tavern, appellant's premises no longer is subject to the same problems it had been.

Appellant testified at the hearing in this Division as well as before the Council, and recounted the difficulties he experiences with the unruly patrons or residents who molest the public in several ways. He has owned his tavern for twenty-five years, and in that length of time has had but three violations.

Within the past few years there has been a neighborhood change, old residents have moved away and have been replaced by others with a great many teen-agers and young adults. He denied that he encourages their patronage and indicated that he has recently taken a more militant action in clearing both the premises and the outside area.

From the totality of the evidence adduced, it is quite apparent that the conditions that gave rise to the ire of the residents did not develop from the interior of the appellant's premises nor from any specific incidents that related to his management of it. The deluge of social improprieties in the area engulfed his tavern in the tide of moral disintegration. The hope of the objectors that by the elimination of these premises all the ills of the area would be remedied was the main bearing about which the entire controversy revolved.

It appears to be uncontroverted that appellant did not take adequate measures that might have been curative to some degree of those problems to which his premises contributed; however, nor did the police department exhibit a sufficient degree of concern which may have alerted appellant and the neighbors that correction was required and obligatory to appellant. For example, in testimony before the Council, a witness related that he knew of the presence within appellant's tavern of his under-age nephew and notified a policeman of his concern. The policeman did enter the tavern and flush out the under-age nephew together with several other young people, presumably in the same age group. This incident was not followed by any censure by the police department, nor was any report of the incident made the subject of investigation.

The testimony also remains uncontroverted that following the closure of the adjacent licensed premises known as the "Frosted Mug", the overall conditions have singularly abated. Appellant himself has belatedly taken sterner measures to rid his premises of undesirables. In short, I find that appellant is not culpable for many of the evils which motivated and influenced the Council's

action in denying renewal of the license. However, appellant should be pointedly warned that, if the situation, as described in the complaints arises again a denial of renewal of license for the next licensing period would certainly be appropriate.

The crucial issue in this appeal is whether the action of the Council in denying renewal of appellant's plenary retail consumption license was reasonable under the circumstances presented to it. If 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, appellant 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 appellant's 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 (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 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, 38 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 ....."

It, is, therefore, concluded that appellant has sustained the burden imposed on him by Rule 6 of State Regulation No. 15 of establishing that the action of respondent Council was erroneous and should be reversed.

Accordingly, it is recommended that the action of the Council be reversed and that it be directed to renew appellant's plenary retail consumption license for the 1974-75 licensing year in accordance with the application filed therefor.

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 transcripts of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer, with the exception set forth hereinafter, and adopt them as my conclusions herein.

I believe the following statement in the Hearer's report is misplaced, and is no relevant factor in the determination hereof:

> "However, nor did the police department exhibit a sufficient degree of concern which may have alerted appellant and the neighbors that correction was required and obligatory to appellant."

By such comment, implication could arise that the duty to control properly the activities at licensed premises resides in the police department rather than in the licensee.

As early as in Conte v. Princeton, Bulletin 139, Item 8, this Division has held that a licensee is responsible for conditions both in and outside the licensed premises which are caused by patrons thereof. Cf. Galasso v. Bloomfield, Bulletin 1387, Item 1; Garcia v. Fair Haven, Bulletin 1149, Item 1. In accord, see Lyons Farms Tavern Inc. v. Newark et al, 55 N.J. 292 (1970), reprinted in Bulletin 1905, Item 1.

Thus, the degree of concern of the police department, or the action which it could or should have taken is not a competent factor in the consideration of the subject matter. Compare R.B. & W. Corporation v. North Caldwell, 1921, Item 1. Therefore, I disassociate myself from the Hearer's comment as hereinabove noted.

Nevertheless, I am persuaded that the appellant should be given one more opportunity to demonstrate his worthiness to continue operation under the liquor license privilege.

Accordingly, it is, on this 24th day of January 1975,

ORDERED that the action of the respondent Council in denying appellant's application for renewal of his plenary retail consumption license be and the same is hereby reversed; and it is further

ORDERED that the Council be and is hereby directed to grant renewal of appellant's plenary retail consumption license for the 1974-75 licensing period, in accordance with the said application filed therefor.

Leonard D. Ronco
Director

5. APPELLATE DECISIONS - 4 LEAF LIQUORS & LOUNGE v. NEWARK - SUPPLEMENTAL ORDER.

4 Leaf Liquors & Lounge (a N. J. Corp.), t/a 4 Leaf Deli and 4 Leaf Liquors & Lounge, Appellant,	)	On Appeal
v.	)	SUPPLEMENTAL ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	

Joseph Barry, Esq., Attorney for Appellant
William H. Walls, Esq., by Althear A. Lester, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appealed from the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark, which on November 18, 1970 directed the appellant to reduce the size of the bar in its licensed premises to one not over ten feet in length.

After a de novo hearing herein, Conclusions and Order entered in this Division on June 19, 1973 affirmed the action of the respondent expressly subject to the modification of the special condition imposed therein, as follows:

An appeal was taken by the appellant, from the determination of the Director, to the Appellate Division of the Superior Court which, on January 6, 1975 entered an Order dismissing the said appeal for failure of the appellant to file its brief.

During the pendency of the said appeal in the Appellate Division of the Superior Court, the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark adopted a resolution on October 10, 1974, amending the special condition which it had theretofore imposed, and which was the subject of the appeal. In its determination, the respondent found that it would be in the best interest of the community to modify its prior action, and in the operative part of the Resolution, set forth the following:

"THEREFORE BE IT RESOLVED that the license of the 4-Leaf Liquors & Lounge (a N.J. Corp.) shall have imposed upon it the condition that the total bar area for the service of alcoholic beverages shall be restricted to 25 feet of the straight section of the bar with the remaining 5 feet of the straight section of the bar for purposes other than the sale of alcoholic beverages and the two eight foot returns of the bar shall not be used for the sale of alcoholic beverages."

I shall therefore, on my own motion, enter an Order approving the amendment of the said special condition.

Accordingly, it is, on this 16th day of January, 1975

ORDERED, that the special condition set forth in the resolution of the respondent dated October 10, 1974, which said special condition is restated hereinabove, be and the same is hereby approved; and it is further

ORDERED, that the Conclusions and Order dated June 19, 1973, be and the same is hereby amended to the extent set forth in the special condition hereinabove noted.

Leonard D. Ronco

LEONARD D. RONCO
Director