STATE OF NEW JERSEY

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

BULLETIN 2123 November 19, 1973

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25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2123 November 19, 1973

1. APPELLATE DECISIONS - FELDMAN v. IRVINGTON.

August Feldman & Anna Feldman, t/a Town Tavern,

Appellants,

v.

Municipal Council (acting as the Alcoholic Beverage Control Board) of the Town of Irvington,

Respondent.

On Appeal

CONCLUSIONS and ORDER

Maurer & Maurer, Esqs., by Barry D. Maurer, Esq., Attorneys for Appellants
Samuel J. Zucker, Esq., by Herman W. Kurtz, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants, holders of a plenary retail consumption license for premises 982 Springfield Avenue and 16 Myrtle Avenue, Irvington, appeal from the action of respondent which on February 27, 1973 found appellants guilty of each of four charges (hereinafter specified) and which resulted in suspension of appellants' license for thirty days on each charge, effective April 1, 1973.

Upon filing of this appeal an order was entered by the Director on March 14, 1973, staying the respondent's action pending determination of this appeal.

In their petition of appeal appellants allege that the Board's action was erroneous as a matter of law and was against the weight of the evidence. These contentions were denied by the Board in its answer.

Transcripts of the proceedings by the Board, supplemented by exhibits, the testimony of a co-licensee and oral argument were presented at this de novo hearing in accordance with Rules 6 and 8 of State Regulation No. 15. Additionally, both counsel submitted written memoranda in summation.

The following charges were leveled against the appellants:

"First Count: That on or about June 8, 1972, you did allow, permit or suffer the sale, service or delivery of alcoholic beverages, directly or indirectly to Horace Perry, a person actually or apparently intoxicated, and allowed, permitted or suffered the consumption of such alcoholic beverage by such person, in or upon the licensed premises, in violation of Rule No. 1 of State Regulation No. 20 ***.

"Second Count: That between the period commencing on or about June 24, 1971 and terminating on or about September 9, 1972, you did allow, permit or suffer your said place of business to be conducted in such a manner as to become a nuisance *** in violation of Rule No. 5 of State Regulation No. 20 ***.

"Third Count: That on or about September 1, 1972, in and about the licensed premises, you did sell, serve or deliver alcoholic beverages to one, Stephen ---, a person under the age of twenty-one (21) years, to wit: 19 years, in violation of Rule No. 1 of State Regulation No. 20 ***.

"Fourth Count: That on or about September 9, 1972, at about 1543 hours and again at about 1827 hours, you did allow, permit or suffer one, Arnold Smith, and one, Ronald Denner, both being persons of ill repute, to be and remain in and upon said licensed premises, in violation of Rule 4 of State Regulation No. 20 ***."

I

In support of the first charge the transcript reflects that two local police officers testified that they entered the licensed premises on June 16, 1972 in order to investigate a complaint that a patron (Horace Perry) was assaulted therein on June 8, 1972. The bartender (Joseph Keifer) who was on duty on June 8, at the time of the alleged incident, during the course of the interview asserted to the officers that Perry entered the premises shortly prior to 5:00 p.m. (when he was about to go off duty) and that he appeared to be intoxicated. Keifer served Perry scotch and water. Perry paid for and consumed the drink.

Keifer, although in attendance at the first of the three hearings held by the Board, was unable to testify due to the lateness of the hour. He did not appear at the second hearing due to illness. Prior to the third hearing Perry died. The Board refused to permit August Feldman to testify concerning an alleged conversation that Feldman had with Keifer relative to the alleged service of an alcoholic beverage to Perry by Keifer on

June 8. Although realizing that Feldman's testimony in this connection would be strictly hearsay, I permitted Feldman to testify at the Division hearing because the rules concerning the admissibility of hearsay evidence have been greatly relaxed at the administrative level.

Feldman testified that, upon questioning Keifer on June 9 concerning the occurrence of June 8, Keifer declared that he did serve Perry a scotch and that Perry was sober.

My analysis of the transcripts and the evidence produced before me convinces me that the Board acted properly, and that the credible testimony before the Board fairly preponderates in support of its determination. I am persuaded that the record on the whole supports the decision reached by the Board.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion is upon appellants. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: Could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App.Div. 1957); Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970).

My examination of the facts and the applicable law generates no doubt that this charge was established by a fair preponderance of the believable evidence. I conclude, therefore, that appellants have failed to sustain the burden of establishing that the Board's action relative to this charge was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

II

In substantiation of the second charge, the Board relied upon the testimony of an area resident, William A. Faria, a local police officer, Robert A. Puorro, and a log of ten police calls made to the subject tavern between June 24, 1971 and September 9, 1972.

In sum, Faria, who resides several doors distant from the tavern, testified that over a period of less than two years he has observed persons in a state of intoxication leave appellants' tavern, enter his hallway and urinate therein. He has ejected drunken persons from his hallway and observed them enter the licensed premises. On another occasion he has seen an intoxicated patron exit from the tavern at 10:00 a.m. He saw one intoxicated person exit, with his trousers lowered, walking up the street. He saw another inebriated person emerge from the premises and molest women. Upon remonstrating with Feldman concerning intoxicated patrons in his hallway, Feldman replied, "What can I do?"

Puorro testified that he has on a number of occasions observed intoxicated persons leave the tavern, cross the street and sleep in the adjacent bus terminal, in telephone booths or on benches. Some patrons required assistance in crossing the street or in boarding a bus or a cab. On several occasions he observed service being made to intoxicated persons. He has witnessed intoxicated persons leave the tavern and annoy pedestrians or hinder traffic.

Additionally, it was stipulated that the records of the Police Department reveal that the police visited the licensed premises on the ten occasions, none of which resulted in police action, as follows:

(a) June 24, 1971. To investigate injuries of one Jan Dawerski.
(b) December 11, 1971. Alleged brawl.
(c) March 22, 1972. Call by owner, Feldman, complaining of one Miss Woodworth's conduct.
(d) June 8, 1972. Complaint to Officer Erdman at Center post to investigate claim of Horace Perry c/m of having been assaulted by 2 or 3 w/m and his wallet taken.
(e) June 9, 1972. Claim by a Mrs. Tumisak (61) that a male patron had touched buttocks and said a few obscene words to her.
(f) June 27, 1972. Disturbance in bar between Mr. Conklin & Mr. Denner. Dispute over bar stool.
(g) July 3, 1972. Alleged brawl between a Robt. Cooper & Jos. Kelly.
(h) September 9, 1972, 2:15 p.m. Answer to call signal 5 (fight).
(i) September 9, 1972, 3:42 p.m. Answer to call signal 5 (fight).
(j) September 9, 1972, 5:27 p.m. Answer to call signal 5 (fight).

It is basic that 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; The Caje, Inc. v. Passaic, Bulletin 2063, Item 2.

I conclude that the Board, as reasonable men, acting reasonably, properly concluded that this charge has been established by clear and convincing evidence. Thus appellants have failed to sustain their burden of establishing that the action of the Board was erroneous. Rule 6 of State Regulation No. 15. It is recommended that the action of the Board on this charge be affirmed.

III

Relative to the third charge, Police Officer Michael Amiano testified that on September 1, 1972 he observed a car containing four males pull up in front of the tavern. One male, identified as Stephen ---, age 19, got out of the car, entered the tavern and exited several minutes later carrying two paper bags. Amiano questioned the youth, ascertained that the bags contained six-packs of beer, and thereupon placed him under arrest.

Police Officer Richard S. Mermer, who was assigned to investigate this alleged transaction, several minutes thereafter also questioned Stephen and entered the tavern accompanied by Stephen. Upon interrogating Feldman concerning whether he had sold the youth the beer, Feldman responded that he had. He explained that no identification as to age was requested because the youth had produced the same in the past.

Police Officer Steven W. Schneider, who accompanied Officer Mermer and Stephen into the tavern, corroborated Mermer's testimony with respect to Feldman's admission that he had sold the beer to Stephen.

Stephen, the minor, testified that, although he purchased the beer in appellants' premises, he did not buy it directly from the bartender; he arranged to have a middle-aged male purchase the beer and hand it to him.

August Feldman, the co-licensee, testified that there were approximately thirty to thirty-five patrons in the tavern on the date and time charged herein; that Stephen asked for two six-packs, and, when he couldn't produce an ID card, he told the youth to leave. He didn't know whether he left the premises or not. Feldman admitted selling two six-packs to a patron who had been standing alongside the minor. He did not keep the patron under surveillance. He denied that he admitted to the police officers that he had sold the beer to the minor.

In their argument for a reversal of the finding of guilt as to this charge, the licensees candidly admitted that there was a delivery of the beer to the minor but not a sale thereof.

I am satisfied that the Board has proved the charge that appellants did actually sell, serve and deliver alcoholic beverages to a minor as charged herein by a fair preponderance of the credible evidence, indeed by substantial evidence. It is clear that, even though alcoholic beverages may have been sold to an adult who in turn delivered such beverages to the minor, the licensees are fully responsible since it has been held, under the broad sweep of the Alcoholic Beverage Law and the principle of rigid control underlying its administration, that service, even indirectly, to a minor via the instrumentality of the adult is a violation of the statute. Re The Bunny Hutch, Bulletin 1722, Item 2, and cases therein cited; Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947); Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); N.J.S.A. 33:1-73. I recommend that the Board's action with respect to the charge be affirmed.

IV

Relative to the fourth charge, licensees were charged with allowing, permitting and suffering one Arnold Smith and one Ronald Denner, both persons of ill repute, to be and remain in the said licensed premises on September 9,1972, in violation of Rule 4 of State Regulation No. 20. It was stipulated that the charge, in so far as it pertained to Arnold Smith, should be dismissed.

Pertaining to Denner, a police officer testified that Denner was arrested on several occasions and on some of these occasions he was convicted of being a disorderly person. He was characterized as a drunkard and on one occasion he was charged with having assaulted his wife.

Rule 4 of State Regulation No. 20, in its pertinent part, reads that no licensee shall allow, permit or suffer in or upon the licensed premises any prostitute, pickpocket, swindler or any notorious criminal, gangster,

racketeer or other persons of ill repute. Reading the rule conjunctively or as a whole, pursuant to the basic rules of statutory construction, requires that the term "ill repute" be defined in terms of the specific characterizations contained in the rule. Accordingly, "ill repute" means a person of a nature kindred to a prostitute, pickpocket, swindler, notorious criminal, gangster or racketeer. It cannot be taken to mean a person with a record of disorderly person offenses. On the whole, I find the proof insufficient to sustain this charge. See Cubanacan Corp. v. Newark, Bulletin 1753, Item 2, and cases cited therein. I therefore recommend that the action of the Board relative to this charge be reversed and the charge dismissed.

V

In sum, therefore, it is recommended that an order be entered affirming the Board's action with respect to the first, second and third charges, and reversing its action with respect to the fourth charge. It is further recommended that the order of suspension imposed by the Board be modified to a suspension of thirty days on each of the said first, second and third charges, or a total of ninety days; and that the said order fix the effective dates of the said suspension which was stayed pending entry of a further order herein.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellants.

Appellants argue that there is no factual basis for the Hearer's recommended affirmance of the finding of guilt of appellants by respondent with respect to the first two charges. Additionally, appellants request that the Hearer's recommended penalty of thirty days suspension with respect to the third charge be modified.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellants must show manifest error in respondent's action and that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947). I find that appellants have not met the burden required by the quoted rule. Furthermore, I have carefully considered the testimony presented both before the Board and at this de novo hearing and conclude that appellants' guilt of the aforementioned charges has been established by a fair preponderance of the believable evidence, and that the record on the whole preponderates in support of respondent's determination.

Respondent had suspended appellants' license for thirty days on each charge. I find no compelling reason to intrude upon the determination thus made. The extent of any penalty imposed herein rests within the sound discretion of the adjudicating authority. Benedetti v. Trenton, 35 N.J. Super. 30 (1955); Schwartz v. Paterson, Bulletin 1577, Item 2.

Hence, having carefully considered the entire record herein, including transcripts of the testimony, the exhibits, the memoranda of counsel in summation, the Hearer's report and the written exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of October 1973,

ORDERED that the action of respondent in finding appellants guilty of the fourth charge preferred herein and suspending their license be and the same is hereby reversed, and the aforesaid charge be and the same is hereby dismissed; and it is further

ORDERED that the action of respondent with respect to the first, second and third charges 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 dated March 14, 1973, staying respondent's action pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-20, issued by the Municipal Council of the Town of Irvington to August Feldman & Anna Feldman, t/a Town Tavern, for premises 982 Springfield Avenue and 16 Myrtle Avenue, Irvington, with respect to the first, second and third charges be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Thursday, November 1, 1973, and terminating at 2 a.m. Wednesday, January 30, 1974.

Robert E. Bower,
Director.

2. APPELLATE DECISIONS - THOMAS-JOHN CORPORATION v. CAMDEN ET AL.

Thomas-John Corporation, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Camden, and Waterview, Inc., Respondents.	On Appeal CONCLUSIONS and ORDER

Wilinski, Suski, Kille & Scott, Esqs., by Edward Suski, Jr., Esq., Attorneys for Appellant
Isaiah Steinberg, Esq., by Samuel T. French, Jr., Esq., Attorney for Respondent Board
Harry L. Shaw, Esq., Attorney for Respondent Waterview, Inc.

BY THE DIRECTOR:

This is an appeal from action of respondent Municipal Board of Alcoholic Beverage Control of the City of Camden (hereinafter Board) which on July 18, 1973 approved a person-to-person transfer of a plenary retail consumption license from the Director of Internal Revenue Service to respondent Waterview, Inc. for premises 400-402 Mechanic Street, Camden.

Appellant contended that the action of the Board was invalid as the transferor had no legal interest in the premises 400-402 Mechanic Street which was identified as the situs of the license, hence any transfer to that site was without legal efficacy. The Board in denying this contention contended that the situs of the license was not in transfer, hence the appeal was not properly grounded.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. By stipulation of counsel, reliance was placed upon a review of the factual background which generated the appeal, as set forth in the pleadings. Essentially those facts are outlined as follows:

Appellant had been the holder of a liquor license at 400-402 Mechanic Street which was seized and sold by the Director of Internal Revenue Service. Appellant also owned the realty in which the license was located. Upon receiving the license by way of the sale to it, respondent Waterview, Inc. applied for and obtained a person-to-person transfer to it of the license. Admittedly, neither Waterview nor Internal Revenue Service had a right of occupancy in the building of appellant. However, the Board, upon granting the transfer, did not actually deliver the license

to respondent Waterview, Inc. but holds the license until proper site for it has been obtained. An application for place-to-place transfer from the 400-402 Mechanic Street address to property 2949 Adams Avenue, Camden, owned by respondent Waterview, Inc., was tabled pending this appeal.

Appellant contends that, by virtue of the identification of respondent Waterview, Inc.'s license as located at 400-402 Mechanic Street, it was thus indirectly denied an opportunity to seek potential transfer to that location of any other license. This contention, while vigorously advanced, was peripheral and indeed irrelevant to its basic argument that the Board improperly approved a transfer involving a non-existent site.

In its initial determination the Board properly relied upon The Boss Co., Inc. v. Bd. of Com'rs of Atlantic City, 40 N.J. 379 (1963) which dispelled further question that a liquor license was not such a property right as to be salable in the enforcement of a federal lien. Appellant concedes the existence of such doctrine, but declared that the application of Boss is inapposite in the present situation.

Appellant's position is groundless; the act of the Board in granting the person-to-person transfer to respondent Waterview, Inc. was essentially ministerial. While the application for transfer was granted, the license was not in fact actually issued but, rather, was (and is) held by the Board pending determination of the proper situs. As an application for place-to-place transfer is presently pending, having been forestalled by the present appeal, it is contemplated that, upon resolution of this appeal, the Board will proceed to effectuate the transfer to its new location. Thus, from the procedural aspect, the issue relative to appellant's building is moot.

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

Accordingly, it is, on this 15th day of October 1973,

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

Robert E. Bower,
Director.

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION - APPLICANT FOR CLUB LICENSE: UNQUALIFIED - LICENSE NOT RENEWED - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

Atlantis Country Club
Country Club Blvd., off Radio Road
Little Egg Harbor, N. J.,

Holder of Club License CB-1, issued by the Township Committee of the Township of Little Egg Harbor.

CONCLUSIONS and ORDER

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Bracken & Craig, Esqs., by D.F. Moore Craig, 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 pleaded not guilty to the following charges:

"1. In your short-form application dated May 12, 1972 and filed May 13, 1972 with the Township Committee of the Township of Little Egg Harbor, upon which you obtained your current club license you in answer to Question No. 9 failed to disclose a change in facts in your last prior long-form application viz., to show a change in answer from "No" to "Yes" to Question No. 21 which asks: "Has any individual, partnership, corporation, or association, other than the applicant, any interest directly or indirectly, in the license applied for or in the business to be conducted under said license?_____. If so, state names, addresses, and interest of such individuals, partnerships, corporations, or associations_____.", whereas in truth and fact the Atlantis International Corporation had such an interest in that it was the real and beneficial owner of the business to be conducted under said license; said false statements, misrepresentations and evasions and suppressions of material facts being in violation of N.J.S.A. 33:1-25.

"2. In your aforesaid application you falsely stated "No" in answer to Question No. 22 which asks: "Has the club agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise) all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?_____.If so, give complete details_____.", whereas in truth and in fact you permitted the said Atlantis International Corporation to retain all the profits and income derived from the licensed business; said false statement being in violation of N.J.S.A. 33:1-25

"3. From on or about July 1, 1962 to date you knowingly aided and abetted said Atlantis International Corporation to exercise contrary to N.J.S.A. 33:1-26, the rights and privileges of your successive club license; in violation of N.J.S.A. 33:1-52."

Licensee was also required to show cause why its license should not be cancelled and declared null and void for the following reason:

"Said license was improvidently issued in violation of N.J.S.A. 33:1-12(5) and Rule 2 of State Regulation No. 7 in that, at the time of issuance of such license and prior thereto, you were not a bona fide club."

At the hearing the following facts were stipulated:

"Atlantis Country Club is owned and operated by Atlantis Country Club, Inc.

Atlantis Country Club, Inc. is a business corporation organized for profit under the New Jersey Business Corporations Act, and has been so organized since 1960.

The total outstanding stock of Atlantis Country Club, Inc. is owned by Atlantis International Corp.

Atlantis International Corp. is a business corporation organized for profit under the New Jersey Business Corporations Act.

Paul H. Sager serves as president of Atlantis Country Club, Inc. and he asserts he is president of Atlantis International Corp.

Atlantis Country Club physically consists of a clubhouse, motel, and golf course.

Atlantis International Corp. owns the land and buildings which constitute Atlantis Country Club.

The clubhouse contains a cocktail lounge, and the entire clubhouse constitutes the licensed premises operated under Club License CB-1 issued by the Township Committee of the Township of Little Egg Harbor, which was first issued on or about July 1962.

Atlantis Country Club offers subscriptions for use of the country club which are termed memberships by the Atlantis Country Club.

To purchase a membership in the Atlantis Country Club an individual must submit application to the board of directors of Atlantis Country Club, Inc., pay an initiation fee of two hundred dollars, and thereafter pay an annual fee the amount of which depends on the type of membership purchased.

All memberships must be approved by the board of directors of Atlantis Country Club, Inc.

The board of Directors of Atlantis Country Club, Inc. are elected by the sole stockholder of said corporation.

The only voting rights permitted the members, as heretofore described, of Atlantis Country Club pertain to the formulation of rules and regulations governing the use by members of the golf course and clubhouse.

The board of directors of Atlantis Country Club, Inc. exclusively direct, manage and control the operations, practices, and conduct of Atlantis Country Club.

Any individual of the general public may register at the motel located at the Atlantis Country Club.

Any individual of the general public may play golf on the golf course of Atlantis Country Club.

Any registrant at the motel is considered by the licensee to automatically be a guest of the motel manager, who is a member of the Atlantis Country Club. Such registrant is thereby considered by Atlantis Country Club to be entitled to be served alcoholic beverages on its licensed premises.

Any individual playing golf on the golf course not a member of the Atlantis Country Club may register at the pro shop contained in the clubhouse, and thereby is entitled by the licensee to be served alcoholic beverages on its licensed premises.

Atlantis Country Club regularly permits the use of its licensed premises for weddings, banquets, and like affairs by organizations and private groups not affiliated with the said licensee. In order to conduct such an affair at the Atlantis Country Club the licensee requires the sponsor of such group to be or become a member of the Atlantis Country Club. The licensee then considers the remainder of the party as guests of such member thereby entitled to the service of alcoholic beverages on the licensed premises.

Atlantis Country Club has never secured special permits for the conduct of such affairs within its premises."

N.J.S.A. 33:1-12.5 provides as follows:

"... Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the Commissioner [now Director] of Alcoholic Beverage Control by rules and regulations."

The applicable part of Rule 1 of State Regulation No. 7 pertaining to club licenses reads as follows:

"'Club.' An organization, corporation or association consisting of sixty (60) or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes, and not for private gain."

Thus it is unquestionably apparent that Atlantis Country Club was not a bona fide club within the intendment of the quoted statute and rule and I therefore recommend that an order be entered cancelling the license now held by it. In view of such recommendation it is not deemed necessary to make any finding with respect to the charges herein, nor to recommend any penalty of suspension or revocation of the license on the basis thereof. Cf. Re Brigantine Golf Club, Inc., Bulletin 1520, Item 2, and cases cited therein.

Conclusions and Order

No exceptions to the Hearer's report were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

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

Division records disclose that the licensee first obtained its club license in 1962 and the subject license expired on June 30, 1973. This license was not renewed by the local issuing authority.

However, a club license was issued to Atlantis Country Club which coincidentally bears the same name but is a distinctly new operation, consisting of officers and stockholders who had no interest in the subject licensee.

In view of the fact that the subject license was not renewed for the current licensing period, no purpose would be served in entering an order of suspension, revocation or cancellation of the said license based upon the charges herein.

Accordingly, it is on this 3rd day of October, 1973

ORDERED that the charges against the licensee herein be and the same are hereby dismissed.

Robert E. Bower,
Director

4. APPELLATE DECISIONS - PLOTKIN, RECEIVER FOR RALLO'S v. WEST ORANGE.

Richard L. Plotkin, Esq., Receiver for Rallo's Bar, Inc.,
Appellant,
v.
Board of Alcoholic Beverage Control of the Town of West Orange,
Respondent.

On Appeal

CONCLUSIONS and ORDER

Richard L. Plotkin, Esq., Appellant, Pro se
Minish and Dooley, Esqs., by Joseph G.Dooley, Jr., Esq., Attorney for Respondent

BY THE DIRECTOR:

This is an appeal from action of respondent Board of Alcoholic Beverage Control of the Town of West Orange (hereinafter Board) which on August 21, 1973 denied renewal of appellant's application for renewal of a plenary retail consumption license heretofore transferred to him as Receiver in consequence of an order of the Superior Court, Chancery Division, entered July 21, 1972 and continued on September 8, 1972. The above license was the subject of an appeal to this Division filed by West Orange Licensed Beverage Association, which appeal was dismissed and the action of the Board affirmed by order of the Director dated June 28, 1973. West Orange Licensed Beverage Association v. West Orange et al., Bulletin 2112, Item 3.

The aforesaid order directed that the Board renew the said license subject to the express condition that appellant be given further opportunity to effect, within a reasonable time, a person-to-person and place-to-place transfer as may be approved by the Board.

The petition contended that the action of the Board in not renewing the license was in direct opposition to the above order. The Board denied that contention. It contended that appellant was dilatory in making no application for any transfer and, further, that a renewal would be detrimental to the public health, safety and welfare of the Town.

By stipulation it was agreed that the facts in the matter were uncontroverted in so far as they existed at the time of the Director's order of June 28, 1973. Thereafter appellant entered into a contract for the sale of the license (copy of which was introduced into evidence) providing for the purchase by the West Orange Englewood Tennis Clubs, Inc. and subject to a subsequent approval of the necessary transfers. Appellant indicated that he was forestalled from submitting an application for person-to-person and place-to-place transfer until the Board acted upon the renewal application.

The Board acted erroneously in not complying with the order of June 28, 1973. Appellant sought and obtained approval by order of the Superior Court of the anticipated sale. The matter should have been permitted to proceed forward in usual course. I find no evidence produced to support the Board's contention that the public health, safety and welfare of the municipality would be adversely affected by the proposed transfer. Thus this contention lacked merit and is rejected.

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

Accordingly, it is, on this 17th day of October 1973,

ORDERED that the action of the Board be and the same is hereby reversed, and it is hereby directed to renew appellant's plenary retail consumption license subject to the special condition that it not be actually issued but shall be held by the Board pending a reasonable opportunity to effect a person-to-person and place-to-place transfer of the said license by the proposed transferee.

ROBERT E. BOWER
DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

Almet, Inc.
Main Street
Bedminster, New Jersey
Application filed November 12, 1973
for place-to-place transfer of
Limited Wholesale License WL-35 to
include a warehouse at Cokesbury
Road and Route 78, Lebanon, New Jersey.

Robert E. Bower
Director