

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

BULLETIN 2187

June 12, 1975

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1. NOTICE TO ALL RETAIL LICENSEES - FOOD STAMPS ISSUED BY FEDERAL GOVERNMENT NOT TO BE USED FOR PURCHASE OF ALCOHOLIC BEVERAGES.

NOTICE TO ALL RETAIL LICENSEES:

The Division has received information indicating that some retail licensees have been accepting food stamps, distributed under the Federal Food Stamp Program, as payment of all or part of the sales price of alcoholic beverages, notwithstanding the fact that the Food Stamp Act (Public Law 88-525) limits the use of these stamps to food purchases and excludes their use for purchases of alcoholic beverages.

Rule 5 of State Regulation No. 30 prohibits any licensee from selling any alcoholic beverage for less than its minimum consumer resale price filed with the Division. Food stamps used to purchase alcoholic beverages may not be considered lawful payment for same since such use is prohibited by Federal law. Accordingly, it is apparent that retail licensees violate said Rule 5 when they accept food stamps as part or all of the sales price of alcoholic beverages sold at their filed price.

Violation of Rule 5 is cause for suspension or revocation of license. However, since this is the first time the Division has had occasion to deal with this matter and there may thus have been some uncertainty by retailers concerning their right to accept food stamps in connection with sales of alcoholic beverages, I have determined to take no disciplinary action at this time with respect to past violations of this nature. Nevertheless, this release shall be considered notice to all licensees that future violations of this type will be the subject of disciplinary proceedings directed towards suspension or revocation of licenses of retailers found committing such offense.

I enlist your cooperation to ensure that the Food Stamp Program is administered for the purposes intended by Congress and that the Division's minimum consumer resale price regulation is not violated by the unlawful acceptance of food stamps.

Leonard D. Ronco
Director

Dated: May 30, 1975

2. APPELLATE DECISIONS - GAUNTT v. PAULSBORO.

Roger A. Gauntt,)
t/a Frosted Mug)

Appellant,)

v.)

Borough Council of the)
Borough of Paulsboro,)

Respondent.)

On Appeal
CONCLUSIONS
AND
ORDER

Boakes, Lindsay, Smith & Sprigman, Esqs., by Charles J. Sprigman,)
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 1, 1974, denied appellant's application for renewal of his plenary retail consumption license for premises 905 Delaware Street, Paulsboro.

Appellant's petition of appeal contends that the grounds of denial as set forth by the Council in its resolution were not supported by proof; hence its action was erroneous. The Council denies this contention and defends that its action was based upon sufficient evidence adduced before it.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15. Additionally, a transcript of the proceedings before the Council was received in evidence pursuant to Rule 8 of State Regulation No. 15. Full opportunity was afforded the parties to introduce evidence and to cross-examine witnesses.

The resolution cited the following difficulties and reasons leading to the denial:

"(9) Other calls have involved difficulties in the immediate locale of said premises, on the street and sidewalk. Many of these have been from neighboring businesses who have made complaints that the patrons of the Frosted Mug were disturbing or bothering their businesses.

(10) In addition to that, a strong-armed robbery took place on February 11, 1974, at approximately 10:30 P.M., directly in front of this premises while said premises was open for business. The victim was an innocent passer-by, who was struck about the face, knocked to the sidewalk, and his wallet taken.

(11) The patrons of the Frosted Mug have the habit of gathering on the sidewalk on Delaware Street, and along the walls of the Frosted Mug. These gatherings have impeded the flow of traffic along Delaware Street physically, and further caused residents to detour around Delaware Street in order of avoid confrontation with the crowds gathered in and around the premises.

(12) The applicant has failed to exercise proper control over the licensed premises and the adjoining entranceway and sidewalk, and has failed to properly police the removal of opened beverages from his premises.

(13) The applicant himself failed to appear for the hearing on this matter, as did both his managers, and Council considers this non-appearance to be a reflection upon their lack of interest or concern in the problems associated with this license.

(14) Further, the applicant failed to answer at the hearing the charge against him that there were other persons or entities which had interest in this license. Council finds, as a matter of fact, that this silence raises a strong inference that the applicant is not the sole and exclusive owner of this premises.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of Paulsboro, that the application of Roger A. Gauntt, for a renewal of liquor license No. C-9, is hereby denied for the following reasons:

- (1) Continuance of the license at this location is against the public interest.
- (2) The licensee has allowed, permitted or suffered the licensed place of business to be conducted in such a manner as to become a nuisance.
- (3) The applicant has failed to come forward and prove that the premises are being adequately managed.
- (4) To a great extent, this conflict with the public interest and the nuisance created at this location, have resulted from the applicant's lack of interest in the continuance of this licensed premises and the lack of interest of his employees.
- (5) Applicant has failed to satisfactorily explain the interest of Messers. Mauk and Baker in this license, despite Council's notice to the applicant that one of its primary concerns was the ownership of this premises, and the answers contained on the application, indicating that the applicant was the sole and exclusive owner of this premises.

At the hearing before the Council, Borough Clerk Ernest S. Meringer acknowledged receipt of petitions signed by seventy-five persons urging that the application be denied. He produced a letter indicating that persons with surname Mauk and Baker were managing the premises as the appellant was not a resident of this State. He stated that there had been no disciplinary proceedings instituted against appellant.

Police Chief Nick Miskofsky stated that appellant began operation of the licensed business in February, 1974. In that month, there had been four calls to the premises: the setting off of a burglar alarm by the manager to summon police because of a disorderly patron; the robbery of a man lying on the sidewalk in front of the premises; a patron who was unruly and had to be removed; and a similar incident which occurred a week thereafter. In March, 1974 there were two calls: patrons urinated on the exterior of the premises, and a disorderly person required removal. There were three calls to police in April, 1974: persons were loitering in front of a next-door baker in such numbers that pedestrian passage was blocked; another incident involved patrons who vomited in front of premises. On June 16, 1974 police responded to a complaint that premises were open during prohibited hours.

The Chief further related a conversation with manager Mauk concerning the loud music coming from the interior of the premises. He had observed constant loitering, received numerous complaints from citizens, some of which were anonymous;

but, he issued no summons or complaints against the license or the manager.

Residents of the community testified to conditions in front of appellant's premises which they described as "intolerable". Robert Gilcrest stated that he drove past the premises four or five times a day, and observed eight to ten persons loitering, or entering and emerging from the premises with glasses in their hands. Double parking by patrons often caused traffic snarls.

Mosell Dansby testified that, in passing the premises six or eight times a day, he saw many persons with glasses containing alcoholic beverage in their hands in front of the premises. On several occasions, patrons were lying on the ground directly outside of the premises. Crowds of loiterers and double-parked cars caused both pedestrian and traffic blockage.

Mary Wurtz testified that, in walking past appellant's premises about eight times a week, she observed groups of eight or ten patrons congregating outside the said premises with beer bottles in their hands. Some of the more unruly patrons stopped passing cars, used foul language, and caused traffic congestion.

Jacob Billing, Jr. described similar conditions, and added that he observed children entering and leaving the premises.

The owner of the next-door bakery, Emma Hahn corroborated the description by the other witnesses of crowds of loiterers with bottles or glasses of beer in their hands; the foul language which was constant, urination by patrons on the exterior of the premises, patrons vomiting on the sidewalk and against her store window. She had called the police as often as four times in a single day.

Joseph Hahn described a row of empty glasses which he observed at the front of the bakery, next-door, being removed by the bartender from appellant's premises.

Val Ipri corroborated the standing glasses on the exterior or appellant's and the next door properties; he also observed beer bottles being thrown into the alley between them and against the buildings.

Bruce Bay described an incident when he was stopped by patrons emerging from appellant's premises and threatened because he complained of being detoured into the street in order to pass.

At the hearing in this Division, Judith DeMuro, a juvenile probation officer of the County, testified that she

comes into this municipality each day where she has between thirty and forty juveniles under her supervision. She has seen constantly crowds of young people congregating in front of the premises, and she has learned that she could locate juveniles under her charge at appellant's premises on most occasions.

She knew of one incident when one of such juveniles got into a fight within appellant's premises, which resulted in a complaint made by the bartender. She had once entered the premises in search of one of her probationers, and, while there, recognized several persons who had been juvenile offenders.

Testifying on behalf of appellant, Frances Mauk described himself as a contract-purchaser of the premises from January through April. He paid no money to appellant as the income, after payment of rent to him as building owner as well as other expenses, left no residue available to appellant.

Francis A. Baker, the co-prospective purchaser with Mauk, testified that, upon departure from management of Mauk, he continued the operation until August. He employed a bartender and a waitress. Moneys received from the operation of the premises were deposited in a special account from which bills were paid; there remains in that account, available for appellant, less than one hundred dollars.

Appellant, Roger A. Gauntt, confirmed his residence to be in Virginia to which he moved in October of 1973. He allowed Mauk and Baker, trading as the F & F Company to manage the premises, and in which he took no part since January 1974. He maintained that neither Mauk nor Baker have any interest in the license or in the licensed premises at the present time.

Appellant contends that the action of the Council should be reversed because its decision was not reached at a public meeting, and hence, violated N.J.S.A. 10:4-1, the so-called "Right to Know Law". Borough Clerk Meringer testified that the meeting at which Council's resolution was adopted was a public meeting. There being no proof whatever to the contrary, appellant's contention in this regard is groundless, and is rejected.

Appellant further contends that, as the local ordinance mandates the police to order loiterers from in front of the licensed premises, and they failed to do so, such failure absolves appellant of any responsibility for such situations. In light of the proofs produced, there is no evidence whatever that appellant or his agents made any effort to disperse loiterers by requesting police aid. Further, there was no evidence whatever showing any request for police assistance by or from the licensed premises, except to eject an unruly patron.

Appellant cites Ishmal v. Div. of Alcoholic Beverage Control, 58 N.J. 347, in support of its contention that as the exterior situation complained of resulted from the premises being in a "troubled area", the Board should not have denied appellant's application for renewal. The facts in Ishmal are inapposite to the instant matter. In Ishmal, the Court found that constant calls to the police for aid in ridding her licensed premises of narcotic users, coupled with a high degree of cooperation with the police, led to the determination that the license should not be terminated, but, rather, the licensee should be given an opportunity to move from the troubled area. The test in such situations is the degree of affirmative good faith action which a licensee would take to aid authorities in solving the problem which inhered in the location of the premises.

In the instant matter, it is obvious that appellant divorced himself from any interest in the licensed premises. He, for all practical purposes, gave the premises to Mauk and Baker who, in turn, exhibited little or no interest in properly managing the licensed business. For appellant to attempt to transfer culpability for the onerous conditions at these premises onto the shoulders of the police as well as society in general, makes mockery of his primary statutory obligation to operate the licensed business in a lawful manner. That the premises became a public nuisance, as was found by the Council on the basis of the substantial credible evidence presented, was clearly the result of total and complete disregard of appellant's responsibilities.

The liquor business must be carefully supervised and the common interest of the general public should be the guide in the renewal of licenses. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. 1946).

It is proper for municipal issuing authorities, in passing upon applications for renewal of liquor licenses, to take into account not only the conduct of licensees, but also conditions not attributable to its conduct which render a continuance of a tavern in a particular location against public interest. Nordco, Inc. v. State, 43 N.J. Super 277 (App. Div. 1957).

The courts will interfere in the exercise of discretion by a municipal issuing authority only in the case of manifest error, clearly unreasonable action, or some more untoward impropriety. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598, 600 (1955). Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees

who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support." In Re 17 Club, Inc., 26 N.J. Super 43, 52 (App. Div. 1953).

Appellant, by taking residence in Virginia ceased to be a reputable licensee and the licensed premises thereafter ceased to be operated in a reputable manner.

It is, accordingly, concluded that appellant has not sustained the burden of establishing that the action of the Council was erroneous or an abuse of discretion, as required by Rule 6 of State Regulation No. 15. Cf. One Ninety Four Bar, Inc. v. Passaic, Bulletin 2142, Item 1.

I, therefore, recommend that the action of the Council be affirmed and the appeal be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument were filed by the appellant pursuant to Rule 14 of State Regulation No. 15. No answering argument to the said exceptions was filed by respondent.

One of the exceptions contends that the Hearer misapplied the testimony of Juvenile Probation Officer DeMuro. However, an examination of that testimony manifests that the witness was first examined with reference to the companion matter, tried concurrently, and thereafter, was examined specifically with respect to appellant's premises. The testimony of Officer DeMuro was correctly summarized by the Hearer.

In his second exception, appellant contends that the Right-to-Know-Law, N.J.S.A. 10:4-1, was violated, at least in "spirit" by the Council. A review of the testimony of Ernest S. Meringer, Borough Clerk, reflects that the Council determined the issue at a public meeting on Saturday, June 29, 1974, from which no members of the public were excluded. Meringer maintained that the action relative to an earlier public hearing on the matter, in which appellant's counsel participated was resolved at a subsequent public hearing, at which the subject resolution was adopted.

Appellant supports his contention that there was a violation of the Right-to-Know-Law by the rather vague testimony of Councilwoman Knestaut, who first asserted that the public was excluded from the subject hearing. However, examination of her testimony reveals that, on cross examination, she believed that the public was excluded, because someone, presumably one of her colleagues told her that "the public would not be allowed there."

She conceded, however, that there was neither official action to exclude the public, nor were the chambers in fact, closed to the public. Furthermore, members of the public were present. Thus, her testimony did not contradict the statement of the clerk that the matter was resolved at a public meeting. Meringer pointedly noted that, in his fourteen years as clerk, there were no public meetings conducted by the Council as which the public was excluded.

Appellant takes further exception to the Hearer's finding the appellant did not obtain police aid to "disburse" (sic) loiterers. He contends that loitering is a social evil indigenous to the area, and is, really, a police problem. He cites Ishmal, supra, in support of his argument that a licensee is not chargeable with the social evils attendant to the area of his licensed premises. Such contention is clearly frivolous when considered within the factual context herein.

In Ishmal, supra, the licensee endeavored repeatedly to obtain police assistance, but despite her good faith efforts, the evils of drug activity engulfed her premises. In the instant matter, neither the appellant nor his employees took any action or made any effort either personally, or by enlisting police cooperation, to alleviate the conditions. Moreover, there was considerable testimony produced which indicated that, the closure of appellant's premises resulted in a substantial improvement in the conditions in this immediate area.

I have considered all of the exceptions asserted by the appellant, and find them lacking in substance.

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

Accordingly, it is, on this 17th day of April 1975,

ORDERED that the action of the respondent Borough Council of the Borough of Paulsboro be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated August 6, 1974 extending the term of the said license for the 1974-75 period pending the determination of this appeal be and the same is hereby vacated.

Leonard D. Ronco
Director

WHEREAS, a public hearing was duly conducted on June 25, 1974 in connection with said application and the objections filed to the issuance thereto; and

WHEREAS, at said public hearing said applicant was represented by Counsel Matthew Wade of 286 North Broad Street, Elizabeth, Union County, New Jersey; and

WHEREAS, at said public hearing said applicant, through Counsel, was granted the right to cross examine any and all objectors heard at said public hearing and did in fact do so; and

WHEREAS, at said public hearing numerous objectors testified to various objections to the renewal of the aforesaid liquor license all as more specifically set forth in the record of said proceedings as taken by a certified shorthand reporter; and

WHEREAS, the Acting Chief of Police of said Township of Union testified to numerous disturbances and complaints emanating from the operation of the premises in question and the numerous occasions upon which police officers were caused to be sent to said premises in response to complaints, all again as more particularly set forth in the aforesaid transcript; and

WHEREAS, many of said objectors termed the operation of said business at the aforesaid address as a "public nuisance" and "against the public interest";

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Union in the County of Union that the application for the renewal of the aforesaid Plenary Retail Consumption License No. C-34 heretofore issued to NOREEN D. MALONE, t/a MALONE's at 1131 Magie Avenue, Union, be and the same is hereby denied for the following reasons:

1. The evidence adduced at said public hearing and as contained in the transcript of the proceedings clearly established that the licensee had, for a period of more than one year, allowed, permitted, and suffered in and upon the licensed premises and the grounds surrounding the same,

(a) The use of filthy language, (b) the use of obscene language and conduct, (c) brawls, (d) unnecessary congregation of patrons, (e) disturbances, (f) unnecessary noise, (g) permitted the patrons of said establishment to act in a manner detrimental to residents living in the vicinity of the licensed premises, (h) permitted the patrons of said premises to act in an unruly manner.

2. The foregoing caused numerous complaints to be made to the Police Department of the Township of Union which resulted in the dispatching of departmental personnel and equipment to the licensed premises and surrounding area on numerous occasions causing a drain on the Police Department and thereby a detriment to the safe and proper operation of said Police Department all to the detriment of the citizens of the Township of Union.

3. The licensee has allowed, permitted and suffered the licensed premises and the property surrounding said premises to be used and conducted and operated in such a manner as to become a public nuisance and against the public interest.

Upon motion made by Committeeman Staton and seconded by Committeeman Zimmerman the foregoing resolution was adopted by the unanimous vote of the five members of the Township Committee."

The transcript of the proceedings before the Board, upon which the foregoing resolution was based, reveals that testimony was elicited of twelve neighbors who reside in close proximity to appellant's premises. In summary, their complaints of conditions attributed to the appellant revolved about excessive noise of young patrons after midnight; of motorcyclists patronizing the said premises who drove over their properties, committed acts of vandalism and prevented sleep; of fighting, brawls, haranguing at each other; debris, including broken bottles; destruction of property; urination on lawns; frequent necessity of calling police; interruption of sleep by slamming car doors; improper parking; obscene language; sexual misbehavior on neighbors' properties; and, in general, conditions which have made their lives unbearable.

At the hearing in this Division, further testimony was elicited from witnesses who had not testified before the Board; and their testimony was generally corroborative. The Board also produced Captain Joseph W. Kitchell of the Union Township Police Department who produced police records relative to appellant's premise for the year 1973 to the latter half of 1974.

The police records accepted into evidence, consisted of computer 'print out' sheets carrying a listing of each call to the area of appellant's premises, the origination of the call, the nature of the situation, together with statistical information identifying the time received and the officers responding. An examination of these sheets indicated that in the period covered there had been thirty-one police visits to the area of which eleven were at the request of appellant. Most of the complaints resulted from a

disturbance, noise, dispute or disorderly conduct. Five calls were the result of fights or an assault, five others arose from public disputes, and the remainder reflected a miscellany of causes.

At the conclusion of the hearing, the recent demise of the appellant was noted for the record. The premises are being operated by appellant's husband, Thomas Malone whose testimony before the Board indicated that he had tried to correct the situation described by the neighbors. He has eliminated entertainment; has hired a special officer for exterior patrol; restricted the sale of packaged goods after seven o'clock in the evening; and began closing the premises at midnight instead of the usual two o'clock closing hour. James Malone, nephew of appellant's husband, corroborated the testimony concerning the corrective efforts, and insisted that a program to pick up debris outside premises was also begun.

Appellant further introduced the testimony of one Arthur F. Glaser, the contract-purchaser of the premises, who stated that, if a transfer to him is approved, the character of the premises would change from a tavern-type operation to a restaurant establishment.

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance and, in order to prevail on this appeal, the appellant must show unreasonable action of the part of the Board, constituting 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 in this appeal is whether the evidence herein justifies the action of the Board in refusing to renew appellant's license. Nordco v. Newark, Bulletin 1148, Item 2. Prior to analyzing the testimony, it would be proper to state the applicable legal principles pertinent to the determination hereof. The burden of proof in all those 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).

As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. 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. Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has a vested right to the renewal

of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

From the entire record herein, it has been clearly shown that appellant's premises has become a source of trouble and annoyance to the neighbors and to the police. The number of repeated calls to the police requiring response to quell disturbances as well as continued noise until early morning hours caused by patrons clearly characterized the premises as a nuisance with which the municipality could well do without.

I find that the Board's action was properly within its discretionary power and not manifestly erroneous or unreasonable. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957.) Thus, the Director, absent such clear abuse or unreasonable or arbitrary exercise of discretion, should not substitute his judgment for that of the Board or reverse its finding. Lyons Farms Tavern, Inc. v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970).

Although no stipulation was entered into between the parties at the hearing in this Division, consenting to reversal on condition that licensee sell his establishment subject to approval of such stipulation by the Director (Cf. Walker v. Newark, Bulletin 1756, Item I), no objection was raised on behalf of the Board respecting potential renewal and sale for use of premises as a restaurant facility. Following the hearing and prior to the preparation of this report however, counsel for the Board advised that it had no objection to reversal of its action to facilitate renewal of the license which would be expressly subject to certain special conditions.

It is within the broad scope of the Director's power to prevent inequities and injustices, and, from time to time, denials of renewal of licenses by local issuing authorities have been reversed merely to permit rectification of what otherwise would be essential unfairness.

By recent example, the action of a Board was reversed and it was directed to renew the license "subject to the special condition that appellant consummate a transfer of his license to a bona fide transferee as may be approved by the respondent Board..." Ripa v. Orange, Bulletin 2171, Item 2. Shortly prior thereto, the action of a Board was reversed "expressly subject to the special condition that appellant consummate a transfer of its license to a bona fide transferee as may be approved..." J & K Bar, Inc. v.

Wallington, Bulletin 2146, Item 3. In other matters, the actions of the local issuing authority were reversed for the sole purpose of permitting a transfer. Cf. Johnson v. Newark, Bulletin 2076, Item 1; Sue and Frank Club, Inc. v. Newark, Bulletin 2032, Item 2; Rallo's Bar Inc. v. West Orange, Bulletin 1914, Item 1.

The appellant has failed to establish that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15, and a recommendation would, thus, normally follow that the action of the Board be affirmed and the appeal herein be dismissed. However, there was testimony elicited at the hearing in this Division that a contract-purchaser of the license is ready, subject to approval of a person-to-person transfer of appellant's license to him, to alter the character of the licensed premises from a tavern to a restaurant operation. Moreover, the Board has advised this Division that it has no objection thereto expressly subject to the following special conditions:

That the application be forthwith made for a person-to-person transfer of the license subject to approval by the Board, which application be for a restaurant-type facility.

Accordingly, it is thus recommended that the action of the Board be reversed, upon the special condition that the Board approve the said person-to-person transfer of the within license to a restaurant operation as hereinabove set forth within ninety days from the date of the Director's Order in the matter; and that the Board, in its discretion fails or refuses to approve such transfer, the Board's initial denial of appellant's application for renewal shall thereupon, be affirmed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

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

ORDERED that the action of the Township Committee of the Township of Union be and the same is hereby reversed; expressly subject, however, to the special condition that application by appellant be forthwith made for a person-to-person transfer of the appellant's plenary retail consumption license to a transferee who

shall promptly change the character of the business operated under such license to a restaurant-type facility; and it is further

ORDERED that, if the Township Committee, in the exercise of its discretion fails or refuses to approve such application for transfer within ninety (90) days from the date of the order herein, the action of the Township Committee in denying renewal shall thereupon be affirmed, and the appeal be dismissed; and it is further

ORDERED that, if such transfer is not effected within ninety (90) days of the date of the order herein, then, and in such event, my order, dated June 27, 1974, extending the 1973-74 term of the said license pending the determination of this appeal, shall, thereupon be vacated, without further order.

Leonard D. Ronco

Leonard D. Ronco
Director