

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1736

June 15, 1967

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1. APPELLATE DECISIONS - BLANCK v. MAGNOLIA AND D'AMICO.

Horace W. Blanck,)
Appellant,)
v.) ON APPEAL
Mayor and Council of the Borough) CONCLUSIONS
of Magnolia, and Harry & Catharine) AND ORDER
D'Amico, t/a D'Amico Liquors,)
Respondents.)

Richman, Berry and Ferren, Esqs., by Grover C. Richman, Jr., Esq.
and Edwin T. Ferren, III, Esq., Attorneys for Appellant.
Joseph A. Maressa, Esq., Attorney for Respondent Mayor and Council
Victor Taylor, Esq., Attorney for Respondents Harry and Catharine
D'Amico.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 17, 1966 respondent Mayor and Council of the Borough of Magnolia (hereinafter Council) granted the application of Harry and Catharine D'Amico, t/a D'Amico Liquors (hereinafter D'Amico) for a plenary retail distribution license for premises located at 200 South White Horse Pike, Magnolia.

Appellant challenges the action of the Council by this appeal as being erroneous for the following reasons:

- (a) The issuance of said license was socially undesirable;
- (b) The license was issued in violation of the New Jersey Alcoholic Beverage Law and the regulations of this Division;
- (c) Such action was arbitrary and unreasonable;
- (d) Council was "guilty of abuse of discretion and a mistake of law and fact;"
- (e) There is no public need or necessity for issuance of the said license to the premises in question "as this area is amply served by the present existing outlets;"
- (f) The D'Amicos are "barred from ever holding a Plenary Retail Distribution License in the Borough of Magnolia by virtue of Blanck vs. Mayor and Borough Council of the Borough of Magnolia, 73 N.J. Super. 306, 179 A2d 765, rev. 38 N.J. 484, 185 A2d 862."

During the course of the hearing an additional reason was urged, and appropriate amendment to the petition was permitted, to wit: that the ordinance adopted by Council on March 3, 1966, was the product of favoritism toward Harry D'Amico and was not passed for any public purposes.

The two separate answers filed by respondents admit the

jurisdictional allegations but deny the substantive charges set forth in the petition. The answer of Council adds that "D'Amico qualified as the most outstanding applicant with a broad history of service to the Borough of Magnolia, having served in many capacities as a public official and as a member of many civic and service clubs, as well as having exhibited a fine record as an individual."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

In order to obtain a proper perspective of the issues herein, an adumbration of the background will be helpful. By ordinance adopted March 12, 1940, the Council limited the number of plenary retail consumption licenses to three and the number of club licenses to one, with no provision for any plenary retail distribution license. On August 24, 1960 the Council approved, on first reading, an ordinance amending the 1940 ordinance and establishing a plenary retail distribution license. It set October 5, 1960 as the date for public hearing and final passage of the ordinance. Respondent Harry D'Amico had been a councilman of the Borough for many years and at the time of introduction of the ordinance was serving as Council president. He was not present, however, at the meeting of August 24. He was present at the meeting of September 7, 1960 and moved the minutes of the last regular meeting of August 3. On October 1, 1960 D'Amico submitted his resignation as president and member of the Council. On October 5, with D'Amico absent, the ordinance was adopted and later, at that meeting, D'Amico's resignation was accepted. On November 7, 1960 the license was granted by Council to the D'Amicos.

Blanck then appealed to the Director seeking to have the amendatory ordinance declared void because of D'Amico's self-interest by reason of his being president of Council at the time the ordinance was adopted and having a personal and financial interest which conflicted with his public duty to the citizens of Magnolia. The Director concluded that the evidence did not support the charge and found other claims of error asserted by Blanck to be without merit. Blanck v. Magnolia and D'Amico, Bulletin 1400, Item 1.

In the meantime the D'Amicos opened their place of business under the license and continued to operate until determination of the appeals.

Blanck then appealed to the Appellate Division and, in Blanck v. Magnolia, 73 N.J. Super. 306 (App. Div. 1962), the court affirmed the decision of the Director. Certification was thereupon granted by the Supreme Court and, in Blanck v. Magnolia, 38 N.J. 484 (1962), the Supreme Court reversed the Appellate Division, remanded the matter to this Division, and held, briefly, that, while D'Amico was not a member of the Council at the time his application was filed, a reading of the statute R.S. 33:1-20 led to the conclusion that, where a member of a local governing body is interested in obtaining a license and an ordinance creating and authorizing such license is introduced and passed and thereafter such member resigns and the license is issued to him, the Director should closely scrutinize the entire action to determine (1) whether the ordinance was adopted in the public interest or to favor the member, and (2) whether, as an original proposition, the license should be issued to the former official rather than a competing applicant.

On the remand the Director found that the ordinance was enacted to favor D'Amico and not for a reason permitted by the Legislature, and set aside the grant of the license to D'Amico. In view of that determination the Director found it unnecessary to consider the other point raised by the Supreme Court in its order of remand, namely, the relative merits of the D'Amico application and a competing application filed for the said license. Blanck et al. v. Magnolia and D'Amico, Bulletin 1534, Item 1.

D'Amico then appealed to the Appellate Division, which affirmed the determination of the Director. D'Amico v. Blanck, et al., 85 N.J. Super. 297 (App. Div. 1964). All the foregoing is prologue.

As gathered from the proofs adduced at this hearing, I find the following pertinent facts relating to the issue sub judice: In 1965 Blanck served as Mayor of Magnolia and, in the November 1965 General Election, three new councilmen were elected in this Borough and took office on January 1, 1966. Blanck was not reelected. The present Mayor, John M. Reid, testified that the matter of adoption of a new ordinance to permit the issuance of a plenary retail distribution license was discussed in 1965 and apparently was a much debated issue in the election campaign of that year. At this election a non-binding referendum was held on the question whether or not a plenary retail distribution license should issue and its proposed issuance was overwhelmingly approved by a majority of two to one. Thereupon, on November 13, 1965, Blanck caused an ordinance to be introduced creating such license. However, before the proposed ordinance was adopted, it was attacked in the courts, which stayed the final enactment of the ordinance.

On January 1, 1966 the local administration changed and John M. Reid succeeded Blanck as Mayor. On February 2, 1966 a new ordinance, similar to the ordinance amending the original ordinance of 1940, to allow a plenary retail distribution license, was introduced and passed on first reading. It was finally adopted on March 3, 1966. After proper advertisement, five applications for the said license were presented to Council meeting on June 1, 1966. It was then announced that the matter would be adjourned to June 16, when the license would be awarded.

On June 3, 1966 a written objection was filed by Mrs. Gertrude S. Vollmer against the issuance of the license to D'Amico. She was accordingly advised by the Borough Clerk that a public hearing on her objection would be held on June 16, 1966.

On June 13 a private caucus meeting was held to decide which of the five applicants should receive the license. All Council members attended (the Mayor was absent), and a preliminary decision was made to award the license to D'Amico. The testimony indicates that at this caucus determination was made on the basis of such factors as the location of the premises applied for, the buildings, the tax ratables, and the personal history of the applicants.

At the June 16 meeting Mrs. Vollmer did not appear, nor was she represented by anyone. The attorney for one of the other applicants (Daniel J. Mazziotta) was afforded an opportunity to speak on behalf of his application. A resolution was thereupon unanimously adopted, awarding the subject license to the D'Amicos effective July 1, 1966. None of the rejected applicants has joined Blanck in this appeal.

I

I shall now consider certain relevant matters raised in the petition of appeal as they relate to the action of Council herein.

It should preliminarily be stated that Blanck, as a resident of the community, has a legitimate right to object to the grant of this application and to pursue his objection through this appeal. In evaluating his testimony and the weight and credibility to be given thereto, D'Amico asserts that appellant's objection is not made in good faith but to protect his own economic interest. In that respect appellant's attorney argues, in summation, that Blanck was the mayor in 1965 and was in favor of an ordinance creating a plenary retail distribution license. However, at that time he appeared to be interested in another prospective purchaser of certain lands in the Borough and had had conversations with the prospective purchaser with respect to an alleged tie-in arrangement of the purchase with the said license. It is further noted that Blanck was a former holder and operator of a plenary retail consumption license in the municipality prior to becoming mayor. He turned the license over to his daughter and son-in-law, who still operate the licensed business under the name Blanck's Liquor Store on property owned by appellant. Thus D'Amico reasons that Blanck "would be opposed to anyone getting a license in the Borough of Magnolia because it would be added competition to him." Nevertheless, as was pointed out hereinabove, Blanck, as a resident, is an aggrieved person within the meaning of the statute. As the court said in Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 510:

"The interest of the appellant herein was sufficient and was sufficiently manifested. Such pecuniary advantage, if any, as may come to the appellant from the limitation of licenses is incidental to the major question of public morals and general welfare, and the possibility that appellant may reap some personal advantage from the result does not nullify the main quest."

Cf. Bayshore Tavern Owners Assn. et al. v. Sea Bright et al., Bulletin 1378, Item 2.

II

Appellant asserts in his petition of appeal and argument in summation that the D'Amicos are forever barred from holding a plenary retail distribution license in Magnolia by virtue of Blanck v. Magnolia, 73 N.J. Super. 306 (App. Div. 1962), revs'd 38 N.J. 484 (1962). This contention is not only without legal basis, but is not accurate. My reading of the decisions referred to fails to glean any language even remotely suggesting such an effect. The decision, as noted before, turned on the question of whether or not there was favoritism in the issuance of the said license to D'Amico because, at the time the ordinance was introduced, D'Amico was a member of Council. The court pointed out that, while D'Amico was no longer a member at the time the license was actually issued, R.S. 33:1-20 would have required, under the facts herein, an application to be made initially directly to the Director of this Division; and the court, therefore, remanded the matter to the Director for the taking of additional testimony with respect to the two issues referred to hereinabove. There is nothing in the language that would indicate a forfeiture of the future rights of the D'Amicos. Indeed, the effect of such con-

struction would be to unfairly disadvantage D'Amico, and would be tantamount to a bill of attainder.

Further, it is unarguable that the issues in the instant matter are not the same as those of the prior adjudicated matter, nor is the present matter subject to the principle of res adjudicata. See Federal Trade Com. v. Motion Picture Adv. Co., 344 U.S. 392, 73 S. Ct. 361 (1953). D'Amico was not a member of Council at the time of adoption of the subject ordinance or as of the date of the issuance of the said license; nor did he occupy any public office or position which might involve conflict with the public or with his rights as a bona fide applicant. With respect to this argument I suggested to the attorney for appellant that he document this argument in the brief submitted. I note that this point was not raised in appellant's written memorandum and, presumably, it has been abandoned. In any event, such contention is without merit and must be rejected.

III

Appellant challenges the issuance of the subject license on the ground that no public need or necessity exist for the license.

It has long been established that a local issuing authority's discretionary power is broad when called upon to determine whether or not a liquor license should be issued. In Fanwood v. Rocco, 59 N.J. Super. 306, the court cites Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, for the following general principle:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In Fanwood, the court also said:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24)"

As the court stated in Blanck v. Magnolia, supra (38 N.J. 484, at p. 491):

"The test in the establishment and issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, supra, 50 N.J.L. 585."

In Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946), the court said:

"The common interest of the general public should be the guide post in the issuing and renewing of licenses."

Thus the sole consideration in the disposition of this allegation is whether the best interests of the public required it. Blanck v. Magnolia, supra (38 N.J. 484, at p. 491). Pertinent to this inquiry is the fact that, prior to the enactment of the 1960 ordinance authorizing issuance of a plenary retail distribution license, no such license was available for this community. The Council at that time and to this date has felt the need for such issuance, which is consistent with statutory doctrine that every municipality in this State is entitled to issue at least one plenary retail distribution license. R.S. 33:1-12.14; R.S. 33:1-12.15; Seip v. Frenchtown, 79 N.J. Super. 521 (App. Div. 1963). Council was undoubtedly aware of the growing population of this Borough which, it was noted, has doubled during the past ten years. It is logical to assume, since New Jersey is experiencing a population explosion, that there will be a continuing population increase in this community.

Particularly in 1965, the Council, including appellant who was then Mayor, was convinced of the public need for this type of license in the municipality and, in fortification of such conviction, a non-binding referendum held in November 1965 gave overwhelming approval for such enabling ordinance.

Nor does appellant suggest in his testimony that he has any reason to believe that his advocacy of such enabling ordinance in 1965 has now been altered by facts appearing to the contrary. Council, reacting to the sentiment of the residents of Magnolia in favor of the passage of the ordinance as reflected in the vote on the non-binding referendum as aforesaid, enacted this enabling ordinance in 1966, without objection on the part of any person in the Borough.

The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal view. Freehold Suburban Tavern Owners Assn. et als. v. Howell and Ho-Jan Corp., Bulletin 1687, Item 1; Broadley v. Clinton and Klingler, Bulletin 1245, Item 1. The action of the local governing body may not be reversed by the Director unless he finds that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, supra (135 N.J.L. 502, at p. 511).

The burden of proving that the Council abused its discretion falls upon appellant and he must make out his case by a preponderance of the proofs. Family Finance Corp. v. Gaffney, 11 N.J. 565; O'Hara and Yuttal v. West Orange, Bulletin 1483, Item 2. Since the municipal action is discretionary, appellant must present manifest error or abuse of discretion. Nordco, Inc. v. State, 43 N.J. Super. 277; Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598; Fanwood v. Rocco, 33 N.J. at p. 414.

I therefore find from the facts presented herein that the action of the Council was not arbitrary but was based upon what it conceived to be the best interests of the community.

IV

Appellant's primary assault in this appeal, as buttressed in his memorandum in summation, is based on the allegation that the issuance of the said license to the D'Amicos was the product of favoritism, and was invalid "because the decision was made prior

to the public hearing on written objections filed against said issuance." In support of this allegation, appellant in his memorandum extracts and cites testimony at length to demonstrate that Council "had decided, on the Monday prior to the hearing on the objection, that the D'Amicos would get the license."

Councilman Ramage testified that at the caucus meeting on June 13, 1966, all of the members of the Council spent approximately two-and-a-half to three hours discussing "the issuance of the license in general, who we were going to issue the license to." He went on:

"Mr. Dougherty opened the meeting and had all the applications in a pile. He read all the applications thoroughly. We discussed each application thoroughly, and after that we read through them again just to make sure that we understood everything that was involved in the applications. It was gone over at least two times. So if there were any questions on the first, they were cleared up in the second reading.

"After that, we asked -- I believe -- I believe Mr. Dougherty asked for everyone's opinion. But as we were going through the applications we were obtaining the pros and cons of each applicant, so that the final decision was easier to make that way."

He further stated that they eliminated three of the applications and the final consideration developed between that of the D'Amicos and that of Myers. It was agreed that the D'Amicos should be favored.

Councilman Dougherty testified that Mayor Reid was in the hospital and was unable to attend the caucus meeting; that he informed the Mayor by telephoning him at the hospital that it had been decided to grant the D'Amico application. Dougherty was then asked the following:

Q What was left to be done at the meeting of the 16th?

A Well, we had to go over all the applications, sir.

Q Hadn't you been over them yet?

A We had been over them as individuals, not as Council.

Q You didn't go over them at caucus meetings?

A Yes, we did.

Q I thought you said you went over them as individuals?

A We went over them as individuals, sir. We had from the first of June, when they were received. Now, I was the first one to receive them. Now, we had from then -- I had them for two days and returned them to the Mayor's house. And other councilmen as well took the same individual consideration and went down and looked at them themselves, so nobody else would be able to influence them one way or another. Then we sat at the meeting and we discussed further.

Q Did you have the applications at the meeting?

A Yes, sir.

Q Did you go through them thoroughly?

A Yes, sir. In fact, I read them once. I read them all in their entirety. We went over them

again, sir. I believe that's the testimony of other people, too."

The Councilman admitted that, prior to the June 16 meeting, a statement was prepared by the Council's attorney to the effect that the application of D'Amico would be granted.

Councilman Weber testified to the same effect and was asked the following question:

"Q But the decision was made in the caucus meeting?

A The decision was made, but it wasn't voted on."

According to the testimony of Weber, and other proofs adduced at the hearing, it appears that the members of the Council generally and specifically reviewed all of the applications prior to the June 16 meeting. This is a practical approach, consistent with the provision in our regulation that the issuing authority has a duty to investigate applications prior to vote. It seems to be merely an exercise in technicalities to assert that such examination of the applications prior to a regular meeting, rather than at the meeting itself, is invalid. I do not find any prejudice in this case, nor is it inconsistent with the principles advanced in Essex County etc. Stores Assn. v. Newark, 64 N.J. Super. 314. In that case a member of the municipal board said:

"You know, of course, what the Board has decided to do and in order to make the record clear, on appeal, state all of your contentions to be decided."

It is interesting to note that in that case the court said:

"While we disapprove of prejudice of any cause prior to hearing, notwithstanding that in this particular instance respondent's license had been previously renewed without objection, the error was not here prejudicial to petitioner."

In reviewing the long history of this case and the facts relevant to the caucus meeting and the regular meeting, it is clear that the Council members were well aware of the applications pending before them. It was also no secret, nor is it contended that it was, that D'Amico, who had operated under the previously cancelled license for several years, was interested in obtaining the license. Moreover, it was also a matter of public knowledge that D'Amico was of the opposite political party to the majority of Council and had in fact opposed them at the last election. Thus it cannot be logically argued that they were inclined to manifest bias in his behalf.

I find nothing irregular, and in fact find it a statutory duty imposed upon the Council to investigate and evaluate the applications. The evidence that this matter was predetermined is indefinite and unsatisfactory, particularly in view of the evidence given by the members of the Council. Bias, partiality or irregular actions on the part of public officials may not be presumed but may be established only by direct proof or by proof of circumstances from which they may reasonably or cogently be presumed. Hall Liquor Co. v. Union, Bulletin 1032, Item 2; Redfield v. Long Branch, Bulletin 1027, Item 1. It does not appear that any councilman was improperly motivated in reaching his conclusion. Cf. Hand and Peters v. Middle et al., Bulletin 1350, Item 1; Longyear v. Jefferson, Bulletin 972, Item 4.

It is fundamental that the preliminary decision of individual Council members cannot be conceived as a final vote or decision of the Council acting as a body. The only vote that counts in a democratic society is the vote of the Council at the meeting lawfully convened for that purpose. In this connection, the testimony discloses that, at the regular meeting of June 16, Mrs. Vollmer's letter of objection was received, although neither she nor any other objector appeared. It is significant to note that her stated objection is a frivolous non sequitur. She wrote:

"I wish to lodge a protest to the issuance of a plenary license to Harry D'Amico and his wife of the Borough of Magnolia. His original tactics were unethical, to say the least, and does not now warrant his (or their) obtaining a license to retail liquor."

I find as a fact that the meeting of June 16 constituted a valid hearing on the objection, although in fact no one appeared to present any testimony or offer any argument in opposition to the grant of this application.

Having given any objectors the opportunity to present such objections, the Council has observed the traditional safeguard against arbitrary action or what Chief Justice Hughes has termed "the rudimentary safeguards of fair play." Morgan v. U.S., 298 U. S. 468, 56 S. Ct. 906 (1936).

Finally, appellant has not been prejudiced, since the contentions were legal in nature, and the action of Council was subject to full review at this plenary de novo hearing. Cf. Essex County Retail Liquor Stores Assn. v. Newark, 64 N.J. Super. 314.

My examination of the entire record convinces me, and I find that Council acted properly at the meeting of June 16 in its determination to grant the application for the license to D'Amico.

V

Another point raised was that the issuance of the license was "socially undesirable". The exact meaning of this term seems rather obliquitous. However, I find this to be without basis in fact on the record before me. The statement of Council which was read by Councilman Dougherty makes clear that "In arriving at this decision, mayor and council held the interest and the welfare of the people of the Borough of Magnolia foremost above all other considerations." In line with this thinking, the statement went on:

"Accordingly, in order that our position may be clear, we may in summary state that we considered the buildings, the locations, the tax ratables, and the personal histories of the applicants."

The statement makes it crystal clear that, while all of the applicants were persons of unquestioned integrity, the contributions of D'Amico to the community in terms of prior constructive public service as an official and as a leader in other organizations, were a plus factor in the Council's determination to grant him the license. Such factor standing alone may not have been an adequate reason for such grant. However, this factor together with the others hereinbefore listed tipped the scales in his favor. I find as a fact that Council acted circumspectly and with a proper exercise of its discretion in granting the said application.

I have reviewed the other matters raised in the petition of appeal and do not find them of substantial merit. Viewing the totality of the evidence and the applicable law herein, I am persuaded and conclude that appellant has failed to sustain the burden of proof of showing that the action of respondent Council was erroneous. Rule 6 of State Regulation No. 15; Gentile v. Manalapan et al., Bulletin 1514, Item 2.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of respondent Council and dismissing the appeal.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's report were filed by appellant's attorney. I find that these exceptions have been fully considered and answered by the Hearer and are without merit.

After carefully considering the entire record herein, including the transcript of the testimony, the exhibits, the memoranda submitted in summation, the Hearer's report and the exceptions thereto, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 26th day of April, 1967,

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

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - QUAGLIA v. HIGHLANDS.

Anthony J. Quaglia,)	
t/a Why Knot,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
Borough Council of the Borough)	
of Highlands,)	
)	
Respondent.)	

Saling, Boglioli & Moore, Esqs., by Francis X. Moore, Esq.,
Attorneys for Appellant.
Benjamin Gruber, Esq., Attorney 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 (hereinafter respondent) whereby the members thereof unani-
mously voted to deny the application for renewal for the licensing
period 1966-67 of appellant's plenary retail consumption license for
premises 36 First Street, Highlands.

Appellant's petition of appeal alleges that the action of respondent was erroneous in that it "abused its discretion and acted unreasonably in denying Appellant's application."

Respondent's answer denies appellant's allegations and further states:

"(a) The Resolution adopted by the governing body denied the renewal of the consumption license on the grounds that the licensee has permitted unnecessary noises and acts of obscene conduct and acts of violence on the licensed premises.

"(b) The premises for which the renewal license was sought was partially destroyed by fire and is in the process of being repaired and has not passed inspection by the Fire Department or the Building Inspector of the Borough of Highlands.

"(c) There has been no certificate of occupancy issued by the Building Inspector and therefore the premises cannot be occupied for the purpose of the operation of a liquor license.

"(d) An inspection and approval by the Police, Fire and Health Department is a prerequisite to the granting of the license."

The appeal herein was heard de novo and the attorneys for the respective parties were given full opportunity to examine and cross-examine witnesses.

Three objectors testified at the hearing herein. Joseph Gheradi testified that he resides about one hundred fifty feet from appellant's premises and was annoyed by excessive noise, i.e., "loud music, blowing of horns, shouting profane language, etcetera;" that he complained to the police about "a dozen or fifteen times." Mr. Gheradi further stated that "I don't want to deprive any one of his livelihood...but I do say a man operating a business of that nature has to have some concern for the neighbors in that area. I don't think he should violate the rights of people and prevent them from getting their proper sleep and maintain proper health just because he wants to conduct business in the manner he does."

Sophie Collins and Thomas M. Collins, who reside next door to appellant's licensed premises, substantiated Mr. Gheradi's testimony with reference to the noise taking place, especially at 3:00 a.m. when appellant closes his tavern.

Police Captain John J. Mackel testified that between June 1965 and January 1966, he received five complaints about noise at appellant's premises and on each occasion dispatched a police officer "to go there and tell him to close the doors and quiet it down." When asked his opinion of appellant, Captain Mackel stated, "He is all right, average man, tries to be nice."

Senior Patrolman Howard Brey testified that between June 1965 and January 1966, he answered fourteen calls to appellant's premises, eight of which were regarding noise. He also said that he was assigned to investigate an incident where a man employed by appellant as a bartender distobed on the rear porch of the building in which appellant's licensed premises is located, ran nude across the beach to the water, took a swim and returned to the rear porch, put on his clothes and then "went inside with a group of male subjects and female subjects."

Police Chief Howard Monahan testified that from June 12, 1965 to and including November 27, 1965, he answered twelve calls relating to incidents allegedly occurring at appellant's premises, three of them because of noise, others for fighting, traffic snarls, hub caps being stolen from an automobile parked in appellant's parking lot, and for an alleged assault. The three times he went to appellant's premises on noise complaints, he was accompanied by Officer Brey. Chief Monahan described conditions, when he answered the noise complaints, as "the band playing loud, people out in the street and alongside building using loud talk."

William McGowan, a member of respondent Council and also police commissioner, testified that the police blotter disclosed that between June 12 and November 27, 1965, there were forty-two telephone calls complaining about the conduct of appellant's licensed business and that he (McGowan) received "many more." He further stated that for the above period of time, combined calls concerning all the other licensed premises in the Borough totaled nine. Councilman McGowan had received no complaints regarding obscene conduct or acts of violence on appellant's premises; the complaints were about unnecessary noise and noise from cars.

Robert M. Johnson, building inspector, testified that on May 4, 1966, a permit was issued to appellant to repair the building wherein the licensed premises was located, which had been damaged by fire on January 12, 1966; that when appellant applied for renewal of the license in June 1966, he (Johnson) had occasion to inspect the building and found the licensed premises to be "in a cluttered state. He had excess furniture. The floors definitely were inadequate structurally for a public building for any people to be in." Mr. Johnson testified further that he made another inspection two Saturdays before the hearing herein (October 22, 1966) and that he found no changes as the building was "still in the original condition. In fact, worse now than when I originally inspected it because it had water damage." On cross examination he stated, "All the flooring in the basement is completely buckled."

Appellant testified that he has held the license in question since June 1965. (Records of this Division indicate transfer of the license to appellant on June 11, 1965.) Appellant further testified that although the chief of police spoke to him regarding the manner in which his establishment was being conducted, no formal charges were ever filed against him. The building, according to appellant, has a cinder block foundation, three floors, and the basement constitutes the licensed premises, being 25 x 60 feet in size with a 20-foot bar. He also said that he has additional plumbing work and painting to do. Appellant described the neighborhood as part commercial and part residential, there being "many rooming houses around, summer operators, and houses that are residential, very few stores." Appellant also said that complaints had been made to him about noise and, when the police officers came, they told him to close the doors. "I closed my doors and they left." He further said the police came to his premises with relation to noise complaints "sometimes once a week, sometimes you wouldn't hear it for two weeks, sometimes you would hear it every other day."

The burden of proof in a case such as this, which involves discretion, rests upon appellant and, in order to prevail in the instant appeal, it must be demonstrated that the local issuing authority abused its discretion and committed manifest error. Nordco, Inc. v. State, 43 N.J. Super. 277; Downie v. Somerdale, 44 N.J. Super. 84. Thus, the issue in this matter is whether respondent, invested with initial authority wherein renewal of licenses is

involved, acted unreasonably so as to constitute an abuse of discretion.

The elementary and fundamental principle might well be restated. In the issuance of a renewal license, just as in the issuance of a new license, the applicant must satisfy the issuing authority that he is worthy of such license. As Commissioner Burnett stated in Hodanish v. Trenton, Bulletin 121, Item 6:

"It is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy."

See also Florence Methodist Church et als. v. Florence et al., Bulletin 1074, Item 2.

It has been ruled consistently by this Division and by the courts that there is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

"There is no inherent right in a citizen to thus sell intoxicating liquors by retail... As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority."

In addition to the testimony of the building inspector concerning the present unsafe condition of the premises, an examination of the evidence adduced herein also discloses that appellant has operated the licensed business since June 12, 1965, until the premises was damaged by fire on January 12, 1966. During this comparatively short period of time, it has been necessary for the police department of respondent Borough to act upon incidents involving law enforcement occurring both inside and immediately outside appellant's licensed premises. It is apparent from the many complaints lodged with the police department without cessation over this period of time that appellant had no regard for persons residing in the area of the licensed premises. Appellant admitted that he was spoken to time and again by local law enforcement officers. However, his manner of operation appears to have become progressively worse. Complaints made against his establishment greatly outnumbered all of the complaints against the other twenty-nine licensed premises in the community.

The worthiness of an applicant for renewal of license is a matter which resides within the sound discretion of the issuing authority. It is proper for the municipal issuing authority, in passing upon applications for liquor license renewal, to take into account not only the conduct of licensees but also conditions not attributable to their conduct which render the continuance of a tavern in a particular location inimical to the public interest. Oak Inn, Incorporated v. Div. of Alcoholic Beverage Control and Elizabeth (App. Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2.

Where, as here, the proof is substantial that the licensed business was conducted in an unlawful and objectionable manner, both within and without the premises, to constitute a nuisance in

the area, the totality of such conduct would be sufficient to warrant denial of renewal of license. Zicherman v. Driscoll, supra. The issuing authority has an obligation not only to the licensee but to the general public as well. If it has determined that the licensed premises now under consideration is not the kind of operation which will serve the best interests of the community, such determination should not be disturbed by the Director in the absence of evidence which clearly indicates abuse or arbitrariness. In an appeal of this kind, it must be shown that the refusal to renew was the result of intentional discrimination or other arbitrary action. Cf. Camden County v. Pennsauken Sewerage Authority, 15 N.J. 456.

Indeed, there is not a scintilla of evidence to indicate any improper motivation on the part of respondent in the action taken and there appears to be substantial evidence to support its determination. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501; Paul v. Brass Rail Liquors, 31 N.J. Super. 211; Zicherman v. Driscoll, supra.

I conclude, on the basis of all the evidence presented and giving due consideration to the memoranda of counsel for the respective parties, that respondent exercised reasonable discretion in and for the best interest of the community in refusing to renew appellant's license for the current licensing period. Therefore, it is recommended that respondent's action in denying appellant's application for renewal of license be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and argument thereto were filed by the attorneys for appellant, and answering argument to said exceptions was filed by the attorney for respondent pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record and the exhibit introduced in evidence at the hearing of this appeal, the exceptions and supporting argument taken to the Hearer's report and the answering argument thereto. I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 19th day of April 1967,

ORDERED that the action of respondent Borough Council in denying appellant's application for renewal of his license for the 1966-1967 licensing year be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Angelo De Castro)
t/a Hotel Talmage)
102 Talmage Avenue)
Bound Brook, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 issued by the Borough Council of the Borough of Bound Brook.)

Leahy, Barbati & Berdinella, Esqs., by Michael W. Berdinella, Esq., Attorneys for Licensee.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 16, 1966, he possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Commissioner for fifteen days effective January 10, 1946, and by the Director for ten days effective October 10, 1966, both for similar violation. Re De Castro, Bulletin 689, Item 3; Bulletin 1702, Item 3.

The prior record of suspension of license for similar violation in 1946 disregarded because occurring more than ten years ago but the prior record of suspension for similar violation in 1966 within the past five years considered, the license will be suspended for twenty days, with remission for five days for the plea entered, leaving a net suspension of fifteen days. Re Strenger & Endlich, Bulletin 1602, Item 8.

Accordingly, it is on this 2d day of May, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Bound Brook to Angelo De Castro, t/a Hotel Talmage, for premises 102 Talmage Avenue, Bound Brook, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Thursday, May 4, 1967, and terminating at 2:00 a.m. Friday, May 19, 1967.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Al-Vil, Inc. t/a Haddon Tavern 1000 Haddon Avenue Camden, New Jersey

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-164 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Licensee, by Roland Bozarth, President, Pro se. Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 21, 1966, it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Sierra, Bulletin 1727, Item 9.

Accordingly, it is, on this 1st day of May, 1967,

ORDERED that Plenary Retail Consumption License C-164, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Al-Vil, Inc., t/a Haddon Tavern, for premises 1000 Haddon Avenue, Camden, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. Monday, May 8, 1967, and terminating at 7:00 a.m. Saturday, May 13, 1967.

Handwritten signature of Joseph P. Lordi, Director