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

BULLETIN 2274 December 28, 1977

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ITEM

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

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1. STATE REGULATIONS - AMENDED STATE REGULATION NO. 39 - NO 6-DAY GRACE PERIOD FOR PAYMENT BY RETAILERS TO WHOLESALERS.

NOTICE TO ALL WHOLESALE AND RETAIL LICENSEES:

AMENDED STATE REGULATION NO. 39 - MAXIMUM CREDIT PERIOD EXPLAINED

It has come to my attention that some retail licensees are under the erroneous impression that the six (6) day period in which a wholesaler must report to me a retailer's default extends that retailer's credit period. This is not true.

Rule 1 of State Regulation No. 39 specifically limits the credit period from wholesaler to retailer by requiring that a retailer must make payment for a delivery of alcoholic beverages not later than the same date of the month following the date of delivery. The Rule further provides:

"When, in the month following the date of delivery, there is no equivalent date, payment shall be made not later than the last day of the month following the date of delivery."

The receipt by a wholesaler of an envelope postmarked before noon of the thirty-first (31)st day after delivery, enclosing a check in full payment, is and has been considered by this Division as timely payment. See Bulletin 914, Item 10.

Any checks or cash picked up at the retail licensed premises, or at any other place, beyond the deadline of the credit period is not payment within the specified time, and the wholesaler must place the retail licensee in default.

The default occurs when payment is not made within the thirty (30) day period. The credit period is not extended by reason of the six (6) day period allowed to the wholesalers to file the notice of default.

JOSEPH H. LERNER
DIRECTOR

Dated: December 1, 1977

2. APPELLATE DECISIONS - ARLINGTON DINER, INC. v. NORTH ARLINGTON, ET AL.

Arlington Diner, Inc., A New Jersey Corporation, Appellant, v. Mayor and Borough Council of the Borough of North Arlington, and Silver Bell Tavern, Inc., A New Jersey Corporation, Respondents.	On Appeal CONCLUSIONS and ORDER

Pappas and Pappas, Esqs., by Chris G. Pappas, Esq., Attorneys for Appellant.
Russello and Russello, Esqs., by Mark M. Russello, Esq., Attorneys for Respondent, Mayor and Borough Council.
George E. Davey, Esq., Attorney for Respondent, Silver Bell Tavern, Inc.
Ralph Fusetola, III, Esq., Attorney for Ralphson Corp..
Frank A. Piscatella, Esq., Attorney for Interested Parties

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent Mayor and Council of the Borough of North Arlington (hereafter Council) which by unanimous vote, on November 23, 1976, denied appellant's application for a place-to-place and person-to-person transfer of plenary retail consumption license C-10, from respondent Silver Bell Tavern, Inc. to appellant and from premises 287 Ridge Road to 1 River Road, North Arlington.

Appellant, in its petition of appeal, contends that the Council erroneously determined that the proposed transfer would be violative of Ordinance No. 896 regulating place-to-place transfers of liquor licenses.

The Council, in its answer, denies that its action was improper.

The appeal was heard de novo, in accordance with Rules 6 and 8 of State Regulation No. 15, at which time the parties consented to rely upon the transcript of hearing held by the Council herein, supplemented by brief additional testimony, the introduction of certain exhibits, and oral and written summations.

The transferor, Silver Bell Tavern, Inc. is neither a proper nor necessary party respondent herein. However, its attorney and the attorney for an objector to the transfer, who was a liquor licensee and had appeared at the hearing before the Council, were permitted to participate in the subject proceedings.

The essential facts herein are not in dispute. The critical inquiry, upon which the parties are diametrically opposed, is the construction to be placed upon the subject ordinance.

The transferor corporation (Silver Bell) had been engaged in the tavern business for forty-one years. The banking institution, which owned the building wherein the liquor business was conducted, demolished the building in order to expand its banking facilities. Ever since Silver Bell closed its doors to business due to its landlord's action on March 28, 1976, it has attempted to relocate.

On more than one occasion, its check for a deposit on a proposed transfer situs was returned. It examined every possible location in the Borough and, failing to find any situs that was available for a place-to-place transfer of its liquor license, it entered into an agreement to transfer its liquor license to the appellant.

It appears that the appellant has, for many years, operated a diner at its present locus. It was represented that the appellant would install no bar at which patrons would be served and would accept a condition limiting the service of alcoholic beverages to its restaurant patrons from a service bar only.

An objection to the proposed person-to-person and place-to-place transfer was interposed by Ralphsons Corp., which operates a bowling alley, bar and cocktail lounge at premises immediately adjoining appellant's premises, and thus well within 800 feet of each other.

The pertinent part of the subject ordinance No. 896 provides, as follows:

No new license or transfers of existing Plenary Retail Distribution Licenses, Plenary Retail Consumption Licenses, or Limited Distribution Licenses for the sale of alcoholic beverages shall hereafter be issued for or transferred to premises within 800 feet of premises for which a Plenary Retail Distribution License, Plenary Retail Consumption License or Limited Distribution License for the sale of alcohulic beverages is outstanding, provided, however, that this limitation shall not prevent the renewal or person-to-person transfer ofa license for premises licensed when this Ordinance becomes effective. Nothing herein contained shall be deemed to prevent transfer of a license to within 800 feet of the premises licensed at the time of the adoption of this Ordinance.

It is uncontroverted that eighteen liquor licensees signed a petition requesting the governing body to adopt the Ordinance for the stated reasons that, the prevention of the issuance or the transfer of liquor licenses "to premises within 800 feet of premises for which such a license has been licensed", would be in the best interests of the liquor industry and the citizens of the community, and would prevent the congestion of liquor licenses in one area.

In support of the appellant's position it was argued that, (a) the proposed transfer was permissible under the Ordinance as enacted; (b) because the licensee was compelled to vacate its premises, the Council's action in denying the transfer was erroneous; and (c) the failure of the Ordinance in not specifically excepting licensees who are compelled to vacate their premises rendered the ordinance arbitrary and invalid.

The judicial goal in the construction of ordinances is the discovery and effectuation of the local legislative intent, and in general this inquiry is governed by the same rules as apply to the interpretation of statutes. Wright v. Vogt, 7 N.J. 1, 5 (1951).

The public policy behind N.J.S.A. 33:1-40 which permits a governing body by ordinance to limit the number of retail liquor outlets in a community supports distance-between-premises ordinance which would prospectively limit the number of licenses in a certain area. Dal Roth v. Div. of Alcoholic Beverage Control, 28 N.J. Super. 246 (App. Div. 1953).

Basically, appellant argues that the proposed transfer is not violative of the quoted Ordinance since the second sentence in the quoted Ordinance was intended to provide relief in cases where a licensee would suffer undue hardship. It is further argued that if the Ordinance did not contain a provision permitting transfers in a hardship situation, the Ordinance would be invalid.

My interpretation of the subject Ordinance is that the first sentence controls the issuance of new licenses and the place-to-place transfers of existing licenses. A new license may not be issued, nor an existing license transferred, to premises with 800 feet of existing liquor licensed premises. As further indicated, the aforesaid prohibition is inapplicable to renewals or person-to-person transfers of licenses in existence when the Ordinance became effective. I interpret the second sentence to permit the present holder of a license to transfer his license to a situs within 800 feet of his licensed premises. I find this interpretation consistent with all provisions of the ordinance, which bifurcates the types of transfers, and only permits a joint person-to-person and place-to-place transfer if the distance between premises requirement is satisfied.

Therefore, a transfer of the subject license to the unlicensed premises of the appellant would be violative of the aforesaid ordinance; and it was so held by the Council in its action denying the transfer.

Consequently, contrary to appellant's argument, I find that the second sentence of said Ordinance does not provide an escape for licensees who would otherwise suffer a hardship.

It is fundamental law that this Division is powerless to declare an ordinance invalid regardless of the harshness of its consequences. An ordinance must be accepted as valid on its face. Suits to challenge the validity of an ordinance must be brought in a court of plenary jurisdiction. Blanck v. Mayor and Borough Council of Magnolia, 73 N.J. Super. 306 (App. Div. 1960), rev'd. on other grounds, 38 N.J. 484 (1962); Seamark, Inc. v. Wildwood, Bulletin 2132, Item 4,

In arriving at a determination herein, I am mindful that the applicable legal principle has been clearly set forth in Petrangeli v. Barrett, 33 N.J. Super 378, 384 (App. Div. 1954), wherein the court stated:

> It has long been established that a local governing body has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Bachman v. Inhabitants of the Town of Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902). The rule is aptly stated in Tube Bar, Inc. v. Commuters Bar, Inc., supra (18 N.J. Super. at page 354):

"When a commission, board, body or person is authorized by ordinance, passed under a delegation of legislative authority, to grant or deny a license or permit, the grant or denial thereof must be in conformity with the terms of the ordinance authorizing such grant or denial. 9 McQuillen, Municipal Corporations (3d ed. 1950)§ 26.73; Bohan v. Weehawken Tp., 65 N.J.L. 490, 493 (Sup. Ct. 1900). Nor can such commission, board, body or person set aside, disregard or suspend the terms of the ordinance, except in some manner prescribed by law. Public Service Ry. Co. v. Hackensack Imp. Com. 6 N.J. Misc. 15 (Sup. Ct. 1927); 62 C.J.S. Municipal Corporations § 439."

It is regrettable and unfortunate that the transferor, which has conducted its business over a period of many years in a law-abiding and respectable manner may be the victim of circumstances which compelled it to vacate its quarters, and, consequently, suffer a great financial loss. However, in view of the mandate of the applicable Ordinance, the Council properly concluded that appellant's application for transfer of its license must be denied.

It is, therefore, concluded that the appellant has failed to sustain its burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Council be affirmed, and the appeal be dismissed.

Conclusions and Order

No written Exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 15.

Having fully considered the entire record herein, including the transcripts of the testimony, the exhibits, the written summations of the parties hereto, 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 1st day of September, 1977,

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

Joseph H. Lerner
Director

3. APPELLATE DECISIONS - DAGOBERTO AZCUY v. UNION CITY.

Dagoberto Azcuy, Appellant, v. Board of Commissioners of the City of Union City, Respondent.	:	On Appeal CONCLUSIONS AND ORDER

James E. Anderson, Esq., Attorney for Appellant
Edward J. Lynch, 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 the Board of Commissioners of the City of Union City (hereinafter Board) which, on March 30, 1977, revoked appellant's Plenary Retail Consumption License C-125, for premises 615-617 Bergenline Avenue, Union City, upon a finding that, the appellant on January 9 and 10, 1977, (1) permitted an act of violence to occur within the licensed premises; in violation of Rule 5 of State Regulation No. 20; (2) hindered an investigation being conducted by local police; in violation of N.J.S.A. 2A:85-1; and (3) permitted the premises to be a nuisance; in violation of Rule 5 of State Regulation No. 20, in allowing the removal of two wounded men from the licensed premises and permitting them to be left unattended on the sidewalk in front thereof.

A further charge of building and health code violations within the licensed premises was not contested.

Appellant maintains in its Petition of Appeal, and at the hearing in this Division, that there was insufficient evidence produced before the Board upon which a finding of guilt could be based; and, moreover, evidence which had been introduced was patently inadmissible and should not have been used as a foundation for the Board's finding. The Board denies these contentions.

A de novo appeal was heard in this Division, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

No witnesses were produced by appellant, who relied upon oral argument and cross examination of witnesses who testified on behalf of the Board.

John Messina testified on behalf of the Board. He is a Sergeant in the Union City Police Department and, on the early morning of January 10, 1977, responded to a call respecting the licensed premises. He arrived there about 3:21 a.m. and found two officers within his command already present. Two men lay on the sidewalk, both of whom had been wounded and were bleeding; one of the men appeared lifeless and was so pronounced shortly thereafter. The other man was a victim of an apparent shooting and was removed to the hospital.

The premises of appellant appeared closed (it was then twenty minutes after closing hour) and the Sergeant dispatched two officers to the home of the appellant to request his presence at the licensed premises. This being done, entry was gained and photographs of the interior were taken. Those photographs, along with others concerning the incident and victims, were introduced into evidence.

From the photographs it was established that a fight, act of violence or brawl did take place within the premises. What appeared to the officer to have been blood stains had been mopped from the floor. A spent bullet was discovered in the wall, a piece of the victim's eye glasses was found in the mop pail, a ten-dollar bill was lying in open view on the floor, and the premises were in a state of disarray, as would normally follow a brawl or altercation.

The Sergeant testified that the appellant admitted the existence of a "fight" within the premises but did not report it because of fear of involvement with the police.

Police Officer Conrad Crismale, next testified that he and fellow officer Maurice Ryan, arrived at the premises in response to a dispatch that a "murder had been committed". They found the two victims on the outside of the premises, one who was dead or dying on the sidewalk and the other, obviously injured and bleeding, leaning against the outside wall of the building. He effectuated the return of the appellant to the premises and, although there was some language barrier difficulties, he understood the appellant to admit a shot was fired within the premises that, he alleged, did not hit anyone. The appellant further indicated that a glass on the bar was that of the suspected murderer.

Minutes before information was dispatched from police headquarters that a murder had occurred at or about appellant's premises, Officer James Fischer testified that at 3:15 a.m. he stopped nearly in front of the premises, and issued a "summons"

for double parking. Officer Fischer noted at that time that the exterior lights of the premises were out, with six to eight males standing in front.

While departing the scene, he observed persons leaving appellant's premises. Minutes later the call came in on his radio indicating the occurrence of the crime.

An investigation of the occurrence was conducted by police detective Kenneth J. Kreutzer. He testified that, on the night of January 9, 1977, he responded to the call relating to appellant's premises, and upon arrival, found two men injured, one on the sidewalk and the other leaning against the building. An ambulance thereupon removed the victims. After ascertaining that the victims were shot, he returned to headquarters and obtained statements from numerous persons including the appellant and the barmaid.

From these statements, Detective Kreutzer concluded that, at 2:50 a.m., one George Fuentes, also known as George Batista, entered the licensed premises, was served a drink, and almost immediately thereafter, became engaged in an altercation with the appellant and two of his patrons. Fuentes was the former husband of the barmaid, who, upon hearing a shot, left the premises. The shot occurred at 2:55 a.m.

In oral argument, counsel for appellant asserted that the testimony of Sergeant Messina indicating that the floor stains represented blood was an unfounded conclusion as no testing had been done; and that the part of the eyeglasses discovered in the mop pail was not necessarily missing from the victim's eyeglasses.

In the absence of any evidence offered by appellant in contradiction of the testimony advanced by the Board, the conclusion is inescapable that the charges have been amply proven.

That an act of violence did occur in the appellant's premises was amply established by the disarray in the interior, the bullet hole in the wall, and the admission of appellant to the police that such a brawl did take place.

The stains on the floor of apparent blood, the recent mopping and the part of one of the victim's glasses in the mop pail further lead to another inescapable conclusion that appellant had taken steps to obscure the tragic happening. His failure to summon police aid, or at the least, to alert the police to the happening is but further support for the charge of hindering an investigation.

Numerous statements of witnesses, made to the police and offered in the form of police reports, were not accepted into evidence. Thus, there was no direct proof to support the

specified factual basis for the nuisance allegation, i.e., that appellant removed or permitted the removal of two mortally wounded men from the interior of his establishment to the sidewalk.

However, when tested against the definition of a public nuisance "as an act not warranted by law, or an omission to discharge a legal duty", Mayor & C., of Alpine Borough v. Brewster, 7 N.J. 42,49 (1951), the totality of appellant's actions unquestionably constituted sufficient basis to support the "nuisance" charge.

In sum, I find the appellant has not established that the action of the Board is erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15. Hence, I recommend that the action of the Board in finding appellant guilty of the charges preferred be affirmed.

However, in the matter of the punishment meted out by the Board, i.e., revocation of appellant's license, appellant urges, and with some merit, that the revocationof license is excessive in view of appellant's lack of prior record and the nature of the charges preferred.

A liquor license is a privilege. There is no inherent right in a citizen to sell intoxicating liquor by retail. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). It is a basic principle that the action of the local issuing authority must be reasonable in equating the interests of the licensee with the paramount rights of the public. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

Where activity in the licensed premises is exceedingly bad and the record is a poor one, the Director has unhesitatingly affirmed revocation of licenses by the issuing authority. Gueche, Inc. v. Union City, Bulletin 2072, Item 5; Anfer, Inc. v. Harrison, Bulletin 2131, Item 2; Feldman v. Irvington, Bulletin 2170, Item 5.

It has generally been held by this Division that a suspension or revocation imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the municipal issuing authority; and the power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest of caution. Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2. The exercise of the power of the Director to reduce the penalty on appeal is most often applied in cases where the penalty is manifestly unreasonable. Sventy and Wilson, Inc. v. Pt. Pleasant Beach, Bulletin 1930, Item 1; Pom Bon, Inc. v. Cliffside Park, Bulletin 1897, Item 1.

As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with "fair recognition of the fact that justice to the litigant is always the polestar." Samuel Berelman, Inc. v. Camden, Bulletin 1940, Item 1; Martindell v. Martindell, 21 N.J. 341, 349 (1956).

In a recent matter in this Division (Emersons Ltd. of West Orange, Inc. v. West Orange, Bulletin , Item), a factual fabric emerged similar to the present matter. There, three brawls occurred, one of which resulted in a fatality. The licensee failed to notify the police, and in a municipal disciplinary proceeding its license was suspended for one hundred and fifty days. That penalty was affirmed by the Director.

Following the principles therein laid out, it is thus recommended that the action of the Board be affirmed in its finding of guilt, but the penalty be modified from outright revocation to a suspension of license of one hundred and fifty days.

CONCLUSIONS AND ORDER

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

By letter dated July 14, 1977, the respondent Board of Commissioners of the City of Union City advises that it has deferred action on the renewal of appellant's license for the 1977-78 licensing year until final determination of this appeal. It also expresses non-concurrence with the Hearer's recommendation of modification of penalty.

While the offenses proven are serious infractions, I note that appellant has no prior adjudicated record herein, and that he has ultimately cooperated in a subsequent criminal investigation.

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

Accordingly, it is, on this 2nd day of August 1977,

ORDERED that the action of the Board of Commissioners of the City of Union City finding appellant guilty of permitting acts of violence on the licensed premises, and maintaining the premises as a nuisance; in violation of Rule 5 of State Regulation No. 20, and hindering an investigation; in violation of N.J.S.A. 2A:85-1, be and the same is hereby affirmed; and it is further

ORDERED that my Order dated April 12, 1977 staying the Respondent's revocation of license pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that the penalty imposed of revocation of license be and the same is hereby modified to the imposition of a suspension of license for one hundred and fifty (150) days, and, as so modified the action of the Board is hereby affirmed, and the appeal be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-125, issued by the Board of Commissioners of the City of Union City to Dagoberto Azcuy for premises 617 Bergenline Avenue, Union City, be and the same is hereby suspended for one hundred and fifty (150) days, the effective dates of said suspension will be set by further Order, if and when the subject license is renewed for the 1977-78 license year.

Joseph H. Lerner
Director

4. SEIZURE - FORFEITURE PROCEEDINGS - SEIZED ALCOHOLIC BEVERAGES IN PRIVATE POSSESSION OF OWNER NOW DECEASED - CLAIM FOR RETURN OF ALCOHOLIC BEVERAGES RECOGNIZED.

In the Matter of the Seizure On July 18, 1975 of a quantity of alcoholic beverages consisting of 2,517 containers, at a dwelling located at 262-D Florence Road, in the Township of Winslow, County of Camden, and State of New Jersey.	:	Case No. 13,268 On Hearing CONCLUSIONS and ORDER

E. Allen Nickerson, Esq., Attorney for Claimant, Estate of Walter Moody.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether 2,517 containers of alcoholic beverages should be forfeited.

The factual context leading to the seizure and confiscation of the subject containers of alcoholic beverages was outlined jointly by counsel for the Estate of Walter Moody, claimant and counsel for this Division. That context, and the Division file, admitted into evidence disclose the following:

Acting on information received, the Police of Winslow Township obtained a search warrant, and entered the subject premises where they discovered a huge amount of alcoholic beverages. Concluding that such alcoholic beverage containers were present for illegal purposes, they seized all of the said alcoholic beverages. This Division was informed and the liquor was thereafter stored in its warehouse.

The seizure occurred on or about July 22, 1975. It subsequently appeared that no proof of any illegality was established, and that the owner of the alcoholic beverages was in the hospital recovering from a wound he had received when his business, a local motel, had been held up.

The owner of the alcoholic beverages eventually died, and his estate now seeks the return of the alcoholic beverages seized as aforesaid, and presently in the custody of this Division.

In preparation for this hearing, the Agents of this Division repeatedly attempted to secure testimony of someone relative to the alleged illegal use of the subject alcoholic beverages. The Chief of Police of the Township of Winslow eventually responded

by letter that the only information to him respecting such beverages was that the deceased, Moody, had purchased them from a tavern in which there had been a fire. He suggested that his fear that such alcoholic beverages might have been fire-contaminated caused him to withhold his recommendation that the liquor be returned.

To determine the effect of fire upon such alcoholic beverage stock, the Division introduced the testimony of its chemist, Penelope Moore, who indicated that, any fire sufficient to have a deleterious effect on the contents of alcoholic beverage bottles would most certainly first damage or affect the bottle labels.

ABC Agent S, the Assistant Seizure Officer of this Division, testified that none of the bottles had markings on their labels which indicated exposure to a fire.

Testifying on behalf of the claimant estate, Drueciller Dixon stated that she is the sister of the deceased Walter Moody and resided in the same premises with him frequently while working in his motel. She described a large storage room in which the deceased had, over many decades, kept a large supply of alcoholic beverages for his own use. He frequently entertained and was pleased to purchase the large quantity which was discovered. She denied that he ever sold or intended to sell the said alcoholic beverages.

Several of the deceased's sisters were also present at the hearing and their testimony was available; however counsel stipulated that their testimony would merely be corroborative.

The issue in this matter is narrowed to the simple mandate of the statute:

> "If the Director shall be satisfied that the property seized was not unlawful property he may return the same to the person from whom or the place from which the same was taken" N.J.S.A. 33:1-66 a."

In the complete absence of any proof whatever that the alcoholic beverages seized were, in any way, unlawful, the asserted claim advanced for its return should be recognized.

At the conclusion of the hearing, counsel waived the preparation and receipt of a Hearer's Report and requested that the Director make a determination as promptly as possible.

Accordingly, it is, on this 12th day of August, 1977,

DETERMINED and ORDERED that the claim of the Estate of Walter Moody for the return of the 2,517 containers of alcoholic beverages be and the same is hereby recognized, and the said alcoholic beverages, except for any unsealed or opened bottles, shall be returned to the

claimant upon his payment of reasonable costs of seizure and storage; and it is further

DETERMINED and ORDERED that the removal of the said alcoholic beverages from the custody of this Division not be effectuated unless and until a valid transportation permit is obtained by claimant.

Joseph H. Lerner,
Director

SCHEDULE "A"

2,517 - containers of alcoholic beverages
Misc. pers. prop.

5. APPELLATE DECISIONS - 111 CLUB, A NEW JERSEY CORPORATION v. BOONTON.

111 Club, a New Jersey Corporation, Appellant, v. Mayor and Board of Aldermen of the Town of Boonton, Respondent.	ON APPEAL SUPPLEMENTAL ORDER

David Jerchower, Esq., Attorney for Appellant.
Maraziti and Maraziti, Esqs., by Joseph J. Maraziti, Jr., Attorneys for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of the respondent, Mayor and Board of Aldermen of the Town of Boonton which, on June 28, 1977, denied appellant's application for renewal of Plenary Retail Consumption License C-4 for the 1977-78 licensing year.

Upon filing of the within appeal, an Order to Show Cause was entered on June 29, 1977, why appellant's license should not be extended for the 1977-78 licensing year pending determination of the appeal.

The aforesaid Order further granted an ad interim extension of license pending hearing on the return date of the Order to Show Cause, which hearing was held on August 11, 1977 in this Division.

The respondent has renewed its objection to any further extension of license pending appeal, or in the alternative, requests that any further extension of license be subject to special conditions prohibiting live and amplified musical entertainment.

In light of the nature of the alleged incidents which resulted in the denial of the appellant's application to renew its license, consistent with the objectives and purposes of N.J.S.A. 33:1-1 et seq., and in the public interest, I shall further extend the subject license for the 1977-78 licensing year pending determination of the within appeal subject to the following special conditions:

(1) There shall be no amplification of any live entertainment, other than vocal amplification limited to one singer, permitted at any time on the licensed premises; and

(2) Any live entertainment on the licensed premises shall be limited to no more than three persons, of which, no more than two may be playing unamplified instruments.

Accordingly, it is, on this 29th day of August 1977,

ORDERED that the term of Plenary Retail Consumption License C-4 for premises 111 Mechanic Street, Boonton, issued by the Mayor and Board of Aldermen of the Town of Boonton to 111 Club, a New Jersey Corporation, be and the same is hereby extended for the 1977-78 license period, subject to the special conditions hereinabove set forth and incorporated herein, pending determination of the within appeal.

JOSEPH H. LERNER
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Bal-Kel Distributor, Inc.
t/a Rapp Beer and Soda Distributors
1000 Clinton Avenue
Irvington, New Jersey
Application filed December 19, 1977
for person-to-person transfer of
State Beverage Distributor's License
SBD-31 from F.C.D.S. Distributors, Inc.,
t/a Rapp Beer & Soda Distributors

Joseph H. Lerner
Director