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

BULLETIN 2161 October 16, 1974

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1. APPELLATE DECISIONS - HERO CORPORATION v. HAMMONTON.

Hero Corporation, Appellant, v. Mayor and Common Council of the Town of Hammonton, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Moss, Thatcher & Moss, Esqs., by John T. McNeill, Esq., Attorneys for Appellant
Donio & DeMarco, Esqs., by Mark A. DeMarco, Esq., Attorneys for Respondent-Hammonton
Blatt, Blatt & Mairone, Esqs., by Robert V. Mairone, Esq., Attorneys for Lessor-Robson Enterprises, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Mayor and Common Council of the Town of Hammonton (hereinafter Council) which on November 26, 1973, denied appellant's application for person-to-person and place-to-place transfer of Plenary Retail Distribution License D-2 from Richard E. Ochsner and Eva D. Ochsner to appellant and from premises 20 Twelfth Street to White Horse Mall, Route #30, Hammonton.

In its petition of appeal, appellant contends that the action of the Council was an abuse of discretion in that the principal objectors at the hearing below were holders of plenary retail licenses whose objections were self-serving and that the transfer would, contrary to the determination of the Council, serve the best interests of the community.

The Council did not file an answer pursuant to Rule 4 of State Regulation No. 15, assuming that a copy of the Resolution denying the transfer previously furnished to the Division operated as an answer. A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. In addition, a copy of the Resolution in issue, the minutes of the Council's meeting held November 19, 1973, at which a hearing was held to consider appellant's application, a Zoning

Map and photographs of the sites referred to were received in evidence.

The Resolution adopted by the Council is as follows:

"WHEREAS, Hero Corporation, a New Jersey corporation, has made application for transfer of Plenary Retail Distribution License #D-2, heretofore issued to Richard E. and Eva D. Ochsner, to premises at a proposed location near the Acme Market in the White Horse Mall (Jamesway Shopping Center) on U.S. Route 30 (White Horse Pike); and

WHEREAS, the Governing Body of the Town of Hammonton has held public hearings to determine the advisability of approving and granting the application for transfer; and

WHEREAS, the Governing Body has had fifty-five petitions submitted to it objecting to the said transfer and requesting the Governing Body to deny the application for transfer; and

WHEREAS, the Governing Body has given consideration to the testimony of the applicant, the arguments of counsel of both Richard E. and Eva D. Oschner and the Hero Corporation, and has given consideration to the petitions filed with the Governing Body and consideration to the statements made by the persons who appeared at the public hearing held on November 19, 1973; and

WHEREAS, it appears that to grant the transfer requested, would cause an imbalance in the geographic location of Plenary Retail Distribution Licenses and Plenary Retail Consumption Licenses by concentrating a disproportionate number of such licenses to a short distance on the White Horse Pike area, leaving only a very limited number on the West side of the Town and other areas of the Town; and

WHEREAS, granting the request for transfer would create additional traffic hazards in the White Horse Mall (Jamesway Shopping Center) area and its entrances and exits onto U.S. Route 30 (White Horse Pike) and cause greater traffic congestion; and

WHEREAS, economic benefits accruing to the existing license holders and taxpayers in the White Horse Pike area would be jeopardized by the granting of this transfer; and

WHEREAS, it is felt that the general welfare and best interests of the citizens of this community would be best served by the denial of this request for transfer.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Hammonton, County of Atlantic and State of New Jersey, that the application of Hero Corporation, a New Jersey corporation, to transfer Plenary Retail Distribution License #D-2 from 20 Twelfth Street to the White Horse Mall (Jamesway Shopping Center) on U.S. Route 30 (White Horse Pike) be and is hereby denied."

Joseph McBride, president of the corporate appellant testified that the proposed location of the licensed premises is in a shopping center for which a lease had been entered into, and funds expended in anticipation of the approval of the transfer. The proposed site of the licensed premises is located immediately adjacent to a supermarket. The parking and traffic conditions would not be intensified as there is ample parking in the center with adequate traffic ingress and egress routes.

The transferor of the license, Richard E. Ochsner, testified that his present location is in the immediate vicinity of several other licensed premises, and in an area overly saturated with licensed premises.

Vincent A. De Marco, a local attorney and former Mayor of the municipality testified that, in his opinion, the move from the present address, which is in a concentrated business area to that in a shopping center would be most advantageous to the community. He based his opinion upon the desire of a purchaser at a liquor store to do one-stop shopping; hence such proposed transfer to a shopping center would serve the public interest.

Richard Orth, a traffic engineer, testified that he had conducted a traffic study at the shopping center which would house the appellant's business. The study was conducted for the shopping center generally. He stated that there was no difficulty as to ingress or egress to the center area and that there would be parking facilities for eight hundred cars. He considered that the proposed liquor store would not substantially increase the traffic flow as so to cause added difficulties.

Testifying on behalf of the Council, two individuals associated with other licensed premises stated that they believed the transfer to the new location by appellant would unduly concentrate liquor licenses in the area.

From the zoning maps of the municipality introduced into evidence it is apparent that the existing location of the subject licensed premises is in a business district and is surrounded by other licensed premises. It is further apparent that the proposed location has no license closer than one thousand feet of it, except for a diner.

Preliminarily, I observe that the burden of establishing that the action of the Council was erroneous and should be

reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transfered to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, Bulletin 997, Item 2; Paul v. Brass Rail Liquors, 31 N.J. Super. 210,211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

In fact, as the court pointed out in Nordco Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957), the determinant is merely whether the refusal to grant the said transfer was the result of intentional discrimination or other arbitrary action.

In Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (1960) the court stated:

> "The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so." (Emphasis added.)

As has been stated more recently in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970):

> "...Once the municipal board has decided to grant or withhold approval of a...application ...its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion..."

From the context of the resolution, it is manifest that the Council arrived at its determination after considering all of the facts pertinent to appellant's application thoroughly. By majority opinion, the Council resolved that the proposed location would not be in the best interests of the community. Although the record does not convincingly support that view I am mindful that I must be guided by the principle enunciated in Fanwood v. Rocco, supra that the Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and if so, to affirm irrespective of his own personal view. Lyons Farms Tavern v. Newark, supra; Fanwood v. Rocco, supra.

Furthermore, it appears that the motivations or objectivity of the members of the Council are not open to successful

challenge. As the court emphasized in Lubliner v. Paterson, 33 N.J. 428, 446 (1960), in matters involving a transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest". Hence the Council's determination, so grounded, should be affirmed on review.

I conclude that the appellant has failed to sustain the burden imposed upon it under Rule 6 of State Regulation No. 15 of establishing that the action of the Council was erroneous and should be reversed. I therefore recommend that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the appellant and the attorneys for the Lessor-Robson Enterprises, Inc. pursuant to the provisions of Rule 14 of State Regulation No. 15. I have carefully analyzed and considered said exceptions and find that they have either been reached and resolved in the Hearer's report, or are lacking in merit.

Furthermore, the controlling principles were articulated in Fanwood v. Rocco, 59 Super. 306,320 (App. Div. 1960), affd. 33 N.J. 404 (1960), wherein the court stated: "No person is entitled to the transfer of a license as a matter of law"; and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

I am persuaded and conclude that reasonable cause exists for the opinion and action of the Council. Lyons Farms Tavern v. Newark, supra, (55 N.J. 303).

Consequently, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summations of counsel for appellant and respondent, the Hearer's report and exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 24th day of July, 1974

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

Leonard D. Ronco
Director

2. SEIZURE - FORFEITURE PROCEEDINGS - SEIZURE OF ALCOHOLIC BEVERAGES IN MOTOR VEHICLE (VAN) ADJACENT TO LICENSED PREMISES - ALCOHOLIC BEVERAGES FORFEITED - VAN RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on May 4, 1973 of a quantity of alcoholic beverages and a 1971 Dodge Van adjacent to 54 E. St. George Avenue, in the City of Linden, County of Union and State of New Jersey.	Case No. 12,920 On Hearing CONCLUSIONS and ORDER

Susskind & Susskind, Esqs., by M. Stanley Susskind, Esq., Attorneys for claimant, Linden Liquors.
Royal Smithson, by Albert Smithson, claimant.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

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 1,404 containers of alcoholic beverages and a 1971 Dodge Van bearing New York registration, as described and set forth in Schedule "A", attached hereto and made part hereof, seized May 4, 1973, adjacent to 54 E. St. George Avenue, Linden, constitute unlawful property and should be forfeited or returned to the respective claimants.

At the hearing in this Division, Linden Liquors, holder of a plenary retail consumption license for premises 54 E. St. George Avenue, Linden, asserted a claim for the return of the alcoholic beverages seized. Albert Simpson appeared on behalf of his brother, Royal Smithson, presently a patient in the Veterans Administration Hospital, who is president of the 801 Freeman Street Corporation, owner of the 1971 Dodge Van seized, and sought its return.

At the hearing, reports of the ABC agents and Division file were admitted into evidence. The Division file contained a certification that the beverages seized contained sufficient alcoholic content to come within the purview of the statute, N.J.S.A. 33:1-1(i). The file also contained a certification by the Director that no license or permit for the transportation of alcoholic beverages had ever been issued to claimant Smithson, nor had invoices or delivery slips been exhibited to agents of this Division at the time of the seizure.

Additionally, ABC Agents N and O testified that on May 4, 1973 they were about to make a check of the licensed premises of claimant Linden Liquors, with reference to an alleged unrelated violation, when they observed a Dodge Van being loaded with cases

of what appeared to be alcoholic beverages. By the time they secured a parking space and returned to the truck, which had been parked on the sidewalk area alongside the Linden Liquors store, the driver was behind the wheel of the truck and the motor was running.

Identifying themselves to the driver, they escorted him into Linden Liquors upon learning that he was en route to New York. Upon entering the Linden Liquor store and identifying themselves as agents of this Division, they endeavored to locate invoices, bills, transportation data respecting the many cases of alcoholic beverages pack packed into the truck.

Eventually the principal officer of Linden Liquors appeared, and upon learning of the inquiries of the agents, visited the Division office where a statement and information was obtained from him. No invoices, bills or transportation data were then available for inspection. The truck containing the alcoholic beverages as well as its contents were seized by the agents. The value of the cargo within the truck was estimated as in excess of $4,000.00.

Helen Solomon, secretary of Linden Liquors and wife of its president, testified that although she is not a regular employee, she does, on occasion, help out in the store. On the afternoon in question she was present and doing routine typing when Smithson entered. While she did not converse with him, referring him to a male clerk employed in the stock room, she called her husband by telephone to advise him of Smithson's presence.

The president of Linden Liquors, Jack Solomon, testified that he was acquainted with Smithson with whom he had done business before. His clerk loaded the Smithson vehicle as a routine act and Smithson was not to leave before Somon's return to the establishment. If the Smithson truck had moved from the sidewalk which it was blocking, it would have been driven to the parking area in the rear of the building, not directly to New York as the agents suggested. He admitted that there were no bills or invoices covering the shipment but such would have been prepared had the agents not arrived; they were prepared and later submitted to the Division.

Albert Smithson, the brother of Royal Smithson, who solely owned corporation, is the record owner of the truck, testified that he borrowed the truck from his brother who had no knowledge wahtever of the purposes for which it had been borrowed. He had borrowed that truck before, and had come over to Linden Liquors to pick up a load of liquor for a person identified as Joe Sunday. Smithson received $50.00 for transporting the liquor.

He stated that, upon entry, he placed an envelope, the contents of which were unknown to him, on the counter. Thereafter, the "order" was filled and packed away in the truck. He admitted the motor of the truck was running when he was approached by the

agents and when asked where he was going to go with the truck replied that he was going to New York. However, he had meant that was his ultimate destination; he was then moving the truck off the sidewalk to the rear area.

The truck seized is registered to 801 Freeman Street Corporation and from the testimony of Albert Smithson, the owner of the stock of that corporation is Royal Smithson, Albert's brother. A certification of the Veterans Administration Hospital indicated that Royal Smithson's condition is such that he is unable to leave that hospital where he has been a patient for more than two months. In the absence of any proof to the contrary, I find that Albert Smithson borrowed the truck without disclosing the illegal purposes intended. In consequence of such finding, it is recommended that the 1971 Dodge Van be returned to its owner, 801 Freeman Street Corporation, upon payment of seizure and storage charges.

The alcoholic beverages contained in the truck were obviously part of an illegal shipment, part of some plot or scheme for illegal sale, and subject to forfeiture. The testimony of Jack Solomon was totally incredible. He had done business before with Smithson; Smithson admitted he got $50.00 for carrying the liquor. He permitted the truck to be loaded by his clerk with Smithson behind the driver's seat, and the motor was running.

Solomon then declared that Smithson would place the truck in the rear parking area, return to the interior of his premises and await his return. Smithson admitted he had no money to pay for the liquor, the value of which was in excess of $4,000.00. Smithson didn't know if the envelope he had brought contained money or not. Solomon's bizarre explanation was "That is foolish, something I wouldn't allow."

By way of further explanation, Solomon added "He (his clerk) filled the truck when I wasn't there. If I was there that slip would never leave my premises until I got a signature or something." Nothing in Solomon's story created an impression of a normal legal business transaction. To the contrary, Smithson's explanation appeared far more logical; he was merely a courier of the shipment, for a modest fee. Solomon and some unnamed character were the principals.

From all of the evidence, it is clear that an unlawful shipment of alcoholic beverages was established by a preponderance of the credible evidence. The quantity of alcoholic beverages and the total absence of slips, bills or any documentation to them belies the explanation of a normal sale.

It is, accordingly, recommended that an order be entered recognizing the claim of Royal Smithson on behalf of 801 Freeman Street Corporation for the return of the 1971 Dodge Van. It is,

further, recommended that the claim of Linden Liquors for the return of the alcoholic beverages be denied, and the seized alcoholic beverages be forfeited.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time provided by Rule 4 of State Regulation No. 28.

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 herein.

Accordingly, it is on this 25th day of July, 1974

DETERMINED and ORDERED that if, on or before the 15th day of August, 1974, the claimant, Albert Smithson or his agent or representative, pays the reasonable costs of seizure and storage of the 1971 Dodge Van, more fully described in Schedule "A", attached hereto, the said motor vehicle shall be returned to him; and it is further

DETERMINED and ORDERED that the claim of Linden Liquors for the return of the seized alcoholic beverages be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the said seized alcoholic beverages be and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the same shall be retained for the use of hospitals and State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Leonard D. Ronco,
Director

SCHEDULE "A"

1,404 - containers of alcoholic beverages
1 - 1971 Dodge Van, New York Registration 111YVL, Serial No. B23AE1V322582.

3. APPELLATE DECISIONS - ROSENBLUM v. MADISON et al.

Aaron Rosenblum, Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Township Council of the Township of Madison and Christopher DiStefano, Respondents.	)	

Toolan, Romond, Burgess & Abbott, Esqs., by Arthur W. Burgess, Esq., Attorneys for appellant
Louis J. Alfonso, Esq., Attorney for respondent Township
John Eugene, Esq., Attorney for respondent DiStefano

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Township Council of the Township of Madison (hereinafter Council) which, on December 26, 1973, granted a plenary retail distribution license to respondent Christopher DiStefano. The appellant is the unsuccessful applicant for this new distribution license issued to DiStefano.

The petition of appeal challenges the reasonableness of the grant to respondent DiStefano and, additionally, contends that the action of the councilmen was tainted with prejudice against appellant which individual bias rendered their action invalid. The Council and DiStefano denied these contentions.

A de novo hearing was held in this Division, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. At the outset of the hearing, by stipulation of counsel, a copy of the file of the municipal clerk, containing the respective applications, the record of the hearings, and the resultant resolution were accepted into evidence. The zoning map of the municipality was also received as a joint exhibit.

Preliminarily, counsel for appellant moved to amend the petition of appeal to add a further ground of appeal, to allege that the resolution of the Council was faulty in that it referred to a "D" license and did not designate the same

by its full title "Plenary Retail Distribution License," in the introduction of the hearing before it. Appellant argued that as N.J.S.A. 33:1-13 refers to a "Class D; transportation license" the failure of the Council to specify at the opening of the hearing that the "one 'D' license remaining" referred to a "plenary retail distribution license" was fatal.

An examination of the minutes of the hearing before the Council on the grant of the license revealed a consistent reference to a store in which alcoholic beverages would be sold; nowhere was there reference to a "transportation" license. The subject resolution specified the license granted as a "plenary retail distribution license;" there is not a scintilla of evidence offered to support appellant's contention. I, therefore, recommend that the motion to amend the petition be denied.

I

It appears from the pleadings, the minutes of the meeting before the Council and some reference in the testimony taken at the hearing in this Division, that there was no substantive challenge to the action of the Council in selecting the location or the prospective licensee, DiStefano. The record does not support appellant's contention that the action of the Council was, in that sense, unreasonable. It may be assumed, for this appeal, that the Council chose the successful applicant on the basis of the better location, as this was not reasonably disproved by any evidence to the contrary.

The Council considered the locations of the respective applicants, the appellant and DiStefano. The proposed location of DiStefano was farther away from existing licenses, churches, schools or other incompatible uses, than the proposed location of appellant.

In short, since the resolution concluded "that the advantages of the location proposed by the applicant, Christopher U. DiStefano, outweigh the advantages to the premises proposed by Aaron Rosenblum and that the location proposed by Mr. Rosenblum is already adequately served by alcoholic beverage licenses," and no proof to the contrary was offered, it is recommended that the action of the Council, with respect to this allegation should be affirmed.

II

The critical issue involved, however, concerns the alleged illegality or impropriety on the part of the Council members in considering a statement made by one of its members. It should be initially pointed out that there were seven members of the Council on December 26, 1973. One councilman (English) was designated Mayor and he, together with another (Bush) absented themselves from the hearing, discussion and vote because they have an interest in a licensed facility and wished to avoid

possible conflict. The remaining members selected Councilman Murphy as their presiding officer for the remaining portion of the meeting.

The hearing occurred with Councilman Murphy acting in the chair and continued with full opportunity afforded the council to hear each applicant under oath and to question each at length, both applicants were represented by counsel.

Following a lengthly hearing, in which searching inquiry was made respecting the proposed sites, their location, distances to some landmarks and intended modes of operation, the Councilmen retired for deliberation. It was at that point that Murphy made the statement, hereinafter related to which appellant took umbrage.

Shortly thereafter the council reconvened and the vote was called. Of the five members participating, one abstained, one voted in the negative and the remaining three voted affirmatively to grant the license to DiStefano, the respondent.

At the hearing in this Division, the appellant introduced the testimony of Councilman Richard N. Wenng, who cast the sole vote against the grant to the respondent, DiStefano. He testified that, at a recess following the presentations by both appellant and DiStefano, the acting Mayor convened the caucus with the statement that he would not consider any application by "Ben Rosenblum for anything, prior or future."

The witness added that "And I tried to point out that this application was by Aaron Rosenblum, not by Ben Rosenblum." Although the witness inferred that the acting Mayor could not differentiate between the Brothers Rosenblum or was cognizant that the application of Aaron was not an application of Benjamin, there was no further proof adduced toward such statement. At the time of the casting of the votes, Wenng stated that he voted in the negative because of his belief that there were already sufficient licenses issued in the municipality. He further admitted that, in his statement of his position, he made no mention of the remark made by the acting Mayor at the caucus; nor did he consider the applicants to have been treated unfairly.

Prejudice has been characterized as "a leaning toward one side of a cause for some reason other than its justice." Taylor v. Woolworth, 73 P.2nd. 1102; Adelbert College v. Toledo, 47 Fed. 836; Montalto v. State, 199 N.E. 198.

At the time of the alleged offending remark, the evidence as to the application of appellant, Aaron Rosenblum had already

been presented by counsel and no testimony was elicited at the hearing in this Division that there was any confusion with respect to the appellant's identity. I find, as a fact, that there was no convincing proof of prejudice on the part of the Council or any of its members.

"The essential test of a juror's competency is whether, notwithstanding some opinion or impression previously formed or expressed, he can render an impartial verdict according to the evidence adduced at the trial." 50 C.J.S. Juries p. 995.

From the evidence presented by appellant, it appears that the Council carefully considered the two sites urged by the appellant and DiStefano. The appellant's proposed site was closer to two existing licenses than the DiStefano site was to any other licensees. The DiStefano site was described as being located in a more rural section of the township whereas appellant's site had some proximity to a highway business section.

The legal principle to that aspect of this matter has long been established in Fanwood v. Rocco, 33 N.J. 404, 414 (1960), wherein the Court stated:

> "...The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable..."

Since the Council's action in matters of this kind is discretionary, appellant, to prevail on appeal, must show manifest error or clear abuse of discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

Neither manifest error nor abuse of discretion by the Council is apparent. Accordingly, I find that appellant has failed to meet the burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the action of the Council be affirmed and the appeal be dismissed. However, it is further recommended that the license be delivered to respondent DiStefano, only upon the Council's approval of the building to be erected in accordance with the plans filed therefor.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the attorney for and on behalf of the appellant, pursuant to Rule 14 of State Regulation No. 15. No written answers to the said exceptions were filed on behalf of the respondents.

The principal exception asserted by the appellant is that Councilman Murphy had a personal bias against the appellant, which militated against his fair and impartial consideration of the merits of the respective applications. He reasons as follows: After a lengthy hearing before the Council, the Council considered in caucus, the applications of appellant and respondent DiStefano. According to the testimony of Councilman Wengg, who participated in the caucus, Councilman Murphy allegedly remarked that he could not consider any application by "Ben Rosenblum for anything, prior or future."

Appellant alleges that the respondents failed to call either Councilman, or any other councilmen to dispute this allegation. Therefore, such alleged bias disqualified Murphy from acting fairly and impartially when he voted to grant DiStefano's application.

I find that this allegation was adequately considered and satisfactorily resolved in the Hearer's report.

In my reading and analysis of the transcript I am satisfied that Councilman Murphy knew or became aware that the appellant was not Ben Rosenblum and, therefore, the alleged prejudice against Ben Rosenblum did not enter into his consideration. In fact, Wengg reminded Murphy that "This is an Aaron Rosenblum application and not Ben Rosenblum." At no time did Murphy state, or even indicate, that any alleged bias that he had against Ben Rosenblum would adversely influence him in the consideration of appellant's application. Nor has appellant introduced any affirmative evidence to support his allegation.

Appellant has the burden, under Rule 6 of State Regulation No. 15, of establishing that the action of the Council was erroneous and should be reversed because Murphy was, in fact, biased against the appellant and that such bias tainted the action of the Council. To support his contention he could have subpoenaed Murphy to testify at this hearing. In fact it was his clear duty to do so, since it is presumed that Murphy was available to testify herein.

Also, the other Council members could similarly have been subpoenaed to testify as to whether Murphy sought to influence them, and did influence them as herein alleged.

Of course, the charge of bias or prejudice is a very serious one when it concerns judges or those standing in the position of

judges in judicial or quasi-judicial proceedings. The duty of a judge is to discover objective truth. If the judge has any personal bias, such objectivity becomes distorted and true justice cannot prevail. Cf. Cardozo in Nature of the Judicial Process, p. 173. See Freehold v. Gelber, 26 N.J. Super. 388.

It is well settled that bias and prejudice or improper motivation may not be presumed, but must be established by convincing proof. Gentile v. Manalapan et als., Bulletin 1514, Item 2; Levine v. Harrison, Bulletin 1032, Item 1.

I find that appellant has failed to prove, by a fair preponderance of the credible evidence that there was any bias against the appellant by Murphy or that the Council was motivated by bias in its action. Cf. Kramer v. Sea Girt, 15 N.J. 268, 282, 283; U. S. v. Valenti, 120 F. Supp. 80.

Furthermore, the record clearly shows that the Council voted by majority vote for approval of DiStefano's application because it determined on the basis of the facts presented at the hearing that such action was warranted. Wengg voted against both applications because he felt that there was no need or necessity for another liquor license in this municipality.

Finally, there is no serious challenge to the basic principle that the Director abides by the municipality's grant or denial of an application so long as its exercise of judgment was reasonable. Fanwood v. Rocco, supra (33 N.J. at p. 14); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

I have considered the exceptions with the supportive argument asserted by appellant and find that they are lacking in merit.

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

Accordingly, it is, on this 1st day of August 1974,

ORDERED that the action of the respondent Township Council of the Township of Madison in granting a plenary retail distribution license to respondent Christopher DiStefano, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Leonard D. Ronco
Director