Deputy Director Stockburger ✓

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

BULLETIN 1758 October 24, 1967

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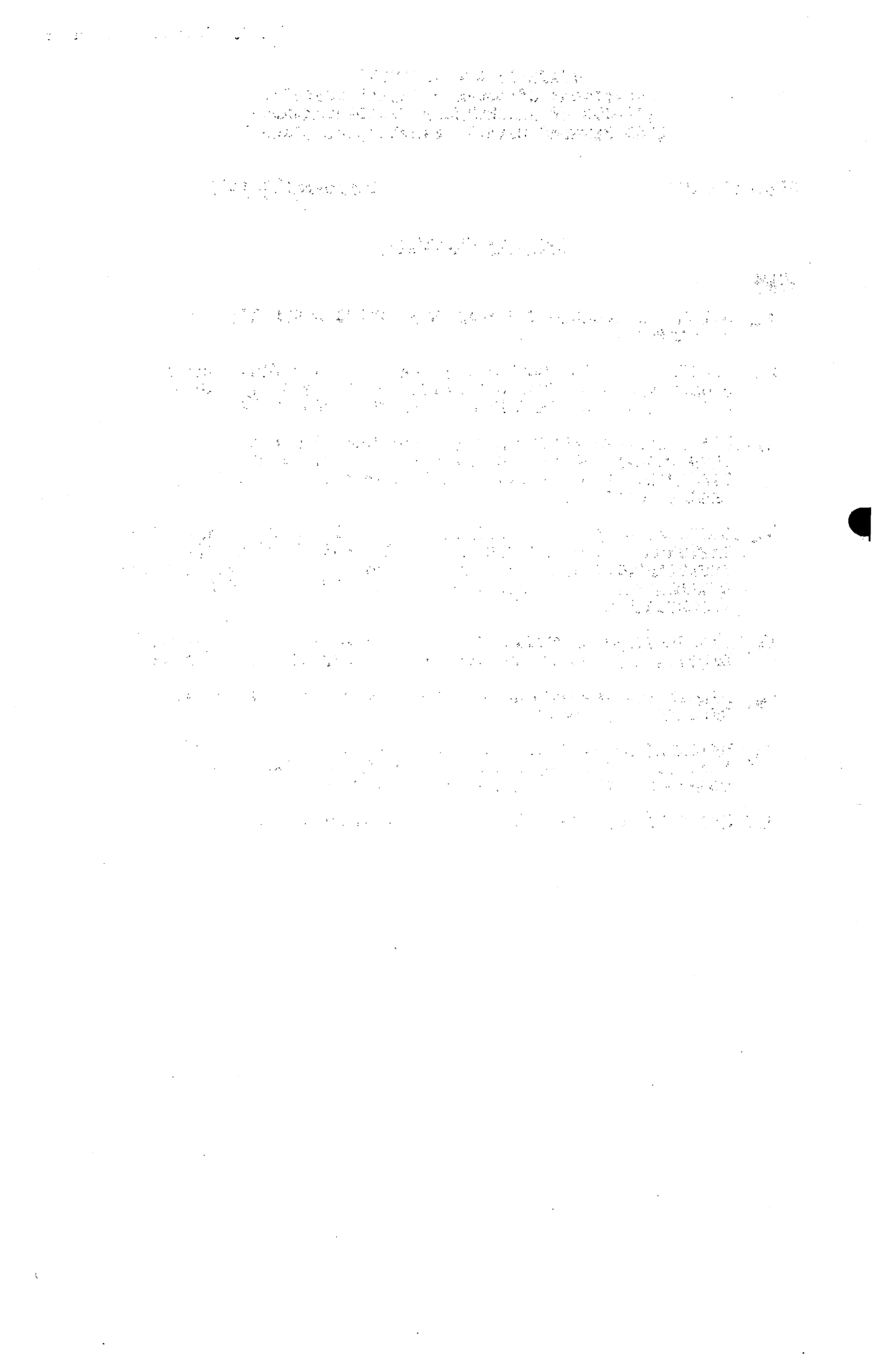

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1. APPELLATE DECISIONS - MILLIE & PAUL'S CORPORATION v. HAMPTON.

MILLIE & PAUL'S CORPORATION, t/a THE BROTHERS,	)	
Appellant,	)	ON APPEAL CONCLUSIONS AND ORDER
v.	)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAMPTON,	)	
Respondent.	)	

Van Blarcom, Silverman & Weber, Esqs., by Albert G. Silverman, Esq.; Frank G. Schlosser, Esq., co-counsel, Attorneys for Appellant.
Trapasso, Dolan and Hollander, Esqs., by Sanford Lloyd Hollander, Esq., Attorneys for Respondent.
Concilio & Hill, Esqs., by Walter I. Hill, Esq., Attorneys for Objector.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Hampton (hereinafter Committee) whereby on the 30th day of August 1966 it denied appellant's application for a place-to-place transfer of a plenary retail consumption license from U.S. Highway, Route 206, Hampton Township, to premises to be constructed at the Big N Shopping Plaza located within three hundred feet south of appellant's premises.

Adrian S. Smith, who was named as a respondent herein because as the sole objector to this application he filed written objections (but did not appear or testify at the hearing before the Committee), is neither a necessary nor proper party to this action. Livingston Land Corp. v. Livingston et al., Bulletin 1136, Item 3.

The petition of appeal alleges that the action of the Committee was arbitrary, unreasonable and unlawful for reasons which may be summarized as follows: (1) the appellant was the victim of a fire damage to its present premises which made it necessary for it to relocate to the proposed premises which are located "just a few hundred feet South of appellant's property;" (2) the sole objection to such transfer was made by another licensee (Adrian S. Smith) whose primary motive was to secure the transfer of his own license to the proposed premises; (3) that, in disregard of the credible testimony of numerous witnesses in support of this application, the Committee arbitrarily voted to deny the same; (4) that such transfer would be in the best interests of the community.

The answer of the Committee denies the substance of the allegations of the appellant and states that it voted to deny the said transfer because it determined that it would not be in the best interests of the Township. It asserts that the Big N Shopping Plaza will contain, among other things, a major food market and a large discount department store, and that the "best interest of the Township and its residents would not be served by having a bar and tavern located in a shopping center of this type." It further answers that appellant's present location is of such proximity to the proposed shopping center that patrons could avail themselves of appellant's facilities "without endangering the many children and family shoppers to be found in this type of shopping center."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony herein.

Before considering the facts and contentions raised in the pleadings herein, it would be appropriate, initially, to restate the basic principles which guide us in the disposition of this action. The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Club Warren Inc. v. Newark, Bulletin 1585, Item 4.

As the court pointed out in Bivona v. Hock, 5 N.J. Super. 118:

> "It seems to us that the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup.Ct. 1940)."

The court further pointed out that:

> "...the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

"[T]he municipality has the original power to pass on an application for an alcoholic beverage license or the transfer thereof. However, its action is subject to appeal to the Director of the Alcoholic Beverage Control Division. On such appeal the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him." Common Council of Hightstown v. Hedy's Bar, 86 N.J.Super. 561, at p. 563; Fanwood v. Rocco, 33 N.J. 404.

I

Appellant contends that its application presents a hardship situation.

Edward H. Lester (an officer of the corporate appellant) testified that this license has been held by his family since 1945, and in 1961 and 1963 the building was almost totally destroyed by two fires. As a result of the fire damage there was considerable litigation because it was suspected that the second fire was caused by an arsonist. In order to rebuild and restore this building for operation of its license, the appellant would be required to spend upwards of $25,000, which it is unable to raise. Accordingly, they negotiated a favorable lease at the Big N Shopping Plaza which was then under construction. His testimony was supported by his brother Paul N. Schuckhaus, associated with him in this business, who stated that appellant had made conscientious but unsuccessful endeavors to borrow money for the purpose of having the building rehabilitated.

There has been no denial on the part of the Committee that the building was in fact destroyed by fire and that the appellant would suffer economic hardship by reason of the denial of its application for the transfer. The only testimony in this regard was by Tony Lorenzo (a member of the Committee) who stated that there was no hardship "explained" to the Committee at the hearing of this application for transfer. Hardship circumstances have frequently been recognized by various municipalities in this State and by the Director of this Division in the consideration of transfer applications. In cases where the local issuing authority has denied such applications the Director has not hesitated to reverse where he considered such action to be unreasonable and an abuse of its discretion. Henderson v. Teaneck and Stanley's Inc., Bulletin 1588, Item 1. See Gruber v. Newark, Bulletin 1071, Item 1; cf. Helms v. Newark and Cardinal Wines and Liquors, Inc., Bulletin 1398, Item 3; Bivona v. Hock, 5 N.J. Super. 118 (App.Div. 1949). It has been consistently held that "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." R.S. 33:1-26; Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462. Cf. Watson and Hardeman v. Camden and Valentine, Bulletin 1010, Item 1.

I therefore find that it was clearly a hardship situation which required sympathetic and favorable consideration on the part of the respondent.

II

It is equally clear that the transfer of the appellant's license from its present location to the shopping center, which is less than three hundred feet from its present location, must be considered as in the same neighborhood and would not result in the existence of any additional license or aggravate the number of present licenses in the general area. Piccirillo v. Lyndhurst, Bulletin 1578, Item 3; L. Kubisky, Inc. v. Paterson, Bulletin 1662, Item 2. As a matter of fact, according to the testimony of Lester (an officer of the corporate appellant), the proposed new premises would be further distant than the present location from all other licenses in the municipality. In addition to this, there has been testimony presented that other safety factors make the proposed premises

more desirable. The present premises are located on a large embankment near a dangerous curve on a busy highway, which is a traffic hazard because motor vehicles traveling around the bend near the present premises do not have adequate visibility. The Highway Department has advised the appellant to install an island with two separate entrances, but this would not materially improve the approaches to these premises.

George Palmer Zink (the building inspector and a member of the planning board of this municipality) testified that the transfer would improve the safety factors and "would increase the safety factors." He stated that the Big N Shopping Plaza, on the other hand, has constructed with the approval of the State Highway Department, three entrances and exits thirty feet in width and "each side of it is protected by the typical steel guard fences now in use on high-speed highways." There is modern, improved lighting and, in his opinion, the transfer from the existing location to the proposed new premises, from a safety standpoint, would be in the best interests of this Township. His testimony was supported by a number of residents who testified to the hazardous position of the present premises and the more desirable location at the shopping center, affording large parking facilities, promenade and other modern appurtenances. I accordingly conclude, therefore, that this transfer would not aggravate the existing licenses in the community and would serve the public interest because of the improved safety factors hereinabove delineated.

III

The Committee maintains that the transfer to the proposed premises would not serve the best interests of the community because women and children patronizing the shopping center, and particularly the major food facility, would be exposed to these licensed premises. In the Committee counsel's brief he states that:

> "The Town fathers determined that the best interest of the public dictated that a tavern not be operated in such a shopping center. The testimony elicited from appellant's witnesses both at the Township hearing and on appeal, the desirability of having a tavern readily available to persons who sought to satisfy their desire for drink while their spouses were engaged in shopping or when they were returning from work. The municipality considered that such accessibility would lead to a safety problem and would endanger both the morals and safety of the public."

The appellant, however, points out that the facility in the shopping center will have a separate entrance and will be similar to other such operations in shopping centers throughout the State. Counsel for the appellant emphasizes in his brief submitted in summation that the appellant does not intend a "saloon-type operation." What is here intended is a package liquor store, to the fullest extent legally permissible under its broad package privilege, "with the minimum of on-premises consumption facilities required under A.B.C. regulations." He also observed that this is the common type of operation in shopping center communities.

It must be assumed that the appellant intends to operate in a lawful manner and in full compliance with the rules and regulations of this Division. If it does not do so, it may, of course, be subject to appropriate disciplinary action.

Furthermore, since this move is being made to within

three hundred feet of its present premises, no additional policing is required on the part of the Committee. In fact, it is apparent that more effective police control could be maintained if this facility is located in the shopping center complex.

IV

Significantly, the only objection on the part of the local residents was a written objection filed by Smith, who did not appear or testify at the hearing. He had a perfect right, as a resident, to make such objection although the weight to be given to his objection may be measured by the fact that he stated forthrightly that he was motivated by his desire, as the only "D" licensee in that municipality, to have his own license transferred to the shopping center. On the other hand, numerous witnesses in support of the application appeared both at the hearing before the Committee and at this hearing. Their testimony substantially supports the argument of the appellant that the said transfer would serve the interests of safety and the convenience of the local residents and, therefore, would be in the best interests of the public. In this connection the appellant testified that it has measured the local sentiment and finds that it preponderantly supports its application. It submitted a petition containing the signatures of 332 local residents in support of its application. However, it should be noted that Smith also obtained a petition containing 114 signatures in opposition to this application.

The mere counting of noses of persons who are in favor or opposed to such transfer, of course, cannot serve as a substitute for the considered determination of the local issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way in which petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Therefore, the weight to be given a petition must, in large measure, depend upon what the petition states, who signs it and how it accords with the policy and common sense of the officials responsible for the administration of law and whose duty and privilege it is to hear both sides. Henderson v. Teaneck and Stanley's Inc., supra; see Dunster v. Bernards, Bulletin 99, Item 1. Nevertheless, the total impact of the testimony of the witnesses herein, and the other evidence submitted, satisfies me that there is a preponderance of local sentiment in favor of such transfer and that such transfer would be in the public interest.

I have carefully examined the testimony of Committeeman Tony Lorenzo who expressed the views of the Committee, as well as his own views in support of its action to deny this transfer. I am not persuaded by the force and logic of the reasons asserted therefor. Under the facts and circumstances appearing herein, it is my opinion that the Committee's denial of appellant's application for place-to-place transfer was unreasonable, arbitrary and an abuse of its discretion.

I am satisfied that appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15, and it is therefore recommended that the action of the respondent Committee be reversed.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, the

attorney for the respondent filed written exceptions to the Hearer's report, and an attorney for the appellant filed answering argument, and thereafter oral argument was presented before me.

In Rocco v. Fanwood, Bulletin 1274, Item 1 (1959) the Director reversed on appeal the denial of an application for place-to-place transfer of a retail license. In Fanwood v. Rocco (59 N.J.Super. 306) the Superior Court reversed the Director's action and, following grant of certification, the Supreme Court, considering that the Director's action was improperly grounded and was soundly set aside, affirmed the action of the Appellate Division (Fanwood v. Rocco, 33 N.J. 404).

In the brief for the appellant and in the answer to the exception to the Hearer's report and in the oral argument it was vigorously contended that, while under the circumstances in Fanwood the denial of place-to-place transfer was thoroughly justified, the denial herein was arbitrary and unreasonable.

Admittedly, the appeal herein is not as strong for the municipal issuing authority as was Fanwood. There the Mayor and six councilmen appeared at the hearing on appeal and subjected themselves to cross examination. Here only one committeeman appeared, although it may be pointed out that the committeeman testified on cross examination: "I am here to represent five members of the township committee."

In Fanwood a church was the principal objector to grant of the transfer, and the testimony indicated an overwhelming objection thereto on the part of local residents. Here the only objector was the one plenary retail distribution licensee in the Township who, in a letter of August 8, 1966 to the Township Committee, stated that he had been giving consideration to the filing of application for transfer of the plenary retail distribution license "to a new place of business at or near The Big N North of Newton on Route 206, subject, of course, to the approval of the Township Committee." In the brief for the appellant and in oral argument it was contended that the reason for the denial of the appellant's application was the holding open of the shopping center for transfer thereto of the plenary retail distribution license, but no application for such license transfer has been filed and the respondent's attorney stated that, in the event such application is filed, it may be denied.

In Fanwood the application was for transfer of a plenary retail distribution license from a location near the border of the municipality to the center of the Borough in which section no liquor license had previously been permitted. In the instant appeal the application, as noted in the Hearer's report, was for transfer to a location some three hundred feet from the old and the new location would be farther than the old from existing licensed premises in the Township. In connection with operation under that license I must comment in emendation of the following portion of the Hearer's report:

> "Counsel for the appellant emphasizes in his brief... that the appellant does not intend a 'saloon-type operation.' What is here intended is a package liquor store, to the fullest extent legally permissible under its broad package privilege, 'with the minimum of on-premises consumption facilities required under A.B.C. regulations.'"

The particular license does not carry the "broad package privilege" under P.L. 1948, c. 98 (R.S. 33:1-12.23 et seq.) and

State Regulation No. 32. Under that license, therefore, alcoholic beverages may lawfully be sold and displayed for sale in original containers for off-premises consumption only in the bona fide public barroom and the sale of package goods in a room with a minimal and token-type public bar would be in contravention of the law.

Unlike Fanwood, it was established in the instant appeal that the traffic situation at the shopping center location sought would be considerably better than at the old location, but I find that such a prospective improvement would not, in itself, justify a reversal of the denial.

In the Fanwood appeal the only person who appeared and testified in favor of a grant of the application was the applicant, but in the instant appeal, as noted by the Hearer, a number of witnesses testified in support of a grant of the application and others stood ready, if called, to give similar testimony while the only persons to testify for the respondent were Committeeman Lorenzo and Adrian S. Smith. I find, however, that the testimony in favor of a grant of the application was far from sufficient to constitute the respondent's denial an abuse of discretion. At the hearing Committeeman Lorenzo was asked whether he felt that his own personal decision and that of the Committee fairly represented the public opinion in the Township. He answered: "I do." The decision in Ward v. Scott, 16 N.J. 16, contained the following language (p. 23):

> "...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 for variance."

The same applies with respect to a municipal issuing authority's consideration of and action upon an application for retail license transfer.

At the hearing herein and in the brief for the appellant and in oral argument it was contended that the alleged unreasonable and arbitrary nature of the denial was demonstrated by the respondent's failure to investigate other shopping centers with plenary retail consumption licenses having public barrooms so as to document and support its fears concerning unwholesome and deleterious results. I find that the burden of making such an investigation was upon the appellant--to show that the respondent's fears were unfounded or greatly exaggerated.

Attention is now directed to the portion of the Hearer's report reading as follows:

> "...Hardship circumstances have frequently been recognized by various municipalities in this State and by the Director of this Division in the consideration of transfer applications. In cases where the local issuing authority has denied such applications the Director has not hesitated to reverse where he considered such action to be unreasonable and an abuse of its discretion. Henderson v. Teaneck and Stanley's Inc., Bulletin 1588, Item 1. See Gruber v. Newark, Bulletin 1071, Item 1; cf. Helms v. Newark and Cardinal Wines and Liquors, Inc., Bulletin 1398, Item 3; Bivona v. Hock, 5 N.J.Super. 118 (App. Div. 1949). It has been consistently held that 'An owner

of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer.' R.S. 33:1-26; Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J.Super. 462. Cf. Watson and Hardeman v. Camden and Valentine, Bulletin 1010, Item 1."

In Henderson the appeal was from the grant of a license transfer. In Gruber the appeal was from denial of transfer of a plenary retail distribution license and the record therein indicated that the primary reason for the denial was to decrease the number of licenses. Helms was an appeal from the grant of transfer of a plenary retail distribution license. In Bivona v. Hock the court reversed the Director's affirmance of municipal denial of a place-to-place transfer and the grounds of denial were far different from those in the instant appeal. In Brandt the court affirmed the Director's reversal of municipal denial of person-to-person and place-to-place transfer, but it was clear in the record that the denial was primarily motivated by a desire to have the license "die." In Watson and Hardeman the appeal was from the grant of a place-to-place transfer, in which case, not in point with the case before me, the Director affirmed the local action.

In cases on appeal from denial of place-to-place transfer it has been stated over and over that personal and economic hardship on the part of the applicant is not sufficient to overcome the primary consideration of the general welfare of the municipality, and that in a conflict between private interests and the interests of the community the latter must prevail. See Hutchins v. Paterson, Bulletin 764, Item 9; Pasquale v. Tenafly, Bulletin 1012, Item 1; First National Stores, Inc. v. Dumont, Bulletin 1451, Item 1; Silvestri v. Jersey City, Bulletin 1554, Item 2; Twin Lee, Inc. v. Middletown, Bulletin 1635, Item 1; Shop-Rite Liquors of Cliffside Park v. Cliffside Park, Bulletin 1681, Item 1.

Piccirillo v. Lyndhurst, supra, and L. Kubisky, Inc. v. Paterson, supra, are distinguishable from the case before me. In Piccirillo the move was approximately one hundred fifty feet, and in Kubisky approximately thirty feet and on the same business street. In both cases the new and the old premises were in the same business area. In the instant case the shopping center location is, as noted, approximately three hundred feet from the old premises, and it is doubtful that the two locations could properly be deemed to be in one and the same business area. Webster's Third International Dictionary defines "shopping center" as follows: "A concentration of retail stores and service establishments in a suburban area usually with generous parking space and usually planned to serve a community or neighborhood." It would appear that the members of the Committee did not consider the shopping center to be in the category of the ordinary business street but, instead, considered the shopping center complex to be in a different and special category, particularly because of the concentration. Other municipal issuing authorities may feel otherwise in this regard.

I am unable to agree with the Hearer's findings and recommendation. To do so would in effect be tantamount to my finding that a grant of the transfer would be in the best interest and welfare of the community. In the face of the respondent's determination to the contrary, and in the absence of any proof of improper motivation, I find myself in no position to make such a finding.

Apart from the general merits, there is an important and basic procedural matter. In his exceptions to the Hearer's report the Township attorney wrote:

> "...It might be added here, that there has been a great deal of correspondence between the Division of Alcoholic Beverage Control and the Township concerning the renewal of the Appellant's license in the past."

Pursuant to that correspondence (begun when the Division was first made aware of the fire or fires which seriously damaged the premises), the respondent adopted the following resolution on October 11, 1966:

> "BE IT RESOLVED that the action taken on June 16, 1966 purporting to grant outright the application of Millie and Paul's Corporation for 1966-1967 License C-5 is hereby amended to provide that the application for the 1966-1967 license is granted, as of June 16, 1966, subject to the special condition that the 1966-1967 license shall not be issued unless and until the renovation and repair of the premises on Route 206 shall have been duly completed."

The Division's letter of October 14, 1966 to the Deputy Township Clerk said:

> "The special condition (Revised Statutes, 33:1-32) is, of course, approved. If and when it shall have been duly complied with please advise us of the date the 1966-1967 license is issued."

Strictly, therefore, with the condition not complied with, there was no 1966-1967 license lawfully in being to transfer.

(On June 13, 1967 a motion was passed by the respondent granting the application of Millie and Paul's Corporation for 1967-1968 renewal of License C-5 for the old premises on Route 206. Later, the respondent adopted an amendatory resolution setting forth grant of the application for 1967-1968 renewal subject to the special condition that the 1967-1968 license shall not be issued unless and until renovation and repair of the premises shall have been duly completed. Remaining, to correct and complete the procedures, is adoption of a resolution making the 1966-1967 license effective as of June 13, 1967 in validation of the grant of application for 1967-1968 renewal.)

After careful consideration of the record herein, including the transcript of the testimony, the exhibits, the arguments of counsel, the briefs, the Hearer's report, the exceptions to the report and the answer thereto, and the oral argument before me, I find that the appellant has failed to establish the burden (Rule 6 of State Regulation No. 15) that the action of the respondent was erroneous and should be reversed.

Accordingly, it is, on this 5th day of September, 1967,

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

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

Florence P. Murphy
t/a Murphy's Bar & Liquor Store)
26-28 South Street
Freehold, N. J.) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 issued by the Borough Council of the Borough of Freehold)

- - - - - - - - - - - - - - - - - -

Jerry Sokol, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 15, August 2 and 16, September 12, 19 and 27, 1966, she permitted acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Yusko's Tavern, Inc., Bulletin 1744, Item 3.

Admittedly, the licensed business is not now being operated and thus no effective penalty can be imposed at this time. Hence the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business under the license shall have been fully resumed on a substantial basis.

Accordingly, it is, on this 30th day of August, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Freehold to Florence P. Murphy, t/a Murphy's Bar & Liquor Store, for premises 26-28 South Street, Freehold, be and the same is hereby suspended for fifty-five (55) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - GAMBLING (WAGERING) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
Chaled, Inc.
t/a "Starlite Tavern")
7137 Woodland Ave.
Pennsauken, N. J.) CONCLUSIONS AND ORDER
)
Holder of Plenary Retail Consumption License C-15 issued by the Township Committee of the Township of Pennsauken)

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John P. Reilly, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on July 1, 1967, it (1) sold drinks of beer to an intoxicated patron, in violation of Rule 1 of State Regulation No. 20, and (2) permitted the playing of a card game for money stakes, in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for eight days effective May 3, 1965 for permitting a brawl on the licensed premises.

The license will be suspended on the first charge for twenty days (Re Humes, Bulletin 1744, Item 7) and on the second charge for fifteen days (Re Molnar, Bulletin 1712, Item 9), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Gajewski, Bulletin 1742, Item 4), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 30th day of August, 1967,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Pennsauken to Chaled, Inc., t/a "Starlite Tavern", for premises 7137 Woodland Avenue, Pennsauken, be and the same is hereby suspended for thirty-five (35) days, commencing at 3 a. m. Wednesday, September 6, 1967, and terminating at 3 a. m. Wednesday, October 11, 1967.

JOSEPH P. LORDI
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES IN SUBSTITUTE TRUCK THROUGH STATE DUE TO EMERGENCY HELD VALID - TRUCK AND ALCOHOLIC BEVERAGES ORDERED RETURNED TO INNOCENT TRANSPORTER.

In the Matter of the Seizure on March 16, 1967 of a quantity of alcoholic beverages and a Chevrolet van truck on the New Jersey Turnpike, near Milepost 35, in the Township of Mount Laurel, County of Burlington and State of New Jersey.	)	On Hearing CONCLUSIONS AND ORDER

Dimon, Haines & Bunting, Esqs., by Lawrence A. Eleuteri, Esq., appearing for Theodore F. Johnson.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28 to determine whether 1038 containers of alcoholic beverages and a Chevrolet van truck, more particularly described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on March 16, 1967 on the New Jersey Turnpike near Milepost 35, Mount Laurel Township, New Jersey constitutes unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 3:1-66, Theodore F. Johnson, the owner of the truck and transporter of the alcoholic beverages, appeared and sought return of the alcoholic beverages and the motor vehicle.

The evidence presented herein establishes the following facts: On Thursday, March 16, 1967 at about 8:00 P. M. a New Jersey State trooper on routine patrol of traffic stopped the motor vehicle in question on the New Jersey Turnpike aforesaid. The truck bore New Jersey license plates KMM927, registered in the name of Theodore F. Johnson of Mt. Holly, N. J. who was then driving the vehicle.

The trooper, in the course of examining the credentials of the driver and issuing a summons to Johnson for a traffic violation, questioned Johnson with respect to certain cases of liquor in the back of the truck. According to the testimony of Trooper John Billick, Jr., Johnson stated that the whiskey was to be delivered to a place in south Jersey. He then told him that the whiskey was being transported from Washington, D.C. to a specific destination in New York City; that his truck had broken down, and he was transporting the liquor to Jersey City in another truck because he "did not want to leave it in the truck, some one might steal it".

Johnson did not have a transportation license or permit for the seized truck, authorizing the transportation of the said whiskey in the State of New Jersey.

The file which contained the affidavit of mailing, affidavit of publication, the chemist's report and the inventory was admitted into evidence by stipulation of counsel.

After the said seizure of the truck and the alcoholic beverages, they were then turned over to ABC agents.

Theodore F. Johnson, the claimant, gave the following account: He is an independent trucker lawfully authorized to transport alcoholic beverages on consignment from without the State of New York to a specific consignee in the State of New York. He produced Permit No. 41414 issued by the New York State Liquor Authority which reflects such authorization for the period from January 1, 1967 through December 31, 1967.

On March 16, 1967 his employee picked up the seized alcoholic beverages from the consignor in Washington, D.C. together with a bill of lading and was in the process of transporting the said whiskey to the Wally Haji Social Club, an authorized consignee located in New York. The truck which had affixed to it a New York State Liquor Authority Trucking Permit 76045 developed clutch trouble while proceeding on Route 130, and the driver called this witness to report that fact. Johnson proceeded to that point with another truck, registered in his name, and transferred the whiskey from the first truck to this truck. It was when driving the second truck on the turnpike that he was stopped by the State trooper.

Johnson maintained that the trooper did not request that he produce any invoice or bill of lading, and promptly took him into custody. However, he insists that he had those documents on his person and displayed them to the officers on the following day. They were admitted into evidence and substantially comply with Rule 4 of State Regulation No. 18.

There has been submitted for my consideration the Certificate of Incorporation of the Wally Haji Social Club, Inc. which indicates that it is a social club, duly incorporated and operating in the State of New York and, by virtue of paragraph 9 of "Definitions" of the New York State Alcoholic Beverage Control Law, is authorized to purchase alcoholic beverages from without the State.

Although there is some dispute in the record herein as to whether or not Johnson had the invoices and bill of lading setting forth the name of the consignor and the consignee, I find, from the evidence herein, that there was substantial compliance, based on the documents submitted. I further find that Johnson has complied with the provisions of paragraphs c, d, and e of Section 102 of the New York State Alcoholic Beverage Control Law relating to transportation of alcoholic beverages from without the State of New York; thus, he was lawfully authorized to transport and haul alcoholic beverages from Washington, D.C. to a specific consignee in the State of New York, through New Jersey.

Rule 2 of State Regulation No. 18 states in its applicable part that alcoholic beverages properly labeled and bearing indicia of tax payment (present on these alcoholic beverages) passing through this State may be transported through this State in any vehicle:

> "(c) the driver of which has in his possession bona fide, authentic and accurate waybills or similar documents stating the bona fide names and addresses of the consignee and consignor, the nature and quantity of the alcoholic beverages being transported, the place of origin and destination; provided further, the beverages may be lawfully delivered to and received by a consignee fully authorized by State and Federal laws to receive the same."

The breakdown of the authorized vehicle created an emergency situation which necessitated the transfer of the alcoholic beverages from that vehicle to the one actually used. However, this did not change the character of the interstate transportation, and fairness would dictate that the vehicle operated by Johnson in such emergency at the time of the seizure continued its essential interstate character. Since I have found that the bill of lading was in order; that Joynson was duly authorized to transport the alcoholic beverages through this State, and that the consignee was duly authorized to receive the said shipment, I am satisfied that there has been substantial compliance with the laws of this State and of New York.

Therefore, I shall order the return of the seized motor vehicle and the alcoholic beverages.

Accordingly, it is, on this 25th day of August, 1967,

DETERMINED and ORDERED that if on or before the 6th day of September, 1967 Theodore F. Johnson pays the costs incurred in the seizure and storage of the motor vehicle and the alcoholic beverages, as set forth in Schedule "A", such motor vehicle and alcoholic beverages will be returned to him.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

1038 - containers of alcoholic beverages
1 - 1964 Chevrolet Van Truck, N.J.Registration KMM 927

5. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Reservoir Bar & Grill (A Corporation)
418 Edgewater Road
Fairview, N. J.

Holder of Plenary Retail Consumption License C-23 issued by the Mayor and Council of the Borough of Fairview

CONCLUSIONS AND ORDER

Licensee, by Wayne McGuirt, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on March 22 and 23, 1967, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Gural, Bulletin 1738, Item 8.

Accordingly, it is, on this 31st day of August, 1967,

ORDERED that Plenary Retail Consumption License C-23,

issued by the Mayor and Council of the Borough of Fairview to Reservoir Bar & Grill (A Corporation) for premises 418 Edgewater Road, Fairview, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a. m. Thursday, September 7, 1967, and terminating at 3:00 a. m. Wednesday, November 1, 1967.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary Proceedings against

Florence P. Murphy
t/a Murphy's Bar & Liquor Store
26-28 South Street
Freehold, N. J.

Holder of Plenary Retail Consumption License C-6 issued by the Borough Council of the Borough of Freehold

SUPPLEMENTAL ORDER

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Jerry Sokol, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On August 30, 1967, I entered an order herein suspending the license for fifty-five days for permitting acceptance of horse race bets on the licensed premises and deferring the license suspension because it appeared that the licensed business was not then being conducted. Re Murphy, Bulletin 1758, Item 2.

Report of recent inspection discloses that the licensed business has now been fully resumed on a substantial basis. Hence, I am satisfied that the deferred suspension may now be imposed.

Accordingly, it is, on this 20th day of September, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Freehold to Florence P. Murphy, t/a Murphy's Bar & Liquor Store, for premises 26-28 South Street, Freehold, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a. m. Wednesday, September 27, 1967, and terminating at 2:00 a. m. Tuesday, November 21, 1967.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Jack Stancampino, Inc.
t/a Orient Bar
7 Orient Avenue
Jersey City, N. J.

Holder of Plenary Retail Consumption License C-384 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City

CONCLUSIONS AND ORDER

Licensee, by Jack Stancampiano, President, Pro se
Edward J. Sheils, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 12, 1967, it sold a pint bottle of gin for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Strand Bar, Inc., Bulletin 1749, Item 7.

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

ORDERED that Plenary Retail Consumption License C-384, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Jack Stancampino, Inc., t/a Orient Bar, for premises 7 Orient Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a. m. Tuesday, September 26, 1967, and terminating at 2 a. m. Friday, October 6, 1967.

JOSEPH P. LORDI
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Thomas Fornataro, Inc.
Buena Vista Avenue
Buena Boro
Landisville, New Jersey

Application filed October 18, 1967 for place-to-place transfer of State Beverage Distributor's License SBD-37 from 11 Nixon Street, Buena Boro, Landisville, New Jersey.

Joseph P. Lordi
Director