

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2359

July 9, 1980

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07102

BULLETIN 2359

July 9, 1980

1. APPELLATE DECISIONS - VINNICK v. PHILLIPSBURG.

Anthony Vinnick and Mary Vinnick,
t/a Coronet Bar & Grill,

Appelants,

v.

Town Council of Phillipsburg,

Respondent

CONCLUSIONS AND ORDER

Ernest F. Duh, Esq., Attorney for Petitioner
James R. Swick, Esq., Attorney for Respondent

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: October 16, 1979

Received: October 19, 1979

BY THE DIRECTOR:

No written Exceptions were filed to the Initial Decision Below by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision Below, I concur, generally, in the findings and recommendations of the Administrative Law Judge, except as hereinbelow noted, and adopt same as my conclusions herein.

I specifically reject the direct and implied inferences set forth in findings No. 5, 9, and 10 of the Administrative Law Judge, viz., "that the town of Phillipsburg has penalized the petitioner (sic) for requesting their assistance when disturbances result from their barring patrons from their premises."

The subjective conclusion set forth in finding No. 5 is totally unwarranted from my review of the record. A similar statement that the Town Council is attempting to make the appellant an example is similarly unwarranted (Page No. 7 of Initial Decision). Town Council was exercising its statutory obligations to regulate retail licensees in its community. N.J.S.A. 33:1-19 and N.J.S.A. 33:1-31. While the charges of nuisance cannot be sustained upon the record before me, proper procedural due process has attached to every step of the proceeding, and appellants are not without culpability, as hereinafter noted.

Finding No. 9, viz., "that some of the disturbances were precipitated by witnesses for the State (sic)," is both overbroad, inasmuch as only one incident can be attributed to a witness for respondent, and contains the erroneous use of the term "State" for the issuing authority-respondent. Such improper designation of the party also appears on Page No. 3 of the Initial Decision.

Finding No. 10, as well as the unsupported comments and conclusions contained on Page No. 7 of the Initial Decision, are also rejected. The fact that the local police were required to respond to the appellants' premises fourteen times between August 12, 1978 and December 6, 1978 indicates that the categorization of the appellants' premises as a "trouble spot" at that time is not improper. See Nordco, Inc. v. State, 43 NJ Super 277, 282 (App. Div. 1957).

The subsequent absence of any quantity of reported police assistance calls indicate that the appellants have apparently modified their operations. This license is not subject to special conditions imposed pursuant to N.J.S.A. 33:1-32. The corrective measures and restrictions voluntarily commenced by the appellants are not so much a result of unreasonable demands by the Town Council to the detriment of appellants; but rather, a license-saving measure by appellants to demonstrate fitness to be able to properly conduct a liquor licensed business.

The citizens of the Town of Phillipsburg are entitled to protection and a peaceful, dignified environment. The Town Council must continue to take those steps necessary to achieve such objective, and the holder of a liquor license must also take such steps as is necessary to fit within that ultimate objective.

However, since the record before me doesn't support the action below, I shall reverse the finding of guilt.

Accordingly, it is, on this 30th day of November, 1979

ORDERED that the action of the Town Council of the Town of Phillipsburg be and is reversed, and the appellants be and are hereby found "not guilty" of the charges alleged.

JOSEPH H. LERNER
DIRECTOR

In the Matter of:)

ANTHONY and MARY VINNICK t/a)
CORONET BAR AND GRILL vs.)
TOWN COUNCIL OF PHILLIPSBURG)

INITIAL DECISION

OAL DKT. NO. ABC 2852-79

Appearances:

Ernest F. Dunn, Esq., Attorney for Petitioner

Anthony Vinnick and Mary Vinnick, Petitioners

James R. Swick, Esq., Attorney for Respondent

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

219-33-039

This is an appeal from an action of the Town Council of Phillipsburg, which, by Resolution and Order dated June 13, 1979, suspended Appellant's Plenary Retail Consumption License #2219-33-039-001 for premises located at 62, 64 and 66 Sitgraves Street, Phillipsburg, New Jersey. Said suspension was to become effective July 1, 1979 and continue until September 28, 1979 for total suspension period of 90 days. Upon the filing, on June 21, 1979, of the Petition of Appeal the Director of the Alcoholic Beverage Control granted a stay on June 22, 1979 of the Order of Suspension pending determination of this appeal. The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on September 12, 1979.

The issues of the hearing are whether or not the action of the Council was arbitrary, capricious and not consistent with the evidence adduced. The Council's answers indicate that they heard sufficient credible testimony from neighbors living in the immediate vicinity as to conduct which constituted a nuisance. They also contend that the proposed suspension for a period of 90 days was not excessive in view of the serious nature of the complaints.

The Town presented two witnesses, Mr. William J. Spieles and Jean Elizabeth Rissmiller, who testified as follows.

Mr. Spieles, who lives five doors from the premises in question, stated that he has lived at that location for the past seven years. He said that from August 1978 to May 1979, the period in question, he had been awakened in the middle of the night by people shouting while leaving or entering the premises. He states that it is normally between the hours of 12:30 a.m. and 1:00 a.m. when this occurs but that it is not an everyday occurrence. He testified that patrons have left beer bottles on his lawn and that three or four mornings a week his wife has to pick up the bottles. He also stated that a motorcycle, when it leaves the parking lot every night, makes a loud noise which interrupts his sleep. He also stated that he has observed persons, both men and women, urinating on the street and the sidewalk. He testified that he talked to a

female worker at the bar and complained of the noise and was informed that she was not responsible for said noise. He recalled in December of 1978 that a fight occurred in front of his home involving several patrons from the bar and that the next morning his wife had to clean blood off the sidewalk. He stated that no people congregate or hang around near the bar and that that is not a problem in the area.

Under cross-examination Mr. Spieles stated that there are approximately four bars within a one block radius of his home. He also admitted that there is an apparent juvenile problem in the vicinity of the tavern which has caused some disturbance. He also admitted that the police have never arrested anyone based upon any of his complaints to them. He stated that someone struck his house with a drinking glass and pounded a dent in his siding. He also testified that one of his neighbors threw a beer bottle against the building and another collected beer bottles from the neighborhood and also threw them against the front of the bar. He admitted that he has never complained to the owners about his problems.

Mrs. Rissmiller testified that she lives approximately five or six doors from the Coronet but that her premises are closer to the Family Liquor Store than the Coronet. She testified that there is noise coming from the patrons of the premises in question every night except Monday. She said the noise is sometimes so loud that it awakens her small children. On one occasion she observed an individual who drives a brown Van to leave the premises of the Coronet and run down the street and knock on all the doors. She admitted that her husband, on one occasion, threw beer bottles at the bar because he had previously complained of them being left in and about the vicinity of their home and that the matter had not been corrected. She also stated that after he threw the bottles against the building they have not had a beer bottle problem in the neighborhood. She stated that she had observed individuals who she believes to be patrons, urinate on the street, on various neighbor's porches and on cars. She stated that the problems are much heavier during the summer than the winter and that she has never complained to the owners about them. She stated that she has never spoken to the owner or complained about the patrons urinating outside. She also admitted that she has never seen any fights at the bar.

Under cross-examination, Mrs. Rissmiller stated that the bottle problem was prior to the complaint period and that it is no longer a problem. She stated that she had only called the police on one occasion and that the police only patrol the area once in a while. She, in her testimony, contradicted that of the previous witness in that she stated there was no juvenile problem in the vicinity of the bar.

The State then rested its case and submitted into evidence the various complaints that the police department has received from August 12, 1978 until April 5, 1979. The Court noted from the documents submitted that there were approximately 17 occasions that the police responded to the vicinity of the bar and that on 10 of those occasions it was for individuals from out of state who were creating a problem. Of the remaining seven occasions, six of the incidents involved persons whose identity were unknown. The seventh occasion involved an individual who was staying at a local hotel

and was refused admittance to the bar and who, several hours later, wished to file a complaint about an alleged assault. It should be noted that no complaint was filed with regard to that matter.

The Petitioners then called the following witnesses: Mr. Palmer, Robert Pinack, Shelly Brown, Robert Sarson, Charles Erdie, Chief of Police, Anthony Velenti and Donna Vinnick.

Mr. Palmer testified that the bar is patronized by individuals from various age groups. He stated that they serve beer, liquor and food. He agrees that there is noise outside but states that it comes from young kids in the area approximately 14 to 15 years old. He testified that there is a juvenile problem in the area and that at 1:00 a.m. or 1:30 a.m. he has seen juveniles in the area drinking beer. He said he has never observed police officers at the premises and goes to the bar between one and three times a week. He testified that he has observed patrons coming from other bars attempt to enter the premises of the establishment in question and has observed them to be barred from doing so. He states that when these individuals are barred from entering the premises they become loud and abusive. He stated that there are two large signs when exiting the premises that instruct the patrons to leave quietly and not take any bottles or glasses with them. He testified that he has heard the owners and workers to request the patrons be quiet while leaving and has observed them also to patrol the premises in the attempt to prevent noise. He stated that during the times he has been to the establishment he has never observed or been aware of any complaints made to the owners. He also stated that he has never observed any persons urinating outside the premises nor has he observed any fights in the bar. He stated that the entertainment at the bar is by way of a jukebox. He also stated that he has been going to the bar for approximately four or five years, he knows the owners and that he usually parks his vehicle in the rear. He states that on many occasions when he has left the premises he has observed juveniles hanging around the area especially on weekends and during the warmer months.

Mr. Pinack, a local contractor who lives in the area, states that he has observed glass being broken in the area but noted that it was by two very small children from his building. He also stated that he has observed teenagers congregate approximately 300 feet from the Coronet and that when they disperse at approximately 9:30 p.m. there have been problems that he has observed. He stated that he has observed them placing beer bottles in store fronts, on the curbs and on people's property. He also stated that he has observed them to drink while walking down the street. He stated that he has observed them to walk past the Coronet and urinate against buildings and cars in the area. He testified that he has observed the daughter of the owners to patrol the premises approximately six times a night in the vicinity of the bar and that he has patronized the bar for approximately nine years and has never observed a fight in the bar. He states that he has observed individuals to enter and leave the bar in a short period of time either complaining because they were not served or because there was nothing going on in the bar. He testified that he has had damage done to his premises as a result of beer bottles but that he does not know who did it and does not believe it was done by a patron of the tavern.

Shelly Brown, the 15 year old daughter of the owners of the bar, stated that on one occasion she observed Mr. Rissmiller throw a bottle against the building at approximately 6:00 a.m., that she informed her parents of the same, that the police were called and Mr. Rissmiller was arrested. She stated that she was able to make these observations because she was preparing to leave for school and was in a room facing the area where the bottle was thrown and when it hit the building she looked out and saw Mr. Rissmiller running from the scene.

Donna Vinnick testified that she has operated the bar for the past 17 years and that when she became aware that there was a noise problem she immediately posted two men at the door. She testified that they do not admit persons to the premises when it is comfortably filled nor do they allow patrons to take bottles or glasses from the premises. She also stated that on occasions they have barred persons from the premises who have made noise in the past and those individuals who do not wish to abide by their rules. She stated that juveniles are a major problem and have created many problems for her patrons when they are exiting from the area. She stated that she tries to keep her patrons from getting drunk and cautions the bartenders not to serve too much liquor to the patrons. She testified that they give their last call at approximately 1:10 a.m. and close the doors at 1:30 a.m. She testified that she has, on occasion, called the police when they were having problems with individuals who were barred from the premises for making noise and was informed by the police department that she had called them too often and that her calls were being held as complaints against her. She also stated that on one occasion a complaint about beer bottles involved a brand of beer that they did not sell in bottle form. She states that they have barred approximately 60 people from their premises and that they are presently only doing approximately one third the business as before due to the harsh rules being applied to them. She testified that even though they are in a very close proximity to Pennsylvania she no longer permits any new Pennsylvania patrons into the bar.

Robert Sarson, an employee of the tavern, testified that he patrols outside of the bar every night and on occasion has observed juveniles in the alley smoking marijuana and drinking beer. He testified that they do not permit individuals to enter the premises if they are intoxicated, have insufficient identification or start making trouble. He stated that they do not sell packaged goods after 10:00 p.m. He also testified that persons who have previously caused trouble are not admitted into the bar. He stated that he leaves the bar at approximately 1:45 a.m. and has observed persons from other places driving by and making noise.

Charles Erdie, Chief of Police, stated that they do have a serious juvenile problem in the area and that a curfew has been instituted with regard to same. He stated that juveniles, in the past, have stayed out to late hours and vandalized persons' property in the area. He stated that on one occasion a person entered the tavern and threatened another individual with a weapon but that person was evicted from the bar by the workers and was chased from the area. He stated that the individual in question fired several shots at the workers who were involved in this matter.

Anthony Viletti stated that he has been a patron of the bar for well over 20 years. He stated that the bar is very clean and nice and that he had never observed any disruptions. He said that on one occasion he was standing out front talking to a foot-patrolman and the officer received a report to investigate a disturbance at the bar to which the officer replied he was at the bar and there was nothing going on. He testified that the loudest noise is the jukebox and it is not played loud enough to cover the conversations in the tavern. He testified that he has observed the owners to check the neighborhood for empty beer bottles and has also observed them to bar persons from entering the premises. He stated that he always leaves the bar when it closes and has never heard any noise outside.

After having observed all the witnesses for both sides and having considered the entire record, including the testimony and exhibits submitted into evidence, together with the arguments of counsel, the court makes the following findings of fact:

1. There was a proposed suspension of the liquor license in question for a 90 day period for conducting a business in such a manner as to constitute a nuisance and that said suspension was held in abeyance pursuant to an Order of Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control.
2. The licensed premises is frequented by persons from the neighborhood and from individuals residing in Pennsylvania.
3. That on 17 different occasions the police were requested to respond for one reason or another but no arrests were affected as a result of their responses.
4. That on occasion noise has been made by patrons as they exit or enter the premises but that said noise is not of a continuous nature.
5. That the Town of Phillipsburg has penalized the Petitioner for requesting their assistance when disturbances result from their barring patrons from their premises.
6. That the owners of the premises have taken every precautionary and necessary step in an attempt to comply with the desires of the Town Council of Phillipsburg.
7. That bottles were left on individuals' lawns but that those situations have been cleared up.
8. That there were occasions when individuals urinated on porches, sidewalks, cars and the street in the neighborhood.
9. That some of the disturbances were precipitated by the witnesses for the State.
10. That as a result of the restrictions placed upon the premises by the Town Council of Phillipsburg, Petitioner's rights to run the establishment have been greatly limited.

To grant or deny an alcoholic beverage license rests in the sound discretion of the Council in the first instance. In order to prevail in this appeal the Appellant must show that the actions of the Council were unreasonable and constituting a clear abuse of their discretion. The burden of proof in establishing that the action of the Council was erroneous rests entirely with Appellant and the decision of the Town Council should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion or unwarranted findings of fact through mistake of law by the Council.

The responsibility of the licensee is to maintain its premises in an orderly and lawful fashion and be responsible for conditions both inside and outside of the licensed premises that are caused by the patrons thereof. It is also clear that a licensing authority such as the Town Council has a right to exercise discretion to determine, what, in light of the surrounding circumstances and conditions, is good for the Town of Phillipsburg. The Counsel for the Town of Phillipsburg submitted to the Court a decision rendered by the Director of the Alcoholic Beverage Control Commission, Joseph H. Lerner. The caption in that particular matter was Kevin A. Schmidt t/a E. Plumbs vs. Borough Council of the Borough of Bagota. After reviewing the case cited it is clear that the circumstances and conditions as outlined in that matter are not applicable in this instance. The Appellant in this particular instance has complied with every request made by the Town Council prior to this particular action being taken. The Appellant also, in complying with the request of the Town Council, have gone to such extents as reducing the hours that the establishment is open, limiting the number of patrons that are admitted to the establishment and also not permitting any patrons from outside the state to patronize its establishment. All of these actions have been to the detriment of the Appellant and it has become apparent that the Town Council is attempting to use this particular individual as an example to the remainder of the licensed establishments in this community.

I therefore conclude that there is not substantial evidence in the record before me to support and justify the decision of the Town Council of the Town of Phillipsburg. I find that the Council's action was not reasonable but was arbitrary and capricious. I also conclude that the incidents complained of were so minute and infrequent that the Appellant should never had been brought up on the charge of maintaining a nuisance. I also conclude that it is unreasonable for the Town Council to go to such extremes that would force a licensee to not admit potential customers from out-of-state solely to satisfy the Town Council. Accordingly, it is HEREBY ORDERED that the suspension of the license of the Coronet Bar and Grill by the Town Council of the Town of Phillipsburg IS REVERSED.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

2. APPELLATE DECISIONS - DA SILVA v. UNION CITY.

#4346

Romilda Pellito Da Silva, }
Appellant, }

CONCLUSIONS

v.

AND

Municipal Board of Alcoholic }
Beverage Control of the }
City of Union City, }

ORDER

Respondent. }

Edward J. Lynch, Esq., Attorney for Appellant.
Dominick Giordano, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: October 24, 1979

Received: October 25, 1979

BY THE DIRECTOR:

The Initial Decision Below set forth a stipulation between the parties, to wit, the affirmance of the action of the Board of Alcoholic Beverage Control of the City of Union City and the reimposition of a reduced license suspension of twenty (20) days (originally a thirty (30) days suspension).

I see no basis to either accept, reject or modify the Initial Decision insofar as it does not concern any findings referable to a contested case, but rather, consists solely of a recitation of an agreed settlement.

Accordingly, it is, on this 5th day of December, 1979,

ORDERED that the action of the Board of Alcoholic Beverage Control of the City of Union City be and the same is hereby affirmed, as modified, and the appeal be and is hereby dismissed; and it is further

ORDERED that my Order of June 14, 1979, staying the suspension pending determination of the appeal, be and is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License No. 0910-33-115-003 issued by the Board of Commissioners of the City of Union City for premises 702 New York Avenue, Union City, New Jersey, be and is hereby suspended for twenty (20) days commencing 3:00 a.m. January 2, 1980 and terminating 3:00 a.m. Tuesday, January 22, 1980.

JOSEPH H. LERNER
DIRECTOR

APPENDIX

Initial Decision Below

| | | |
|-------------------------------|---|--------------------------|
| In the Matter of: |) | |
| ROMILDA PELLITO DA SILVA vs. |) | <u>INITIAL DECISION</u> |
| UNION CITY BOARD OF ALCOHOLIC |) | |
| BEVERAGE CONTROL |) | OAL DKT. NO. ABC 2835-79 |

Appearances:

Dominick Giordano, Esq., Attorney for Appellant

Edward J. Lynch, Esq., Attorney for Respondent

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is an appeal from the action of the Union City Board of Alcoholic Beverage Control, which by Resolution and Order dated April 24, 1979 suspended Appellant's Plenary Retail Consumption License #0910-33-115-003 for premises at 702 New York Avenue, Union City, New Jersey. Said suspension was to become effective July 2, 1979. Upon the filing on June 14, 1979 of the Petition of Appeal the Director of Alcoholic Beverage Control granted a stay of the Order of Suspension pending determination of this appeal.

Appellant's appeal contends that the action of the Council was arbitrary, capricious and deprived Appellant of his constitutional right to be present at the hearing as well as his constitutional right to have an attorney at law to represent him. Also Appellant contends that the suspension was against the weight of the evidence. The Respondent, in its answers, indicates that the Appellant failed to file their appeal within the 30 days of the hearing as barred by N.J.A.C. 13:2-17.3, that the decision of the Union City Board of Alcoholic Beverage Control was not abusive, it was within its dcretion and consistent with the powers vested with it.

The Appellant and Respondent stipulated that on January 6, 1979 three plainclothesmen of the Union City Police Department entered the premise at approximately 12:30 a.m. and observed a go-go dancer dancing in a lewd manner. They stated that they observed the dancer to spread the material from her vaginal area and place same in the face of a patron. Upon a settlement dis- cussion among the parties it was agreed by the attorney representing the Union City Board of Alcoholic Beverage Control that Petitioner's

license not be suspended for the 30 day period but reduced to a suspension for 20 days in accordance with their policy of a guilty plea. Attorney for Appellant agreed to accept the stipulated suspension time and the hearing was concluded. It should be noted for the record that this is the second offense of the Appellant.

I therefore CONCLUDE that there is substantial evidence in the record before me to support and justify the decision of the Union City Board of Alcoholic Beverage Control and that they acted in a reasonable exercise of its discretion in suspending the Plenary Retail Consumption License #0901-33-115-003 of Romilda Pellito Da Silva operating at 702 New York Avenue, Union City, New Jersey.

Accordingly, IT IS HEREBY ORDERED that the suspension of the license of Romilda Pellito Da Silva by the Union City Board of Alcoholic Beverage Control BE AFFIRMED. However, in light of the stipulated and agreed settlement suspension, it is hereby recommended that the suspension be for a period of 20 days.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record of these proceedings.

3. SPECIAL RULING - PURSUANT TO N.J.S.A. 33:1-12.39 - T-J's LIQUOR AND LOUNGE, INC.

| | | |
|---|---|-------------|
| In the Matter of the Petition of | : | |
| | : | CONCLUSIONS |
| T-J's Liquor and Lounge, Inc. | : | |
| | : | AND |
| Holder of Plenary Retail Consumption | : | |
| License No. 1505-33-014-001 issued by | : | ORDER |
| the Township Committee of Berkeley | : | |
| Township. | : | |
| ----- | : | |
| Joseph S. Reynolds, Esq., by Richard G. Hyer, Esq., | : | |
| Attorneys for Petitioner | : | |
| David Griffiths, Esq., Deputy Attorney General, | : | |
| Appearing for Division | : | |

Initial Decision Below

Hon. Gerald I. Jarret, Administrative Law Judge

Dated: October 24, 1979 - Received: October 25, 1979

BY THE DIRECTOR:

No Exceptions to the Initial Decision were filed pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein including the transcript of the testimony and the Initial Decision, I concur in the findings and conclusions of the Administrative Law Judge except that part of the said conclusions which "orders that the renewal of the liquor license be granted".

N.J.S.A. 33:1-12.39 states as follows:

"No class C license as defined in R.S. 33:1-12 shall be renewed if the same has not been actively used with the operation of a licensed premises within a period of two (2) years prior to the commencement date of the license period for which the renewal application is filed unless the Director for good cause and after a hearing authorizes a further application of renewal. (emphasis supplied).

Thus, the Legislature never intended to deprive the local issuing authority of its right and obligation to use its discretion in the grant or denial of such application. I, therefore, reject that part of the Initial Decision which ordered "that the renewal of the license be granted."

Accordingly, it is, on this 4th day of December, 1979 :

ORDERED that the Township Committee of the Township of Berkeley be and is hereby authorized to consider the application of T-J's Liquor and Lounge, Inc. for renewal of its Plenary Retail Consumption License for the 1979-80 licensing term, and, in the exercise of its discretion, to grant or deny the said application.

If granted, such action shall be made expressly subject to the special condition that the said license must become operational during the 1979-80 license term.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

| | | |
|--------------------------|---|--------------------------|
| In the Matter of: |) | |
| PETITION OF T-J'S LIQUOR |) | <u>INITIAL DECISION</u> |
| AND LOUNGE, INC. |) | OAL DKT. NO. ABC 2555-79 |

Appearances:

Joseph S. Reynolds, Esq., Attorney for Petitioner
By: Richard G. Hyer, Esq.

David Griffiths, Esq., Deputy Attorney General
for the Division of Alcoholic Beverage Control

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is a Petition pursuant to N.J.S.A. 33:1-12.39 for renewal of an inactive liquor license. Petitioner, T-J's Liquor and Lounge, Inc., presently owns liquor license #C-14, located in the Township of Berkley.

Thomas Devery testified that he purchased the liquor license with his brother James J. Devery in April 1976 with the intention of opening a packaged goods store and bar and that in furtherance of their desire they entered into a lease agreement on June 15, 1977 as well as contracted to purchase bar equipment. He stated that the lessor had financial difficulty and was unable to complete the renovations of the premises pursuant to their contract arrangement and therefore the lease was cancelled. He testified that since that time he has contracted to sell the license to four individuals but they were unable to consummate the contractual arrangement due to lack of financing. He testified in addition that he had listed his license with three other brokers but they were unsuccessful in locating a qualified purchaser. He stated that at present they are under contract to Paris, Inc., which owns a deli and packaged goods store in Berkley, to purchase the license, that said corporation has sufficient financial ability to consummate the deal and have, in fact, contracted with Holiday City in the Town of Berkley where the license will be located.

Mr. Paris testified that he presently is under a lease agreement with Holiday City, which is a retirement community, that the premises are 95% completed and that he expects to open up on or before Thanksgiving.

Petitioners submitted to the Court copies of previous contract agreements entered into prior to the Paris agreement. They also submitted to the Court a copy of the contract entered into between themselves and Paris, Inc., as well as a copy of the lease agreement entered into between Paris, Inc. and Hovchild, the owners of Holiday City. In addition a copy of the floorplan and floorplan schmetic as well as the architectural rendering of the Mall elevation and floorplan was submitted to the Court along with a partial list from Hill Sales and Service Co. for supplies ordered by Paris, Inc. to complete the furnishings of their bar and restuarant.

N.J.S.A. 33:1-12.39 permits a license renewal application based upon good cause being shown that the owner has made good faith efforts to activate the license and that the license will be reactivated in due course. It is the finding of the Court that:

1. Diligent efforts were made on the part of Petitioners to reactivate the license, and
2. As a result of their recent contract agreement with Paris, Inc. the license will be reactivated in due course.

Therefore I CONCLUDE that there is substantial evidence in the record before me to support and justify the renewal of liquor license C-14 located in the Township of Berkley. Accordingly, IT IS HEREBY ORDERED that the renewal of the liquor license be GRANTED.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

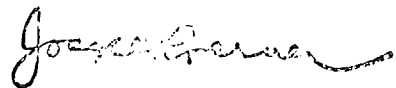
4. STATE LICENSES - NEW APPLICATIONS FILED.

Direct Import Wine Associates
of New Jersey Inc.
235 Paul Court
Hillsdale, New Jersey
Application filed June 27, 1980 for
wine wholesale license.

Massie Simms Associates Inc.
691A Clifton Avenue
Clifton, New Jersey
Application filed June 27, 1980 for
plenary wholesale license.

Boller Wine and Liquor Co.
1500 Westover Road
Linden, New Jersey
Application filed July 3, 1980 for
broker's license.

Ruth Orris
t/a John Lawrence Co. Ltd.
Rear 115 W. Mt. Pleasant Avenue
Livingston, New Jersey
Application filed July 7, 1980 for
place-to-place transfer of limited
wholesale license from 11 Devonshire
Road, Livingston, New Jersey.



Joseph H. Lerner
Director