

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 2399

May 28, 1981

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May 28, 1981

1. COURT DECISIONS - CITY HALL SANDWICH, INC. v. JOSEPH H. LERNER, DIRECTOR  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-3486-79

IN THE MATTER OF  
CITY HALL SANDWICH, INC.,

Appellant,

v.

JOSEPH H. LERNER, DIRECTOR  
OF THE DIVISION OF ALCOHOLIC  
BEVERAGE CONTROL,

Respondent.

-----

Argued January 20, 1981 - Decided January 30, 1981

Before Judges Matthews and Morton I. Greenberg.

On appeal from the Director of the Division of Alcoholic  
Beverage Control.

Roger E. Kulka argued the cause for appellant.

Kenneth I. Nowak, Deputy Attorney General, argued the cause  
for respondent (John J. Degnan, Attorney General, attorney;  
Erminie L. Conley, Assistant Attorney General, of Counsel).

PER CURIAM

(Appeal from the Director's decision in Re City Hall Sandwich,  
Inc., Bulletin 2398, Item 2. Director affirmed. Opinion  
not approved for publication by Court Committee on Opinions).

## 2. APPELLATE DECISIONS - MR. JON'S PUB, INC. v. PASSAIC.

#4366

Mr. Jon's Pub, Inc.  
t/a Gianni's Ristorante,

Appellant,

vs.

Municipal Board of Alcoholic  
Beverage Control of the City  
of Passaic,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

-----  
Dominick Giordano, Esq., Attorney for Appellant.  
Randolph Newman, Esq., Attorney for Respondent.

## Initial Decision Below

Hon. Arnold Samuels, Administrative Law Judge

Dated: March 27, 1980

Received: March 28, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were filed by the parties hereto, pursuant to N.J.A.C. 13:2-17.14. However, for reasons hereinafter set forth, my review of the record herein leads me to support the action of the Board, and I shall affirm the denial of renewal of appellant's license.

The Administrative Law Judge found specifically that "...there is no question that the licensed premises was a trouble spot" (page 9). However, he conditions that finding to a period of time that the premises were frequented by members of a motorcycle gang. He further finds that, when these individuals stopped patronizing appellant's premises in the early part of 1978, the "attendant problems disappeared" (Finding No. 10 - page 7). I reject such finding and conclusion as not supported by the record, except the finding that the licensed premises was a "trouble spot".

Review of the specific offenses detailed in the Initial Decision indicate numerous apparent regulatory violations in June, July and August of 1978. Analysis of R-1 in Evidence sets forth numerous incidents requiring police assistance in the latter part of 1978, and the first six months of 1979. These include several atrocious assault and battery incidents where hospital treatment was required; police attendance to disorderly patrons; after hours violations; and E-141-A (employee's list) violations. All of the above occurred after the alleged early 1978 departure

of the motorcycle gang patrons.

The Administrative Law Judge also concludes that the denial of renewal was an excessive penalty, unreasonable and arbitrary because of the absence of prior disciplinary proceedings that would have served as a warning to the appellant.

It is a well established principle that an issuing authority may deny an application for renewal, even though there has been no prior disciplinary proceedings or adjudicated violations against the license. This may occur where there are numerous complaints against a particular licensed premises. Kaplan and Buzak v. Englewood, Bulletin 1745, Item 1, affirmed in unreported Appellate Division opinion, noted in Bulletin 1790, Item 1; R. B. & W. Corp. v. Caldwell, Bulletin 1921, Item 1; Ocean Club Corp. v. Jersey City, Bulletin 2122, Item 2, affirmed in unreported Appellate Division opinion, noted in Bulletin 2148, Item 2.

While certain decisions of the Division discuss the preference of instituting disciplinary proceedings for specific violations pursuant to N.J.S.A. 33:1-31 by the local issuing authority, that is not a prerequisite. In the matter sub judice, more than adequate notice of difficulties attendant to the operation of appellant's premises has been established. Just as clearly, it has been established that the appellant failed to either cooperate with legal authorities or affirmatively act to correct the problems (Findings Nos. 13 and 14- page 7).

In appellate review of the action of the local issuing authority, the Director should not substitute his judgment for that of the local Board, and shall not reverse unless he finds that there was a manifest abuse of discretion on the part of the local authority. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 NJ Super. 598 (App. Div. 1955); Zicherman v. Driscoll, 133 NJL 586 (Sup. Ct. 1946); Clores v. Fort Lee, Bulletin 2316, Item 3; Vargas v. Union City, Bulletin 2237, Item 4.

As the court held in Lyons Farms Tavern v. Newark, 55 NJ 292, 303 (1970):

Once a municipal Board has decided to (act) ...its discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion.

The denial of renewal was a conclusion of the Board that the continuance of this licensed business would be inimical to the public interest. R.O.P.E., Inc. v. Fort Lee, Bulletin 1966, Item 1. Such determination is supported by the testimony herein. Thus, I reject the ultimate conclusion reached by the Administrative Law Judge.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summation of appellant and the Initial Decision, I concur in the factual findings of the Administrative Law Judge, except as hereinabove rejected or supplemented. I reject the ultimate conclusion derived therefrom that recommends reversal of the action below. I shall affirm the action of the Board and dismiss the appeal.

Accordingly, it is, on this 1st day of May, 1980,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed; and it is further

ORDERED that my Order of July 2, 1979 extending the subject license for the 1979-80 license term pending determination of the appeal, be and the same is hereby vacated.

JOSEPH H. LERNER  
DIRECTOR

INITIAL DECISION

IN RE:

MR. JON'S PUB, INC.  
T/A GIANNI'S RISTORANTE

O.A.L. DKT. NO. A.B.C. 2869-79  
AGENCY DKT NO. 4366

V.

CITY OF PASSAIC, Municipal  
Board of Alcoholic Beverage Control

APPEARANCES:

Dominick Giordano, Esq., Attorney for Appellant, Mr. Jon's Pub, Inc.

Randolph P. Newman, Esquire, City Prosecutor, Attorney for  
Respondent, City of Passaic Board of Alcoholic Beverage Control

WITNESSES:

For Respondent:  
Roger Iapicco, Edwin Syrek, Kim Capwell, Phil Taborn  
For Appellant:  
John Comperatore, Stephan Fraumberger.

BEFORE THE HONORABLE ARNOLD SAMUELS, A.L.J.:

The appellant, Mr. Jon's Pub, Inc., t/a Gianni's Ristorante, is the holder of plenary retail consumption license number 1607-33-083-001, located at 82 President Street in the City of Passaic. On June 27, 1979, acting on the appellant's application for renewal, the respondent, Board of Alcoholic Beverage Control of the City of Passaic, passed a resolution denying renewal of the license for the year beginning July 1, 1979 and ending June 30, 1980. An appeal was filed by the licensee, contending that the Board's action was arbitrary, capricious, unreasonable, against the weight of evidence, illegal and an abuse of discretion.

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The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on November 20, 1979 at the Passaic County Courthouse in Paterson, New Jersey. A post-hearing memorandum was filed by the appellant and the record closed on February 15, 1980.

The following exhibit was marked in evidence:

R-1 Group of complaints and police reports from  
1/31/78 to 6/22/79.

A July 27, 1979 municipal resolution stated the following as reason for denying renewal of the license:

"Past record of violence and/or lack of ability of licensee to carry on operation within the community on a normal, peaceful and/or proper manner as regards the good and welfare of the community specifically referring to (1) constant nuisance surrounding area; (2) well documented testimony that he is unable to control the premises".

Roger Iapicco, a City of Passaic detective, testified about an assault and battery that took place at Gianni's at 2:30 a.m. on December 23, 1978. The police investigation indicated that the incident happened inside the bar and that the victim was dragged outside and left on the sidewalk. The defendant subsequently pleaded guilty to a reduced charge of simple assault and battery.

The most vital point made by Detective Iapicco about this incident related to the role played by the owner, John Comperatore. According to Mr. Iapicco, Comperatore lied, was uncooperative and tried to cover up. When the police came in, Mr. Comperatore was standing alongside the defendant, a white male. He did not disclose the defendant to the police and told them: "I didn't see anything. The fight happened outside the bar." He then falsely identified the perpetrator as a black male. The defendant later gave a sworn statement to the police admitting the assault, which he said took place inside the bar.

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Detective Iapicco also spoke generally about the problems at Gianni's. In the past seven years, he has been called there more than ten times, which is more often than his experience at other similar premises in Passaic. According to this witness, Gianni's is a detriment to the City because it brings in bad elements and a lower class of people from outside the community, including motorcycle gangs.

Edwin Syrek, an investigator in the Office of the Passaic County Prosecutor, also testified. He was assigned to a unit called the Tavern Task Force, which was formed in 1977 to implement a policy designed to cut down on the number of "trouble spot" bars in Passaic. This policy was formulated by city officials following publicity which attended the Carter/Artis retrial.

After completing their investigation, the Tavern Task Force advised the Municipal Board of Alcoholic Beverage Control that nine or ten taverns in the City had accumulated extensive violations over the previous year and were trouble spots or nuisances that should be eliminated. Gianni's was one of them.

Mr. Syrek produced a group of complaints and police reports dealing with the petitioner's premises for a one and one-half year period from January 31, 1978 through June 22, 1979 (R-1 Evid). These were admitted for the limited purpose of characterizing the frequency and nature of incidents at Gianni's that required police attention, but not to prove the truth of their contents.

Alleged past violations of ABC regulations testified to by Mr. Syrek took place on June 26, 1978 when a charge of open lewdness was filed; July 25, 1978 when a charge of not having an employee listed on the work sheet was filed; and August 9, 1978 when customers were found in the tavern after hours. The only one of these that was subsequently followed up and substantiated was the open lewdness charge. The Task Force's decision to recommend elimination of Gianni's license was essentially based on their evaluation of police incident reports since the latter part of 1977, most of which were contained in the R-1 exhibits.

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Kim Capwell, a police officer in Passaic, testified that six or ten times during a six month period from June, 1977 to December, 1977 he was assigned to a night shift stakeout of Gianni's. He and other officers would sit in a marked patrol car parked at Gianni's intersection. They did this regularly because of complaints about motorcycle gangs that frequented the tavern and caused problems. While stationed there, Ptl. Capwell observed unruly conduct by members of the motor cycle gang, who made noise and violated motor vehicle laws. He saw intoxicated patrons come out of the premises with drinks in their hands, behaving in a loud and disruptive manner.

On January 31, 1978 Ptl. Capwell was detailed to the interior of the tavern where there had been a fight. He found a man unconscious on the floor, badly beaten. The man revived and gave no cooperation to the police. This officer also recalls having been dispatched to Gianni's 40 to 50 times in the last six years because of incidents that required police attention. In his opinion, the tavern is a detriment to the city.

On cross-examination Ptl. Capwell acknowledged that no arrests were made for the problems he saw there and no ABC charges were filed. He was under orders from his superiors to use good judgment and not make unnecessary arrests. The primary purpose of his assignment there was to keep the peace by establishing a police presence.

Another Passaic police officer, Phil Taborn, testified that on June 7, 1978 he was sent to Gianni's where he found a 6'5" tall male out of control, hysterical, throwing and destroying things. After he calmed down, the manager refused to sign a complaint and the police left. In seven and one-half years, Ptl. Taborn was officially dispatched to the tavern 20 to 40 times. He attended to disputes inside, and he noticed the motorcycle gangs outside. He also mentioned a homicide that took place at the premises, but no date was indicated. According to Mr. Taborn, when he was stationed outside, he would use a loudspeaker to order patrons back into the tavern when they came out carrying drinks; and at times there were as many as 35 or 40 motorcyclists leaving at the same time, making noise.



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Mr. Taborn indicated that, in his opinion, Gianni's drew a more violent type of patron, who was more prone to cause disturbances. He also noted that the owner failed to cooperate with police when they arrived to investigate problems. On many such occasions he had heard the owner tell patrons "You did not see anything. Nothing happened here." Ptl. Taborn had been called to other licensed premises in Passaic, but none as often as Gianni's. Based on his experience, this tavern was a detriment to the city.

John Comperatore, the owner of Gianni's, testified in his own behalf. He denied being uncooperative and he denied interfering with police. Mr. Comperatore stated that he calls the police voluntarily when he feels something is likely to happen that he will be unable to control. He challenged the testimony of the officers and stated that they were not truthful about the number of calls they made at the premises in the past. Mr. Comperatore denied that he covered up the commission of crimes or offenses in his premises or that he instructed third parties to deny what they saw.

Mr. Comparatore employs six go-go girls, a cook, a manager and two to five barmaids. His establishment seats 50 persons at the bar and another 40 at tables. He does not use special security guards because he stated they are too expensive. The neighborhood is a marginal one, basically commercial and multiple family residential. There are 10 to 20 establishments selling or dealing with alcoholic beverages within a 200 foot radius of Gianni's. According to Mr. Comparatore, there were a number of motorcycle gangs frequenting the tavern for about a year, beginning in June, 1977. They carried chains, knives, made noise and frightened other customers. The manager of Gianni's was friendly with the motorcycle gangs, and the barmaids were going out with the members. These gangs were primarily responsible for much of the trouble testified to by respondent's witnesses. The motorcyclists lost interest in the tavern sometime in 1978 and were gone by the time the respondent voted not to renew the license. Since they stopped patronizing Gianni's, Mr. Comparatore feels there have been no real problems. He still does have occasional trouble of other varieties with his clientele and he thinks the go-go girls have a lot to do with it.

Although much of the petitioner's testimony was revealing, he greatly minimized his problems. His denials and contradictions of factual testimony by the respondent's witnesses were unconvincing and lacked credibility.

Stephan Fraumberger lives next door to Gianni's Ristorante. He testified that in the nine years the tavern has been operated by John Comperatore, the one big problem was noise made by the motorcycle gangs. They are gone now and there are no other substantial problems. Mr. Fraumberger has had no real complaint about the tavern for the last one and one-half years.

Having heard and observed the witnesses and having reviewed the exhibit and the memorandum filed, the Court makes the following findings of fact, by a preponderance of the credible evidence:

1. The foregoing discussion is incorporated herein by reference.
2. The Municipal Board of Alcoholic Beverage Control of the City of Passaic voted not to renew the plenary retail consumption license held by the appellant for the 1979/80 license year, for premises at 82 President Street, Passaic, New Jersey.
3. The decision made by the respondent not to renew the license resulted primarily from a recommendation made by the Tavern Task Force, a special unit in the Passaic County Prosecutor's Office. The Tavern Task Force was formed to eliminate "trouble spot" bars in the city. After a review of police records, eight or nine bars, including the appellant's, were identified as trouble spots, and recommendations were made to the respondent to terminate their licenses.
4. As reasons for denial of the appellant's renewal, respondent charged that the licensee had a past record of violence, lacked the ability to operate normally and peacefully, caused a constant nuisance and was unable to control the premises.
5. The subject premises is located in a mixed commercial and multiple family residence area. The appellant employs a cook, a manager, six go-go girls and two to five barmaids. Ninety patrons can be accommodated in the tavern.
6. On December 23, 1978 an assault and battery was committed in the licensed premises. The victim was dragged out onto the sidewalk and the perpetrator remained inside. When police arrived, the owner did not cooperate with them. He tried to cover up the incident and did not disclose who the defendant was, although he was standing next to

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him. No charge was made against the appellant on account of this incident.

7. On June 26, 1978 a charge of open lewdness was brought against and sustained the licensee.
8. On July 25, 1978 the appellant failed to list an employee on his worksheet, as required by regulations.
9. On August 9, 1978 patrons were found in the tavern after hours, contrary to regulations.
10. In the latter part of 1977 motorcycle gangs frequented the premises. These patrons were generally violent, unruly, noisy, troublesome and often intoxicated. They caused trouble for other patrons, nearby residents and the police. The licensee did little to discourage this element and he did not cooperate with the police. However, the motorcycle gangs voluntarily stopped patronizing Gianni's sometime in early 1978 and the attendant problems disappeared.
11. In June 1978, when police were called to deal with a patron who was destroying property inside the tavern, the manager would not cooperate and refused to sign a complaint.
12. The City of Passaic Police are called upon to quell disturbances and attend to problems at Gianni's with greater frequency than at other taverns in the city.
13. On numerous occasions in the past, when police arrived in response to a call, the licensee interfered with their investigations and covered up for wrongdoers. He has instructed other witnesses to tell police nothing and to deny that they had seen anything.
14. The licensee has made no attempts to employ security guards or otherwise regulate or abate the problems that occur in and about the tavern.

The question to be determined is if the appellant's record in the management of the premises justified the respondent's action in denying renewal of the license. Did the Municipal Board of Alcoholic Beverage Control act reasonably, in a proper exercise of its discretion?

The appellant argues that, except for one substantiated violation for open lewdness, no disciplinary proceedings were instituted and completed by the Board against the licensee for any of the incidents complained of in the testimony. Furthermore, few, if any, arrests were made by the police in connection with the same incidents. In other words, in the past the respondent did not initiate disciplinary proceedings or specific charges against the tavern, upon which it could now base its refusal to renew the license. No adjudicated record was built. Instead, the Board relied upon a summary of past incident reports tabulated by the Tavern Task Force, and summarily denied renewal.

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the issuing authority in the first instance. In order to prevail on appeal, the appellant must show unreasonable action on the part of the municipality, constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Mayor & Borough Council of Magnolia, 38 N.J. 484 (1962).

The burden of proof in cases involving such discretion falls upon the appellant, to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

The determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. This responsibility is wide and its guide is the public interest. Blanck v. Mayor & Borough Council of Magnolia, supra; Lubliner v. Paterson, 33 N.J. 428, 446 (1960). Apart from consideration of the appellant's culpability for the conditions existing at its establishment, the broad question posed on an application for renewal is whether, in the light of the surrounding circumstances and conditions, it is in the public interest for those licensed premises to continue to operate. In matters relating to the denial of renewal of a license, the Director has in the past unhesitatingly affirmed the action of the local issuing authority in denying renewal where the licensee fails to correct intolerable conditions, either inside or outside the premises. Perkins and Silver Edge Corp. v. Newark, Bulletin 2083, Item 2.

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Nevertheless, an owner of a license or privilege acquires through his investment an interest which is entitled to some measure of protection. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). Therefore, where a license has been renewed for prior licensing periods, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence.

In the case at hand, there is no question that the licensed premises was a trouble spot, especially during the period of time that it was frequented by the motorcycle gangs. The other incidents testified to also support this characterization. However, a mitigating fact to be considered is that the motorcycle gangs and their problems were gone before the Board voted not to renew the license.

The most reprehensible and inexcusable actions of the licensee involve his refusal to cooperate with the police and his intentional covering-up and protection of persons who commit crimes on the premises. The Municipal Board would certainly have been justified in bringing disciplinary action against the tavern for that reason, which could have resulted in suspensions, fines and stringent conditions designed to keep order. Such proceedings would have served to establish an adjudicated record upon which to base a refusal to renew the license. Yet, no such disciplinary actions were taken by the respondent.

At times, local issuing authorities understandably withhold the institution of disciplinary proceedings with the expectation that licensees will make efforts to improve the conditions in the operation of the business. This is not to say that prior warning is necessary in each case. There may be conduct so indisputably heinous that a single instance would warrant revocation or refusal to renew. However, no such single incident has been established in this case. Despite the record of wrongful conduct by the licensee as recited above, some significance should be accorded to the lack of disciplinary proceedings related thereto. Refusal to renew a license is an absolute revocation and is the ultimate penalty. There is no question that disciplinary proceedings and the imposition of conditions were and are appropriate in this case, on account of the problems and incidents testified to. However based simply upon principles of fundamental fairness, the licensee should have been dealt with in meaningful disciplinary terms, before imposing the ultimate penalty upon him.

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Based upon the foregoing facts and circumstances, it is **CONCLUDED** that:

The appellant has shown that, in the absence of prior disciplinary proceedings that would have been served as a warning, the action of the respondent in denying renewal of the license was an excessive exercise of discretion and, therefore, unreasonable and arbitrary.

It is, therefore, **ORDERED** that the action of the City of Passaic Municipal Board of Alcoholic Beverage Control be **REVERSED** and said Board is directed to renew the appellant's plenary retail consumption license for the 1979/80 license year, subject to the imposition of such conditions and disciplinary actions by the Respondent or the Director of the Division of Alcoholic Beverage Control as is consistent with the foregoing.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of the Alcoholic Beverage Control, **JOSEPH H. LERNER**, my Initial Decision in this matter and the record in these proceeding.

## 3. APPELLATE DECISIONS - AMSTER v. ATLANTIC CITY.

#4417

Lillian Amster,

)

Appellant,

ON APPEAL

v.

}

CONCLUSIONS

Board of Commissioners of  
the City of Atlantic City,

AND

Respondent. }

ORDER

-----  
 Jack L. Cohen, Esq., Attorney for Petitioner.  
 Harold L. Wertheimer, Esq., Attorney for Board of Commissioners  
 of the City of Atlantic City.

INITIAL DECISION BELOW

Hon. Lillard E. Law, Administrative Law Judge

Dated: April 15, 1980

-

Received: April 17, 1980

BY THE DIRECTOR:

No written exceptions were filed to the Initial Decision  
 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, I concur in the findings and recommen-  
 dations of the Administrative Law Judge and adopt them as my  
 conclusions herein.

Accordingly, it is, on this 29th day of May, 1980,

ORDERED that my Special Ruling of September 26, 1979,  
 finding that renewal of the subject license for the 1979-80  
 license term is contrary to the public interest, be and is  
 hereby vacated; and it is further

ORDERED that the action of the Board of Commissioners in  
 denying renewal predicated on such Special Ruling be and the  
 same is hereby reversed; and it is further

ORDERED that the Board of Commissioners of the City of  
 Atlantic City be and are hereby authorized to consider the  
 application for renewal of the subject Plenary Retail Con-  
 sumption License No. 0102-33-251-001 issued to Lillian Amster  
 for the 1979-80 license term, and to thereupon grant or deny  
 said application in the reasonable exercise of its discretion.  
 If the application is approved, the renewal thereof shall be  
 made subject to the special condition that said license must  
 become operational during the 1979-80 license term.

JOSEPH H. LERNER  
 DIRECTOR

IN THE MATTER OF:	:	<u>INITIAL DECISION</u>
	:	
LILLIAN AMSTER	:	OAL DKT. NO. ABC 0766-80
ATLANTIC CITY	:	AGENCY DKT. NO. 4417
HOLDER OF PLENARY	:	
CONSUMPTION LICENSE NO.	:	
0102-33-2151-001 ISSUED	:	
BY THE BOARD OF COMMISSIONERS	:	
OF THE CITY OF ATLANTIC CITY,	:	
ATLANTIC COUNTY.	:	

## APPEARANCES:

For the Appellant, Jack L. Cohen, Esq.

For the Respondent, Atlantic City Board of Commissioner,  
Harold L. Wetheimer, Esq., Assistant City Solicitor

BEFORE THE HONORABLE LILLARD E. LAW, ALJ

## DOCUMENTS IN EVIDENCE:

A-1 Agreement for Sale of Real Estate for property known as  
2018 Atlantic Avenue, Atlantic City, New Jersey.

A-2 Renewal Application for Plenary Retail Consumption  
License Number 0102-33-251-001, for period from July 1,  
1979 to June 30, 1980 executed by Lillian Amster with  
Affidavit.

This is a proceeding to determine whether good cause has been established by the Appellant who seeks to file a further application for renewal of her Plenary Retail Consumption License issued by the Board of Commissioners of the City of Atlantic City, hereinafter "Board of Commissioners," for the 1979-80 license term, pursuant to N.J.S.A. 33:1-12.39.

A hearing de novo to determine this limited issue was conducted on April 2, 1980 at Atlantic City Hall, Atlantic City, New Jersey, pursuant to the provisions of N.J.S.A. 52:14F-1 et seq. This matter comes before this court by way of a verified Petition of Appeal, the Board of Commissioners Answer to such Petition and an Order to Show Cause issued by the Hon. Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, hereinafter "Director", which provides, inter alia as follows:

"\*\*\*This matter being opened to Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, and it appearing that notice and Petitioner of appeal and petition for extension of license have been filed, and good cause appearing therefor,

It is, on this 31st day of October, 1979, ORDERED that Respondent Board of Commissioners of the City of Atlantic City, show cause before me or such other person designated by the Office of Administrative Law, at such time and place as shall be designated for the de novo hearing on this appeal, why the term of License No. 0102-33-251-001, held by Appellant, should not be extended for the 1979-80 license period pending determination of the appeal; and it is further



ORDERED that the term of License No. 0102-33-251-001, for premises located at Suite 512 - One South New York Avenue, Atlantic City, issued by the Board of Commissioners of the City of Atlantic City to Lillian Amster, and Individual be, and the same is hereby extended for the 1979-80 license period pending return of this order to show cause or until sooner order of the Director;\*\*\*

The parties set forth the following Stipulation of Facts at the hearing:

1. That Hammond A. Daniels is the Supervisor of the Alcoholic Beverage License Bureau for the City of Atlantic City.
2. That Petitioner's license was inactive for the period proscribed by statute, N.J.S.A. 33:1-12.39.

Counsel for the Board of Commissioners asserted that the resolution adopted on October 11, 1979, wherein it denied the renewal of Petitioner's Plenary Retail Consumption License, was in accordance with the ruling of the Director and finding that such renewal would be contrary to the public interest. The Board of Commissioners' resolution of October 11, 1979 is set forth in pertinent part hereinbelow as follows:

"\*\*\*WHEREAS, on September 26, 1979, a Vacation of Order, Findings and special Conditions was issued by the Honorable Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, establishing that pursuant to the provisions of N.J.S.A. 33:1-12.39 RENEWAL of the following twenty-three (23) Inactive Licenses is deemed contrary to the public interest;\*\*\*"

"\*\*\*0102-33-251-001 Lillian Amster 8/8/75\*\*\*"

"\*\*\*NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Atlantic City that the RENEWAL of Plenary Retail Consumption Licenses as listed above, be and the same are hereby DENIED for the 1979-80 Licensing Term.

Upon motion this resolution was adopted as read.\*\*\*"

Counsel for the Board of Commissioners argued further that it was contrary to law for Petitioner to take such action against the statute N.J.S.A. 33:1-12.39, which provides as follows:

"No Class C license, as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with the operation of a licensed premises within a period of two 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 for renewal;...\*\*\*"

Petitioner testified that she and her husband, the sole shareholders of the corporation of Phillip Amster, Inc., purchased the property located at 2018 Atlantic Avenue, Atlantic City on or about April 8, 1977 (A-1) and the Class C license Number 0102-33-251-001 prior to the Legislative enactment of N.J.S.A. 33:1-12.39. She testified that she was represented by legal counsel with regard to both transactions, however, at no time during the purchase period was she informed, advised or instructed with respect to the proposed legislation which took effect on October 3, 1977. She testified that she first learned of the act in the latter part of December 1977 upon receipt of a Notice from the

Alcoholic Beverage Control. She testified that she immediately made application for the renewal of the license, which was granted by the Board of Commissioners with the condition that the license remain at the present address located at New York Avenue. She testified that thereafter, she made inquiry of Mr. Hammond A. Daniels, Supervisor of the Alcoholic Beverage License Bureau for the City of Atlantic City, as to the procedure to follow with regard to the transfer of the license. Subsequently, she made application to the Board of Commissioners to transfer the license to the premises located at 2018 Atlantic Avenue. She testified that the Board of Commissioners denied her transfer application grounded upon its assertion that the property at 2018 Atlantic Avenue was located within two hundred (200) feet of an existing license trading as Kelly's Tavern, and that she had not secured the principal owners consent to occupy the premises at 2018 Atlantic Avenue.

Petitioner testified that she had been frustrated in securing the consent of the owner of Kelly's Tavern due to the fact that he is an Officer in the United States Army, serving overseas, and that all attempts to locate him had been to no avail. She testified that she had received the consent of the Vice President, now deceased, however, the Board of Commissioners determined that the Vice President did not hold sufficient equity in the licensed premise to grant consent for the principal owner.

Petitioner testified that she and her husband had not made the necessary improvements and alterations to the 2018 Atlantic Avenue property because there was not assurance that the license would be activated at that location. They testified that the renovations to the property was estimated to cost between \$200,000 and \$250,000.

Both Petitioner and her husband testified that they have the financial resources to carry out the necessary work at 2018 Atlantic Avenue or, in the alternative, to purchase other property in the event that they would be assured of the approval of the transfer of the license.

Having carefully reviewed the testimony of the witnesses, the representations of counsel, the pleadings and the documents in evidence, I FIND that:

1. Petitioner purchased Plenary Retail Consumption License Number 0102-33-251-001 prior to the effective date of N.J.S.A. 33:1-12.39.
2. Petitioner's license had not been actively used in connection with an approved licensed premise within a period of two years prior to her purchase.
3. Petitioner's license was subject to the conditions as set forth in N.J.S.A. 33:1-12.39, subsequent to October 3, 1977.
4. Petitioner, lacking the consent of the principal owner of a holder of a Plenary Retail Consumption License within two hundred (200) feet of the property located at 2018 Atlantic Avenue, has been unable to secure approval to operate her license at said address.
5. Petitioner and her husband are financially able and willing to secure property, other than that located at 2018 Atlantic Avenue, for the purpose of activating said license.

I CONCLUDE, therefore, that Petitioner has shown good faith and continues to show good faith in her attempt to reactivate the subject license.

Based upon all of the foregoing factual findings, I CONCLUDE that good cause has been demonstrated to extend the renewal of the subject license for the 1979-80 license term. In the matter of the Petition of R.H.I., Inc. v. Township Committee of Hamilton, ABC Bulletin \_\_\_\_\_ (Director's decision dated February 22, 1980); In the Matter of the Petition of Philip and Frank Lax v. Borough of Chatham, ABC Bulletin \_\_\_\_\_ (Director's decision dated January 16, 1980.

Accordingly, the Board of Commissioners of the City of Atlantic City be and the same is hereby authorized to consider the application for renewal of the subject license for the 1979-80 license term, and, to thereupon grant or deny said application in the reasonable exercise of its discretion.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the Director does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1 et seq.

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

#### 4. STATE LICENSES - NEW APPLICATIONS FILED.

Carl-Den Corp., Mountain Ave. Hackettstown, N. J.

Application filed May 15, 1981 for person-to-person transfer of a state beverage distributor's license from Krumm Distributing, Inc.

South Jersey Bottling Co. (New Corporation), 266 S. Pine St. Camden, N. J.

Application filed May 19, 1981 for person-to-person transfer of a state beverage distributor's license from South Jersey Bottling Co. (old corporation).

Napolitan & Lo Scalzo Importers, Inc., 47 Park Ave., Allendale, N. J.

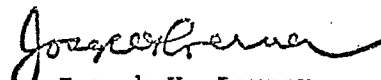
Application filed May 21, 1981 for limited wholesale license.

Newark Beverage Co., Inc., 208 Vanderpool St., Newark, N. J.

Application filed May 22, 1981 for person-to-person and place-to-place transfer of a state beverage distributor's license from American Beverage Co., Inc., 252 West Runyon St., Newark, N. J.

M-H USA Corp., t/a Schieffelin & Co., 30 Cooper Sq., New York, N. Y.

Application filed May 22, 1981 for plenary wholesale license.

  
Joseph H. Lerner  
Director