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

BULLETIN 2290 August 1, 1978

TABLE OF CONTENTS

ITEM

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1. APPELLATE DECISIONS - QUEEN CITY LOUNGE, INC. v. PLAINFIELD.

Queen City Lounge, Inc., Appellant, vs. City Council of the City of Plainfield, Respondent.	ON APPEAL CONCLUSIONS and ORDER

Leonard Rubin, Esq., Attorney for Appellant.
Frank H. Blatz, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the City Council of the City of Plainfield, (Council) which, by Resolution dated July 5, 1977, denied appellant's application for renewal of Plenary Retail Consumption License C-1 for premises at 400 Liberty Street, Plainfield for the 1977-78 licensing period.

Appellant contends that the action of the Council was arbitrary, and not founded upon competent evidence.

The Council, in its Answer, denies the substantive allegations contained in the appellant's Petition of Appeal, and reiterates the findings of a nuisance as set forth in its Resolution.

Upon the filing of the appeal, by Order to Show Cause dated July 14, 1977, the Director granted an ad interim extension of appellant's license pending determination of the within appeal.

The appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to offer testimony and cross-examine witnesses.

Mamie Jackson testified on behalf of the Council. She is the President of the Tenants Association of the West End and Elmwood Garden housing projects and is familiar with the intersection where the licensed premises is located, which is across the street from the Elmwood Gardens project where she resides. She testified that, as President of the Tenants Association, she has received innumerable complaints from its members alleging noise, obscene language, loitering, public drinking,

the use of narcotics, card and dice games, intimidation of passersbys and other antisocial acts committed by loiterers on the street adjacent to subject licensed tavern and across the street in front of, and upon the steps of, a vacant residence.

She admitted, during cross-examination, that most of her assertions were based on hearsay, but she has seen the loiterers, and is personally fearful to walk on the street near subject tavern. She submitted a Petition bearing in excess of one hundred signatures obtained by the Tenants Association, requesting that the City Council take appropriate action with regard to the licensed premises.

Roland L. Turpin, Executive Director of the Housing Authority of Plainfield, testified for respondent that he has occasion daily to pass the intersection where the tavern is located. He stated that there was a problem of crowds loitering in front of, as well as across the street from, the tavern. As a result, the Housing Authority management is obliged to expend additional monies in removing the litter that accumulates daily, as well having incurred the expense of erecting a fence. The litter consists of bottles, cans, food containers and wrappers, remains of drug activity, etc.

Turpin has received countless telephone calls from housing authority employees and tenants, advising and/or complaining to him of the various activities that occur at this intersection. His testimony was largely, but not totally, confined to the housing authority's property located at this intersection, and not to the other side of the street where the tavern is located.

Mr. Turpin has made no effort to contact the tavern owner. He concluded that it would be useless as a result of his observations of the tavern owner's attitude at a public meeting that was held several years ago in a local church.

He admitted that there exists a dual problem at this location; the first being law enforcement, and the second, the extent to which the tavern responded to the complained of conditions. It was his opinion that the police have not done an effective job of law enforcement, and his agency has brought this to the City's attention. That notwithstanding, he opined that the removal of the tavern would greatly alleviate the problems complained of at this intersection.

Charles K. Allen, the Director of Public Affairs and Safety of the City of Plainfield for the past eight years, testified on behalf of the respondent. He is aware of the problems existing at the intersection where subject tavern is located and has recently met with appellant, as well as two other licensees, whose licensed premises have given the Police Department cause

for concern. He reiterated the problems outlined by Turpin and indicated that, as a result of his meeting with appellant, the number of calls for police assistance have shown a steady, though modest, decline. While not understating the seriousness of the problem that existed in the area, it was his belief that the appellant had the capacity to correct many of the deficiencies that he (Allen) perceived. The witness was asked the following which is pertinent hereto:

> Q: Did you recommend to the Council of the City of Plainfield on your own that the license of Queen City Lounge not be renewed?
>
> A: I recommended that the license be renewed.
>
> Q: You recommended that it be renewed?
>
> A: Yes, sir.
>
> Q: What was your rationale for that recommendation?
>
> A: My rationale for the recommendation was that I had had conferences with Mr. Jones (100% stockholder of corporate appellant). I had felt that he was capable of correcting the conditions that existed on his premises, and it was my recommendation to the City Council that they renew his license with the understanding that I would, again, periodically report back to the Council whether or not Mr. Jones did take affirmative action, if you will, toward correcting those conditions.

Thomas E. Curran, Acting Chief of Police of the City of Plainfield, similarly testified to the conditions requiring police response and supervision in the immediate area of the lounge. He, too, did not underplay the seriousness of the conditions that existed, but noted that the immediate area surrounding the tavern was a focal point for persons to congregate, and that from the arrest record, it appears they are drawn to the location from many of the adjacent towns, as well as from various points within the City of Plainfield. He opined that, if this tavern were closed down, the individuals who are the cause of the problems described hereinabove would not disappear, but rather, would gravitate to another area, most likely in the proximity of a different bar.

He produced statistics which graphically illustrate the slow, but constant, decline in incident reports and requests

for police assistance in the area immediately adjacent to the appellant's tavern. He noted too that the improvement occurred subsequent to the date that the appellant was called to the municipal offices for the above-described conference with Director Allen.

The following questions and responses are illustrative:

Q: Chief, there was some testimony from Director Allen that in February of 1977 he had a meeting with Mr. Jones, and he asked him to take steps to cut down the problems. Does this report indicate that after February, at least on a monthly basis, the incidents kept on reducing themselves?

A: Statistically, yes.

. . .

Q: So, what you have in February is 23 and in May it was 6 and each month in between it kept reducing itself?

A: Yes, sir.

Curran further stated he was called upon to make a recommendation to the municipality as to whether or not the license should be renewed, and he recommended the renewal of subject license.

Curran did not indicate he was satisfied with the conditions that exist at this location. He stated that the appellant should better supervise the area in proximity to his tavern in an endeavor to reduce loitering, so that the people who live in the neighborhood could walk upon the street.

Wilhelmena Chandler, a tenant in the apartment above the licensed premises, testified on behalf of the appellant. She stated that she has resided in the apartment for fifteen months and is not aware of any undue noise coming from the tavern. She stated that, for the most part, the loitering occurs across the street in the area of the vacant house. The loiterers are young persons. She has witnessed card games and crap shooting in the vicinity of the aforementioned vacant house, but not on the tavern's side of the street. She also said that a greater number of persons loitered in front of the tavern during the period it was closed.

She asserted that very little litter can be found on the sidewalk adjacent to the tavern, but large amounts are present in front of the vacant house and in the areas adjacent to the

project.

She perceives no danger to her children or grandchildren upon the street in front of the tavern. In fact, two grandchildren, ages 4 and 2, often play there, attended by an older granddaughter. She would not permit this if there was danger to them or if "there was a mob of people out there." She also indicated that the police do not appear to make a concientious effort to disperse the loiterers as they patrol the area.

Clarence T. Jones, sole stockholder of corporate appellant, produced two petitions signed by approximately 500 persons in support of keeping his licensed premises open, including upwards of 35 signatures of persons who had also signed the Tenant Association's petition. He testified that many of these persons who signed both petitions are patrons of his tavern. He said that, upon questioning, one or more informed him that the Tenant Association's petition was presented as an appeal to "clean-up the loitering in Plainfield," not the elimination of his licensed tavern.

He further testified that he has never been guilty of any crime, nor has his license ever been suspended for any infraction of local or State Alcoholic Beverage Control Regulations. His establishment was closed for a time as a result of the death of his partner pending refinancing to enable him to purchase said deceased partner's interest.

Jones acknowledges a loitering problem existed outside the tavern, but denies it existed to the degree testified to by the respondent's witnesses. He has never been contacted by any official of the Tenants Association or of the Plainfield Housing Authority at any time prior to the proceedings herein.

The first notice Jones had that his license might be in jeopardy was the letter of February 2, 1977 from Commissioner Allen subsequent to the discussion in the Commissioner's office. As a result of that discussion, he took steps to rectify the loitering situation outside of his tavern and spends as much as 8 hours per day in that endeavor. This policy required him to employ an additional barmaid to replace him at the bar during those extended periods he supervises and attempts to control conditions upon the sidewalk. He maintains his efforts are obviously successful predicated upon the reduced calls for assistance testified to by the City Police Officials. Further, he maintains that he does not find it desireable for his business to have numbers of persons, especially teenagers, loitering near the entrance to his premises. He claims that City Officials have been remiss in providing adequate police coverage to the area, and he has made a number of unsuccessful efforts to obtain an increase of same.

I

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

The dispositive issue in this appeal is whether the evidence herein justifies the action of the Board in refusing to renew appellant's license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. In analyzing the testimony, it is appropriate to state the applicable legal principles pertinent to a determination hereof. The burden of proof in matters which involve discretion such as the renewal of a license, rests with appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super 84 (App. Div. 1957).

As stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587-88 (Sup. Ct. 1946):

> The question of a forfeiture of any property right is not involved. R.S. 33: 1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, and no person is entitled as a matter of law to a liquor license. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses. (citations omitted)

As early as Conte v. Princeton, Bulletin 139, Item 8, the well established principle was cited to the effect that a licensee is responsible for conditions, both inside and outside

his licensed premises, caused by patrons thereof. As to the extent of such responsibility see Garcia v. Fair Haven, Bulletin 1149, Item 1, where the Director cites Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947) as follows:

> Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority.

However, 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). Hence, 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 evidence. R. B. & W. Corporation v. North Caldwell, Bulletin 1921, Item 1.

This is so because the application of fairness has long been a hallmark in the activities of this Division.

> As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with a "fair recognition of the fact that justice to the litigant is always the polestar."

Berelman v. Camden, Bulletin 1940, Item 1. See also Barbire v. Wry, 75 N.J. Super 327 (App. Div. 1962); Martindell v. Martindell, 21 N.J. 341, 349 (1956).

In the instant matter, the witnesses for the Council, as well as the appellant, agree that a loitering situation exists in the neighborhood. The disagreement is as to the magnitude, cause, and area where the loiterers congregate. Further, there is no doubt that gambling and unsavory conduct occurs on an almost constant basis in the area.

The area in which this tavern is located is inhabited by disadvantaged black residents of Plainfield. There can be no disagreement that unemployment is substantially high amongst this group, especially the younger citizens. Nor will anyone seriously dispute that the State of New Jersey currently has one of the highest rates of unemployment in the nation.

Appellant established that there exists limited recreational facilities for the residents of the area. It is an

unfortunate fact that under the conditions prevailing, loitering and the attendant problems inevitably result. The licensee has no control whatsoever over these forces. The requirement that he be responsible for conditions both within and without his licensed premises must be tempered by the realities that exist in each case. I have heard only limited testimony that would reasonably tie these complained of conditions to the activities of patrons of the tavern.

The operative standard is whether there is a failure of a licensee to prevent disorderly activities outside of the premises which are caused by patrons thereof. (underscore added) Moon Star, Inc. v. Newark, Bulletin 2130, Item 3. Plainly, it is not the licensee's responsibility to supervise or police the activities of persons who are not tavern patrons merely because they are in close proximity to his establishment. Nor should any community disregard its obligation to adequately police an area merely because there exists one or more taverns within it. The obligation of maintaining the peace and well-being of the inhabitants within a given area does not shift from the municipality to licensees merely because their business is the dispensing of alcoholic beverages.

The area in which subject tavern and housing projects are located is the area in which civic disturbances occurred after the tragic murder of Martin Luther King, Jr. The City fathers of Plainfield must be aware that a heavier concentration of police effort is required in this area than in other areas within this City, in order to maintain peace and protect the inhabitants.

I find, as a fact, that the nuisance situation described is more attributable to the socio-economic conditions extant within the area, than the management and operation of the subject licensed premises. I further find that the appellant has made a serious and strenuous effort to alleviate the conditions once it was forcefully brought to its attention by Director Allen. Furthermore, the statistics prepared by the Police Department tend to establish the ability of appellant to upgrade supervision of its premises. It is regrettable that the yearly renewal of licenses occurred before an adequate trial period elapsed.

Although the initial determination to grant or deny the subject application to renew the liquor license rested solely withing the discretion of the local issuing authority, I am mindful of the Police Chief's recommendation to the Commissioner, and the Commissioner's recommendation to the local issuing authority, that the license be renewed. The professional opinion of these two officials, who are charged with maintaining and preserving law and order within the City of Plainfield, has made a substantial impression upon me. Coupled with the fact that there have been no prior disciplinary proceedings, con-

ferences or warning, save the one that occurred earlier in the year, I conclude that the action of the Council in refusing to renew the appellant's license was too precipitious and unduly severe. The Council failed to accord due regard to fundamental fairness in this matter.

I find, as a fact, that the appellant has met the burden of establishing that the Council acted erroneously, pursuant to Rule 6 of State Regulation No. 15, and recommend that the action of the Council be reversed. In recognition of the obvious problem in the area, and consistent with appellant's recognition of required patrol deterrents, I further recommend that the license renewal be made expressly to the following condition:

> A uniformed professional security guard shall be engaged to patrol the outside of the premises and immediately adjacent areas during the hours of 7:00 p.m. until closing, to curtail breaches of the peace, the use of abusive language, littering, loitering, accosting of innocent passersby, gambling and similar acts offending the public sensibility.

In recommending that the appellant be given another opportunity to demonstrate its worthiness to hold a license, subject to the attached special condition, I, in no wise approve of it's past failure to provide adequate supervision until it realized that its license was in jeopardy.

In the event appellant fails to maintain and supervise the public areas adjacent to it's tavern in a manner consistent with that reasonably expected of a licensee, it is expected that the Council will institute disciplinary proceedings to affect the suspension or revocation of the said license, in accordance with the provision of N.J.S.A. 31:1-31.

Conclusions and Order

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

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

Accordingly, it is, on this 10th day of February, 1978,

ORDERED that the action of the City Council of the City of Plainfield be and the same is hereby reversed, and the appeal

herein be and is hereby dismissed; and it is further

ORDERED that the City Council of the City of Plainfield be and the same is hereby directed to renew appellant's Plenary Retail Consumption License C-1 for the 1977-78 license term, in accordance with the application filed therefore, expressly subject to the imposition of the following special condition annexed thereto:

> A uniformed professional security guard shall be engaged to patrol the outside of the premises and immediately adjacent areas during the hours of 7:00 p.m. until closing, to curtail breaches of the peace, the use of abusive language, littering, loitering, accosting of innocent passersby, gambling and similar acts offending the public sensibility.

Joseph H. Lerner
Director

2. APPELLATE DECISIONS - HANK O'TOOLE, INC. v. MILFORD.

Hank O'Toole, Inc., t/a Brookside Inn, Appellant, v. The Mayor and Common Council of the Borough of Milford, Respondent.	ON APPEAL CONCLUSIONS and ORDER

Bernhard, Durst and Dilts, Esqs., by Edmund R. Bernhard, Esq., Attorneys for Appellant.
Morrow and Benbrook, Esqs., by Donald W. Morrow, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Common Council of the Borough of Milford (hereinafter Council) which, on May 2, 1977, denied appellant's application to renew its plenary retail consumption license for the 1977-78 licensing year, as a result of a failure to second a motion introduced to approve said application.

The appellant contends in its Petition of Appeal that the Council's action was arbitrary, capricious, unreasonable and illegal.

The Council, in its Answer, denies the substantive allegations of the appellant's Petition.

Upon the filing of the within appeal an Order to Show Cause was entered by the Director on June 8, 1977, why the appellant's license should not be extended pending determination of the appeal. In addition thereto, an ad interim extension of license was granted to appellant pending the return date of the Order to Show Cause and further order of the Director.

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

The minutes of the regular monthly meeting of the Council held on May 2, 1977, discloses the following action with

regard to appellant's application to renew its license:

> HANK O'TOOLE, INC. RESOLUTION
> Resolution introduced by Richard Johnson.
>
> RESOLVED BY THE MAYOR AND MILFORD BOROUGH COUNCIL that the application of Hank O'Tool, Inc. for the renewal of a Plenary Retail Consumption License for 1977-78 is hereby approved by said Council at the regular meeting of Council held on May 2, 1977, and
>
> BE IT FURTHER RESOLVED that the Borough Clerk be hereby authorized to endorse said License.
>
> There being no motion to adopt, this application was denied - Attorney Morrow said "you are only prolonging the agony. The A.B.C. is going to renew it anyway." To which Mr. Godown replied, "Well, then let the A.B.C. do it! We're not going to do it."

Michael Henry O'Toole, the sole stockholder of corporate appellant, testified in reference to an issue raised herein of receipt of notice of denial of appellant's application that, he telephoned the Borough Clerk and requested that she prepare a letter evidencing the action taken by the Council on May 2, 1977. He informed her that he would pick up the letter at her office, which he did on May 9, 1977. He steadfastly denied, under cross-examination, that he received the letter, which is dated May 5th, 1977, by mail.

Verna P. Winn, Borough Clerk, testified in behalf of the Council and confirmed the telephone call from Mr. O'Toole. She advised him that she "...had a lot of things to attend to from the meeting." He then asked her to call him when the letter was ready.

She stated that she called him on the day the letter was prepared, May 5, 1977, and when he failed to pick it up, she posted it at the end of the day.

I

Before considering the substantive aspect of the appeal, the procedural question of timeliness of filing of the appeal must be resolved. Should it be determined that the appeal was filed untimely, the Division would lack jurisdiction in the matter. Hess Oil and Chemical Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396 (App. Div. 1963). See also First Baptist Church of Bloomfield v. Bloomfield and Proud Mary's Inc.,

Bulletin 2249, Item 3.

N.J.S.A. 33:1-22 provides in relevant part:

> If the other issuing authority shall refuse to issue andy license,...the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application. Such applicant may within 30 days after the date of service or of mailing of such notice, upon payment to the director of a non-returnable filing fee of $50.00, appeal to the director from the action of the issuing authority. (Emphasis added)

It is obvious from the testimony that, in either version testified to, the aforesaid statutory provision would not bar consideration of the appeal. Effective personal notice was on May 9, 1977. The notice allegedly mailed was by regular, not registered mail, and, thus, ineffective to commence the appeal period.

I therefore find that the appeal, which was filed on June 8, 1977, was timely. See Shop-Rite of Hunterdon Cty. v. Township Committee of Raritan Township, 131 N.J. Super. 428 (App. Div. 1974).

II

It is undisputed that the motion to grant appellant's application for renewal of its license was never acted upon in the absence of a second to the motion. The matter was never considered on its merits.

N.J.S.A. 33:1-24 states as follows:

> It shall be the duty of each other issuing authority to receive applications for such licenses as such other issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct

> minutes; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said other issuing authority.

Clearly the Council failed to follow the duty imposed upon it by the legislature. While it is an established principle that, the Director should not substitute his judgement for that of the local board, or reverse the ruling if reasonable support for it can be found in the record, Lyons Farms Tavern, Inc. v. Mun. Bd. of Alc. Bev., Newark, 55 N.J. 292, 303 (1970), such standard is predicated upon a hearing having taken place at the local level, with a factual record subject to review. No such record exists herein.

Rule 9 of State Regulation No. 2, as amended and effective September 8, 1977, states in regard to applications or renewals of license:

> No hearing need be held if no written objection shall be lodged and the issuing authority determines to approve the application, but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative. However, the issuing authority shall not disapprove the application without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type; and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

The changes in this section merely codify Division policy in existence prior to the recent revision.

I recommend that the matter be remanded to the local issuing authority for a hearing on the merits, with full opportunity afforded the appellant to introduce evidence on its behalf and cross-examine witnesses. Further, I recommend that the Division retain jurisdiction and that the extension of appellant's license, granted by the Director by order of June 8,

1977, be continued pending final determination of the matter, or further Order of the Director.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the appellant, and further, Oral Argument was held before me, pursuant to Rule 14 of State Regulation No. 15.

In its Exception, the appellant is in accord with the findings of fact and conclusions derived therefrom in the Hearer's Report. However, it disagrees with the recommendation of the Hearer that the matter be remanded to the Council "for a hearing on the merits."

Having analyzed and assayed the transcript of the testimony, the exhibits, the Hearer's Report, the Exceptions filed thereto and the oral argument, I am unable to accept that portion of the Hearer's recommendation that the matter be remanded for a further hearing.

The procedure followed by the Council was a clear breach of the requirements of Rule 8 of State Regulation No. 2. No reasons were stated for its failure or refusal to act on the said application, except that the transcript reflects the remark of a Councilman to "let the A.B.C. do it."

Based on the record before me, it is agreed by both counsel for the parties that nothing appears to negate favorable action on appellant's application for renewal. Furthermore, at the de novo hearing in this Division, the Council had an opportunity to introduce such substantive evidence to justify its denial of the said application. This was not done.

Accordingly, I shall order that the Council be directed to renew the said license for the 1977-78 license term, in accordance with the application filed therefor.

If, in fact, the appellant's conduct of the licensed premises bottomed its action, the Council may, at any time, institute disciplinary proceedings in accordance with N.J.S.A. 33:1-31 and State Regulation No. 16. I find that its action, in effect denying appellant's application for renewal for no expressed reason is per se arbitrary and unreasonable. Thus, the proper remedy is to reverse and order the renewal of the appellant's license for the 1977-78 license term.

Accordingly, it is, on this 22nd day of February, 1978,

ORDERED that the action of the respondent Mayor and Common Council of the Borough of Milford be and the same is hereby reversed; and it is further

ORDERED that the said Mayor and Common Council be and is hereby directed to renew the subject license for the 1977-78 license term, in accordance with the application filed therefor, and upon payment by the appellant of the required filing fees.

Joseph H. Lerner
Director