

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 2388

February 17, 1981

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STATE OF NEW JERSEY  
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February 17, 1981

1. COURT DECISIONS - PFLAUMER v. STATE OF NEW JERSEY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-2093-79

WILLIAM PFLAUMER,

Appellant,

v.

STATE OF NEW JERSEY, DIVISION OF  
ALCOHOLIC BEVERAGE CONTROL,

Respondent.

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Argued January 19, 1981 - Decided January 29, 1981

Before Judges Allcorn and Pressler

On appeal from the Department of Law and Public Safety  
Division of Alcoholic Beverage Control

L. Bruce Puffer, Jr., argued the cause for the appellant  
(Shanley & Fisher, attorneys; Robert A. Boutillier on the  
brief).

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

PER CURIAM

(Appeal from the Director's decision in Re: In the Matter  
of the Petition for the Removal of Disqualification of  
William Pflaumer, Bulletin 2375, Item 1. Director affirmed.  
Opinion not approved for publication by Court Committee on  
Opinions).

2. COURT DECISIONS - BROWN v. EGG HARBOR - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-3050-79

CHARLES EDWIN BROWN,  
t/a BARBARA ANDREW, LTD.,

Respondent,,

v.

TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF EGG HARBOR,

Appellant.

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Submitted January 13, 1981 - Decided February 3, 1981

Before Judges Matthews and Ashbey

On appeal from the Division of Alcoholic Beverage Control

Michael Jacobson, attorney for appellant (Michael Winkelstein.  
on the brief).

H. Robert Boney, Jr., attorney for respondent

John J. Degnan, Attorney General, attorney for the Division  
of Alcoholic Beverage Control (Erminie L. Conley, Assistant  
Attorney General, of counsel; Kenneth I. Nowak, Deputy  
Attorney General, on the statement.

PER CURIAM

(Appeal from the Director's decision in Re: Brown v. Egg Harbor,  
Bulletin 2387, Item 1. Director affirmed. Opinion not approved  
for publication by Court Committee on Opinions).

## 3. APPELLATE DECISIONS - ON TAP, INC. v. NORTH BERGEN.

#4401	:	
On Tap, Inc.,	:	
	:	
Appellant,	:	CONCLUSIONS
	:	
vs.	:	AND
	:	
Municipal Board of Alcoholic	:	ORDER
Beverage Control of the Township	:	
of North Bergen,	:	
	:	
Respondent.	:	
-----	:	
Walsh, Scuito & Dimin, Esqs., by John K. Walsh, Esq.,		
Attorneys for Appellant.		
George C. Heppner, Esq., Attorney for Respondent.		

## Initial Decision Below

Hon. Thomas E. Clancy, Administrative Law Judge

DATED: February 5, 1980 - RECEIVED: February 8, 1980

BY THE DIRECTOR:

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

This is an appeal from the action of Respondent, Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, which, by Resolution dated August 23, 1979, found appellant guilty of a charge alleging a violation of N.J.A.C. 13:2-23.13 and suspended its license for thirty (30) days.

The appellant, in its Petition of Appeal, does not contest the substantive finding of a violation; but rather, appeals the penalty imposed which it asserts is unreasonable, unfair and politically motivated.

By my Order of September 7, 1979, I stayed the suspension pending determination of the appeal.

Under the recent amendments to the Administrative Procedure Act and the creation of the Office of Administrative Law, N.J.S.A. 52:14F-1 et seq., the Administrative Law Judge in a "contested" case must provide the agency head with an Initial Decision setting forth his findings of fact, conclusions of law and recommended disposition of the case. The agency head then has forty-five days to either accept, reject or modify the Initial Decision. N.J.S.A. 52:143-10.

Initially, in the instant matter, the Administrative Law Judge purports to transfer the agency head's authority to the Municipal Board of Alcoholic Beverage Control of North Bergen by providing that the Board has 45 days to accept, reject or modify the Initial Decision. This is totally outside and contrary to the statutory scheme, and is clearly erroneous.

Further, only the Director, Division of Alcoholic Beverage Control, in his discretion, has the authority to impose a fine, in compromise, in lieu of license suspension. N.J.S.A. 33:1-31. Neither local issuing authority, the parties to an appeal, nor the Administrative Law Judge have this authority.

Finally, this is an appeal case wherein the ultimate determination is either an affirmance, reversal or modification of the action of the issuing authority. Any settlement between parties in the instant matter would be limited to modification of the term of the license suspension and/or a statement that there is no objection to a request by the appellant to petition for a fine in an amount to be established by the Director. Otherwise, the issue of penalty must be adjudicated through hearing.

Therefore, I reject the Initial Decision of the Administrative Law Judge and remand this back to the Office of Administrative Law for disposition in accordance with law and my comments herein.

Accordingly, it is, on this 13th day of March, 1980,

ORDERED that the Initial Decision herein be and is hereby rejected and the within appeal be and is hereby remanded to the Office of Administrative Law for disposition, in accordance with law and the within Order.

JOSEPH H. LERNER  
DIRECTOR

Appendix - Initial Decision Below

In the Matter of: )

ON TAP, INC., )  
Appellant )

v. )

NORTH BERGEN MUNICIPAL )  
BOARD OF ALCOHOLIC BEVERAGE )  
CONTROL, )  
Respondent )

INITIAL DECISION

O.A.L. DKT. # A.B.C. 5578-79

Agency Dkt. #4401

Mun. Rev. #7455

APPEARANCES:

John K. Walsh, Esq., on behalf of Appellant,  
On Tap, Inc.

George C. Heppner, Esq., on behalf of Respondent,  
The North Bergen Municipal Board of Alcoholic  
Beverage Control

BEFORE THE HONORABLE THOMAS E. CLANCY, A.L.J.:

The North Bergen Municipal Board of Alcoholic Beverage Control charged the Appellant with an alleged violation of New Jersey Administrative Code provision 13:2-23.13 (a)-1. Appellant pled guilty to the charge and the Respondent resolved and ordered that Appellant's Plenary Retail Consumption License No. 0908-33-069-002 for the year 1979 be suspended for a period of thirty (30) days. The imposition of the suspension was stayed, and the matter was transferred to the Office of Administrative Law for a determination as to the assessment of a penalty.

At an administrative judicial proceeding held on January 29, 1980, the parties stipulated that:

- (a) No factual dispute exists with respect to the charges made against the Appellant;
- (b) Appellant should be allowed to enter a plea of guilty to the charge made - in exchange for the imposition of a \$350 fine in lieu of a thirty (30) day suspension of Respondent's license; and,
- (c) In the event the North Bergen Municipal Board of Alcoholic Beverage Control makes a final decision which does not affirm this Initial Decision, the Appellant shall be allowed to withdraw its guilty plea and to proceed to a hearing in the matter.

Pursuant to the stipulations reached, Appellant (through its attorney and its Corporation members, Ernie Tabbachino and Richard Williams) entered a plea of guilty to the charge.

The Municipal Board's attorney, George C. Heppner, then represented that the proposed penalty was appropriate in the circumstances of this case and that he would recommend its adoption by the North Bergen Municipal Board of Alcoholic Beverage Control. Appellant (through its attorney and its Corporation members, Ernie Tabbachino and Richard Williams) then agreed to accept the imposition of the proposed fine.

Accordingly, on the basis of the foregoing, I DECIDE AND ORDER that Appellant be fined the sum of \$350 for its violation of N.J.A.C. 13:2-23.13(a)-1.

This recommended decision may be affirmed, modified or rejected by the North Bergen Municipal Board of Alcoholic Beverage Control, which by law is empowered to make a final decision in this matter. However, if said Board 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 Alcoholic Beverage Control, Joseph W. Lerner, the Secretary of the North Bergen Municipal Board of Alcoholic Beverage Control, Anthony La Tempa, and, the North Bergen Township Acting Clerk, Christopher Carmeci, my Initial Decision in this matter and the record in these proceedings.

## 4. APPELLATE DECISIONS - PEPE and PEPE, INC. v. SAYREVILLE.

#4395 - #4399

Pepe and Pepe, Inc.,  
t/a Nickelodeon,

}

Appellant,

v.

}

Mayor and Borough Council  
of the Borough of  
Sayreville,

CONCLUSIONS

AND

ORDER

Respondent. }

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David J. Haber, Esq., Attorney for Appellant,  
Robert Blanda, Esq., Attorney for Respondent.Initial Decision Below  
Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: January 24, 1980 - Received: January 28, 1980

BY THE DIRECTOR:

No Exceptions to the Initial Decision were filed  
by the parties pursuant to N.J.A.C. 13:2-17,14.

The record indicates that the appellant has agreed to withdraw its appeal from the imposition of special conditions to its license for the 1979-80 license term, subject to an agreement that Special Condition C is modified to also permit the parking lot attendant to make his observations indoors from an appropriate visible structure.

Additionally, the appellant withdraws its appeals from the imposition of two license suspensions for an alleged violation of the Special Conditions affixed to its license (August 15, 1979 Order - 5 days suspension). It is further represented that the appellant has been closed much in excess of the fifteen days set forth by the Mayor and Borough Council and the parties do not object to the credit of the suspension to that time period.

Thus, upon the withdrawal of all appeals, the matter no longer was a contested case. Nothing further is required than to dismiss the appeal, vacate my previous stay orders and reimpose the license suspensions.

When an appeal is filed, jurisdiction vests in the Division. Any determination to reestablish the suspension dates is the function of the Director, particularly since the Director has issued an Order staying the suspension pending appeal. I strongly oppose the practice of the licensee deciding when to serve a suspension and then requesting credit for the time served. In this case, I shall grant the request reluctantly; but admonish all parties in the future that any further type action will be at the risk of the parties.



In consequence of the withdrawal of the appeals, there would normally be no need to accept, reject or modify the Initial Decision. To the extent, however, that the Initial Decision does recite testimony adduced prior to the parties' settlement of the issues, and further purports to order modification to the licensed premises, I reject same.

On an appeal, my jurisdiction is limited by the applicable statutes, case law and regulations to a determination of the issues presented. The relief available is to affirm, reverse or modify the action below. An appeal is not a forum to "establish guidelines for the control and prevention of future violations and nuisances." Once the appellant withdrew its appeals, there is no basis for any further Division action.

While the appellant is well-advised to consider appropriate corrective measures to avoid future nuisance charges, the discussion and incorporation of same in an Initial Decision is without basis in law.

Accordingly, it is, on this 10th day of March, 1980,

ORDERED that the appellant's motion to withdraw its appeals be and the same is hereby granted and the appeals be and are hereby dismissed; and it is further

ORDERED that the modification to Special Condition C heretofore set forth be and is hereby approved by the Director pursuant to N.J.S.A. 33:1-32; and it is further

ORDERED that my Orders of August 23, 1979 and August 30, 1979 staying certain Special Conditions and suspensions pending determination of the appeals be and are hereby vacated; and it is further

ORDERED that, in lieu of reimposition of the license suspensions totalling fifteen (15) days, the appellant shall be credited for the time served.

JOSEPH H. LERNER  
DIRECTOR

#### APPENDIX

Initial Decision Below

IN THE MATTER OF:	:	<u>INITIAL DECISION</u>
	:	
PEPE & PEPE, INC.,	:	OAL DKT. NO. A.B.C. 4259-79
t/a NICKELODEON	:	AGENCY DKT. NO. APPEAL #4399
	:	APPEAL #4395
vs.	:	
	:	
MAYOR AND COUNCIL OF	:	
THE BOROUGH OF SAYREVILLE	:	
	:	

## APPEARANCES:

David J. Haber, Esq., attorney for Petitioner

Robert Blanda, Esq., attorney for Respondent

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

This is an appeal from an action of the Mayor and Council of the Borough of Sayreville, which by Resolution and Order dated August 1, 1979, suspended Appellant's Plenary Retail Consumption License No. 1219-33-001-002 for premises located at 156 Main Street, Sayreville, New Jersey. Said suspension was to become effective August 12, 1979 and continue until August 22, 1979 for a total suspension period of ten (10) days. Additionally this is an appeal from the Resolution of the Mayor and Council of the Borough of Sayreville establishing special conditions upon the renewal application of Petitioner's license for the period 1979-80, also this is an appeal from a suspension of Petitioner's license for five days effective August 26, 1979 for violation of special conditions as proposed by the renewal resolution of the Mayor and Council. A Petition of Appeal and Amended Petition of Appeal was filed with the Director of the Alcoholic Beverage Control and he granted a stay with regard to all matters pending the 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 November 26, 1979 and the final memoranda and summations were received by this office on December 13, 1979.

The issues of the hearing are whether or not the actions of the Council were arbitrary, capricious and not consistent with the evidence adduced. Council's answers indicate that they heard sufficient credible testimony from a neighbor living next door to the premises as to conduct which constituted a nuisance. They also contend that the stipulations placed on Petitioner's renewal license application and the suspension of 15 days was not excessive in view of the serious nature of the complaints.

The Respondent and Petitioner, after discussing the issues of the matter, have agreed with regard to the first count to have a parking lot attendant on duty Friday, Saturday and holidays and said attendant be responsible for the parking lot. In addition the parking lot attendant may be stationed indoors but the doors to the building must have windows on them so that the parking lot attendant has clear visible access to all areas outside. As to the various suspensions imposed for violations, Petitioner withdraws its appeal of said violations and it is agreed between Petitioner and Respondent that all penalties heretofore imposed will be adjudicated for time served. The only remaining issue pertains to the nuisance violation, N.J.A.C. 13:2-23.6(a)(3). The penalty with regard to said nuisance violation has already been stipulated to and adjudicated and the only issue with regard to nuisance is the establishment of guidelines for the control and prevention of future violations and nuisances.

The Borough presented Grace Bailey who testified as follows. She resides at 160 Main Street in the Borough of Sayreville and her home is approximately eight feet from the Nickelodeon. Between her home and the Nickelodeon is a concrete alley way. The owners of Pepe & Pepe, five years prior, had run the establishment as a night club with live entertainment. During the period that they had said establishment she was constantly disturbed by the loud volume of noise from the music as well as the patrons. Prior to the Nickelodeon reopening under the ownership of Pepe & Pepe, she forwarded correspondence to them advising them that she had heard they would be reopening and she did not wish to have the same problems with regard to noise and disturbance as she did prior. After the Nickelodeon reopened she found herself being disturbed between the hours of 9:00 P.M. and 3:00 A.M. on Fridays and Saturdays by a constant beating sound or vibration. She spoke with Bill Pepe, one of the owners, and it was determined that speakers which were on the wall closest to her home would be moved in an attempt to alleviate the problem. After said speakers were moved she continued to experience the same vibrational problems and lodged complaints with the owners as well as the Town. She also had an occasion to speak to Mr. Pepe at her home and had him listen to the beating sound and vibration she was experiencing. He candidly admitted to her, at the time that he visited her home, that he did hear the sound she was referring to and he would attempt to correct the matter. She also stated that she has testified on various occasions before the Mayor and Council with regard to complaints she had filed and the renewal of Petitioner's license.

There are two other persons in her home according to Mrs. Bailey that must get up at 6:00 A.M. and they find that the beating sound disturbs them every night that the stereo is started up. Said sound does not subside until approximately 3:00 A.M. when the club closes. The parties she referred to that are also having problems were not present in court nor had they ever testified at a Mayor and Council meeting with regard to same.

Mrs. Bailey stated that a Mrs. Farley came to her premises at approximately 4:30 P.M. and took some sort of sound test outside in her backyard but never entered her home.

Under cross examination Mrs. Bailey admitted that five years ago she had signed several complaints against the Petitioners and that prior to the Petitioners opening their premises this time she forwarded correspondence to them advising them that she did not wish to have the same problem that she had had with them previously. In addition she forwarded correspondence to the Mayor and Council and advised them that the club was opening back up under the ownership of Pepe & Pepe and that she did not wish to experience the same problems as before. She admitted that from basically the first day the Nickelodeon opened to present that she has complained about the premises being noisy and her inability to sleep. When asked if it was determined that the noise level that was coming from the premises were permitted by law would she still complain she stated yes she would.

William Pepe testified on behalf of Pepe & Pepe, t/a Nickelodeon, and stated that approximately five years ago he and his brother had been involved in the tavern business at the same location but based upon several complaints with regard to noise nuisance they were compelled to close their doors and sell their business. Sometime prior to March, 1979, they were forced to take the business back, in that the purchaser defaulted on his payments. After taking the business over again a determination was made that live entertainment should not be used on the premises in light of the problems they had heretofore experienced. Thereafter they instituted the policy that implemented the use of a disc jockey and records so that they might have better control over the sound.

Prior to their opening the business they received a communication from Mrs. Bailey asking them to plan their music out at which time they informed her they were not going to have live entertainment. In setting up the sound system for the disco they continuously consulted with Mrs. Bailey so that a happy medium could be arrived at with regard to sound.

He stated that even though he had attempted to arrive at a compromise with Mrs. Bailey with regard to sound she continually complained about noise. Initially in lying out the place they had the speakers on Mrs. Bailey's wall but based upon her complaints they moved them to the opposite wall, took out a window on her side of the building, had the wall filled with styrofoam, put books and heavy drapes on the wall, all in an attempt to cut down on any noise or vibration that might possibly disturb his neighbor. However, even after all these attempts they still received complaints from Mrs. Bailey with regard to the sound.

Based upon all the complaints, Mrs. Farley of the Department of Environmental Protection, was called in by the Health Department of the Borough of Sayreville and she performed sound read-

ings outside of the building. As a result of the sound readings taken both by Mr. Pepe and Mrs. Farley, Mrs. Farley testified that even with the sound system turned to its highest capabilities, the sound system was not in violation of the noise statute which is regulated by the Department of Environmental Protection. In addition, Mr. Pepe testified that he had consulted with an acoustical engineer who informed him that unless he knew what sound decimal was going to be permissible he could not do anything to help alleviate the problem. Mr. Pepe had also admitted that he had visited the Bailey premises and heard the noise vibrations or beating sound which Mrs. Bailey was referring to. He stated he has attempted to do everything so that he might run a business yet get along with his neighbors and that it just does not seem possible to satisfy Mrs. Bailey.

Under cross examination he described Mrs. Bailey's letter which stated "let's not have any problems" as a warning from Mrs. Bailey. Additionally, he said when he visited Mrs. Bailey's premises the beating noise he stated he heard was only in the kitchen and back rooms of her home.

Mrs. Farley testified that she had performed sound checks outside the premises of Pepe & Pepe between the Nickelodeon and Bailey residence. As a result of the various tests she found that at no time did the sound which was emitted from the Nickelodeon exceed the standards established by the Department of Environmental Protection. She admitted that she did not go inside the Bailey home but felt that the sound would be less inside her home than it was outside.

After having observed all the witnesses from 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. Pepe & Pepe, Inc., t/a Nickelodeon are the owners of Plenary Retail Consumption License No. 1219-33-001-002 located at 156 Main Street in the Borough of Sayreville.
2. Sometime around March 1979, the Nickelodeon was taken over by Pepe & Pepe, Inc. and opened as a discotheque.
3. On June 18, 1979 a hearing was held and testimony was taken wherein certain guidelines and standards were placed upon the license renewal of Nickelodeon which were subsequently amended by the Director of the Alcoholic Beverage Control.
4. Pepe & Pepe, Inc., t/a Nickelodeon, has served all its penalties for the various violations for municipal ordinances and ABC violations.
5. That noise vibrations are heard in Mrs. Bailey's home at 160 Main Street in Sayreville.

6. Diligent efforts have been made by Petitioner, Pepe & Pepe, Inc., to attempt to alleviate the noise vibrations heard.
7. The noise emitting from the Nickelodeon is not in violation of Department of Environmental Protection regulations.
8. That there are presently no outstanding violations against the Nickelodeon.

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 the licensed premises that are caused by the patrons thereof. It is also clear that a licensing authority such as the Mayor and Council of the Borough of Sayreville has a right to exercise discretion in determining what, in light of the surrounding circumstances and conditions, is good for the Borough of Sayreville. As early as 1936, then Director of the Division of Alcoholic Beverage Control stated in the landmark case of Conti v. Princeton, Bulletin No. 139, Item 8

"A license is a privilege. A licensee must keep his place and his patronage under control. When the exercise of his personal right becomes a nuisance to the community the public interest requires that the prevailing terminate".

This doctrine has been cited repeatedly throughout the years.

It is apparent that the noise vibrations do create a disturbance or nuisance for the premises next door but both locations must learn to live and compromise their positions in order to reach a harmonic accord.

The COURT CONCLUDES and ORDERS that Pepe & Pepe, Inc., t/a Nickelodeon must make the following modifications to the establishment:

1. Three way speakers are no longer to be housed in one single cabinet but are to be suspended on a rack by chains from the ceiling.
2. As the volume is increased on the stereo system, the base is to be decreased proportionally.
3. An acoustical engineer is to be engaged to help eliminate the ground vibrations between the Nickolodeon and the Bailey premises.
4. Noise vibration between the Bailey premises and the Nickelodeon is to be reduced to its lowest possible range as can be provided by an acoutiscal engineer.

5. Parking lot attendant is to be on duty Friday, Saturday and holidays during the evening hours and is to be outside of the premises fifteen minutes before and after closing time.

The Court also concludes that the regulations as to noise violations under the Department of Environmental Protection are not binding or have exclusive jurisdiction over nuisance complaints involving noise under the ABC regulations. N.J.A.C. 2-23.6. The Court does not conclude from the testimony presented that Pepe & Pepe, Inc., t/a Nickelodeon, are intentionally creating nuisance but in fact finds that they have attempted with due caution and care to eliminate any disturbance that might occur with regard to their neighbors. The Court concludes that there is going to be a certain degree of noise or vibration emitted from the premises and that after all the corrections have been implemented by Petitioner another review of the noise situation should be made.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control 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 Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

In the Matter of the Petition of

AMENDED

## CONCLUSIONS

AND

ORDER

BY THE DIRECTOR:

I scheduled oral argument at which the testimony of Thomas P. Quinn, the National Director of Alcoholic Beverages of the Petitioner was offered. In summary, it was indicated that if the approval to renew the subject license was granted, the license would be operational before the expiration of the 1979-80 license term. Two viable locations for the license were established, either one being consistent with State and local regulations and ordinances. It was further indicated that this was the first application under N.J.S.A. 33:1-12.39.

Having carefully considered the supplemental evidence presented, I find that, in the exercise of my discretion, an additional authorization to renew the subject license is warranted. The petitioner shall have until June 30, 1979 to activate this license provided the Mayor and Council renews same.

Accordingly, it is, on this 7th day of March, 1980,

ORDERED that my Order of December 11, 1979 be and the same is hereby amended as follows:

ORDERED that the petition of the Great Atlantic and Pacific Tea Company, Inc. for relief pursuant to N.J.S.A. 33:1-12.39 be and the same is hereby granted; and the Mayor and Council of the Village of Ridgewood be and are hereby authorized to consider the Petitioner's application for renewal of its license for the 1979-80 license term and to grant or deny same in the exercise of its discretion; and it is further

ORDERED that no further extensions shall be granted in the event the license is not in active use by the expiration of the 1979-80 license term.

JOSEPH H. LERNER  
DIRECTOR



## 6. APPELLATE DECISIONS - H.G.N.S., INC. v. ATLANTIC CITY.

#4426

H.G.N.S., Inc.,

Appellant,

vs.

Board of Commissioners of the  
City of Atlantic City,

Respondent.

CONCLUSIONS

AND

ORDER

-----  
 Edward J. Ross, Esq., Attorney for Appellant.  
 Steven W. Smoger, Esq., Attorney for Respondent.

## BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City which, on October 11, 1979, denied appellant's application to renew its license for the 1979-80 license term.

Upon filing the within appeal, the Director, by Order dated November 14, 1979, extended the subject license pending determination of the appeal.

The basis for the denial of renewal was the Special Ruling of September 26, 1979 by the Director, Division of Alcoholic Beverage Control. This ruling held that renewal of the subject license would be contrary to the public interest because of appellant's failure to comply with the provisions of N.J.S.A. 33:1-12.39 concerning inactive licenses.

Subsequent to the filing of this appeal, the appellant submitted a Verified Petition requesting relief in accordance with N.J.S.A. 33:1-12.39. Said petition established "good faith" efforts to activate this license since it terminated active operations in 1976. The "good faith" efforts include substantial efforts to relocate the license or find a buyer thereof. On January 21, 1980 an agreement was entered to sell the license and same will be reactivated immediately upon transfer approval.

Therefore, by my finding herein that the appellant has established "good faith" efforts pursuant to N.J.S.A. 33:1-12.39 to warrant a further application for renewal of its license for the 1979-80 license term, the underlying objections and basis for my Special Ruling of September 26, 1979 no longer exists.

Thus, I shall vacate my Special Ruling of September 26, 1979, and find that approval of appellant's renewal application would not

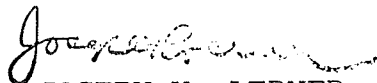
be contrary to the public interest. N.J.A.C. 13:2-3.10. The action of the Board of Commissioners shall, thereupon, be reversed and the application will be remanded for its consideration, and the exercise of its discretion with respect thereto.

Accordingly, it is, on this 13th day of March, 1980,

ORDERED that my Special Ruling of September 26, 1979 be and the same is hereby vacated; and it is further

ORDERED and determined that the appellant's application to renew its license for the 1979-80 license term is not contrary to the public interest (N.J.A.C. 13:2-3.10); and it is further

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and the same is hereby reversed, and the application in question be and is hereby remanded to the Board of Commissioners of the City of Atlantic City to act upon such application in any way consistent with its authority.

  
JOSEPH H. LERNER  
DIRECTOR