

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 2357

June 17, 1980

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June 17, 1980

1. APPELLATE DECISIONS - L-J's TENDER TRAP v. PATERSON.

#4338

L-J's TENDER TRAP,)

Appellant,)

v.)

CONCLUSIONS

AND ORDER

BOARD OF ALCOHOLIC BEVERAGE CONTROL)
OF THE CITY OF PATERSON,)

Respondent.

William J. DeMarco, Esq., Attorney for Appellant.
Adolph Romei, Esq., Attorney for Respondent.
Robert Goodman, Esq., Appearing for Objector, Alta Janosko.

Initial Decision Below

Hon. Sybil R. Moses, Administrative Law Judge

Dated: September 20, 1979

-

Received: September 20, 1979

BY THE DIRECTOR:

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

Counsel for respondent did, however, submit comments in lieu of Exceptions, indicative of several areas of disagreement with specific factual findings of the Administrative Law Judge.

Basically, the respondent alleges that: (1) in addition to the testimony and documents presented at the de novo hearing, the transcript of the hearing below was submitted pursuant to N.J.A.C. 13:2-17.8; and (2) the interrelationship of the various provisions of the City's distance-between-premises ordinance had not been completely presented in relationship to the appellant herein, and particularly, the failure to note the various options available to appellant to find a situs consistent with said ordinances.

None of these comments bear on the ultimate validity of the findings of the Administrative Law Judge.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits and the Initial Decision, I concur in the findings and recommendations of the Administrative Law Judge, and adopt them as my conclusions herein.

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

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Paterson be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

Joseph H. Lerner
Director

Appendix - Initial Decision Below

L-J's TENDER TRAP, INC. V.)	<u>INITIAL DECISION</u>
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL, PATERSON)	O.A.L. DKT. NO. ABC 1557-79

Appearances:

William J. DeMarco, Esq., appearing for Appellant,
L-J's Tender Trap, Inc.

Ralph DeLuccia, Jr., Esq., Assistant Corporation
Counsel, City of Paterson, appearing for Re-
spondent, Board of Alcoholic Beverage Con-
trol, Paterson.

Robert Goodman, Esq., appearing for Objector, Alta
Janosko

BEFORE THE HONORABLE SYBIL R. MOSES, A.L.J.:

This is an appeal from the action of the Board of Al-
coholic Beverage Control of the City of Paterson which, by
Resolution dated April 25, 1979, denied Appellant's application
for a place-to-place transfer of Plenary Retail Consumption Li-
cense 1608-33-168-001, heretofore issued to L-J's Tender Trap,
a corporation, t/a L-J's Tender Trap, 521 20th Avenue, Pater-
son, New Jersey, to 150 Ellison Street, Paterson, New Jersey.
Appellant filed said appeal on May 23, 1979, contending that
the action of the Board was erroneous in that there is no lo-
cation within the prescribed area that is suitable for a tavern,
in that said transfer was occasioned by governmental action be-
cause the Appellant's original location was taken under the
right of eminent domain for the construction of a school, in
that the location applied for was always a tavern, and in that
said use is permitted by the laws of the City of Paterson.
The Board, in its answer, denies the allegations of the appeal,
and contends that the granting of the transfer in question
would be contrary to law and that the denial was within the sound
discretion of the Board. The Board contends there is more than
sufficient and competent evidence in the record to support its
resolution denying a place-to-place transfer and asks that said
denial be affirmed by this Court.

O.A.L. DKT. NO. ABC 1557-79

A de novo hearing was held on Friday, August 17, 1979, in the Passaic County Court House, Paterson, New Jersey. Robert Goodman, Esq., counsel for Objector, Alta Janosko, requested and received permission to appear in this matter.

The Board presented one witness, its secretary for the past five years, Kathleen Gibson. Ms. Gibson testified that she was familiar with the actions of the Board during the past five years. She was also familiar with the premises at 150 Ellison Street, the proposed place of the transfer, and knew that it had been a licensed tavern for the past ten to fifteen years. The Objector, Mrs. Janosko, had a "C" license for said location, but in 1978 had turned her license in to be held by the Alcoholic Beverage Control Board. Ms. Gibson testified that the Alcoholic Beverage Control Board can hold such a license, even without an address, for two years as a "Pocket License". The Appellant herein had already leased 150 Ellison Street at the time the Objector turned in her license.

Ms. Gibson also indicated that the old location of Tender Trap was now School No. 30 of the City of Paterson. The Board of Education of the City of Paterson had taken that location by right of eminent domain. Ms. Gibson testified that the Appellant had been attempting to move her license to the Ellison Street address since her property had been condemned by the Board of Education in 1977. Ms. Gibson stated that the denial of the transfer by the Board was based on Title 3, Section 2:3-3, Revised Ordinances of the City of Paterson, which were admitted into evidence. Section 2:3-3(a) does not allow a transfer if there are existing licensed premises within 1,000 feet of the proposed place of transfer. Section 2:3-3(b) allows a transfer within 1,500 feet of the original premises if that location has been taken for any government project. J-3 and J-4 in evidence, letters to the Board of Alcoholic Beverage Control from the Engineering Division of the City of Paterson, show that the distance between 521 20th Avenue and 150 Ellison Street is approximately 6,880 feet, and that the distance from 150 Ellison Street to 5 Colt Street, the site of the "Pub", another licensee of the City of Paterson, is approximately 180 feet. The distance from 150 Ellison Street to four other Plenary Retail Consumption Licenses is as follows: to 32 Church Street, approximately 280 feet; to 58 Church Street, approximately 320 feet; to 55 Church Street, approximately 420 feet; to 45 Church Street, approximately 240 feet. The Board presented no other testimony.

The Objector called the Appellant, Mrs. Trajanka Ciric, to testify. Her purpose was to impeach the Appellant's credibility in the Court's eyes by exploring possible financial entanglements of the corporation. The Court sustained objections to that line of questioning because it is irrelevant to the instant appeal, confusing and time consuming. Mrs. Ciric testified

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that she looked for approximately ten months, with the aid of two real estate brokers, to find a new location near 20th Avenue so she could be in conformance with the ordinance. When she found the 150 Ellison Street location, approximately 6,880 feet away and a pre-existing bar and tavern, she did not look any further. She testified she knew that five other taverns existed nearby; at 5 Colt Street, 32 Church Street, 55 Church Street, 58 Church Street and 45 Church Street. She knows that all are within 1,000 feet of her new location. Mrs. Ciric asserted she relied on the assurance of the Board of Education attorney that she would have no trouble, due to hardship, in getting a place-to-place transfer for her liquor license.

Attorney for Appellant cross-examined his client and adopted said testimony (without objection) as his case-in-chief. Mrs. Ciric, an emotional witness attempting to surmount a language barrier, indicated that the 150 Ellison Street location was the best location for her since she did not have to make any new expenditures, which she could ill afford. She has been paying rent for twenty-five months on the Ellison Street address, and has put a great deal of work into fixing the place into a decent bar and restaurant. The location is in an area of offices and retail stores, not residences. Mrs. Ciric also stated that she would have stayed on 20th Avenue had the Board of Education not condemned the property. Certain letters, A-1, 2 and 3 in evidence, were admitted by the Court in support of the Appellant's assertion of hardship and reliance on Board of Education representations.

Ms. Gibson, the Secretary of the Board of Alcoholic Beverage Control of the City of Paterson, was able to testify with clarity as to the requirements of the Revised Ordinances of the City of Paterson for a place-to-place transfer. The Appellant, Mrs. Ciric, certainly presented a graphic picture of her problems resulting from the Board of Education taking her property, but her remedies are not with this Tribunal. The Objector appeared to protect her personal and business interests, and did not represent community sentiment against the transfer.

After having observed the witnesses for all parties and having considered the entire record, including the testimony and exhibits submitted in evidence, together with the arguments of counsel, including a legal memorandum submitted on behalf of the Board of Alcoholic Beverage Control, the Court makes the following findings of fact:

1. The Appellant, L-J's Tender Trap, Inc., is a corporation of the State of New Jersey, and is the holder of Plenary Retail Consumption License 1608-33-168-001, issued by the City of Paterson.

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2. Said license is issued to a location at 521 20th Avenue, Paterson, New Jersey.

3. On April 25, 1979, the Respondent, The Board of Alcoholic Beverage Control of the City of Paterson, denied an application for a place-to-place transfer of said license.

4. The object of the place-to-place transfer was 150 Ellison Street, Paterson, New Jersey.

5. The distance between 520 20th Avenue, Paterson, to 150 Ellison Street, Paterson, is approximately 6,880 feet.

6. There are five Plenary Retail Consumption Licenses, at the following addresses, within 420 feet of 150 Ellison Street:

(a) 5 Colt Street is 180 feet from 150 Ellison Street;

(b) 32 Church Street is 280 feet from 150 Ellison Street;

(c) 58 Church Street is 320 feet from 150 Ellison Street;

(d) 45 Church Street is 240 feet from 150 Ellison Street;

(e) 55 Church Street is 420 feet from 150 Ellison Street

7. The location at 150 Ellison Street has been a tavern for approximately the past ten years.

8. Mrs. Alta Janosko, the Objector herein, is the holder of a Plenary Retail Consumption License for the 150 Ellison Street address; which license is presently being held by the Board as a "pocket license".

9. The location at 521 20th Avenue, Paterson, New Jersey, was taken by right of eminent domain by the Paterson Board of Education in 1977 for the construction of School No. 30.

10. The Appellant herein, Mrs. Ciric, made good faith efforts to attempt to find another location within 1,500 feet of the 20th Avenue address so she could be in conformance with the ordinance.

11. Said good faith efforts were made for approximately ten months until she found the location at 150 Ellison Street.

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12. The Appellant herein has been paying rent on the Ellison Street location for approximately twenty-five months and has prepared same for use as a bar and tavern.

13. The Appellant was aware that five other Plenary Retail Consumption Licenses were in existence within 1,000 feet of the Ellison Street location.

14. The Appellant was aware that 150 Ellison Street is more than 1,500 feet from 521 20th Avenue.

The Board relied on Section 2:3-3, Title 3 of the Revised Ordinances of the City of Paterson, which pertains to premises covered by Plenary Retail Consumption Licenses. Subsection (a) indicates:

(a) No plenary retail consumption license, except renewals for the same premises covered by the previous license and transfers within the same premises, shall be granted for or transferred to any premises within 1,000 feet from an existing licensed premises covered by a plenary retail consumption license. In the event a licensee desires to transfer to another premises, he shall be permitted to do so within 600 feet of the premises wherein he is located at the time of said transfer, but shall comply with the provisions aforementioned when transferring to premises in excess of 600 feet from the premises upon which the transfer is sought.

Subsection (b) indicates:

(b) notwithstanding the foregoing provisions paragraph "(a)" of this section the local issuing authority may allow the transfer of a plenary retail consumption license to within 1,500 feet of the premises wherein the license is located at the time of the said transfer, where the licensed premises is being taken for any municipal, county, state or federal project, or where the licensed premises is destroyed to the extent that it can no longer be used for the purpose for which the license was issued and it is not intended to restore the same. If such a transfer is granted, no plenary retail consumption license shall be transferred to the premises or part thereof so vacated by such transfer.

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Said ordinance does not provide for waiver or exception to the distance requirement.

The general grant or denial of an alcoholic beverage license rests in the sound discretion of the local licensing authority in the first instance. In order to prevail in an appeal, the Appellant must show unreasonable action on the part of the local authority, constituting a clear abuse of their discretion. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super 598 (App. Div. 1955); Elanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484, 1962; Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 55 N.J. 292 (1970); and Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 68 N.J. 44 (1975). The burden of proof in establishing the action of the Board was erroneous rests entirely with Appellant. See Downie v. Sumerdale, 44 N.J. Super 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super 277 (App. Div. 1957). The decision of the Board should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion, unwarranted finding of fact, or mistake of law. (See Nordco, supra).

Since the application did not conform to the distance requirements set forth in the Ordinance, the Board properly followed the mandates of the Ordinance and denied the application. Tube Bar, Inc. v. Commuter Bar, Inc., 18 N.J. Super 351 (App. Div. 1952). The local board considering the application for a place-to-place transfer is invested with wide discretion and they are to use, as their principle guide in making a determination, the public interest and the ruling ordinance and its past construction. This Court will not substitute its judgment for that of the local board or reverse its ruling if reasonable support for it can be found in the record before the Court. See Margate Civic Association v. The Board of Commissioners, Margate, 132 N.J. Super 58 (App. Div. 1975). The evidence reveals that the 150 Ellison Street location, the object of the place-to-place transfer application, is more than 1,500 feet from the 521 20th Avenue location of the existing "C" license. There are also five Plenary Retail Consumption Licenses within 1,000 feet of 150 Ellison Street. This is sufficient and competent evidence to justify the Board's denial. The Board of Alcoholic Beverage Control is not empowered to issue hardship type "variances" from the distance requirement for place-to-place transfers of liquor licenses set forth in the City Ordinance. Therefore, I conclude that the Respondent Board acted in the circumspect and reasonable exercise of its discretionary authority when it refused to grant a place-to-place transfer to the Appellant herein.

C.A.L. DKT. NO. ABC 1557-79

Accordingly, it is HEREBY ORDERED that the denial by the Board of Alcoholic Beverage Control of Paterson of the application for a place-to-place transfer of the license of L-J's Tender Trap, Inc. from 521 20th Avenue, Paterson, New Jersey, to 150 Ellison Street, Paterson, New Jersey, be AFFIRMED.

This decision cannot be effected prior to the effective date of this Order, which is forty-five (45) days from the date of agency receipt of this Order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

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

DATE

SYBIL R. MOSES, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

FOR OFFICE OF ADMINISTRATIVE LAW

2. SPECIAL RULING - PURSUANT TO N.J.S.A. 33:1-12.39 - PETITION OF TRANS-INNS, INC.

In the Matter of the Petition of)
 Trans-Inns, Inc.) CONCLUSIONS and ORDER
 Holder of Plenary Retail Consump-)
 tion License No. 0912-33-026-002)
 issued by the Board of Commissioners)
 of the Town of West New York.)
 - - - - -)
 Robert M. Zweiman, Esq., by Edward J. Nesselquist, Esq.,
 Attorney for Petitioner.
 Mart Vaarsi, Esq., Deputy Attorney General for Division.

Initial Decision Below

Hon. Jack Berman, Administrative Law Judge

Dated: October 5, 1979

Received: October 5, 1979

BY THE DIRECTOR:

No written Exceptions were filed by the parties to the Initial Decision Below in this application for authorization to apply for renewal of the subject license, pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision Below, I concur in the findings and recommendations therein and adopt them as my conclusions herein.

I specifically note that my approval of the subject petition is predicated in substantial part on the extended illness of the sole corporate stockholder (five ulcer related operations between 1974 and 1978) and three proposed agreements of sale prepared (documented), but not effectuated apparently through no fault of the licensee.

Accordingly, it is, on this 15th day of November, 1979,

ORDERED that the Board of Commissioners of the Town of West New York 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 grant or deny same in the exercise of its discretion; and, if renewal is granted, it shall be made subject to the Special Condition that the license must become operational during the 1979-80 license term.

Joseph H. Lerner,
Director

In the Matter of:)
 TRANS-INNS, INC.)
 PETITIONER)

INITIAL DECISION
 OAL DKT. NO. ABC 2428-79

Appearances:

Edward Nesselquist, Esq., attorney for Petitioner,
 Trans-Inns, Inc.

Mart Vaarsi, Esq., Deputy Attorney General for Respondent,
 Division of Alcoholic Beverage Control

BEFORE THE HONORABLE JACK BERMAN, A.L.J.:

This is a proceeding to determine whether good cause has been established by the Petitioner who seeks to file a further application for renewal of its Plenary Retail Consumption License #C-1 issued by the Town of West New York 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 held on September 24, 1979 pursuant to the provisions of N.J.S.A. 52:14F-1 et seq.

Lawrence Ducate, sole shareholder of Petitioner, testified that Petitioner had purchased its liquor license from Chip's Tavern, Inc. in 1973. He stated that at that time Chip's Tavern had been closed because of urban renewal. He said that Petitioner intended to operate a tavern there but due to a sudden illness Mr. Ducate was unable to become active in that endeavor. He testified that he had five ucler related operations from 1974 to 1978. He then testified that Petitioner had entered into various contracts to sell its license during that period of time. Thus an agreement to sell Petitioner's license to Louis Redustiano was entered into in May, 1974 but that transaction fell through. In February 1976 Petitioner contracted to sell its license to Paul and Nedra Rivas but that deal fell through as the purchasers were unable to purchase the particular store they had desired to transfer the license to. On March 17, 1977 Petitioner entered into a contract to sell its license to Buy-Rite Food Market, Inc., but that transaction never materialized because the location the purchaser was contemplating transferring the license to was located within 200 feet of another licensed premise.

The Petitioner recently has negotiated for the sale of its license to the recent owners of a Chinese Restaurant in West New York. Although no formal contract has been entered into the parties plan to execute a formal agreement when and if this petition is granted. Notwithstanding this the Petitioner, through the Villa Real Estate Agency, has inspected certain premises in West New York that sometime ago housed a bar. The premise is complete with a bar, beer box, and small kitchen at a monthly rental of \$550.00 plus utilities.

Mr. Ducate stated that Petitioner has renewed the license each year since it has owned same and has paid all necessary licensing fees except for the present licensing period wherein Petitioner was directed by the Town Clerk of West New York to proceed to petition under N.J.S.A. 33:1-12.39 for a hearing to determine good cause. He stated that it is Petitioner's belief that the license will be activated one way or another prior to July 1980.

The relevant section of N.J.S.A. 33:1-12.39 states:

"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 licensed period for which the renewal application is filed unless the director, for good cause and after a hearing, authorizes a further application for renewal." (Emphasis added).

Therefore, based on review of the entire record in this matter the COURT FINDS:

1. Petitioner is the owner of Plenary Retail Consumption License #C-1 issued by the Town of West New York.
2. The basis for inactivity of this license is the illness of Petitioner's sole shareholder.
3. Petitioner has entered into many agreements to sell its license none of which have materialized.
4. The Petitioner has recently negotiated to sell its license to the owners of a restaurant in West New York.
5. The Petitioner is ready, willing and able to operate a bar in West New York.

Therefore, the COURT CONCLUDES that the Petitioner has established good cause as specified in N.J.S.A. 33:1-12.39. Accordingly, the Petitioner shall make FURTHER APPLICATION FOR RENEWAL of Plenary Retail Consumption License C-1 for the 1979-80

licensing period. The Town of West New York 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. The Petition is HEREBY GRANTED.

This action cannot be effected prior to the effective date of this order which is forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

The COURT HEREBY FILES with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, its Initial Decision in this matter and the record in these proceedings.

DATE

JACK BERMAN, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

3. SPECIAL RULING - PURSUANT TO N.J.S.A. 33:1-12.39 - PETITION OF GEORGE APOSTOLOPOULOS.

In the Matter of the Petition of)
George Apostolopoulos) CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption)
License No. 1214-33-103-001 issued)
by the City Council of the City of)
New Brunswick.

- - - - -)
Rothbard, Harris & Oxfeld, Esqs., by Doane Regan, Esq., Attorneys
for Petitioner.
Mart Vaarši, Esq., Deputy Attorney General for Division.

Initial Decision Below

Hon. Jack Berman, Administrative Law Judge

Dated: October 5, 1979

Received October 5, 1979

BY THE DIRECTOR:

No written Exceptions were filed by the parties to the Initial Decision Below in this application for authorization to apply for renewal of the subject license, pursuant to N.J.S.A. 33:1-12.39.

The subject application applies not only to the licensee's renewal application for the 1979-80 license term, but also for the 1978-79 license term. The license was renewed by the local issuing authority for the 1978-79 license term, but the required approval was not obtained from the Director for that period as mandated by N.J.S.A. 33:1-12.39.

My review of the sparse testimony produced by the petitioner indicates that the license was acquired on or about August 8, 1975. No testimony was produced indicative of efforts to activate this license during the 1975-76, 1976-77, 1977-78 and 1978-79 license terms.

The plans and specifications of proposed construction are dated August 12, 1979. There was no competent testimony that the proposal is viable in terms of municipal zoning requirements and approvals or construction financing.

I further find that the subject license was required, by virtue of N.J.S.A. 33:1-12.39, to obtain authorization for renewal for the 1978-79 license term from this Division. This was not done by petitioner; and the renewal by the issuing authority was erroneous.

The prognosis of activation of this license by July 1980

is not accorded great weight based upon the record herein. The absence of required governmental approvals for construction, the required financing, any commencement of construction and municipal transfer approvals mitigates against a bona fide assumption of completion within the current license term. These factors, in conjunction with the absence of proof of good faith efforts to activate this license for the past four license terms, and the additional failure to obtain the required approval for the 1978-79 license term, requires me to conclude that the subject petition lacks merit and must be denied.

Having carefully considered the entire record herein, including the transcript of the testimony and the Initial Decision Below, I reject the finding and conclusion of the Administrative Law Judge that the petitioner has evidenced good faith efforts sufficient to authorize a further application for renewal of license as required by N.J.S.A. 33:1-12.39.

Accordingly, it is, on this 15th day of November, 1979

ORDERED that the petition of George Apostolopoulos, holder of Plenary Retail Consumption License No. 1214-33-103-001 issued by the City Council of the City of New Brunswick for authorization to renew his license for the 1978-79 and 1979-80 license terms be and the same is hereby denied; and it is further

ORDERED that the City Council of the City of New Brunswick be and the same is hereby directed to deny renewal and/or vacate any renewals which may have been improperly granted for the 1978-79 and 1979-80 license terms.

Joseph H. Lerner,
Director

Appendix - Initial Decision Below

In the Matter of:)
PETITION OF GEORGE APOSTOLOPOULOS)
)

INITIAL DECISION

OAL DKT. NO. ABC 2429-79

Appearances:

Doane Regan, Esq., Attorney for Licensee

Mart Vaarsi, Esq., Deputy Attorney General,
Division of Alcoholic Beverage Control

BEFORE THE HONORABLE JACK BERMAN, A.L.J.:

This is a proceeding to determine whether good cause and/or good faith has been established by the Petitioner who seeks to file a further application for renewal of its Plenary Retail Consumption License No. C-56 issued by the City of New Brunswick for the 1978-1979 and 1979-1980 license terms, pursuant to the provisions of N.J.S.A. 33:1-12.39.

Petitioner had filed on June 11, 1979, with the Division of Alcoholic Beverage Control, an affidavit dated June 7, 1979.

A hearing de novo was held on September 24, 1979 pursuant to the provisions of N.J.S.A. 52:14F-1 et seq.

The Petitioner, George Apostolopoulos, testified that on August 8, 1975, he purchased a tract of land at #2 Georges Road, in the City of New Brunswick, Middlesex County, New Jersey, upon which there had been a building consisting of a restaurant with a bar. At that time he also purchased Plenary Retail Consumption License No. C-56, covering those premises. Shortly before he purchased the property the building on the property had been destroyed by fire. The Petitioner has renewed the license each year in anticipation of erecting a restaurant and bar on the tract of land. He has procured a Site Plan for the building of the proposed restaurant and has had plans drawn for its exterior and interior by Architect Abraham Goodman, A.I.A. The plans were submitted to the Court for its perusal. He stated that he anticipated that the restuarant would be operative before July 1980.

Section N.J.S.A. 33:1-12.39 states:

"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 (2) years prior to the commencement date of the licensed period for which the renewal application is filed unless the director, for good cause and after a hearing, authorizes a further application for renewal; provided, however that, if the licensee has been deprived of the use of the licensed premises as a result of

eminent domain fire or other casualty, and establishes by affidavit filed with the director that he is making a good faith effort to resume active use of the license in connection with the operation of a licensed premises then the period of 2 years provided for in this section shall be automatically extended for an additional period of 2 years. (Emphasis added)."

Therefore, based on review of the entire record in this matter, the COURT FINDS:

1. The Petitioner purchased, on August 8, 1975, a tract of land at #2 Georges Road, New Brunswick, New Jersey upon which there had been a building consisting of a restaurant with a bar which had been destroyed by fire. He also purchased the Plenary Retail Consumption License No. C-56 for those premises.
2. Petitioner has renewed the License each succeeding year since he purchased it except the 1978-79 license term.
3. Petitioner has made arrangements to build a restaurant and bar at the licensed premises which is to be completed and operative prior to July, 1980.
4. Petitioner has filed with the Division of Alcoholic Beverage Control of the State of New Jersey an affidavit that "he is making a good faith effort to resume active use of the license in connection with the operation of (the) licensed premises."

Therefore, the COURT CONCLUDES that the Petitioner has established "good cause" and "good faith" as specified in N.J.S.A. 33:1-12.39. Accordingly, the Petitioner shall make FURTHER APPLICATION FOR RENEWAL of Plenary Retail Consumption License C-1, for the 1978-79 and 1979-80 periods. The City of New Brunswick be and the same is hereby authorized to consider the application for renewal of the subject license for the 1978-79 and 1979-80 license terms and, to thereupon, grant or deny said application in the reasonable exercise of its discretion. The Petition is HEREBY GRANTED.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

THE COURT HEREBY FILES with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, its Initial Decision in the matter and the record in these proceedings.

DATE

JACK BERMAN, A.L.J.
Receipt Acknowledged:

Agency Head

Joseph H. Lerner
Joseph H. Lerner
Director