

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2112

August 22, 1973

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1. NOTICE TO ALL LICENSEES - RELAXATION OF POLICY FORBIDDING WHOLESALER SALESMEN TO ASSIST RETAILERS - CONDITIONS OF RELAXATION ESTABLISHED.

TO ALL LICENSEES:

This Division has consistently prohibited all wholesalers and/or their salesmen from performing any service, whatsoever, be it menial or significant, on retail licensed premises and/or on behalf of the retail licensed business. The prohibition is total in applicability whether the service is performed for financial consideration or merely as a favor.

This policy was adopted and has been rigorously enforced because the New Jersey legislature indicated its opposition to any "tied house" by its enactment on July 18, 1939 of R.S. 33:1-43. In its effort to effectively and objectively discharge its statutory obligation, the Division has insisted that the retailer be completely unrestricted by any obligation, whatsoever, to a wholesaler. In those instances where a violation was proven, both the employee and the retailer were penalized.

However, I have become acutely aware of a problem situation which has resulted from the challenge of the ever increasing demand for wines. The increase in production and sale of wines in quantities never before anticipated has necessitated determining whether, for quality control purposes, a re-evaluation of the Division policy be made.

It has been definitely established that wines, especially those of low alcoholic content, have a comparatively short shelf life. If the wines are not moved quickly enough, oxidation due to age and exposure to light might result in a change of quality, taste and color. Within this framework, a comparison must be made between rigid adherence to past Division policy and the welfare of the general public, specifically public health and the value of the wine articles involved. The decision, undoubtedly, must be in favor of the welfare of the public.

Consequently, I have determined that Division policy prohibiting a wholesaler and/or his employee from performing any service, on behalf of a retail licensee must be relaxed to the extent that the supplier of a wine may rotate his brands of wine at retail premises, under the following conditions, without violation of R.S. 33:1-43.

1. Permission must be obtained from the retailer.
2. Only brands of wine sold by the supplier may be rotated.

- 3. No brands of wine may be returned to the wine supplier by the retailer other than under exception found in Rule 12 of State Regulation No. 34.

If, at any future date, it is determined that this partial relaxation has resulted in the extension of services and favors by the wholesalers to the retailers, of a type not contemplated or intended, I shall immediately recommend the institution of disciplinary proceedings directed to the suspension or revocation of the violator's license or permit.

Dated: July 2, 1973

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - RADER v. WOODBRIDGE.

Peter Rader,)
Appellant,)
v.)
Township Council of the)
Township of Woodbridge,)
Respondent.)

On Appeal
CONCLUSIONS
and
ORDER

-----)
Abrams, Kestenbaum, Hendricks & Reina, Esqs., by G. Douglas Reina, Esq., Attorneys for Appellant
Arthur W. Burgess, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal has its genesis in the action of the New Jersey Department of Transportation, which in 1969 took appellant's premises for highway expansion. Thereafter, appellant sought transfer to another location. Upon denial of that application, appellant appealed to this Division (Rader v. Woodbridge, Bulletin 1986, Item 1), and the action of the respondent was affirmed. In the Director's Conclusions and Order therein, the following recommendation to the Council was set forth:

"To aid a vigorous effort of the appellant to discover a new location, it is recommended that Council extend all possible cooperation."

This Order, entered May 25, 1971, was followed by successive renewals of appellant's license and a further application to transfer the license from the present situs in the Hope Lawn section of Woodbridge to 893 Green Street at the intersection of Hyde Avenue, Iselin section of the Township. That application, denied by the respondent Township Council of the Township of Woodbridge (hereinafter Council) is the subject of this appeal.

The resolution denying appellant's application to transfer, adopted September 19, 1972 contained the following grounds upon which denial was based:

- (a) The new location is near to both an industrial zone and a residential zone containing numerous one-family homes;
- (b) No plan of the proposed use of the two-story residential building on the proposed site was furnished;
- (c) The proposed location is near a church and schools;
- (d) There are five other licensees within a half mile range; and
- (e) Numerous nearby residents expressed vigorous disapproval.

Appellant's petition of appeal challenged the reasoning of the Council as expressed in the resolution and contended that the public would be properly served in the new location.

A de novo hearing in this Division was held at which the parties were permitted to introduce evidence and cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15. A copy of appellant's application, maps of the area, photographs, survey and petition of objectors were admitted into evidence.

A nearby resident, Herman Cohen, testified on behalf of the Council. His objection to the proposed site was based upon the location's proximity to the nearby high school from which eighteen year-olds would pass and possibly congregate. He described the entire area with clarity. That description was related to a sketch he prepared which was admitted into evidence. It appears that Green Street is a major thoroughfare in that section of the municipality. Crossing it are numerous residential streets containing one-family homes.

The map of that entire area of that community discloses that Green Street crosses a major New Jersey Highway, Route 1, and continues northerly for five blocks to the intersection of Hyde Street at the southwesterly corner of which the proposed location lies. Green Street continues past that intersection for a considerable distance. Immediately along it are gas stations, office buildings, homes converted to offices, a small shopping center, apartments and some residential buildings.

Mrs. Helen Brunello, president of the Iselin Junior High School Parent-Teachers Organization testified in objection to the proposed transfer because of the proximity of the proposed location to the nearby schools.

The hardship occasioned to the appellant by the taking of his prior licensed premises gave rise to extensive and protracted efforts to relocate. Appellant's brother, Michael Rader who was fully familiar with the subject matter of this appeal, testified that a continuous search for a new property had been underway for a long period during which the efforts of established real estate agencies in the area, namely, Bertagna Agency, Sun Realty, Hansen Realty, Stern & Dragoset, Berg Agency, Jacobson & Goldfarb and Jackson Realty were enlisted. Attempts were made to transfer to parcels on Lake Avenue and Edmund Avenue, in the Colonia section of the Township. A site was obtained in the Hope Lawn section resulting in a contract of sale followed by a denial on application for a variance. The aid of the Relocation Bureau of the State Highway Department was sought which proved non-productive. A request for assistance of the Planning Board resulted in the projection of a parcel of land that later proved unavailable. While stores may have been available in the Woodbridge Shopping Center, the anticipated rentals made such locations economically unfeasible. All of the commercial areas of the municipality were combed by the brokers above and their searches turned up very few potential locations, all impractical in that they were either in a high concentrated area of other licensees or were too small or lacked parking facilities. The present location applied for is the only feasible location that appears available. It appears that adequate parking would be provided for the proposed liquor establishment and that parking is not in issue.

Joseph J. Carr, a professional planner, who possessed impressive credentials testified that he studied the area of Green Street as reflected on the exhibit map. In particular, he noted the utilization of the land along Green Street and along Hyde Avenue. He inspected the master plan, the zoning ordinances and the area encircling the proposed location of the licensed premises.

From Hyde Avenue and along the same side of Green Street on which the proposed licensed premises would be located and to the south thereof, and toward Route 1, is, for the most part, zoned light industrial. A gasoline station is located on Green Street approximately fifty feet distant from the proposed site. A small neighborhood shopping center containing six or seven stores is located at the southwest corner of Green Street and Trainer Place, one block distant from the proposed site. On the southeast corner of Trainer Place and Green Street, five hundred-fifty feet distant from the proposed site, is located another gasoline station. A garden apartment building containing

sixty-eight units is located along the same side of Green Street, eleven hundred-fifty feet distant from the proposed site. On the northerly side of Green Street are located various buildings housing a school bus garage, a beauty salon, miscellaneous offices, a florist, a photographer and a gasoline station. Additionally, there are residences located on either side of Green Street. The proposed site is zoned for light manufacturing, various commercial, business and professional uses, warehousing and for multiple other uses including that for the sale of alcoholic beverages.

The population of Woodbridge according to the 1970 census was 98,944. The population of the Iselin section was 18,350. The population of the Hope Lawn section was 3,458. A 42 percent growth rate is projected for Iselin by 1975. A five percent decrease in population is projected for Hope Lawn.

It was the witness' opinion that the usage of the proposed site for the operation of a "cocktail lounge, bar-tavern" would be consonant with the overall business and retail development of this area.

A letter from the Superintendent of Schools, Dr. Fredric Buonocore, was placed in the record by reason of the inability of the superintendent to appear at the hearing due to shortness of notice. He objected to the proposed location because of its proximity to the senior high school.

The controlling legal principles involved here are substantially the same as those expressed in Rader v. Woodbridge, supra. The action of the local issuing authority, in the absence of unreasonableness or clear abuse, should be affirmed by the Director on appeal. Lyons Farms Tavern v. Mun. Bd. of Alc. Newark, 55 N.J. 292 (1970); Fanwood v. Rocco, 33 N.J. 404 (1960).

Hence, the basic issue involved is the reasonableness or lack of it by the Council's action. Were appellant to have initiated this appeal upon his desire merely to relocate his existing premises, Council's determination that the application for the proposed site was not acceptable would undoubtedly result in affirmance by the Director for reasons set forth in the resolution. However, "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).

Apart from the proximity to the local high school, there is no substantial evidence indicating the proposed location would be contrary to the best interests to the residents who reside behind Green Street. That street already appears to have numerous commercial businesses and is typical of a business street in this and most communities. The appellant would be hard put to find a business street anywhere in the municipality that did not have a residential area surrounding it. There are no licensed premises on Green Street, or within five blocks, in either direction, of the proposed site.

Objections voiced by neighbors, through the petitions filed, are such that, taken into full consideration as an expression of area sentiment, should have a substantial influence on municipal action. This would be particularly so, if the transfer sought arose from a mere election of appellant to remove his existing premises. Hence the objections, of whatever motivation, should have been weighed against the apparent hardship of appellant facing a forced relocation.

The location of the high school from which students emerge is located two blocks distant from the proposed premises and students would have to cross Green Street, an admitted thoroughfare to visit the licensed premises, were they encouraged to do so. The fears of parents and school authorities that the proposed licensed premises would become a teen-age "hangout" is merely speculative. The appellant would not, logically, impair his investment by permissively creating a situation placing his license in jeopardy.

I have considered the fact that objections were voiced against the grant of the transfer at the hearings held herein and that a petition in opposition thereto was filed with the Board. It is understandable that the residents of an area voiced their concern for its welfare. However, if the premises are conducted in a respectable and law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, however, the licensed premises are operated in violation of the Alcoholic Beverage Law, the licensee will subject his license to suspension or revocation. Jesswell, Inc. v. Newark, Bulletin 1847, Item 5 and cases cited therein.

The resolution adopted by the Council in the previous appeal between the parties recorded in Bulletin 1986, Item 1, set forth, among other things, in substance, the following:

- (1) There are approximately fourteen liquor licenses in the Iselin section of the Township.
- (2) The proposed site is adjacent to the Iselin First Aid Squad Building and would endanger the ingress and egress of emergency vehicles of the First Aid Squad.
- (3) St. Cecilia's Church and School is located in the vicinity of the subject site and the granting of this transfer would constitute an added hazard to the large number of students who must walk past the site on the way to and from school.
- (4) U. S. Route 27 (the site of the proposed transfer) is a heavily traveled road and the transfer would considerably increase the hazards already existing in the area.

It is my view, that the elements noted in this resolution which impelled the Council's action are presently either entirely missing or so greatly diluted that they should have no effect upon the final result in the appeal now under consideration.

The Council has accepted annual renewal fees of the appellant and, as above noted and was enjoined to proffer such assistance as it could to the end that the new suitable location could be found. Admittedly, new locations, mindful of distance regulations, are difficult to acquire at any time in any community. When one is found which will not do violence to a neighborhood scheme, is not adjacent or near to other licensed premises and is a considerable distance in excess of the statutorily mandated minimum distance requirement from a church or school, it should be approved where the equities of the situation compels that result. Cf. Dal Roth v. Div. of Alcoholic Beverage Control, 28 N.J. Super. 246 (App. Div. 1953); Lakewood v. Brandt, supra; Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965); Piccirillo v. Lyndhurst, Bulletin 1578, Item 3, (affirmed App. Div. 1966, opinion not approved for publication). See also Pistilli v. Bernardsville, Bulletin 1030, Item 2, wherein it was held that objections to the transfer of a license to a business street, filed by residents of side streets which may be residential, are not in themselves sufficient reason for denying a transfer.

From the proofs adduced, it is found that the presence of the school two blocks distant is not fatal to the location, nor is the character of the neighborhood, nor is the presence of other licensed premises on Route 1 or more than a thousand feet distant in the other direction, such as would mandate rejection of the site. In view of the hardship of appellant and the size of the plot on which the licensed premises would be housed and the overall distances to other commercial facilities and residences as shown on the tax map, I find that the Council should have registered approval of such site and not to have done so was manifestly unreasonable.

In connection with the remaining ground of objection by the respondent Board, i.e., that the application was not accompanied by suitable plans and land use proposal, as required by Rule 1 of State Regulation No. 2, it should be noted that the testimony of Michael Rader reflected such intense desire for approval that an elevation sketch and layout of the parking area were not submitted so that both could be modified or amended in order to comply with any suggestions or wishes the Board members might have. Such application by appellant cannot be said to be a failure of compliance with the Rule when the Board could well have conditioned its action on receiving such plan or deferring its determination pending receipt and publication of notice thereof. The long history of appellant's abortive efforts to relocate lends credence to his reluctance to provide additional grounds of rejection if the Board was not pleased with his proposals.

In reviewing the record, including the exhibits and the testimony presented, I find no factual or legal foundation to support the Council's action.

For the reasons stated, I conclude that the appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15. It is, therefore, recommended that the Council's action be reversed, and that it be remanded to respondent Council for the following limited purposes:

- (1) To permit appellant to re-file its application, accompanied by plans and specifications as provided by Rule 2 of State Regulation No. 6, and re-publish the notice of application in accordance with Rules 4 and 7 of State Regulation No. 6.
- (2) The hearing on remand shall address itself solely to the matter of compliance by appellant with procedural requirements of State Regulation No. 6, including its plans and specifications, and any objections raised with reference thereto.
- (3) That in the event, the Council then determines that the said procedural requirements have been fully satisfied, it shall then grant the said application for transfer in accordance with the application filed therefor.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15 written exceptions to the Hearer's Report and argument in support thereof were filed by the attorney for the respondent Township Council of the Township of Woodbridge. Written answer to the said exceptions with supportive argument was filed by the attorney for the appellant. In addition, oral argument was had before me and the parties were permitted to advance further argument in summation.

I have carefully examined the entire record herein, as a consequence of which, I am unable to agree with the Hearer's ultimate recommendations that an order be entered reversing the Council's action and remanding the matter to the Council for the limited purposes as set forth in the Hearer's report.

The central rationale of the Hearer in arriving at his recommendation was that special consideration should be afforded the appellant because his premises were taken by the New Jersey Department of Transportation for highway expansion; that he has sought in vain to obtain other premises which although available were rejected by him either because they were too close to other licensed

facilities or were "economically unfeasible". Said the Hearer "In view of the hardship of appellant and the size of the plot on which the licensed premises would be housed and the overall distances to other commercial facilities and residences as shown on the tax map, I find that the Council should have registered approval of such site, and not to have done so was manifestly unreasonable."

In the oral argument before me, it was pointed out that this municipality consists of twenty-seven square miles and has a population of approximately ninety-nine thousand residents. The municipality is divided into five sections and the licensed premises were formerly located in the Hope Lawn section. The proposed transfer site is located in the Iselin section.

The appellant frankly acknowledged that there were other locations available, one of which was near a shopping center but that these locations were either economically unfeasible, or he felt that they were unsuitable. However, it is well established that this does not constitute a valid reason for the approval of an application for transfer. It is elementary that concern for the licensee's own financial problem will not be elevated above the public interest. Re Bosco et al v. Jersey City et al., Bulletin 1353, Item 1, aff'd 66 N.J. Super. 165 (App. Div. 1961); DeCarlo v. Cliffside Park, Bulletin 1144, Item 3; Cf. Nordco, Inc. v. State, 43 N.J. Super. 277, 288; Hudson-Bergen County Retail Liquor Stores Association et al v. Hoboken et al., 135 N.J.L. 502 at p.510 (E. & A. 1947).

The Iselin section of this municipality contains approximately fourteen liquor licenses. The proposed transfer site is within a half-mile range of five other licensees, and while it is located on a site zoned light industrial, it is surrounded by a residential zone containing numerous one-family homes. It is also near a church and several public schools. Numerous nearby residents, the president of the Iselin Junior High School P.T.A. and the local superintendent of schools have expressed vigorous disapproval of the said transfer because of the proximity to the schools.

A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject of course, to review by this Division in the event of abuse thereof. Blanck v. Magnolia, 38 N.J. 484 (1962). The action of a municipal issuing authority may not be reversed by the Director unless he finds the act to have been clearly against the logic and effect of the presented facts. Hudson-Bergen County Retail Liquor Stores Association et al v. Hoboken et al., supra (135 N.J.L. at p.511).

In fact, as the court pointed out in Nordco the determinant is merely whether the refusal to grant the said transfer was the result of intentional discrimination or other arbitrary action. (43 N.J. Super. at p.288.) In Fanwood v. Rocco, 59 N.J. Super. at p.323 aff'd 33 N.J. 404 (1960) the court stated:

"The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

I do not believe that the Council was unsympathetic to the dilemma of the appellant, although as I have noted that his personal problem was based more on economics than on any other single factor. Nevertheless, the Council took into consideration the views of the objecting residents and the public interest. It was properly concerned with the fact that the proposed transfer site was near schools and a church, even though they were more than two hundred feet beyond the premises. As the court stated in Fanwood v. Rocco, supra (33 N.J. 404):

"Similarly, the municipal governing body may reasonably decline to issue a license because of the proximity of the premises to a church or school even though the church or school is beyond the 200 foot area outlawed by R.S. 33:1-76.

And it appears clear to us that, consistent with and in furtherance of the foregoing, the municipal governing body may reasonably honor local sentiments by declining to license taverns and package stores in designated areas within the municipality."

And further:

"The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the convenience of residents who purchase alcoholic beverages but also for the sentiments of residents who are unsympathetic or hostile to their sale."

In Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970) the court stated:

"Responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place...is primarily committed to municipal authorities. N.J.S.A. 33:1-19, 24... In allocating spheres of operation between the State Division and municipal authorities, the Legislature wisely recognized that ordinarily local officials are thoroughly familiar with the community's characteristics...the nature of a particular area...."

"Obviously, when the lawmakers delegated to local boards the duty 'to enforce primarily' the provisions of the act it invested them with a high responsibility, a wide discretion and intended their principal guide to be the public interest. Lubliner v. Paterson, 33 N.J. 428, 446 (1960).

"The conclusion is inescapable that if the legislative purpose is to be effectuated, the Director and the courts must place much reliance upon local action (and) its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

In Lyons Farms Tavern the Supreme Court re-emphasized the theme of Fanwood that the Director may not disregard the municipal governing body's authority to decline to license the operation of any taverns or package stores in a business section, particularly where there is widespread local sentiment in favor of keeping the area free of taverns and package stores. In honoring the expressed sentiment, the governing body does not act at all unreasonably.

In the instant case, it is apparent, and I so find, that the expressed sentiments of a substantial number of the residents of the affected neighborhood are contra to the grant of the transfer. It is apparent that this factor, together with all other circumstances related to the best interests of the municipality were circumspectly evaluated by the Council in reaching its ultimate determination.

After considering all of the evidence herein, including the transcript of the testimony, the exhibits, the summation of counsel, the exceptions, the answers to the exceptions and the oral argument before me, I conclude that the appellant has failed to sustain the burden of establishing that the action of the Council was erroneous and should be reversed. Hence, I shall reject the recommendation of the Hearer, and enter an order affirming the action of the Council.

Accordingly, it is, on this 12th day of June 1973,

ORDERED that the action of the respondent Township Council of the Township of Woodbridge be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ROBERT E. BOWER
DIRECTOR

Without specifically listing the twenty-six individual joint exhibits, it suffices to say that from them an uncontroverted factual picture of the ramifications of the license treatment emerges covering the period of May 6, 1970, the date of a prior order of the Director of this Division to the present.

Briefly capsulating the progression of the license to the present, the record discloses that the license heretofore issued in the name of Rallo's Bar, Inc. had covered premises at 3 Beasley Street, West Orange. Challenge to Board's approval of transfer to that location resulted in a reversal by the Appellate Division of the Superior Court (Karam et al. v. Alcoholic Bev. Control, et al., 102 N.J. Super. 291 (App.Div. 1968)). The use of the license at that location being thus denied, the Board denied renewal by resolution dated September 9, 1969. That denial was appealed to the Director of this Division who, on May 6, 1970, reversed the then action of the Board for the sole purpose of permitting the licensee to obtain a new location for the license for which an application for a place-to-place transfer could be made. The Conclusions and Order of May 6, 1970, as set forth in the then matter of Rallo's Bar, Inc. v. West Orange, Bulletin 1914, Item 1, contained the following:

"ORDERED that the Board is hereby directed to grant appellant's application for transfer of its license upon the following conditions:

- (a) That the appellant may file an application for transfer of its license to other suitable premises in the municipality;
- (b) That within three months from the date of the order herein the Board may in its discretion grant said application;
- (c) That upon the grant of appellant's application the said license, now in the custody of the Board, shall be in full force and effect as soon as the said transfer is endorsed on the face of the license certificate;
- (d) If the application for said transfer is not approved within the above stated period of time, or any extension of time thereof granted by the Board or the Director of this Division, the said license shall be cancelled."

Thereafter the subject license was renewed for the 1970-71 license period with a limitation that the license would expire on October 20, 1970. Despite this expiration date, the license was further renewed by the Board for the 1971-72 license period by resolution dated July 22, 1971. No conditions or expiration date were attached to that renewal. Again the subject license was included in a list of licenses approved for renewal by the Board for the period covering 1972-73 license period. The requisite fees were paid and received by the Board for each renewal period.

The minutes of the Board during these periods fail to reveal that any objections were raised to the renewal of the license. Correspondence introduced into evidence suggests that a series of difficulties were encountered by the licensee during the period, the last of which culminated in the appointment of respondent Richard L. Plotkin as Receiver by orders of the Superior Court dated July 21, 1972 and September 8, 1972.

Following the appointment, the respondent Receiver applied for and received an extension of the license pursuant to Rule 1 of State Regulation No. 5. That extension was the result of a resolution by the Board on December 19, 1973 and covered the remainder of the license year, i.e., June 30, 1973.

Compounding the issue it is noted that the order of the Superior Court appointing the Receiver contained, in addition to the usual appointing provisions, the following:

"ORDERED, that any or all of the above restrictions and restraints as set forth herein above against Rallo's Bar Inc., and its officers and agents, together with those restraints imposed upon the Clerk of West Orange, New Jersey; are to be released and removed, wherever may be necessary, in order to permit the sale and transfer of the said A.B.C. License, to a bonafide purchaser from Rallo's Bar Inc.. The Proceeds of such sale to be held by the Receiver appointed herein for Rallo's Bar Inc....."

While it is well established that there is no inherent right to the renewal of a license (Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Bumball v. Burnett, 115 N.J.L. 254 (1935); Meehan v. Jersey City, et al., 73 N.J.L. 382 (1906)), the holder of a license or privilege acquired through his investment therein an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App.Div. 1955).

It should also be emphasized that the mere non-user will not of itself void a license. Re Tarantola, Bulletin 570, Item 5; Lethe, Inc. v. North Bergen, Bulletin 1537, Item 2. Even non-use for a period of nine years was not in one instance too long a period of non-use to require non-renewal of license. Cf. Cooke v. Hope, Bulletin 2096, Item 4.

Appellant contends that the limitation by the Director to a three-months period within which the license was to have been located was a fixed limitation subject to extensions and the failure of the Board to have so limited the further renewals worked as an automatic termination of the license. Based upon this contention, the renewals of license were after 1971 merely empty gestures.

The denial of renewal of a license is an extreme measure and the authority to deny the same should be exercised with great caution. Heide's Tavern, Inc. v. South Amboy, Bulletin 2009, Item 1.

The crucial language of the Director's order (Bulletin 1914, Item 1, supra) contained in (d):

"If the application for said transfer is not approved within the above stated period of time, or any extension of time thereof granted by the Board or the Director of this Division, the said license shall be cancelled." (underscore added),

merely authorizes the Board to cancel the license, in its discretion, upon being satisfied that efforts of the licensee to secure a new license situs are unsatisfactory to it. Had the Board failed to renew the license, such action would have constituted affirmative cancellation with which the licensee or respondent Receiver could have had no quarrel.

Further, as vigorously argued by the Receiver, should the Director support the contentions of appellant, such result would be in complete juxtaposition to the order of Superior Court Judge Mehler and defeat the inherent right of the State of New Jersey through its Division of Employment Security, applicant for the receivership, to recover monies expended by it.

Thus it is found that the license has been regularly renewed by the Board and, further, that the Court has mandated opportunity to be afforded the Receiver to dispose of the license asset. At such posture, it is recommended that an order be entered affirming the action of the Board, dismissing the appeal, and directing the Board to afford further opportunity to the Receiver to effect, within a reasonable period of time, a person-to-person and place-to-place transfer as may be approved by the Board.

Conclusions and Order

Written exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15, by counsel for appellant. No answer to the said exceptions was filed on behalf of respondents.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions filed thereto which I find lacking in substantive merit, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of June 1973,

ORDERED that the action of the respondent Board be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed; and it is further

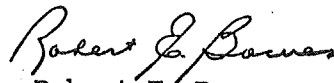
DIRECTED that the Board renew the said license subject to the express condition that the respondent Richard L. Plotkin, Esq., Receiver for Rallo's Bar, Inc., be given further opportunity to effect, within a reasonable time, a person-to-person and place-to-place transfer as may be approved by the Board.

Robert E. Bower
Director

4. STATE LICENSES - NEW APPLICATIONS FILED.

International Knights of Wine, Inc.
100 Cherry Hill Road
Parsippany, New Jersey
Application filed August 15, 1973
for limited wholesale license.

Minck Beverage Town, Inc.
t/a Minck Beverage, Minck Beverage Town
& Minck Beverage Co.
300 Route 17
Paramus, New Jersey
Application filed August 21, 1973 for
person-to-person transfer of State
Beverage Distributor's License SBD-94
from Petermann Co., t/a Minck Beverage Co.
& Minck Beverage Town.


Robert E. Bower
Director