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

BULLETIN 2252 April 21, 1977

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - DOME LOUNGE CORPORATION v. PISCATAWAY.

Dome Lounge Corporation, t/a Dome Lounge,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Township Council of the Township of Piscataway,	)	
Respondent.	)	

Carchman, Sochor & Carchman, Esqs., by Neil H. Schuster, Esq., Attorneys for Appellant
M. Roy Oak, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Township Council of the Township of Piscataway (hereinafter Council) which on June 28, 1976, denied renewal of appellant's Plenary Retail Consumption License C-5, for premises 1535 - 1539 West Fourth Street, Piscataway.

Appellant contends that the Council's action was arbitrary, and had no basis in law or fact. The Council answered that its action was based on the prior record of appellant and took into consideration the numerous objections made by local residents.

An appeal de novo hearing was held in this Division, at which the parties had full opportunity to offer evidence and cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. Additionally, the transcript of the proceedings before the Council was admitted into evidence, pursuant to Rule 8 of State Regulation No. 15.

Upon the filing of the appeal, the Director entered an order on August 12, 1976, extending the term of appellant's license pending a hearing of an Order to Show Cause respecting a continuance of the license pending the determination of this appeal, and until further Order.

The Council's resolution at the conclusion of its hearing denying the renewal of the said license, sets forth no reason for its action.

The transcript of the proceedings before the Council, upon which the foregoing resolution was based, reveals that testimony was elicited of fifteen neighbors who reside in close proximity to appellant's premises. In summary, their complaints of conditions attributed to the appellant may be capsulated as follows: excessive noise emanating from within the premises; debris, including broken bottles; urination outside the premises; obscene language; frequent necessity of calling police; destruction of property; high speed driving of cars by patrons; vocal harassment of persons by loitering patrons; and, in general, conditions which have made their lives unbearable.

Several of the aforesaid witnesses emphasized that these deleterious conditions never occurred in this neighborhood prior to the transfer of license to the present licensee in March, 1972.

Police records of the Piscataway Police Department were admitted into evidence; these reflect responses by police to appellant's premises from varied sources, from April, 1973 to a short time prior to the hearing before the Council. An examination of these reports indicate that there were 186 instances when calls to the police or police action of some sort resulted. Many of these calls came from appellant's premises itself, particularly in the first six months of operation when a malfunctioning alarm system repeatedly attracted the police.

Nevertheless, during this three year period there were thirty-six calls resulting from complaints of disorderly persons; twenty-three resulting from loud sounds; thirteen which related to robbery or larceny; and ten were caused by fights or anticipated fights.

Additionally, a petition was presented to the Council signed by ninety-four persons complaining of (1) Double parking; (2) Speeding; (3) Several accidents; (4) Excessive noise; (5) Inebriated patrons roaming the neighborhood at all hours of the day and night; and (6) Degeneration of the neighborhood as a result of the presence of said establishment.

At the Division hearing, testimony was elicited of David Thompson and his wife, Estelle Thompson, who are the holders of most of the capital stock of appellant corporation. The thrust of their testimony was that, at no time were formal charges instituted against the licensee either by the Council or this Division with respect to alleged violations of either Borough ordinances or state regulations (save for a minor gambling at pool table charge) resulting from the large number of police visits.

Thompson admitted that, two years previously, he had been warned in conference with municipal officials that his place was a source of annoyance, particularly with respect to loud noises and parking infractions. In consequence of that conference, he added sound-resistant construction to the interior of the premises and placed logs or barriers in the parking lot. He further admitted that the exterior lot does attract congregants, and he tries to prevent this. He has terminated band-playing within his establishment and presently has only one performer, who plays records for the entertainment of his guests. He denied that the music can be heard on the exterior, and further denied that all of the complaints of neighbors should be attributable to the subject premises. The roaming bands of young men that cause so much of the problems are not his patrons, he asserted.

The crucial issue in this appeal is: does appellant's record presented to the Council justify the Council's action in denying renewal of license. In short, did the Council act reasonably and in the proper exercise of its discretion in its determination?

Appellant alleges that it did not substantially violate any Division regulation governing the conduct of licensees and use of licensed premises, and that no disciplinary proceedings were instituted by the Council against it. It would have been a more satisfactory procedure for the Council to initiate such proceedings upon specific charges and to base its refusal to renew on an adjudicated record.

It is understandable that local issuing authorities at times withhold the institution of disciplinary charges where warranted with the expectation that the licensee will make good faith efforts to improve the conditions in the operation of the licensed premises. R. B. & W. Corporation v. North Caldwell, Bulletin 1921, Item 1.

In a parallel matter to that of above cited case, the Director held the following:

> "Thus, in this matter, entirely apart from the consideration as to appellant's culpability for the deleterious conditions which surrounded this establishment, the broad question posed before the Council on the subject application for renewal, was whether, in the light of all of the surrounding circumstances and conditions, it was good for North Caldwell and the neighborhood involved, for this tavern to continue to exist at this particular location at all. The objective judgment of the Council was that its continuance would not serve the public interest and the immediate neighborhood." D'Ambola v. North Caldwell, Bulletin 1922, Item 1.

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance and, in order to prevail on this appeal, the appellant must show unreasonable action on the part of the Board constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962). Prior to analyzing the testimony, it would be proper to state the applicable legal principles pertinent to the determination hereof. The burden of proof in all those cases which involve discretionary matters where the applicant seeks a renewal of the license falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957).

As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (1946):

> "The question of a forfeiture of any property right is not involved. R. S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

The well established principle is that a licensee is responsible for conditions both inside and outside the licensed premises. Gueche, Inc. v. Union City, Bulletin 2072, Item 5; Perkins v. Newark, Bulletin 2083, Item 2.

In Nordco v. State, 43 N.J. Super. 277 (App. Div. 1957) which involved an appeal from the affirmance by the Director of this Division from the local authority's determination

denying the renewal of a tavern plenary retail consumption license, the court held that there was no abuse of discretion in the refusal to renew this license based upon the tavern being a "trouble spot" in that the police were summoned fifty-nine times during the year for disturbances. Said the court (at p. 282):

> "It seems to us entirely proper for both the local and the state agencies, when passing on such application, to take into account not only the conduct of the licensee, but also conditions not attributable to its conduct, which render a continuance of a tavern in a particular location against the public interest."

From the entire record herein, it has been clearly shown that appellant's premises has become a source of trouble and annoyance to the neighbors and to the police. The number of repeated calls to the police requiring response, as well as continued noise until early morning hours caused by patrons clearly characterizes the premises as a nuisance with which the municipality could well do without.

I find that the Board's action was properly within its discretionary power and not manifestly erroneous or unreasonable. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Thus, the Director, absent such clear abuse or unreasonable or arbitrary exercise of discretion, should not substitute his judgment for that of the Board or reverse its finding. Lyons Farms Tavern, Inc. v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970).

I further find that the premises are a public nuisance and that appellant cannot control his patronage; hence, it was responsible for the conditions giving rise to such conclusion.

Nevertheless, the Director's power includes molding a conclusion that is equitable under the circumstances. Hedy's Bar, Inc. v Hightstown, supra. It is, thus, recommended that the action of the Council be reversed in order to afford an opportunity to the appellant to execute a person-to-person transfer of the license to a bona fide transferee within ninety (90) days from the date of the Order of the Director, should the Director accept this recommendation. A's Inn, Inc. v. South Belmar, Bulletin 2220, Item 1.

Conclusions and Order

Written Exceptions to the Hearer's report with supportive arguments were filed by appellant. In addition thereto, Oral Argument was had before me, pursuant to Rule 14 of State Regulation No. 15.

I have analyzed and assayed the said exceptions, and find that they have either been considered and correctly resolved in the Hearer's report, or are devoid of merit.

The Hearer finds that the premises are being operated as a "public nuisance" and that appellant cannot control its patronage; hence, it was responsible for "conditions giving rise to such conclusions".

Having found, therefore, that the action of the Council was proper and within its discretionary power, and not "manifestly erroneous or unreasonable", Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957), he nevertheless recommended the action of the Council should be "reversed in order to afford the appellant the opportunity to effectuate a person-to-person transfer of license to a bona fide transferee".

Although I am willing to enter Order that would be equitable and fair, I cannot, under the facts and circumstances of this case, accept the Hearer's recommendation that a person-to-person transfer would be an adequate corrective of the conditions which gave rise to the Council's action.

During the course of oral argument, I felt that, short of affirmance of Council's action in denying renewal, there appeared to be a concensus that both a person-to-person and place-to- place transfer within a limited time would be fair and reasonable to both parties.

I, shall, therefore, enter an order reversing the action of Council in order to afford appellant an opportunity to effectuate both a person-to-person and place-to-place transfer to a bona fide transferee within ninety days of the date of within order.

Accordingly, it is, on this 28th day of December 1976,

ORDERED that the action of the respondent Township Council be and the same is hereby reversed; and it is further

ORDERED that Council be and is hereby directed to renew appellant's license for the current license period, expressly subject to the following conditions:

(1) That the appellant shall effectuate a person-to-person transfer of its said license to a bona fide transferee within ninety days from the date of this Order or such extension of time thereof, that may be granted by Council or the Director of this Division; but that any application for such extensions should be granted only for and under unusual and critical circumstances.

(2) If an application is made for said transfer, and is not approved by the Council in the exercise of its discretion within the above stated period of time, or any extension of time granted by Council or the Director of this Division, the said license shall be cancelled.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - MAURER v. TEANECK.

George C. Maurer, t/a Enterprise Liquors, Appellant,	:	On Appeal
v.	:	
Township Council of the Township of Teaneck, Respondent.	:	CONCLUSIONS and ORDER

Samuel J. Davidson, Esq., Attorney for Appellant
Jacob Schneider, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Township Council of the Township of Teaneck (hereinafter Council) which, on January 19, 1976 suspended appellant's Plenary Retail Distribution License for four days, following a finding that appellant sold alcoholic beverages to a minor on November 21, 1975. The suspension of license was stayed by Order of the Director on February 24, 1976, pending the determination of this appeal.

Appellant contended that the action of the Council was erroneous and should be reversed. The Council denied this contention. A de novo appeal in this Division was held pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross examine witnesses.

Testimony of appellant and his wife, Joan Maurer, together with that of the minor, Matthew, established that the minor, then sixteen years of age, obtained alcoholic beverages from appellant, because he appeared over the age of eighteen years, and by producing a motorcycle driver's license belonging to his brother. This license appeared to set forth the age of the holder thereof as over 18 years, consequently he obtained the alcoholic beverages without being questioned relative to his age.

Sergeant Anthony Scolpino of the Teaneck Police Youth Bureau, who had assisted in the apprehension of the minor, testified that the minor appeared to be of statutory maturity. However, Lieutenant Donald Campbell, also of the Teaneck Police Department, who arrested the minor, testified that, in his opinion, the minor did not appear to be of statutory maturity.

The burden of establishing that the Board acted erroneously, and in an abuse of its discretion, rests with appellant (Rule 6 of State Regulation No. 15). The ultimate test in these matters is one of reasonableness on the part of the Board. The Director should not reverse unless he finds, as a fact, that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E.& A. 1947).

Extensive memoranda of law were prepared and furnished by both counsel. Appellant's attorney stressed the finding by the Municipal Judge that appellant was not guilty of committing the criminal offense of Sales to a Minor (N.J.S.A. 33:1-77). He argues that this finding, coupled with the production of the fraudulent license and the impression that the minor was truly over eighteen years should be sufficient to require dismissal of the charge.

However, such thesis lacks merit when examined in light of the statutory requirement that the minor must represent, in writing, that he was over 18 years of age. Further, it has been long established under Regulations of this Division, and by decisional precedents, that the representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service.

Display of a driver's license has long been held to be insufficient upon which a sale to a minor posing as an adult could be used as a defense. Sportsman 300 v. Nutley, 42 N.J. Super 488 (App.Div.1957). This doctrine has been and consistently long followed, most recently in Balzar's Delicatessen Inc., v. Teaneck, Bulletin 2110, Item 1 (and cases cited therein), affirmed by the Appellate Division (1974) in an unreported decision, Bulletin 2139, Item 1.

Accordingly, it is recommended that an Order be entered affirming the action of the Council, dismissing the appeal and fixing the effective dates for the suspension imposed by the Council stayed by the Director pending the determination of this appeal.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by the appellant, and an Answer to said Exceptions was filed by respondent, pursuant to Rule 14 of State Regulation No. 15.

In its Exceptions, the appellant argues that the Hearer chose to ignore the testimony of a police sergeant assigned to the local Youth Bureau, who testified that the minor appeared to be over eighteen years of age. He further contends that the Hearer gave more weight to the testimony of a police lieutenant who was not an expert in judging ages and who testified that the minor did not appear to be of statutory maturity.

There is nothing in the record which indicates that the sergeant had more expertise in judging ages than the lieutenant and that, in consequence thereof, his testimony should have been accorded greater weight. The record clearly reflects the fact that the lieutenant's testimony of the subject

minor's appearance of lack of statutory maturity was corroborated by the true age of the individual. There is no merit to these arguments.

Appellant's contention that the dismissal of criminal charges against him is a factor to be considered herein is similarly without merit.

The fact that appellant was found not guilty of serving a minor in the local municipal proceeding is irrelevant in arriving at an adjudication of the subject charge. This is an action against the licensee, and not against an individual. Furthermore, the subject action is a civil proceeding and thus the truth of the charge must be established by a fair preponderance of the believable evidence only, and thus, different from the criminal charge levelled in the Municipal Court against the seller, which was criminal in nature wherein the guilt had to be proven beyond a reasonable doubt. See In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J . 373 (1956).

Appellant alleges that the Hearer erred in not dismissing the charge because the production of the fraudulent license by the minor, and the impression that the minor was truly an adult dictated such dismissal. Counsel cites the case of Laurino v. State Division of Alcoholic Beverage Control, 81 N.J. Super. 220 (App. Div. 1963), in support of his contention that appellant has successfully established the necessary elements to provide a complete defense to the charge herein.

In Laurino two female minors (ages twenty and sixteen) sought employment on licensed premises. Both girls orally represented themselves to be twenty-one years of age and submitted what purported to be genuine baptismal certificates reciting dates of birth indicating their ages to be twenty-two and twenty-one respectively. The licensee thereafter escorted the two young ladies to local police headquarters where they were fingerprinted, issued proper identification and certified by the local Police Department as having complied with the provisions of the local ordinance respecting ages of employees on licensed premises.

In a subsequent disciplinary proceeding against the licensee on charges alleging employment of the said minors and sale of alcoholic beverages to them, the then Director concluded that each minor's appearance was such that an ordinary prudent person would not believe them to be of age. Hence, the defense failed.

On appeal the Appellate Division reversed. The court said inter alia:

> "... We discern no greater efficacy in a false representation in writing as to age made to the licensee on a recommended ABC form at the time of the sale, upon which he honestly relies in making the sale, than in a similar written false representation made only a few weeks anterior to sale on a form prescribed by the local liquor control board, upon which both the local board and the licensee relied in good faith...."
> (emphasis added) Laurino, supra, at p. 225.

The facts in the instant matter are quite distinguishable. The licensee herein did not obtain the requested written representation, which would entitled him to the defense upon which he relies. Furthermore, this Division has interpreted Laurino to be limited to the particular circumstances and facts therein. See Sportsman's 300 v. Bd. of Com'rs. of Town of Nutley, 42 N.J. Super. 488, 492 (App. Div. 1956), as the expression of established and prevailing principles relative thereto.

Appendix 5 (page 89) of the Division Rules and Regulations sets forth that, in disciplinary proceedings involving alleged sales of alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20, the licensee may establish the defense provided by N.J.S.A. 33:1-77 by affirmatively showing all of the following: (a) that the minor falsely represented himself in writing to be of age; and (b) that the minor's appearance was such that an ordinary prudent person would believe him to be of age; and (c) that the sale was made in reliance upon such written representation, and appearance, and in the reasonable belief that the minor was of age.

Hence, it is not a defense that mere verbal inquiry may have been made as to the age of the minor, or that the minor had verbally misrepresented his age, or that the minor had displayed a driver's license which represented his age as over eighteen. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Sportsman's 300 v. Nutley, supra.

Thus, the Hearer properly applied the firmly established principles to the facts in this case. Appellant's reliance upon Laurino is misplaced and this contention is, therefore, rejected.

Appellant's additional contention that the statute reducing the age of statutory maturity from 21 to 18 (N.J.S.A. 9:12B-1), in effect, (1) modified and (2) repealed N.J.S.A. 33:1-77 and thus, created a new policy thereby eliminating the various requirements that a licensee must establish to provide a defense thereunder is patently frivolous, and is devoid of merit.

I have examined the other matters set forth in the exceptions and find that they have either been considered and correctly resolved in the Hearer's report, or are lacking in merit.

Therefore, having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Hearer's report, the written exceptions thereto, and the answer to the said exceptions, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of January 1977,

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

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Council of the Township of Teaneck to George C. Maurer t/a Enterprise Liquor Shop, for premises 441 Cedar Lane, Teaneck, be and the same is hereby suspended for four (4) days commencing 2:00 a.m. on Monday, January 10, 1977 and terminating 2:00 a.m. on Friday, January 14,1977.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - STAMPAC, INC. v. POINT PLEASANT BEACH.

Stampac, Inc., t/a Hoffman's Beach House, Appellant, v. Mayor and Council of the Borough of Point Pleasant Beach. Respondent.	On Appeal CONCLUSIONS and ORDER

Kunzman, Kunzman & Yospin, Esqs., By Edwin D. Kunzman, Esq., Attorneys for Appellant
Sim, Sinn, Gunning, Serpentelli & Fitzsimmons, Esqs., By Eugene D. Serpentelli, Esq.
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Mayor and Council of the Borough of Point Pleasant Beach (hereinafter Council) which, in granting renewal of appellant's Plenary Retail Consumption License, C-13, imposed special conditions thereto which appellant considered onerous. Following the appeal, the Director of this Division, by Order of July 30, 1976, stayed the imposition of such conditions pending this appeal.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15 at which the parties were permitted to introduce evidence and cross-examine witnesses. In addition, a transcript of the proceedings before the Council was admitted into evidence, in accordance with Rule 8 of State Regulation No. 15.

The Resolution adopted by the Council on July 12, 1976, restricts appellants license by the following conditions, which may be summarized as follows:

(1) Package liquor not to be sold after 10:00 P.M.
(2) No music, whether live or recorded, and no live entertainment shall be permitted at any time except that dinner music may be utilized during dining hours in the restaurant on the second floor of the premises.

(3) Security guards shall be posted at all entrances to check each and every patron for proper identification....
(4) Two security guards shall patrol the outside during the hours of 9:00 P.M. to closing....
(5) Sufficient personnel shall be provided for purpose of retrieving all litter...by 9:00 A.M. of each morning...
(6) Occupancy regulations shall be posted.
(7) A number of persons employed equivalent to one half of the number of bartenders on duty one hour prior to closing shall be posted outside premises for crowd disbursal.
(8) All physical altercations...must be reported to the Police.
(9) All doors and windows shall be kept closed...
(10) Violations of conditions shall be grounds for hearing by Mayor and Council....
(11) These conditions to be effectuated within seven days.

The subject resolution was adopted after Council heard the testimony of several residents in the area who recounted a detailed history of difficulties arising from the appellant's premises by its youthful patrons, who, late in the evening on Thursdays and Fridays, as well as weekends, were such a very disruptive influence upon the residents of the area.

Testimony given by appellant's president and one of the principal stockholders, Louis A. Pirone, indicated that there was no substantive objection to the conditions imposed with the exception of condition (2) relating to the prohibition of live or recorded music in other than the restaurant located on the second floor of the licensed premises.

From the oral description and photographs entered into evidence, the appellant's establishment consists of a large 'L' shaped two story building located along the beach, and a large parking area at side and rear of said premises. The mandate of the resolution, other than the challenged section, has already been complied with, but the prohibition against live music would be totally disastrous.

The building can accomodate 850 patrons and there are bar stools that accomodate about 250 of this number. Despite the huge numbers of young people serviced, there has been but a minimum of trouble, and no disciplinary proceedings have been instituted against the license during the past two years, when the appellant was the licensee.

The testimony both before the Council and at this Division relating to the complaints registered against the patrons of appellant's establishment are not here.

set forth in detail as they are not, in the main, controverted. The Council has attempted to remedy the complained of conditions by way of the special conditions imposed, which although stayed by the Director of this Division as aforesaid, have been generally complied with by appellant. This has substantially reduced the problems outlined in the aforesaid testimony.

Hence, the issue has narrowed to the prohibition by the Council of live or recorded music being offered to the guests of appellant's main bar area on the ground floor. Appellant's objections to that restriction are varied and many.

Firstly, appellant contends that this restriction is discriminatory in that there are at least five licensed premises in the Borough which have live music, and whose licenses do not contain special conditions. Hence, the condition imposed here is discriminatory. In a prior matter where this contention was advanced the Director determined:

> "Appellants allege that respondent's action was erroneous in that a licensed premises across the street was not subject to the same condition.....The cases are legion wherein local issuing authorities granted licenses or granted renewals thereof subject to special conditions. In Cesar v. Trenton, Bulletin 951, Item 2, the Director affirmed the action of the local Board in renewing a license subject to a condition similar to the one imposed in the instant case.

Borko v. Mansfield, Bulletin 1894, Item 3; Cf. Erin Hotel Ltd. v. Belmar, Bulletin 1894, Item 4. I find this contention to be without merit.

The other contentions of appellant, i.e. that the special conditions deprive appellant of its property without due process; they are vague; create undue hardship; and were arbitrary and capricious are similarly without substance. Cf. A's Inn, Inc., v. South Belmar, Bulletin 2220, Item 1.

From the testimony of Pirone respecting the magnitude of his operation, it appears that the ballroom-bar facilities on the ground floor of the establishment are the mainstay of the entire business, which contains the beginnings of a restaurant facility. It is his plan, given sufficient time to reduce the present indebtedness of the business, to develop the entire operation into a first class restaurant. The premises had been a bar-ballroom type operation for the past thirty years; hence the transition must be gradual for such transition to be economically viable.

It is to be noted that there have been no disciplinary proceedings instituted by the Council against appellant, particularly charging appellant with maintaining a nuisance. From the testimony of several of the Council's witnesses, although there may well have been grounds for such charges, none were made. No charges need be made to establish conditions to a license. Old Mill Stream Inn, Inc. v. Paramus, Bulletin 2215, Item 1. However, the mere absence of charges gives rise to an impression that the conditions described were not so severe as to mandate the institution of such proceedings.

The appellant has the burden of establishing that the action of the Council was erroneous and should be reversed, Rule 6 of State Regulation No. 15. I find that appellant has not met this burden and the action of the Council should be affirmed, and I so recommend.

However, it is recommended further that condition No. 2, respecting 'live or recorded' music, have added to it a phrase "after midnight during weekdays and one o'clock on weekends" which addition, together with the other conditions in full force, would undoubtedly reduce the major problems complained of. This simple modification, substantially eliminating the bulk of the complaints, would not result in the total economic disaster described by Pirone.

Nonetheless, if such modification as recommended to the Director of this Division is accepted by him, notation should be given to the parties that, at the expiration of the license year, should the addition of the modification not resolve the problems, the Council is in no way prevented from attaching the special condition without the modification upon any renewal of said license or to take such other action as it deems necessary.

In sum, it is recommended that the action of the Council be affirmed, subject to the above modification, and the appeal herein be dismissed.

Conclusion and Order

Written exceptions to the Hearer's Report with supportive argument were filed by appellant, and an answer thereto was filed by the Council pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the said exceptions, and find that they have either been considered and correctly resolved in the Hearer's Report or are lacking in merit.

The essential thrust of said exceptions is appellant's apprehension that if the recommended modified special conditions are imposed, the licensed establishment would become bankrupt shortly; that because of that fear, appellant requests that the said special conditions, as modified by the Hearer commence on September 1977.

I find appellant's contention devoid of merit because the welfare of the public is paramount to any negative fiscal situation which may result from the imposition of the said special conditions. Cf Nordco, Inc. v. State, 43 N.J. Super 277 (App.Div.1957).

It should be pointedly emphasized that the special conditions were deemed necessary and proper by the Council in order to provide for proper control as authorized by the Alcoholic Beverage Law N.J.S.A. 33:1-39, and to serve the best interests of the community. Borko v. Mansfield Twp., Bulletin 1894 Item 3. The imposition of special conditions is an endeavor to obtain amelioration of the situation complained of. Wenzler v. Hillside, Bulletin 2182, Item 3.

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

Accordingly, it is, on this 20th day of December 1976

ORDERED that, the action of the Council with respect to the imposition of the special conditions exclusive of the special condition (2), and the same is hereby affirmed, and it is further

ORDERED that the imposition of special condition (2) in the Council's Resolution is affirmed, as expressly modified by the addition of the phrase "after midnight during weekdays and one o'clock on weekends"; and it is further

ORDERED that the with exception of special condition (2), the conditions attached to the resolution of Council, (1) through (11) be and the same are hereby approved nunc pro tunc; and it is further

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATIONS FILED.

Donald D. Alexander, James L.,
Peter M., Daniel P. & Steven K. Mirassou
t/a Mirassou Sales Company
3000 Aborn Road
San Jose, California
Application filed April 13, 1977
for limited wholesale license.

Barmar, Inc.
t/a Brewers' World of Highland Park
55 Raritan Avenue
Highland Park, New Jersey
Application filed March 22, 1977
for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-53 from Gerard Calabrese, t/a Haledon Distributing Co., 29 Mangold Street, rear, Haledon, New Jersey.

Cameron Imports, Inc.
20 Station Plaza, Evergreen Place
East Orange, New Jersey
Application filed April 20, 1977
for Limited Wholesale License.

Joseph H. Lerner
Director