

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 2353

May 27, 1980

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

#4335 and #4383

QUEEN CITY LOUNGE, INC.)

Appellant,)

v.)

COMMON COUNCIL OF THE CITY OF)
PLAINFIELD,)

Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Joseph A. Ferrante, Esq., Attorney for Appellant.

Sachar, Bernstein, Rothberg, Sikora and Mangello, Esqs., by David Rothberg, Esq.,
Attorneys for Respondent.

Initial Decision Below

Hon. Sybil R. Moses, Administrative Law Judge

Dated: September 18, 1979

Received: September 18, 1979

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the appellant pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, the appellant asserts, in mitigation, its efforts to comply with the security guard special condition affixed to the renewal of the subject license for the 1978-79 license term.

The factual findings indicate that the problems transcend the sole issue of security personnel at the licensed premises. This special condition originated from this Division's reversal of the respondent's denial of application for renewal for the 1978-79 license term, and constituted a final opportunity for appellant to prove its fitness for licensure. The record clearly indicates appellant has failed. Thus, I find this Exception to be lacking in merit.

The appellant next argues that the Administrative Law Judge's direction to the parties to introduce testimony, rather than solely rely on the transcripts below, was erroneous. The de novo hearing functions as a means to permit the reexamination of testimony and provide an independent evaluation of same. Clearly, in a revocation appeal, the demeanor and the decision on ultimate credibility of witnesses are enhanced by actual testimony before the trier of fact. Both parties were afforded this opportunity, and I perceive no prejudice in such procedure. I reject this Exception as without merit.

The balance of appellant's Exceptions are either without support or inconsequential to the ultimate determination to be arrived at herein, based upon my analysis of the record as a whole. The competent, credible evidence adduced clearly supports the action of the respondent.

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

It should be noted that, in my Order of August 22, 1979, I reversed and vacated the original stay of revocation pending determination of this appeal. The reasons set forth therein are amply supported by the Initial Decision and are incorporated herein as if set forth at length.

Accordingly, it is, on this 1st day of November, 1979,

ORDERED that the action of the City Council of the City of Plainfield be and the same is hereby affirmed, and the appeal be and is hereby dismissed; and it is further

ORDERED that the appeal filed by appellant from denial of its application for renewal for the 1979-80 license term (Appeal #4383) be and the same is hereby rendered moot by the within action; and said appeal be and is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License No. 2012-33-025-001 issued by the Common Council of the City of Plainfield to Queen City Lounge, Inc. for premises at 400 Liberty Street, Plainfield be and the same is hereby revoked, effective immediately.

Joseph H. Lerner
Director

APPENDIX A - Initial Decision Below

In the Matter of:)
 QUEEN CITY LOUNGE, INC.) INITIAL DECISION
 v.) OAL DKT. NO. ABC 1558-79
 COMMON COUNCIL OF THE)
 CITY OF PLAINFIELD)

Appearances:

Joseph A. Ferrante, Esq., for Appellant,
 Queen City Lounge

David Rothberg, Esq.
 Sachar, Bernstein, Rothberg, Sikora and Mangello,
 for Respondent, Common Council of the City of
 Plainfield

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

This is an appeal from an action of the Common Council of the City of Plainfield which, by Resolution and Order dated May 14, 1979, revoked Appellant's Plenary Retail Consumption License No. 2012-33-025-001, for premises at 400 Liberty Street, Plainfield, New Jersey. Said revocation was to become effective May 24, 1979. Upon the filing on May 18, 1979 of the petition of appeal the Director of Alcoholic Beverage Control granted a stay of the Order of Revocation pending determination of this appeal.

Appellant's appeal contends that the action of the Council was arbitrary, capricious and not consistent with the evidence adduced. The Council, in its Answer, indicates that Appellant received timely notice of the charges against it and that a full plenary hearing was held on May 14, 1979, at which time testimony was taken. The Appellant had full opportunity to cross-examine the witnesses and present evidence. The Council, therefore, contends that there is more than sufficient and competent evidence in the record to support its Resolution, and asks that the license revocation be affirmed.

It is relevant to the instant appeal to note that when Appellant was denied renewal of his 1977-78 license by the City Council, he appealed to the Division of Alcoholic Beverage Control and was awarded an Order reversing the action of the City Council. Said Order was entered, effective April 1, 1978, subject to a special condition that the licensee-Appellant provide a uniformed professional security guard on the premises from 7:00 p.m. to closing.

This appeal was heard de novo on August 22, 1979.

The City presented both civilian and police witnesses in support of their revocation of the license. The civilian witnesses included Rev. Ovie Lattimore, a minister in the City of Plainfield, who lives 125 feet from the Queen City Lounge, and has lived in the immediate area of said Lounge for 45 years; Fr. Raymond T. Lukenda, Pastor of St. Mary's R.C. Church, which is two blocks from the Queen City Lounge; Councilman-at-Large for the City of Plainfield, William Merritt, who grew up in the area of the Queen City Lounge and passes there every day; and Mr. Roland Turpin, Executive Director of the Plainfield Housing Authority, who is very familiar with the area around the Queen City Lounge, which area includes the West End Gardens, an apartment project of the Housing Authority of the City of Plainfield.

Each of the civilian witnesses testified that there were crowds and traffic in front of the Queen City Lounge at varying hours of the day and night, which created situations whereby both pedestrians and automobiles could not pass freely. They indicated that there was an atmosphere of fear near the premises and that it was unsafe to traverse the area. Their testimony also indicated that the persons who congregated in front of the Queen City Lounge, or directly across the street, were loitering and engaging in activities that ranged from card playing, dice games, taunts and harrassment to more serious criminal behavior, such as narcotics offenses which sometimes resulted in arrests. These loiterers were not considered neighborhood residents by the witnesses.

Rev. Lattimore pointed out that sanitary conditions outside the Queen City Lounge were so poor that there had to be a clean-up each and every morning. He did indicate that conditions inside the bar were "all right". Fr. Lukenda spoke of having beer cans thrown at his car as he drove by the Lounge and he also testified that people on their way to Bingo at St. Mary's Church would walk all around the block to avoid the Lounge area or would lock their car doors if they were driving past.

Councilman Merritt, who passes the area every day on his way from his home to work, and who also has specifically observed the area as a result of citizens' complaints, conceded that not all of the social problems in the area, such as unemployment and narcotic abuse, were caused by the Queen City Lounge and its loiterers. Yet, he maintained that the bar attracted many persons who do participate in gambling, narcotics, fights, prostitution, harrassment and assaults with greater frequency than in other areas of the City of Plainfield. He was a thoughtful and credible witness representing community sentiment.

Executive Director Turpin clearly indicated that the loitering problem only existed in front of and directly across the street from the Queen City Lounge but not on the other corners of West End Gardens. The problem was so bad in the delineated area that the driveway from Liberty Street into the project had to be closed. After the bar closed at night, he

received complaints that gamblers would gather in the inner court yard of the apartments to continue the gambling which had begun in front of the Queen City Lounge.

The above witnesses were earnest and sincere. They all testified that there was a great diminution of the aforementioned types of activities during periods when the Queen City Lounge had been closed. The area then became peaceful and the street was never blocked. It is relevant to note that problems similar to those described at the Queen City Lounge did not exist at Lou's Lounge, which was only one and one-half blocks distant from Queen City Lounge and also across the street from the Housing Project.

Officers Hummel, Whitaker, Carter and Taylor of the Plainfield Police Department also testified for the City. Their testimony was corroborative of the civilian witnesses, as well as of each other. They confirmed that there was loitering outside the lounge as well as directly across the street; that the loiterers engaged in drinking, narcotics traffic and gambling, among other things and that Lou's Lounge, nearby, was not the problem that the Queen City Lounge appeared to be. Officer Hummel had made many narcotics arrests inside and right outside of the Queen City Lounge. He also indicated that the Lounge had been used as an escape route, as a place to drop contraband, and as a place into which he had to chase people. Officer Taylor stated he had never seen a uniformed security guard patrolling the premises of Queen City Lounge after September 5, 1978.

Acting Chief, Captain Henry G. Cunninghame, testified that the Alcoholic Beverage Control Monthly Analyses, the Licensed Premises Observation Reports and the Monthly Reports of Activity for All Licensed Premises in the City of Plainfield, marked R-4 through R-23 in evidence, and dating from October 1978 through July 1979, led him to believe that the police had to make many more calls to the Queen City Lounge than to any other licensed premises in the City of Plainfield. Captain Cunninghame conceded that not every call that was designated as Queen City Lounge was directly attributable to the tavern. R-4 through R-23 also confirmed the fact that there had been no uniformed security guard present on the premises since September 5, 1978. It was his professional opinion that there would be much less criminal and nuisance activity on the corner of Liberty and West Fourth Street of Plainfield if the Queen City Lounge, a "drawing card", was closed; notwithstanding whether or not a uniformed guard was present.

The licensee-Appellant, Clarence T. Jones, owner of Queen City Lounge, testified in his own behalf. He conceded that there had been no uniformed guard on duty since September 5, 1978. In his defense, he outlined the lengths to which he had gone to obtain such a uniformed guard in order to conform to the order of the Alcoholic Beverage Control Com. of April 10, 1978. This included contacting various security agencies, getting his attorney to write letters to security firms, contacting the City and the Alcoholic Beverage Control Commission, and writing

to security agencies listed in the telephone book. He indicated he had received letters from some security agencies telling him that they were not interested in servicing his account. Counsel for Mr. Jones represented that such letters would be offered in evidence; but the offer did not materialize. Mr. Jones testified that he asked for an off-duty policeman to guard his premises, but the Plainfield Police Department would not comply with that request.

Mr. Jones insisted that his bar was a neighborhood tavern, serving local residents, and did not cause any nuisance problems. He indicated there were no problems in the bar, as described above, which he or his employees could not handle. He also said that in the past year he had only called the police twice for help, but that they had not been cooperative in regard to the larcenies which he reported. Jones never moved to have the Alcoholic Beverage Control Commission rescind its order for a uniformed guard.

Mr. Jones is a businessman, clearly anxious to protect his investment, who did try, at one time, to comply with the Order of the Alcoholic Beverage Control Commission. The witnesses who were presented by the City were credible, sincere, honest and striving to be fair in their testimony. After having observed all of the witnesses for both sides and having considered the entire record, including the testimony and exhibits submitted in evidence, together with the arguments of counsel, the Court makes the following findings of fact:

1. An order of the Alcoholic Beverage Control Commission was in effect from April 1, 1978 requiring that a condition of the Plenary Consumption License of Queen City Lounge be that the licensee provide a uniformed professional security guard from 7:00 p.m. until closing time.
2. There was no such uniformed professional security guard on duty after September 5, 1978 until the end of July, 1979.
3. The licensee did make some good faith efforts in 1978 to obtain such a uniformed professional guard.
4. When he could not obtain such a professional security guard, he, nevertheless, continued to operate his bar.
5. The licensee never filed a formal petition for rescission of the above Ordernor was any other application made to the Alcoholic Beverage Control Com. fo modify the Order requiring a guard.
6. The licensee has already received a ten day suspension for failure to have a uniformed professional security guard.
7. The witnesses on behalf of the City had direct and personal knowledge of the area and conditions surrounding the Queen City Lounge.

8. The Queen City Lounge is frequented by persons other than those who reside in the neighborhood where it is located.

9. During the period from August, 1978 through July, 1979 loiterers were present in great numbers, at all hours of the day and night, in front of the Queen City Lounge and on the opposite corner.

10. Pedestrians and drivers of passing automobiles had to fear for their safety when going through the aforementioned area.

11. Said loiterers have engaged in gambling, drinking, harassment, narcotics and other nuisance and criminal activities and offenses.

12. The presence of said loiterers has caused the closing of the Liberty Street driveway into the nearby housing project, West End Gardens.

13. The City of Plainfield has a major problem with narcotics in the area of the Queen City Lounge.

14. The Plainfield Police Department has made a good faith effort to investigate and alleviate the above problems.

15. The Plainfield Police Department has many more calls to the area of Queen City Lounge than to any other licensed premises in the City of Plainfield.

16. Not every call made to the immediate area of Queen City Lounge is of a criminal nature, or the direct result of activity inside the Lounge.

17. Another tavern, Lou's Lounge, located very close to the Queen City Lounge, has not had problems similar to those of the Queen City Lounge.

18. When the Queen City Lounge was closed, for suspension or any other reason, the area was peaceful, the number of loiterers was greatly diminished, and the street was not blocked.

19. The Queen City Lounge is a drawing card for persons who congregate and loiter outside the tavern and directly across the street, and who engage in various sorts of criminal, quasi-criminal and nuisance activities.

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

was erroneous rests entirely with Appellant. N.J.A.C. 13:2-17.6, Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957), Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). The decision of the City Council should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion, or unwarranted finding of fact, or mistake of law, by the Council. (See Nordco, supra.)

It is clear that the responsibility of a licensee to maintain its premises in an orderly and lawful fashion includes not only the conduct of the licensee, but also conditions not directly attributable to its conduct, but which conditions would render continuance of a tavern in a particular location something that is against the public interest. See Nordco, supra and Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control, 55 N.J. 292, 1970. The licensee is responsible for conditions both inside and outside his licensed premises that are caused by the patrons thereof.

It is also clear that a licensing authority such as the City Council has the right to exercise discretion to determine what, in light of all the surrounding circumstances and conditions, is good for the City of Plainfield.

I therefore conclude that there is substantial evidence in the record before me to support and justify the decision of the Common Council of the City of Plainfield, acting in a reasonable exercise of its discretion, to revoke the Plenary Retail Consumption License #2012-33-025-001 of Queen City Lounge, 400 Liberty Street, Plainfield, New Jersey.

2. APPELLATE DECISIONS - ODOM v. PATERSON.

#4330

RUBY ODOM,

Appellant,

v.

BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF PATERSON,

Respondent.

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ON APPEAL
CONCLUSIONS
AND ORDER

Robert I. Goodman, Esq., Attorney for Appellant.
Ralph L. DeLuccia, Jr., Esq., Attorney for Respondent.

Initial Decision Below

Hon. Jack Berman, Administrative Law Judge,

Dated: September 12, 1979 - Received: September 18, 1979

BY THE DIRECTOR:

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

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits and the Initial Decision, I concur in the specified findings of the Administrative Law Judge and adopt his conclusions therein.

Accordingly, it is, on this 1st 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 the same is hereby dismissed.

Joseph H. Lerner
Director

Appendix - Initial Decision Below

IN THE MATTER OF:)
)
 RUBY ODOM vs.)
 BOARD OF ALCOHOLIC BEVERAGE)
 CONTROL, CITY OF PATERSON)

INITIAL DECISION

O.A.L. DKT. # A.B.C. 1561-79

APPEARANCES:

Ralph DeLuccia, Esq., for the Respondent,
 Board of Alcoholic Beverage Control,
 City of Paterson

Sylvan G. Rothenberg, Esq., and

Robert Goodman, Esq., for the Applicant,
 Ruby Odom

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

On March 28, 1979, the Board of Alcoholic Beverage Control (Board) passed a resolution denying the place-to-place transfer of Plenary Retail Consumption License #1608-33-043-003, issued to Cabin of Joy, Inc., t/a Cabin of Joy, 205-12th Avenue, Paterson, New Jersey to Ruby Odom, (Appellant), t/a Hogan's Bar for premises situated at 130-132 Governor Street, Paterson, New Jersey for the following reasons:

1. "...the proposed new location of this transfer would result in the license being situated within 250 (two hundred fifty) feet of three (3) churches in that community";
2. "...the Department of Community Development of the City of Paterson has embarked on a program of family housing development in the immediate vicinity of the proposed transfer and future plans for that area will include substantial rehabilitation of existing housing";
3. "...the operation of a tavern on the proposed site would be inconsistent with such housing development";

4. "...there is no need for another tavern in the area and to grant such transfer would not be in the best interest of the citizens in that community, or in the best interest of the City of Paterson".

On April 20, 1979, the appellant filed a notice and Petition of Appeal with the Division of Alcoholic Beverage Control (Division), pursuant to N.J.A.C. 13:2-17.1, seeking to have the resolution of the Board overruled.

In its Petition of Appeal, appellant contends that facts adduced at the Board's hearing indicated that appellant was within the footage requirements as established by the City of Paterson, that at the time of the hearing, there were no objections that were made known to appellant's application for place-to-place transfer and no footage requirements were offered by the City to contradict appellant's measurements and that the appellant was summarily denied the transfer without any evidence whatsoever being offered in opposition to her application.

A hearing de novo was held on August 14, 1979 and August 21, 1979 pursuant to the provisions of N.J.S.A. 52:14F-1 et seq. At the hearing the parties stipulated that no claim of violation of any New Jersey Statute or Regulations promulgated by the Division of Alcoholic Beverage Control or local ordinances adopted by the City of Paterson regarding footage requirements would occur at the proposed site if a place-to-place transfer were granted to appellant. Nonetheless the Board asserts that the close proximity of the proposed site of transfer would have to churches and schools in the area is a factor that the Board did take into consideration in its determination to deny appellant's place-to-place application.

The sole issue stipulated to by the parties for the Court to determine was whether the resolution of denial of the Board is reasonably supported by the record.

The Board's attorney represented to the Court that the transcribed notes of the stenographer who had attended the Board's meeting of March 28, 1979 had been destroyed by the stenographer before a transcript was prepared and consequently he was unable to introduce the transcript of those proceedings.

The Board offered three (3) witnesses at the hearing before the Court and through one of them, the Secretary of the Board, introduced into evidence the Board's resolution of March 28, 1979, the minutes of that meeting and correspondences furnished the Board at that meeting.

The first witness for the Board was Ronald Martinides, a Deputy Director of the Department of Community Development of the City of Paterson and established to the satisfaction of the Court his expertise as a licensed New Jersey municipal planner.

Although Mr. Martinides did not appear at the Board's hearing, he was allowed to testify in this proceeding as all appeals are heard de novo, N.J.A.C. 13:2-17.6. He stated that the proposed site was in an area that the Department of Community Development of the City of Paterson had embarked on a program of family housing development. Future plans for that area included substantial rehabilitation of existing housing. He stated that the operation of a licensed liquor premises would be incompatible with such housing development. He stated that he worked on the development of the redevelopment plan since 1970. The area was designated by the City of Paterson as a blight area and the proposed site is at the heart of the core area of rehabilitation. The area, he stated, is one of a low rise medium density and that the Redevelopment Plans calls for (1) new housing where land is available and (2) to deal with the rehabilitation of existing structures for residential use. He stated that the plan had been submitted to the Federal Department of Housing and Urban Development for mortgage assistance and other subsidies and that the plan is complete except for financing. The State of New Jersey has also partly financed the rehabilitation plan. Under the rehabilitation plan the proposed site is zoned as R-3 medium to low residential zone (2-3 storie buildings) and no commercial use is permitted within that zone. He stated that in his capacity as Deputy Director of Community Development and as a licensed professional planner the reasons the department opposed appellant's transfer application was because of the redevelopment plan, the zoning ordinance, the family nature of the residential buildings in that area and that a liquor licensed premise would bring additional traffic problems into the area. He stated that the St. Augustine Church Multi-Purpose Center located on Governor Street approximately one block from the subject property, provides through a government grant social services to families (in counselling for youngsters, family programs) where housing such as that sponsored by non-profit community organizations such as United and INCCA in the form of a new eighty-eight (88) unit development and rehabilitated housing has occurred which in fact is the justification upon which the multi-purpose center was funded. He also stated that there is no existing off-street parking facilities on Governor Street and consequently a tavern there would increase the traffic and would create a safety hazard for children.

A second Church in the neighborhood, the Church of Love, through its Pastor has submitted to his department a plan to expand his church to provide parking and has also indicated a potential private school site which plans have been incorporated into the Rehabilitation Plan of his department.

He testified that a least one (1) tavern had been acquired by the City under the redevelopment plan and was demolished because its use would have been incompatible with the Department's plan of rehabilitation.

The Board's second witness was Kathleen Gibson, who is secretary to the Board. Through her, various correspondence received by the Board from organizations located in the area of

the proposed site, objecting to the application, was introduced into evidence including (1) a letter from Gary L. Hutton, Clerk of Session of St. Augustine Presbyterian Church citing no need for additional saloons in the area, the present extreme parking shortage, the unhealthy atmosphere for the neighborhood which would set a poor image for the youth of the community directly contrasting to the aims, purpose and functions of the St. Augustine Presbyterian Church Multi-Purpose Center as funded by the City of Paterson under the Department of Human Resources, and that the overall effect the saloon would have on the community would be an increased level of disturbance and noise from patrons and their vehicles, strangers to the community entering and exiting at will, causing a feeling of mistrust, fear and suspect by the community, drug peddling, increased crime/vandalism, prostitution, and gambling, (2) a letter from George Evans Engineering Division of the Department of Public Works of the City of Paterson which sets forth the measurements made of the following Churches from 130-132 Governor Street (the proposed site):

- a) St. Augustine Presbyterian Church - distance 351 feet.
- b) Community Baptist Church of Love - distance 254 feet.
- c) St. Lukes Church - distance 1,620 feet.

The respondent's third and final witness was Vera McCants, president of INCCA Housing (Inner City Christian Action for Housing) and who had lived two and one half ($2\frac{1}{2}$) blocks from the proposed site for twenty-five (25) years. She stated that INCCA took a position opposing the transfer as it would not be compatible to the attempts INCCA had been making to improve the neighborhood. She stated that INCCA has constructed an eighty-eight (88) unit family housing for low and moderate income which is located one half ($1/2$) block from the proposed site. INCCA has expended \$6 million for the building of this project. Presently she is aware of drugs, gambling and prostitution in the area and has called the police to assist her to remove these types of elements from the area. INCCA is in the process now of building another one hundred and fifty-nine (159) units a couple of blocks from the proposed site. In the past (1972) a bar located about one half ($1/2$) block from the proposed site had attracted a lot of men (20-30) hanging and milling around the outside of the bar creating a disturbance in the neighborhood.

Hogan's Bar, a predecessor bar at the proposed site, was allegedly used as a place to run numbers. It was, according to Ms. McCants, a rowdy place where people were drunk and used vulgar language. INCCA is affiliated and associated with St. Augustine Presbyterian Church, the Church of Love and St. Lukes Church whose hierarchy and parishioners members partake in the discussions and policy decisions and planning of INCCA.

The appellant's sole witness was Ruby Odom, who testified that she is the appellant and had formerly owned a restaurant next door to the proposed site for one and one half (1½) year serving neighborhood people and others as well as employees of local industries and storeowners in the area. She stated that the attitude of people in the neighborhood, was "everybody is very anxious for the bar to open" and that if she would be given the opportunity to have a liquor license she would run a highly respectable restaurant with liquor. She stated that Hogan's bar was a family bar where community activities had occurred.

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

1. On March 28, 1979 the Board adopted a resolution denying an application by the appellant for a place-to-place transfer of Plenary Retail Consumption License No. 1608-33-043-003 from premises located at 205 12th Avenue, Paterson, New Jersey to premises at 130-132 Governor Street, Paterson, New Jersey. Public hearing had been held on March 28, 1979.
2. The area in which the proposed site is located has been declared a "blighted" area by the City of Paterson.
3. A redevelopment plan has been developed for the area in which the proposed site is located by the Department of Community Development of the City of Paterson to eliminate that "blight".
4. The Redevelopment Plan has been submitted to the Federal Department of Housing and Urban Development to provide mortgage assistance and other subsidies to restore all those buildings which goes up to the subject property at 130-132 Governor Street, Paterson, New Jersey.
5. Two (2) churches are located within three hundred and fifty (350) feet of the subject property.
6. A store that would dispense alcoholic beverages at the subject premises would not be compatible with the rehabilitation plan of the city of Paterson.
7. Two (2) non-profit community organizations Unity and INCCA have sponsored and developed recent rehabilitated family housing and new family housing dwellings.
8. St. Augustine Church Multi-Purpose Center located near the subject premises provides social services to families in the area through Government grants.

9. There are no existing off street parking facilities on Governor Street.
10. A liquor licensed premises at the subject property would not be compatible with the attempts of civic organizations to improve the neighborhood.

The responsibility for the administration and enforcement of the alcoholic beverage laws relating to the place-to-place transfer of a liquor license is primarily designated to municipal authorities, N.J.S.A. 33:1-19,24. The purpose of this is that the local board "may be assumed to have a more intimate awareness of the needs and interests of the neighborhood" Lyons Farm Tavern v. Municipal Board of Alcoholic Beverage Control of the City of Newark. In Lyons, Supra, the court expounded the view set forth in Borough of Fanwood v. Rocco, 33 N.J. 404 (1960) that public sentiment may be taken into account in the review of a transfer application. In fact, the court went on to state that the local authorities would be remiss in their duty if they failed to give serious consideration to such sentiment. Lyons, Supra.

In concluding that much reliance must be placed upon local action if the legislative purpose behind the alcoholic beverage law is to be effectuated, the court in Lyons Farms, Supra at p303 held that once the municipality has decided to grant or deny an application:

"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."

There is an absence of evidence before this Court to indicate that the granting of the transfer application by the Board was an arbitrary, unreasonable or abusive exercise of its discretion.

Therefore, the COURT CONCLUDES:

1. The determination of the Board was reasonably supported by the record and there is no evidence of any abuse or unreasonable or arbitrary exercise of its discretion. The appellant has not met the burden of establishing that the decision of the Board should be reversed N.J.S.A. 13:2-17.6.
2. The resolution of the Board denying the transfer application of appellant was a reasonable exercise of its discretion and should not be altered.

Therefore, the appeal as presented by the appellant is HEREBY DISMISSED.

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 its Initial Decision in this matter and the record in these proceedings.

DATE

JACK BERMAN, A.L.J.

Receipt acknowledged:

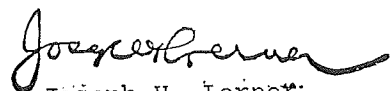
DATE

AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW


Joseph H. Lerner
Director