STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX, CN-087
TRENTON, NJ 08625

BULLETIN 2432 AUGUST 31, 1983

TABLE OF CONTENTS

ITEM

1. NEW REGULATION: N.J.A.C. 13:2-24.11 - MANUFACTURERS' REBATES AND COUPONS - TEXT OF REGULATION AND INSTRUCTIONS FOR COMPLIANCE.

2. NOTICE REGARDING ADVERTISEMENT AND CONTENTS OF MANUFACTURERS' REBATE PROGRAMS - RETAILER ADVERTISEMENT BASICALLY PROHIBITED - REBATE OR REFUND LIMITED TO PURCHASE OF A SINGLE ALCOHOLIC BEVERAGE PRODUCT - FURTHER PROPOSED AMENDMENTS DISCUSSED.

3. OPINION LETTER: INTERPRETATION OF NEW JERSEY TIED HOUSE STATUTE, N.J.S.A. 33:1-43 - ACQUISITION OF AN INTEREST IN A RETAIL LICENSE BY A SUBSIDIARY OF A MULTINATIONAL CORPORATE CONGLOMERATE WHOSE PARENT CORPORATION HAS INTERESTS IN WHOLESALE AND MANUFACTURER'S LICENSES IN OTHER STATES AND OUTSIDE THE UNITED STATES.

4. OPINION LETTER: INTERPRETATION OF THE TERM "ACTIVELY USED" AS CONTAINED IN THE NEW JERSEY POCKET LICENSE STATUTE, N.J.S.A. 33:1-12.39.

5. NOTICE REGARDING USE OF "REGULAR PRICE" OR SIMILAR WORDS IN ADVERTISING BY RETAIL LICENSEES (N.J.A.C. 13:2-24.10(a)1).

6. NOTICE TO SUBSCRIBERS OF DIVISION BULLETINS - AVAILABILITY OF INDICES.

7. APPELLATE DECISION: THE ILLIAD AND ODYSSEY INC. v. NORTHVALE, (IMPOSITION OF SPECIAL CONDITION AT TIME OF TRANSFER APPROVAL CONCERNING DISCOTHEQUE USAGE SUBJECT TO ZONING BOARD VARIANCE IS AFFIRMED).

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX, CN-087
TRENTON, NJ 08625

BULLETIN 2432 AUGUST 31, 1983

1. NEW REGULATION: N.J.A.C. 13:2-24.11 - MANUFACTURERS' REBATES AND COUPONS TEXT OF REGULATION AND INSTRUCTIONS FOR COMPLIANCE

The Director has adopted a new regulation cited as N.J.A.C. 13:2-24.11, which permits and regulates the use of manufacturers' refunds or rebates to be offered directly to New Jersey residents and redeemed for cash or check only by such manufacturer, distiller, blender and rectifier, brewer, vintner or importer. Retail licensees will not be permitted to redeem the refund or rebate coupons. The new regulation's proposal appeared in the June 20, 1983 New Jersey Register (15 N.J.R. 1004). Following the requisite comment period, the Director adopted the new regulation, with minor technical changes, on August 4, 1983. It was filed with the Office of Administrative Law on August 15, 1983, and it will be effective upon promulgation by publication in the New Jersey Register, expected to be on September 6, 1983. Summary of comments received and responses will appear with the notice of adoption.

The full text of N.J.A.C. 13:2-24.11, as adopted and to be effective on promulgation, is as follows:

N.J.A.C. 13:2-24.11 Manufacturers' rebates and coupons

(a) Subject to the provisions of this section, a manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of alcoholic beverages directly to consumers for the purpose of introducing or re-introducing consumers to its product(s) or for advertising, promotion, or market-testing purposes.

1. No such rebate may be for more than the full amount of the retail purchase price of the alcoholic beverage. In addition, the reimbursement of first-class postage to the consumer for the cost of mailing in the rebate offer for redemption is permitted.

2. Any such rebate offer shall require a form, with all the terms and conditions of the rebate offer clearly stated thereon, to be completed and mailed by a consumer who must be of legal age to purchase alcoholic beverages. A proof-of-purchase may also be required to be submitted with the form. Such forms shall be distributed to consumers via advertisements in newspapers, magazines, or circulars of general distribution; by general address mailings; by point-of-sale tear-off pads on retail licensed premises; or by neck-hangers on bottles; provided that such pads or neck-hangers shall be non-discriminatorily distributed to licensees within a targeted advertising area. Nothing shall prohibit the directing of a rebate offer to a specific geographic area, but rebates shall be made to any New Jersey resident complying with the terms of the offer, whether or not they shall reside in the targeted advertising area.

3. Any rebate offered in accordance with this section shall be mailed to the consumer completing the form at the address shown thereon in the form of cash or check only.

4. At least ten days prior to the commencement of any rebate promotion offered in accordance with this section, the manufacturer, distiller, blender and rectifier, brewer, vintner, or importer making such rebate offer shall file in duplicate with the Director of the Division of Alcoholic Beverage Control a statement setting forth all terms and conditions of the rebate offer, including, but not limited to, the amount of rebate, any proof-of-purchase requirement, the effective dates of the offer, the marketing area in which the offer will be promoted, how the offer will be advertised to the public and the name and address of any clearinghouse retained to process rebates. A facsimile or copy of the rebate offer form shall also be filed in duplicate. The Division shall promptly be notified of any change in the terms of a rebate offer prior to such change's taking place.

(b) No manufactuer, distiller, blender and rectifier, brewer, vintner, importer, wholesaler or distributor shall provide or distribute by any means whatsoever any coupon or certificate redeemable for a discount on or "cents-off" the purchase price of any alcoholic beverage by a consumer at any retail licensed premises, nor shall any retail licensee redeem any such coupon or certificate.

Attention is directed to the changes from the proposal. All the changes are in paragraph (a)4 and include the requirement for duplicate filing of both the terms of the rebate offer and the rebate form itself (or a facsimile), and the inclusion of a description of how the offer will be advertised to the public.

All filings of proposed rebate programs, which shall be submitted in duplicate at least 10 days prior to the effective date of the program, should be sent to the following address:

Trade Practices Bureau (Rebate Filing)
Division of Alcoholic Beverage Control
CN-087
Trenton, NJ 08625

Forms for filing have been prepared and may be obtained from the Trade Practices Bureau upon request. Although use of the form is not mandatory, the Division would prefer it to be used. The content of the form is as follows:

ABC FILE NO.
RR_____

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
CN - 087, Trenton, NJ 08625

FOR ABC USE ONLY
Date Received_____

REBATE/REFUND OFFER INFORMATION

TO BE COMPLETED BY MANUFACTURER, DISTILLER, RECTIFIER/BLENDER, BREWER, VINTNER, OR IMPORTER OFFERING REBATE.

1. Name and Address of Entity offering rebate

   Name_____

   Address_____

   Telephone No. (Area Code)_____ NJ License No._____
   (Indicate "none" if not a NJ Licensee)

2. Person to contact regarding rebate program_____

   Telephone No. (Area Code)_____

3. Name(s) of Product(s) included in rebate program.

   Name_____ Type_____ Sizes_____

   Name_____ Type_____ Sizes_____

4. Is this Brand currently registered in the State of New Jersey (according to N.J.A.C. 13:2-33.1)? _____Yes _____No

   If yes, give name of Registrant_____

   License No. of Registrant_____(If none, indicate "none")

5. Effective dates of rebate program

   Commencement Date_____ Expiration Date_____

6. Indicate how rebate offer will be advertised to the public.

   _____

   _____

7. Terms and Conditions of rebate offer

   (a) Amount of rebate_____

   (b) Proof of Purchase required? _____Yes _____No

   (c) Marketing area_____
   (Describe in detail)

8. Clearing House which will process rebates

   Name_____

   Address_____

NOTES:

(1) This form is to be filed in Duplicate. Each copy is to be accompanied by Form(s) to be used in the rebate offer.

(2) If reply is desired, file in Triplicate and include self-addressed, postage-affixed envelope.

The Division will maintain a book of rebate offer filings for public or industry inspection during normal business hours.

When the duplicate filing of a proposed rebate or refund program is made, no reply or acknowledgement will be furnished unless a third copy is also supplied together with a return envelope with address and postage affixed.

If anything in the filing does not comply with N.J.A.C. 13:2-24.11, or is violative of any other regulation or law, the Division will make every effort to advise the filing supplier, but failure to do so shall not be deemed acquiescence in the violative portion of the filing or rebate program.

Conduct of a rebate or refund program without filing the terms and details of the offer with the Division at least ten days before its commencement will be deemed a violation of N.J.A.C. 13:2-24.11 and will subject the violator to disciplinary proceedings. In the case of a supplier not licensed in New Jersey pursuant to N.J.S.A. 33:1-10 or N.J.S.A. 33:1-11, an order may issue ordering the supplier to show cause why the brand registration for the product involved should not be revoked or suspended, thereby rendering the product ineligible for sale in New Jersey; or why an order should not issue barring New Jersey wholesale and retail licensees from doing business with such supplier and from dealing in one or more of such supplier's products.

Any questions regarding N.J.A.C. 13:2-24.11 may be addressed to the Trade Practices Bureau of the Division.

No filing will be accepted until promulgation of the adoption in the New Jersey Register (expected September 6, 1983). Therefore, no rebate or refund program may commence until at least 10 days after the promulgation of the adoption of N.J.A.C. 13:2-24.11.

It should be noted that manufacturers' rebates or refunds may be only in the form of cash or check. Merchandise may not be offered if a proof-of-purchase is required. Merchandise, however, may continue to be sold by mail, provided no proof-of-purchase is required and there is no requirement for purchase of or inducement to purchase an alcoholic beverage.

2. NOTICE REGARDING ADVERTISEMENT AND CONTENTS OF MANUFACTURERS' REBATE PROGRAMS - RETAILER ADVERTISEMENT BASICALLY PROHIBITED - REBATE OR REFUND LIMITED TO PURCHASE OF A SINGLE ALCOHOLIC BEVERAGE PRODUCT - FURTHER PROPOSED AMENDMENTS DISCUSSED

After publication of the notice to permit manufacturers' rebate or refund coupons, inquiries concerning contemplated program offerings have raised issues which most appropriately should be addressed at this time.

Initially, the ability of a retail licensee to advertise manufacturers' rebate offers is limited. An advertisement by a retail licensee which lists the purchase price of the product (Our Price $5.99), then notes a manufacturer's rebate (Less $1.00 Rebate) and then subtracts to create an alleged net price (Your Cost $4.99) is not permitted. The purchase price to the consumer in the above example is $5.99 and the retail licensee can only advertise that price under N.J.A.C. 13:2-24.10. Whether or not a consumer can obtain the manufacturer's rebate is conditioned upon factors which the retailer cannot control; such as, satisfaction of all conditions of the rebate offer, consumer utilization of coupon, expiration of program, etc. Thus, this type of retailer advertisement or any variation thereof which juxtaposes a retailer's price for a product with the cash amount of a manufacturers' rebate and then concludes or represents a "net" cost to the consumer is prohibited because it could be false or misleading.

A retailer may, however, advertise the existance of manufacturer's refund offers in general terms. For example, a retailer could list in an advertisement that cash rebates from manufacturers may be available on specified products.

Manufacturers and suppliers should note this advertising limitation in the preparation of in-store merchandising to be distributed to retail licensees in this State.

With respect to the contents of a rebate program, manufacturers cannot condition the availability of a rebate upon the purchase of more than one alcoholic beverage product. One alcoholic beverage product for distilled spirits and wines means one bottle or one distillers or vintners holiday or gift merchandise package prepacked as a unit; while for malt alcoholic beverages that means one package, whether it is a prepacked container of 6, 8, 12 or 24 cans or bottles. A rebate program which offers a $1.00 refund upon the purchase of either one 1.5 liter bottle of a product or two 7.50 ml. bottles of the same product is prohibited. The offering of something of value conditioned upon the purchase of more than one alcoholic beverage product violates N.J.A.C. 13:2-23.16(a)(2). Any rebate program which offers an enhanced refund (e.g. $1.00 refund on proof of purchase of one bottle - $3.00 refund on proof of purchase of two bottles) is also prohibited under the same regulation.

Additionally, the requirement for or inducement of multiple product purchases by consumers to obtain or enhance a manufacturers' refund is inconsistent with the theory behind the Division's determination to permit such programs. Rebate programs are permitted to allow product suppliers to introduce or re-introduce a product to a consumer for advertising, promotion or marketing purposes. This objective is achieved upon the sale of one product. Multiple purchase requirements or inducements reflects an objective of enhanced sales volume which is not the purpose of N.J.A.C. 13:2-24.11.

A final area of comment will address the issue whether a rebate program can provide more than one redemption per household or family. While the regulation is currently silent on this issue, the Division does intend to amend N.J.A.C. 13:2-24.11 to limit rebate redemptions to one per household or family at a given address. As previously noted, the single purchase by a family or household will achieve the introduction, or reintroduction, purposes of a rebate program. Multiple redemptions would only foster a sales volume objective of the supplier.

It is strongly recommended that any refund program submitted at the present time contain the one rebate limitation to avoid difficulties when such restriction becomes part of the regulation in the near future.

3. OPINION LETTER: INTERPRETATION OF NEW JERSEY TIED HOUSE STATUTE, N.J.S.A. 33:1-43 - ACQUISITION OF AN INTEREST IN A RETAIL LICENSE BY A SUBSIDIARY OF A MULTINATIONAL CORPORATE CONGLOMERATE WHOSE PARENT CORPORATION HAS INTERESTS IN WHOLESALE AND MANUFACTURER'S LICENSES IN OTHER STATES AND OUTSIDE THE UNITED STATES.

The following reply acknowledges the permissibility of Stouffer Corporation's acquisition of an interest in a plenary retail consumption license in Princeton Borough, New Jersey subject to various conditions to insure the integrity of and compliance with the intent and spirit of New Jersey's Tied House Statute, N.J.S.A. 33:1-43.

For a full understanding of the opinion, the business relationship of the parties incorporated by reference in the opinion letter are further detailed. Stouffer Corporation, an Ohio corporation, is a wholly owned subsidiary of Nestle Enterprises, Inc. (NEI), a Connecticut corporation headquartered in New York. NEI itself is a wholly owned subsidiary of Nestle, S.A. (Nestle), a Swiss corporation publically traded in Europe and headquartered in Switzerland. Nestle has interests in wineries in West Germany and California and wholesale licenses of Maryland and Delaware corporations through stockholdings by subsidiaries other than Stouffer Corporation. Stouffer Corporation and its subsidiaries are licensed to sell alcoholic beverages at retail in twenty-three states.

It should also be noted that the final conditions of approval incorporate and expand the "five stipulations" referenced in the second paragraph of the opinion letter and need not be repeated.

The reply follows:

Re: The Stouffer Corporation--Borough of Princeton

I am in receipt of your letter of July 27, 1983 raising the question as to whether the application of The Stouffer Corporation for a Plenary Retail Consumption License in the Borough of Princeton will violate the New Jersey "tied-house" statute, N.J.S.A. 33:1-43, in view of the interest which Stouffer's parent corporation, Nestle, S.A., has in St. Ursula, G.N.B.H., and in Wine World, Inc., and A.C. Wines, Inc. I will not repeat the specific details of the relationships as they are adequately outlined in your letter of July 27, 1983.

Also in your letter, you propose that there will be certain stipulations, and I will also not refer to them in detail here, but those five stipulations and representations will also be included.

On its face, N.J.S.A. 33:1-43, appears very restrictive in that it precludes any manufacturer or supplier from being interested "directly or indirectly. . . in the retailing of any alcoholic beverages." The legislative intent of this section must be examined, however, and it must also be read in light of N.J.S.A. 33:1-39, which provides, in pertinent part:

> "The commissioner (director) may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter. . ."

It thus appears that a fair and impartial look must be taken at the words of N.J.S.A. 33:1-43 to decide just what is meant by the prohibition of any interest, direct or indirect, in the retailing of any alcoholic beverages.

The legislative intent behind N.J.S.A. 33:1-43 is explained in Grand Union v. Sills, 43 N.J. 390 (1964), where, at page 407, the Supreme Court said that "The statutory provisions against the tied-house system were designed to prevent brewers, distillers and wholesalers from owning or controlling retailers. . . But the dominating consideration was social rather than economic and the tied-house system with its sales stimulating incidents was viewed as anti-social." The Court was referring to the "tied-house" system wherein it was the manufacturers' object to stimulate and promote sales of alcoholic beverages by owning/operating the retail outlets. The statute outlawed this so as to "reduce the volume of sales and tend to promote temperance rather than intemperance." Grand Union v. Sills, supra, at 407.

Given the proposal by Stouffer, there certainly can be no attempt on its part to stimulate the retail sales of Nestle's subsidiaries' wineries. The relationship is rather the outgrowth of the late 20th century economics, wherein corporate mergers and acquisitions are common and a fact-of-life. That it is not intended to further the growth and sales of Nestle's alcoholic beverage products is assured by the prohibition in the approval of the proposal against sales of any of its own products in any of Stouffer's licensed premises. And, pursuant to the authority in N.J.S.A. 33:1-39 quoted above, I make a finding in that regard.

Even with this finding, there is still the language of N.J.S.A. 33:1-43 which must be explained. That subject is also addressed in Grand Union v. Sills, supra, at page 409, wherein the Supreme Court pointed out that the phrase "directly or indirectly interested," which is the same phrase used in the

"tied-house" prohibition in N.J.S.A. 33:1-43, "was intended to include ownership interests in the broad or equitable sense rather than in the narrow or technical sense." Borrowing from this interpretation, the adjoining language in the statute, "in the retailing of any alcoholic beverages," must also be interpreted in the broad or equitable sense. I find that the equitable sense of these two phrases taken together compel an interpretation that, although the statute would preclude any interest having the incidents of ownership or control over the retailing, it only applies when the retailing of alcoholic beverages includes those goods produced or distributed by the brewer, vintner, distiller, rectifier and blender, or wholesaler involved. To conclude otherwise, in light of the purpose of the statute discussed above, makes no sense.

The conclusion reached herein that the Division can basically approve the proposal set forth in Mr. O'Brien's letter of July 22, 1983, is also not without precedent. On March 17, 1978, the General Counsel for the Casino Control Commission advised the Commission that it could grant a retail casino hotel alcoholic beverage license to Mecca Ltd., whose parent corporation also had similar, indirect interests in alcoholic beverage suppliers. That approval was conditioned on the licensee's not selling any alcoholic beverage products manufactured or distributed by the parent corporation or its subsidiaries. In his opinion, the General Counsel said, "The breadth of the prohibition expressed in N.J.S.A. 33:1-43, however, reaches far beyond the traditional evil perceived in the "tied-house" system. There is no apparent relationship between the prohibition, which precludes the manufacturer of one brand of alcoholic beverage from retailing other brands in which it possesses no interest, and the stated purpose of the alcoholic beverage law, which seeks to restrain unfair competitive practices in sales stimulations injurious to the public." I fully agree with that reasoning.

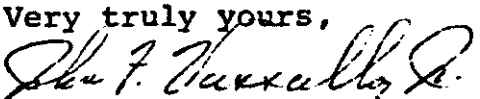
Also, on February 21, 1980, my predecessor, former Director Joseph H. Lerner, approved an acquisition proposal by Howard Johnson Company, a holder of 20 retail consumption licenses, by Imperial Group Ltd., which had subsidiary companies interested in the manufacturing or distribution of alcoholic beverages. On July 14, 1982, I approved an acquisition by Greenall Whitley Public Limited Company's subsidiary, Treadway Inn's corporation, and Treadway Inn of Princeton, Inc., to acquire and operate the plenary retail consumption license in the Treadway Inn of Princeton. On the following day, July 15, 1982, I also gave approval to a merger of interests by Intercontinental Hotels Corporation, the parent company of Grand Metropolitan Limited, which had alcoholic beverage manufacturing interests, and Scanticon International, Inc., which had an interest in the Scanticon-Princeton Executive Center. In all of these approvals, they were accomplished with restrictions against the retail sale by the retail licensee of any of the products manufactured or distributed, directly or indirectly, by the parent corporation or any of its subsidiaries.

It has also been brought to my attention that several of our sister states, with "tied-house" prohibition similar to New Jersey's, have approved the type of acquisition proposed by the Stouffer Corporation. This is certainly indicative of the proper intent of the prohibitions, which are very necessary ones, but which should not be overly restrictive of modern-day business. I feel that New Jersey should stand with our sister states in this regard, rather than alone with a too restrictive interpretation of the "tied-house" statute.

In conclusion, the proposal for the acquisition by the Stouffer Corporation of a plenary retail consumption license in the Borough of Princeton, as outlined in your letter of July 27, 1983, is approved and will not be considered violative of N.J.S.A. 33:1-43, provided that (1) Nestle S.A. and any subsidiary or related corporation or entity, or any corporation or entity in which it has a beneficial interest, shall not hold any class A or class B license in the State of New Jersey; (2) the Board of Directors of the Stouffer Corporation will be independent and separate from the board of directors of any of the alcoholic beverage subsidiaries of Nestle S.A., and there will not be any common directors or officers of those corporations, nor will any person outside the Stouffer Corporation and having any connection whatsoever with the alcoholic beverage subsidiaries of Nestle S.A., exercise any financial or management control over the alcoholic beverage operations of the Stouffer Corporation in its Princeton Borough License, or in any other retail consumption license it holds within the State of New Jersey; and (3) the Stouffer Corporation shall not sell or serve at its licensed premises in the Borough of Princeton, or at any other licensed premises within the State of New Jersey, any alcoholic beverage products manufactured or distributed, directly or indirectly, by St. Ursula, G.N.B.H., The Nestle Company, Inc., Alexander Cairns & Sons Ltd., A.C. Wines, Inc., or Wine World, Inc., or any other subsidiary corporation of Nestle S.A., or any other corporation in which Nestle S.A. , or its subsidiaries has a beneficial interest, or any affiliate of any of the said corporate entities.

I trust that this will adequately answer the inquiry set forth in your letter of July 27, 1983, but if there is any further question, please do not hesitate to contact me.

Very truly yours,



JOHN F. VASSALLO, JR.
DIRECTOR

4. OPINION LETTER: INTERPRETATION OF THE TERM "ACTIVELY USED" AS CONTAINED IN THE NEW JERSEY POCKET LICNESE STATUTE N.J.S.A. 33:1-12.39.

The Division recently received a formal request for a clarification of issues, one of which involved guidance as to the Division's interpretation of the term "actively used" as contained in N.J.S.A. 33:1-12.39. The following is the operative part of the response to the inquirer's request.

The statutory provision in question is, of course, N.J.S.A. 33:1-12.39. This provision prohibits issuing authorities from renewing any Class C license which has not been actively used within a period of 2 years prior to the commencement date of license period for which renewal was requested, without first receiving permission from the Director to authorize such renewal consideration. This provision does not define "actively used." It is clear that since this provision applies to all "C" licenses (which includes seasonal licenses), it is not necessary that every license be utilized 365 days a year. Nevertheless, to permit a licensee to open its premises one day per year and thereby interrupt the statutorily prescribed two-year period of inactivity would, I must suggest, certainly void the spirit and intent of this provision. Moreover, it would also be a severely constrained interpretation to consider such usage as constituting a license being "actively used."

It should be the purpose of this Division to insure that the legislative intent behind the meaning of the statute's words are reached by construing the phrase sensibly and in a manner to avoid anomalous or absurd results. Planned Parenthood vs. State, 75 N.J. 49 (1977), Monmouth County v. Wissel, 68 N.J. 35 (1975), Roman v. Sharper, 53 N.J. 338 (1979), State v. Gill, 47 N.J. 441 (1966). It is a well-settled rule for statutory construction that an interpretation of words is to be given according to the clear and plain meaning they ordinarily import. Mullen v. Board of Education of the Township of Jefferson, 81 N.J. Super. 151 (App. Div. 1963). In order to ascertain this plain meaning, the courts in New Jersey have looked to the dictionary. "Actively" is the adverbial form of the adjective "active." According to the American Heritage Dictionary of the English Language (1975 edition), "active" means: "1. in action; moving... 4. engaged in activity; contributing; participating... 5. In the state of action; not passive or quiescent; ... 6. characterized by energetic action or activity; busy." Certainly, the license's one-day use at any time out of a full year's period does not meet this meaning in any reasonable sense of the word.

Although each case must be decided on its own factual basis, suffice it to say that for the purposes of this statutory provision, we are looking for sufficient, active operations of a licensed premise, which would clearly exclude it from the requirements of the noted act. Meaningful full-time operation, with a present intent of the licensee to operate for an unlimited duration, is the standard to be utilized.

There is no magic formula consisting of a certain minimum number of days or hours of necessary operation. In fact, in some instances it is conceivable

that a one-day operation could be sufficient (i.e. ceasing operations on the first day of the license period, during which time activities cease by reason of a casualty; or beginning operations on the last day of the license period, after which activities continue in a meaningful, full-time operation, with a present intent to continue operations for an unlimited duration). Nevertheless, given the circumstances as you have suggested them, a mere one-day usage inconsistent with the above noted examples, does not exempt the licensee from the application of the statute's provision.

In response to your opening statement and the implied rhetorical question - how can licensees escape the requirements of this provision - the answer is simple, either licensees exempt themselves from the provisions of the law through meaningful full-time operation with a present intent to operate for an unlimited duration or licensees undertake and establish that good faith efforts to activate their licenses have been and are continuing to be made and utilize the procedures set forth to show good cause and thereby obtain authorization from the Director to permit further applications for renewal of inactive licenses.

(end of relevant part of reply)

5. NOTICE REGARDING USE OF "REGULAR PRICE" OR SIMILAR WORDS IN ADVERTISING BY RETAIL LICENSEES (N.J.A.C. 13:2-24.10(a)1)

N.J.A.C. 13:2-24.10(a)1 provides that no manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that is false or misleading.

It has come to the Division's attention that many retail licensees are indicating in advertising material, or on "in store" signs, that a product has a "regular price" in an amount that is shown and which is based upon the application of a "traditional mark-up" to the wholesale cost or other artifically created price, neither of which represents a price that the product was recently offered for sale at by the licensee. Contrasted to the "regular price" is the customer's current acquisition price of a lower amount.

It is the Division's position that a "regular price" listed in this manner is false and misleading, and is violative of N.J.A.C. 13:2-24.10(a)1. The only time it is permissible to use a "regular price" together with a reduced sale amount is when there is an actual reduction of that particular item for the purposes of a sale, clearance, or other advertising purpose that is permissible, and the product (the actual bottles involved) was actually once offered for sale at the higher price which is shown as the "regular price". Otherwise, nothing may be shown as a "regular price" as that implies a reduction whereas in reality there may not have been any, but rather the retailer is offering the product at a special price and there had been no previous higher price for that particular item.

For example, if bottles were originally priced at $4.99 and the retailer places them on a one-week sale, it is permissible to say "Regular Price $4.99, now $3.99" (provided the sale price is not below cost). If, however, a retailer decided to lower a price of a product based on a subsequent purchase at a lower wholesale acquisition cost, the newly acquired product must be priced without reference to a "regular price".

If there is such special pricing of a product due to lower acquisition costs, it is permissible to indicate that it is a special or exceptional value or words or phrases of a similar nature may be used.

Licensees are cautioned that if there is any question regarding this, they would be well advised to check with the Division prior to commencing the posting of a "regular price" or something of that nature.

6. NOTICE TO SUBSCRIBERS OF DIVISION BULLETINS - AVAILABILITY OF INDICES

We have received several requests from various subscribers who wish to obtain copies of the more recent indices which Division personnel have compiled for our internal uses over the past twenty-two years. Although these indices have not been compiled with an eye towards ultimate completeness, and there may be instances of either incorrect or incomplete citations, we also recognize that they may be the only indices available for potential review by bulletin users. Therefore, with the above referenced limitations duly noted and making no warranties nor representations concerning the completeness or accuracy of these indices, we will make them available for purchase by subscribers in order to assist in the researching of past published materials.

Below please find an order blank. You should complete same and send it along with either a certified check, money order, or lawyer's check for the appropriate amount and payable to the Division of Alcoholic Beverage Control to: Publications, Division of Alcoholic Beverage Control, Richard J. Hughes Justice Complex, CN-087, Trenton, New Jersey 08625. Please have your orders sent in by September 30, 1983 so that we can determine our publication requirements. We will try to have your order sent to you either by late October or early November, 1983.

TO: DEPUTY DIRECTOR GEORGE E. LUND Re: ABC BULLETIN INDEX ORDER
Administrative Services
Publications, Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex
CN-087
Trenton, New Jersey 08625

I wish to order the below noted copies of the ABC Bulletin Index. My (Certified Check) (Money Order) (Lawyer's Check) is enclosed for the calculated amount. I

understand that the Division makes no representations as to the completeness or accuracy of these indices.

BULLETINS INDEXES	# OF PAGES	FEE	QUANTITY ORDERED	TOTAL FEE
1401-1600	18	$25.		
1601-1800	21	$25.		
1800-2100	19	$25.		
2100-2340	50	$50.		
Case Name Cross Ref. (2100-2340)	29	$25.		

7. APPELLATE DECISION: THE ILLIAD AND ODYSSEY INC. V. NORTHVALE, (IMPOSITION OF SPECIAL CONDITION AT TIME OF TRANSFER APPROVAL CONCERNING DISCOTHEQUE USAGE SUBJECT TO ZONING BOARD VARIANCE IS AFFIRMED)

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

APPEAL #4765 THE ILLIAD & ODYSSEY, INC., Appellant v. MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF NORTHVALE, Respondent	FINAL CONCLUSIONS AND FINAL ORDER DISMISSING APPEAL AND AFFIRMING ISSUING AUTHORITY'S IMPOSITION OF A SPECIAL CONDITION ON TRANSFERRED PREMISES OAL DKT. NO. ABC 9133-82

Burton T. Cohen, Esq., Attorney for Appellant
(Okin, Pressler & Shapiro, Esqs., attorneys)

William P. Schuber, Esq., Attorney for Respondent
(Contant, Contant & Schuber, attorneys)

INITIAL DECISION BELOW

JOSEPH ROSA, JR., Administrative Law Judge

Decided: April 13, 1983 Received: April 14, 1983

BY THE DIRECTOR:

No Exceptions to the Initial Decision were filed by the parties in connection with the above captioned proceeding, pursuant to

N.J.A.C. 13:2-17.14. Nevertheless, for the reasons stated below, I shall reject the decision of the Administrative Law Judge in this case, and uphold the action of the Respondent-local issuing authority.

The Appellant is appealing the action of the Respondent-issuing authority which, when it approved a Person-to-Person Transfer to the Appellant, placed a condition upon the transfer, which limited Appellant's operation to a restaurant, and forbade the premises from being used as a discotheque without receiving an appropriate zoning variance. The Administrative Law Judge, in concluding that the action of the issuing authority was erroneous and should be reversed, based his conclusions on three grounds.

The Judge initially concluded that before a condition could be imposed on the license, the Director had to first approve that condition. Secondly, the Judge found that the approval by the issuing authority of the transfer, was "subject to" local zoning board approval, and therefore was in contravention of the case law. Finally, although the Judge found, as a finding of fact, that the licensee consented to the condition placed upon the transfer of the license, the Judge concluded that he had not waived his right to appeal that condition.

Regarding the Judge's first conclusion, I note that he has incorrectly applied the law concerning the Director's "required" prior approval of a special condition. Finding none, he determined that the proceedings below, on that basis alone, were unreasonable. In fact, it has long been the position of the Division, that the failure to submit special conditions for approval by the Director prior to the issuance of a license is a mere technicality, and, when timely raised, will be considered on the merits, nunc pro tunc. DeLuccia v. Paterson, Bulletin 1240, Item 1.

The Judge further erred when he concluded that, the action of the issuing authority in approving the transfer "subject to" local zoning approval, was in clear contravention of the holding in Lubliner v. Board of Alcoholic Beverage Control of the City of Paterson, 59 N.J. Super. 419 (App. Div. 1960), aff'd. 33 N.J. 428 (1960).

It is clear that, in the within referenced case, the license was not transferred subject to zoning board approval. It was transferred with the special condition attached that should the Appellant wish to use the premises as a discotheque rather than as a restaurant, it would have to first obtain zoning board approval.

The Lubliner case held that an approval of the transfer would not be illegal or erroneous because the premises, when transferred might be placed in a location which, by zoning ordinance, prohibited taverns. The Lubliner case, therefore, merely indicated that a local issuing authority could approve a transfer without first waiting to determine whether the

licensee had obtained all appropriate zoning clearances. Although it is true that proceedings before an alcoholic beverage issuing authority should not decide factual zoning matters, Lubliner does not prevent a transfer of a license whose activation is made subject to such determinations. In fact, it specifically permits such a procedure. See also, Holiday Inn, Inc. v. Paramus, Bulletin 2315, Item 3.

Nevertheless, the present case is even further removed from the Lubliner situation. Here we have the basic transfer (and use) of the premises fully effectuated; the Respondent-issuing authority merely required that, before the Appellant change the use of its premises, it first get the approval of the appropriate zoning authorities. Such acts were required both by ordinance and case law. Lubliner, supra at 433. Since this special condition merely restated applicable law, at the most it can be considered no more than surplusage and without effect, by itself, on the rights of the Appellant.

Finally, it is not necessary to address the Judge's finding that the Appellant, by agreeing to the condition of the local hearing, did not waive his right to appeal that condition. Factual situations in any case may or may not support such proposition. To evaluate same herein is not required since the condition has been sustained.

While the Initial Decision references the preferment of disciplinary charges against the Appellant on August 18, 1982 for alleged violation of the Special Condition on August 17, 1982, there is no record of any disposition of that matter. Since the within appeal does not address any disciplinary action, the Order herein shall concern the actions of the local issuing authority on Appellant's transfer application.

A review of the record indicates no evidence that the condition imposed was an improper one or an unreasonable exercise of the Respondent's authority. Therefore, since such condition was not unreasonable nor was it an improper exercise of the issuing authority's power, I find the conclusions reached by the Judge to be without foundation.

Accordingly, it is on this 31st day of May, 1983,

ORDERED that the action of the Mayor and Council of the Borough of Northvale be and the same is hereby affirmed, and the appeal therefrom be and is hereby dismissed; and it is further

ORDERED that the order entered September 1, 1982, staying the imposition of the special condition pending determination of

the appeal, be and same is hereby vacated.

JOHN F. VASSALLO, JR.
DIRECTOR

APPENDIX: INITIAL DECISION BELOW

INITIAL DECISION
OAL DKT. NO. ABC 9133-82
AGENCY DKT. NO. 4765

THE ILIAD & ODYSSEY, INC.,
Appellant,
v.
MAYOR AND BOROUGH COUNCIL
OF THE BOROUGH OF NORTHVALE,
Respondent.

APPEARANCES:

Burton C. Cohen, Esq., for Appellant, Iliad & Odyssey, Inc.
(Okin, Pressler & Shapiro, Esqs., attorneys)

William P. Schuber, Esq., for Respondent, Mayor and Council of Northvale
(Contant, Contant & Schuber, attorneys)

Record Closed: March 8, 1983 Decided: April 13, 1983

BEFORE JOSEPH ROSA, JR., ALJ:

This is an appeal from the action of the Mayor and Council of the Borough of Northvale (hereinafter Borough or Respondent), which by Resolution, dated July 28, 1982 (R-1 Evidence) approved a person-to-person transfer of plenary retail consumption license No. 0240-33-007-002 from William F. Tuohey, as trustee in bankruptcy from the North Restaurant Corp. to the Iliad & Odyssey, Inc., and placed a condition, upon the transfer,

OAL DKT. NO. ABC 9133-82

which limited its operation to a restaurant, and forbade the premises being used as a discoteque.* The restriction was further limited and stated that the Appellant could not operate a discoteque (hereinafter disco) until it had obtained local zoning board approval.

On August 17, 1982 the Appellant allegedly violated the condition by operating a disco on the premises prior to receiving zoning board approval. On August 18, 1982, the Borough issued a notice of charges alleging as follows:

> Violation of the 'restaurant only' restriction of your license. Said violation allegedly occurred at 10:25 p.m. on the 17th day of August 1982 at which time disco music and dancing were permitted on your licensed premises.

The Appellant entered a plea of "not guilty" to the charges.

On August 23, 1982, the Appellant filed a Notice of Petition and Appeal with the Division of Alcoholic Beverage Control (hereinafter Division). In its Petition of Appeal, the Licensee contended that the action of the Borough was erroneous in that the action was mistaken, arbitrary, a gross abuse of discretion, that the condition was not intended to accomplish any object of the Alcoholic Beverage Law, that the condition was not supported by any evidence before the issuing authority, that the condition imposed sought to prohibit under the Alcoholic Beverage Law what was specifically permitted by the municipal land use law, and that the condition imposed was without notice or opportunity for hearing on the necessity therefore.

On September 8, 1982 an Answer was filed on behalf of the issuing authority which claimed that the imposition of the condition was a proper exercise of the discretion vested in the local issuing authority.

*At the meeting of July 28, 1982, Mayor John Rooney stated that all parties agreed that the definition of discoteque was that as could be found in Webster's Dictionary. In Webster's New Collegiate Dictionary, a discoteque is defined as "a small intimate nightclub for dancing to live or recorded music; broadly a nightclub often featuring psychedelic and mixed-media attractions (slides, movies, special lighting effects, and kinetic sound). For the purposes of this decision, such definition will be accepted.

OAL DKT. NO. ABC 9133-82

On September 1, 1982, the Director of the Division of Alcoholic Beverage Control, John F. Vassallo, Jr., entered an Order staying imposition of the special condition pending the outcome of the appeal. The matter was then transmitted to the Office of Administrative Law, by the Division, for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq.

A hearing de novo, pursuant to N.J.A.C. 2:17-6, was held on February 25, 1983 before Administrative Law Judge Joseph Rosa, Jr. At the hearing, pursuant to N.J.A.C. 1:1-3.1 et seq., all parties were given an opportunity to be heard and to cross-examine witnesses.

At the hearing, the parties agreed to submit a Stipulation of Facts on the issues, with the exception of the issue of the possible consent to the condition by the Licensee. Said Stipulation of Facts is attached hereto and incorporated herein, as if set forth fully.

The only witnesses presented at the hearing were those who testified in regard to the issue of the possible consent of the Licensee to the imposition of the condition. Testifying initially on behalf of the Respondent was Ruth Pribish. She testified that:

She is the Borough Clerk of the Borough of Northvale and was present at the meeting of Mayor and Council held on July 28, 1982. She prepared the notes and minutes of the meeting which were submitted as R-1 in evidence. She stated that the minutes were an accurate reflection of the events that transpired at the meeting, and that to the best of her recollection Mr. Musico, representing the Iliad and the Odyssey indicated that he agreed to the restriction which was placed on the license.

Under cross-examination Mrs. Pribish admitted that her notes of the meeting were not typed up until sometime after the meeting, approximately in the month of September. She admitted that there was sound recording of the meeting, but that it was partially inaudible. She said her notes were the primary basis of the minutes. She admitted that she could not exactly recall what was stated at the meeting.

OAL DKT. NO. ABC 9133-82

The next witness on behalf of the Respondent was John Rooney. He stated, he was the Mayor of the Borough of Northvale, and was present at the meeting in question. Prior to the meeting, he had ascertained that the license, before being issued to the Iliad & Odyssey, Inc., had not been used as a disco. He and the rest of the governing body, therefore determined that they would not issue the license without a restriction as to its operation as a disco.

He specifically recalls himself, and the Borough attorney, asking the applicant, on at least two occasions if this condition, i.e., that it not be operated as a disco without prior zoning board approval, was acceptable to the applicant, and the applicant agreed that it was.

Under cross-examination, Mayor Rooney admitted that the minutes of the meeting were not a verbatim reflection of the meeting and also that the applicant did not have an attorney at the meeting when he allegedly agreed to the imposition of condition.

Testifying on behalf of the Appellant was Rocky C. Musico. He stated that:

He was the brother of the applicant for the transfer, and was present at the meeting when the transfer took place. He did not specifically recall any mention of Board of Adjustment approval at the transfer hearing, and stated that his brother never agreed to the imposition of the disco condition.

Under cross-examination, he admitted that he did hear Mayor Rooney speak about a disco, but did not recall the Mayor saying that the premises could not be used as a disco.

After carefully reviewing all the evidence and testimony, I **FIND** that:

1. The foregoing discussion and the uncontroverted facts contained therein are incorporated herein by reference.

OAL DKT. NO. ABC 9133-82

2. The Appellant Iliad & Odyssey, Inc. is the holder of plenary retail consumption license No. 0240-33-007-002 heretofore issued by the Borough of Northvale.

3. The Stipulation of Facts attached hereto is incorporated herein as if set forth fully.

4. The Licensee consented to the condition placed upon the transfer of the license.

In view of the foregoing, I **CONCLUDE** that the Appellant has proven by a preponderance of the believable evidence that the action of the Respondent issuing authority was erroneous, and should be **REVERSED.**

In licensure proceedings (e.g., renewals, transfers, good cause, etc.) the decision of the municipality in granting or denying an application is to be upheld by the Director so long as its exercise of judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. 404, 414-415 (1960); Lyons Farm Tavern v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292 (1970); and Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). The municipality's action must not be an arbitrary exercise of its discretion.

It should also be observed, that it is firmly established that no one has a right to the issuance, or transference, of an alcoholic beverage license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Township of Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a license should be transferred rests within the sound discretion of the local issuing authority, Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954), which has the intial authority to approve or disapprove place-to-place transfers. The authority is vested with a high responsibility, a wide discretion and is to have as its principal guide the public interest. N.J.S.A. 33:1-19, 24. See also, Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); and Blanck v. Mayor and Council of Magnolia, 38 N.J. 484 (1962). The action of the local issuing authority in either approving or denying an application for a transfer may not

be reversed by the Director unless in the first instance he finds its action to be contrary to logic based on the presented facts, see Hudson - Bergen County Retail Liquor Store Assoc. v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947); and Passarella v. Board of Commissioners, Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). The Director conducts a de novo hearing on appeal, N.J.A.C. 13:2-17.6, and makes the necessary factual and legal determinations on the record before him. The Director will abide by the municipality's grant or denial of the application so long as the exercise of the judgment and discretion of the local board is reasonable. If the decision of the local board,

> ... represent(s) a reasonable exercise of discretion on the basis of the evidence presented ... it ends the matter of review by both the Director and by the courts. Lyons Farm Tavern v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292, 307 (1970).

This standard has been set down because the Courts have felt that in reviewing licensure matters it is improper for the Director to "intervene and to substitute his judgment for that of the Board" Lyons Farm at 307. The Courts and the Legislature have thus recognized that, ordinarily, local officials are thoroughly familiar with their community's characteristics, and the nature of particular area where a license is proposed to be located. The Director, and the Courts therefore, place great reliance on local action and local opinion. Absent a manifest mistake, or abuse of discretion, the Director may not reverse the action of a local board. Cf. Florence Methodist Church v. Township Committee, Florence Township, 38 N.J. Super. 85 (App. Div. 1955) and Fanwood v. Rocco, 33 N.J. 404, 414-415 (1960). Even if there is an honest difference of an opinion in the exercise of discretion for or against the license transfer, the action of the local issuing authority in approving or denying the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (1954).

However, if the municipal action is unreasonable, improperly grounded, or not based on the facts presented the Director may grant such relief or take such action as is appropriate. Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965); N.J.S.A. 33:1-26; N.J.S.A. 33:1-22; N.J.S.A. 33:1-38; Mayor and Council, Borough of Totowa v. Chicken Barn, Inc., 41 N.J. Super. 459 (App. Div. 1956); and South Jersey Retail Record Dealers Assoc. v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940).

OAL DKT. NO. ABC 9133-82

Special conditions can be attached to a license, pursuant to N.J.S.A. 33:1-32 and N.J.A.C. 13:2-2.13. They may be attached to the license at issuance, transfer or renewal. The local board has the full right and power to impose conditions on the issuance of the license, Mayor and Council of Hoboken v. Greiner, 68 N.J.L. 592 (Sup. Ct. 1902); and Board of Commissioners of Belmar v. Division of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958).

There are, however, certain restrictions upon the imposition of the conditions. Among these conditions is the requirement of the prior approval of the Director. Tangently, it should be noted that in the present proceeding the issuing authority did not have the condition given the prior approval of the Director, and on that basis alone their action was unreasonable.

I further CONCLUDE that the action of the issuing authority, i.e., that is the approval of the transfer subject to local zoning board approval is in clear contravention of the holding in Lubliner v. Board of Alcoholic Beverage Control of the City of Paterson, 59 N.J. Super. 419 (App. Div. 1960), aff'd 33 N.J. 428 (1960). Where the Appellate Division held:

> The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all applicable statutes and ordinances, including zoning ordinances, building codes, health codes and the like. It may be that Hutchins will need a variance or other relief before he can operate a tavern at 39 Carroll Street, but he is not required to obtain it before the grant of the transfer. Cf., Passarella v. Board of Comm, 1 N.J. Super. 313 (App. Div. 1949).

The disposition of this issue was affirmed by the Supreme Court.

> In dealing with that contention the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available. Lubliner, supra at 435. See Garrou v. Teaneck Tryon Co., 11 N.J. 294 (1953).

OAL DKT. NO. ABC 9133-82

It is clear that the local issuing authority had no authority to condition the transfer of the license upon subsequent zoning board approval, and on those grounds their action should be reversed.

There is also the issue present in this matter of whether or not the applicant agreed to the imposition of the condition thus creating an estoppel situation which would bar the transferee from raising the issue of the illegality of the condition at a subsequent date. There was conflicting testimony as to whether or not the applicant agreed to the imposition of the condition. The minutes of the meeting, and the testimony on behalf of the Respondent indicated that he had. The testimony on behalf of the applicant indicated that he had not. This issue, therefore becomes a question of acceptance or rejection of the Respondent's or the applicant's testimony as to whether or not consent was given. The choice of accepting or rejecting the testimony of witnesses rests with the trier of fact. Atkinson v. Parsekian, 37 N.J. 143 (1962). I have chosen to accept the testimony offered by the Respondent in this regard. Both the Mayor and the Borough Clerk testified as to their recollections of the meeting. Their recollection are buttressed by the minutes of the meeting. Although the minutes are not a verbatim transcript of the meeting, they have not been shown by the licensee to be inherently unreliable. All that the applicant has shown is the somewhat clouded recollection of the brother of the applicant, and it was his opinion that his brother did not consent to the condition. Mr. Musico did however say, that he remembered Mayor Rooney speaking about a disco. I choose to believe that the Respondent was not attentive enough at the meeting, and did not hear his brother consenting to the condition.

However I CONCLUDE that even if the applicant agreed to the condition he did not agree to waive his right to appeal that condition. There is a strong presumption against waiver of fundamental rights. State v. Bellucci, 81 N.J. 531, 544 (1980). Certain rights may be waived only with sufficient awareness of the relevant circumstances and likely consequences. United States v. Dolan, 570 F.2d 1177, 1181 (3d Cir. 1978); State v. Morgenstein, 147 N.J. Super. 234, 237 (App. Div. 1977). I agree with the applicant's contention that "any consent to an illegal condition, given at a public meeting, without benefit of counsel, and without explanation of appellant's rights with respect thereto, cannot amount to a waiver" (appellant's R.B. p. 1-2). I agree that in the present matter

OAL DKT. NO. ABC 9133-82

the action of the applicant at the meeting would not bar him from subsequently appealing the imposition of the condition. I therefore CONCLUDE that the action of the local issuing authority was erroneous and should be REVERSED.

It is therefore ORDERED that the application for transfer of plenary retail consumption license No. 0240-33-0007-0002 from the trustee and bankruptcy of North Restaurant Corp. to the Iliad & Odyssey, Inc. is hereby approved without any special condition upon the license.

This recommended decision may be affirmed, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who by law is empowered to make a final decision in this matter. However, if John F. Vassallo, Jr., does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JOHN F. VASSALLO, JR. for consideration.

April 13, 1983
DATE

JOSEPH ROSA, JR., ALJ

Receipt Acknowledged:

4/14/83
DATE

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Mailed To Parties:

April 15, 1983
DATE

FOR OFFICE OF ADMINISTRATIVE LAW

al

PUBLICATION OF BULLETIN 2432 IS HEREBY
DIRECTED THIS 31st DAY OF AUGUST, 1983.

JOHN F. VASSALLO, JR.
DIRECTOR