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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1974

May 20, 1971

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1. APPELLATE DECISIONS - JOHN YURCHAK ET. AL. v. JERSEY CITY, ET. AL.

JOHN YURCHAK, and THE JERSEY )  
CITY TAVERN OWNERS ASSOCIATION, )

Appellants, )

v. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF JERSEY CITY, and THOMAS FORD, )

Respondents. )

-----  
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for  
Appellants.

James F. Ryan, Esq., by Louis P. Caroselli, Esq., Attorney for  
Respondent Board.

Edward F. Zampella, Esq., by Marchall J. Wofsy, Esq., Attorney  
for Respondent, Ford.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which approved a place-to-place transfer on May 5, 1970 of a plenary retail consumption license held by Thomas Ford from premises 147 Wayne Street to 323 Monmouth Street, Jersey City.

In their petition of appeal, appellants allege that the Board acted erroneously in that it approved transfer despite a prior denial of transfer to the same location; hence, its action was inequitable and arbitrary as well as violative of local ordinance.

Answer filed by the Board denies its action was inequitable, unreasonable and arbitrary. Further, that the transfer was proper and not violative of the provisions of the applicable ordinance.

The transfer of the said license was granted under an exception set forth in Section 4 of the local Ordinance K-1299, which reads in pertinent part, as follows:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption license, provided, however, that if any licensee

holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said license may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated."

It is admitted that the said transfer was to premises which are within an area of a circle having a radius of five hundred feet, having at its central point an existing licensed premises covered by a plenary retail consumption license.

The Board based its action on that portion of the ordinance which offers relief to such licensees who "shall be compelled to vacate the licensed premises for any reason ... or if the landlord of said licensed premises shall consent to a vacation thereof, said license may ... be transferred to another premises within a radius of ... (500) feet of the licensed premises so vacated."

The facts briefly are as follows: Ford was the transferee on November 26, 1969 of the plenary retail consumption license from Leo R. Frega, and from premises 368 Monmouth Street to 147 Wayne Street. Prior thereto, in August 1969, Frega had applied for a transfer to 323 Monmouth Street, and that application was denied. Coincidentally the object of his application was then the same location for which Ford later received approval, i.e., 323 Monmouth Street; it is this transfer which is the subject of this appeal.

Testimony was offered of Anthony J. Ferrara, one of the members of the Board who indicated that the vote in favor of the transfer from 147 Wayne Street to 323 Monmouth Street was unanimous; that the application was granted because the licensee "was being dispossessed from the building he was presently at."

Walter McDermott, Secretary of the Board for the past fourteen years, testified that Ford's predecessor in license, Frega, had been rejected in his application for transfer to 323 Monmouth Street because a special ruling permitting any transfers of any license affected by urban renewal up to four thousand feet did not apply to him. In November the person-to-person and place-to-place transfer to Ford at 147 Wayne Street was approved. He acknowledged that no inspection was made of the residential building to which the license was being transferred except that he "...rode by it on the outside" adding "To me, it looked like a home for a license; thats about the gist of it", and "It was an empty house, I would say".

No written report was furnished the Board. The testimony of this witness disclosed a bewildering lack of pertinent information concerning facts upon which decisions of the Board would be predicated. As an example, although "...it would take a lot of renovation to put a bar in there, and so forth", no conditions were attached to the granting of the license that such construction be completed. No plans, even a rudimentary floor sketch were called for by the Board or submitted. There was no investigation of the applicant's right, if any, to use the premises. Upon

formal approval, no resolution was adopted, the Secretary making only a marginal note that the application was "granted". No minutes of the meeting were produced.

Testifying further as to the approval of Ford's application to transfer to 323 Monmouth Street, he stated that the Board felt that it had no discretion in the matter of the transfer; "It was either we have the footage or we don't have it". The transfer was predicated solely on the testimony of the applicant. A letter from the landlord indicating the applicant must vacate premises by May 15th or be dispossessed was accepted into evidence.

John F. O'Connell, building inspector of Jersey City, testified that no building permit had been taken out for premises at 147 Wayne Street, but that, in April 1970, an inspection of the building revealed fifty-five violations. The building housed three families above the tavern on the first floor. The inspector had been unable to gain entry to the tavern on his visits, and found no one in the premises on these visits.

The president of the Jersey City Tavern Owners Association and member of the Board of Governors of the N. J. Licensed Beverage Association, William Rubino, testified that there is no public need for another liquor outlet in the area. He pointed out that there is a tavern only twenty-five feet from the proposed premises, at the corner of Montgomery and Monmouth Streets; around the corner one hundred feet away is another; one is right across the street and one two blocks away. Thus, there are five taverns within a short distance of the proposed location.

Respondent, Thomas Ford, testified that when he bought the tavern he had a job that he quit after the tavern business became successful. He admitted buying the premises at 323 Monmouth Street a year before but did not recall from whom he purchased it. On cross examination he thought that perhaps, his period of ownership was really two years. The time was fixed by approximation to June or July of 1968 when he established a restaurant there which he operated until he bought the license for 147 Wayne Street. Prior to that he had agreed to sell his premises at 323 Monmouth Street to Frega, but the sale did not materialize. He denied knowing Frega had applied for a transfer of his then-existing tavern at 368 Monmouth Street to 323 Monmouth Street. He affirmed that he was represented by counsel when he acquired the Frega license but never received a lease. He testified further that when he purchased the license it had already been transferred to 147 Wayne Street and Frega had been operating the establishment there for six months; Frega had bought the building and sold his stock to him. The witness never made any alterations at Wayne Street as he was operating his restaurant at 323 Monmouth Street for the six months the license was purportedly being operated there.

Appellant John Yurchak testified that he owns a tavern across the street from the new location of the Ford license. He watched the development of the 147 Wayne Street tavern and insisted that Frega never operated a tavern at that address. Ford put in a little window, two and one-half feet by three feet, prior to his opening Thanksgiving evening. The new location is only a block and a half from the old one.

The recitation of testimony has been set forth at length in that the circumstances surrounding the approval of the Ford

application was unusual. In summary, Frega sold his license to Ford with a simultaneous transfer to Wayne Street. This occurred three months after Frega had unsuccessfully applied for a transfer to Ford's place on Monmouth Street. Six months later, Ford applied for and received favorable approval to the very location for which Frega's application had been rejected eight months earlier. The reason given by the Board for this later approval was the notice to Ford by his landlord requiring removal.

It has been long established by this Division that that portion of the ordinance which requires the consent of the owner of the property from which a license is to be transferred is unreasonable and restrictive because it does not carry out the objects of the Alcoholic Beverage Law. It serves only the private interests of the owners by giving them a strangle-hold on their tenants whereby refusal to give consent could be made the means thereby of exacting an exorbitant rent. Re DeYoe, Bulletin 278, Item 8. Thus, that portion of the ordinance requiring consent of the owner is void because it is clearly unreasonable and completely without relation to the purposes of distance regulations. Re Cielukowski, Bulletin 716, Item 6; Van Houten v. Deal, Bulletin 895, Item 1.

Such consent was not a valid consent within R.S. 33:1-26, and was fatally defective. See Walsh v. Bradley, 121 N.J. Eq. 359; Lachow v. Alper, 130 N.J. Eq. 588; Novack v. Kraus, 138 N.J. Eq. 241 Cf. Delaware Tavern, Inc. v. Atlantic City, et al., Bulletin 758, Item 1.

The transfer to the present location, having been accomplished with the approval of the Board, the burden of establishing that its action was erroneous and should be reversed rests with appellants. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (1956); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance, within the sound discretion of the local issuing authority. (emphasis added) Hudson-Bergen County Retail Liquor Stores Ass'n v. North Bergen et als., Bulletin 997, Item 2. A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject of course, to review by this Division in the event of abuse thereof. Passarella v. Atlantic City, et als., 1 N.J. Super. 313 (App.Div. 1949); Blanck v. Magnolia, 38 N.J. 484 (1962).

The Director should not substitute his judgment on appeal for that of the local Board or reverse the ruling if reasonable support for it can be found in the record. Lyons Farms Tavern Inc. v. Newark et als., 55 N.J. 292 (1970). On the other hand, where it appears that the action was unreasonable, and an abuse of its discretion, its action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1.

The issue thus presented is: Did the Board act reasonably in the exercise of its discretion in granting approval of the transfer? Or, by corollary, were the reasons ascribed to the initial rejection, and subsequent approval, proper under the circumstances?

To appraise the judgment of the Board, Secretary McDermott describes the reasoning of the initial rejection:

"The decision of the Board was that we didn't consider the address, the movement from 368 to 323 Monmouth Street, a redevelopment area. First we thought it might have been, and we do have a ruling, or an ordinance, which says they can move 4,000 feet, whereas they're put out by the redevelopment, or city, or county, or something like that putting them out, and we felt that he wasn't entitled to this move of 4,000 at this particular time."

It is noted that McDermott did not allude to any discussion within the Board or any evaluation of the proposed location and its merits or demerits. In response to the question "You wouldn't know whether there was any other reason set forth in the minutes?" he replied "No" and "It would be the footage. I don't think there was anything else, if I recall."

Referring to the later approved transfer to 147 Wayne Street, the secretary indicated that locations are examined by a police captain assigned to the Board. The secretary rode by the prospective location. He admitted the Board did not set forth any findings or reasons "except that its within the footage; that would be about it."

Pertaining to the transfer to 323 Monmouth Street, the transfer under attack by this appeal, the secretary of the Board stated that it is the practice of the Board to state merely "granted" or "denied". Thus, the minutes, if they were located and produced would only reflect the same.

In making inquiry of the secretary respecting the knowledge, if any, of the members of the Board about the prior application and rejection of the situs 323 Monmouth Street, the secretary replied that he called this to their attention. The following discourse ensued:

- "Q. And did the Board discuss this at their meeting?
- A. Counsellor, there's nothing to discuss. It was either -- either we have the footage or we don't have it. In this particular case we didn't have it.
- Q. In other words, it isn't a matter of discretion with the board. They felt either they were obligated to transfer, if it were within a certain distance, or they're obligated to deny it if it was not?
- A. Right.
- Q. Now, Mr. McDermott, you were present at the hearing on the application for the transfer?
- A. (nods head yes)
- Q. Were there any other witnesses for the applicant besides Mr. Ford?
- A. No.
- Q. Were there any exhibits submitted in support of Mr. Ford's testimony, to your recollection?
- A. No.
- Q. So the sole evidence before the board at the time of the decision of the place-to-place transfer from 147 Wayne Street to 323 Monmouth Street was the testimony of Mr. Ford.
- A. I'm almost sure that was it, all of it."

The decisive issue whether the area to which this license was proposed to be transferred was sufficiently serviced by existing liquor outlets was never before the Board. There was no survey made to reflect accurately the number of licenses then existing and operating in the area in which the proposed licensed premises are located. The Board did not consider if the proposed premises would create an undue concentration of licenses in the area, as there must obviously be, nor did it reflect an analysis of any public need to be served. Panda Inn, Inc., v. Township of Lakewood, Bulletin 1924, Item 1.

While it is true that the issuing authority's discretionary powers are very broad and that on an appeal the burden of proof is on the appellant, the presumption in favor of the validity of the issuing authority's action is not conclusive. The reasons assigned for its action must be reasonably supported by the evidence in order to such action to be sustained. Wrege v. Elizabeth, Bulletin 1930, Item 3; O'Bertz v. Perth Amboy, Bulletin 1011, Item 1.

In order to warrant the transfer of a liquor license, there must be some indication that the issuing authority considered whether or not a need, necessity or convenience existed. In Mevoli et al v. Camden and Shapiro, Bulletin 933, Item 1, it was held that "a decision of a local issuing authority totally disregarding the paramount issue of public necessity and convenience such as is involved in a connection with the discretionary function of transfer of a liquor license, cannot sustain the local action. Indeed, it is tantamount to a failure to discharge the responsibility which, under the provisions of the Alcoholic Beverage Law (R.S. 33:1-1 et seq.) is vested in each issuing authority in the first instance...." Passarella v. Atlantic City, 1 N.J. Super. 313 (App.Div. 1949); Goldberg v. Newark et al., Bulletin 1453, Item 1.

I am persuaded and conclude that there was no showing of need or convenience for the said transfer to the proposed premises. The evidence shows that such transfer would only exacerbate an existing proliferation of liquor facilities in this area. Jersey City is already burdened with outstanding licenses beyond the statutory saturation point.

Furthermore, I find an absence of good faith on the part of Ford; and having heard him testify at this plenary de novo hearing, find the credibility of his testimony in serious doubt; and the failure of the Board to make the requisite statutory investigation to ascertain the full background and facts involved herein indicates that its ultimate action was unreasonable.

The appellants have sustained the burden of establishing that the Board was erroneous and should be set aside. Rule 6 of State Regulation No. 15. Accordingly, under all of the facts, it is recommended that the action of the Board be reversed.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is on this 5th day of April, 1971,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City in granting the application of respondent Thomas Ford for a place-to-place transfer of a plenary retail consumption license held by him be and the same is hereby reversed.

RICHARD C. McDONOUGH  
DIRECTOR

2. APPELLATE DECISIONS - TENRO, INC. v. ENGLEWOOD.

TENRO, INC.,	)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
	)	AND ORDER
COMMON COUNCIL OF THE CITY	)	
OF ENGLEWOOD,	)	
Respondent.	)	

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 Van Riper, Belmont & Villanueva, Esqs., by Walter D. Van Riper,  
 Esq., Attorneys for Appellant  
 Sylvia B. Pressler, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Common Council of the City of Englewood (hereinafter Council) which adopted a resolution denying a place-to-place transfer of appellant's plenary retail consumption license from its premises 60 Van Nostrand Avenue to 409 Grand Avenue, Englewood,

Between the initial application for place-to-place transfer and its eventual denial, which is the subject of this appeal, the Council conditionally granted the appellant permission to operate the licensed premises only between the hours of ten o'clock in the morning to three o'clock in the afternoon. There were other conditions also attached; however, this particular condition relating to the hours of operation was determined to be invalid by the Director and the Council and appellant were so notified by letter dated July 29, 1970. In consequence, the matter was reconsidered by the Council which thereupon denied the transfer. The reasons for denial are stated in the resolution of October 6, 1970, the pertinent part of which is as follows:

"1. The Council of the City of Englewood hereby finds that the uncontrolled intersection of Grand and Van Nostrand Avenues in the City of Englewood is at present an extremely hazardous intersection in terms of passenger vehicle, truck, bus and pedestrian traffic; and further finds that said hazard is particularly acute during the morning and evening rush hours; and further finds that said hazard would be substantially increased by the operation of an on-premises alcoholic beverage consumption operation; and further finds that legitimate objections to the applied-for transfer have been raised

by residents of the immediate vicinity and by the Parent-Teachers Association of the Roosevelt School;

2. The transfer of a plenary retail consumption license for Tenro, Inc., from 60 Van Nostrand Avenue to 409 Grand Avenue be and the same is hereby denied."

The petition of appeal alleges that the action of the Council was erroneous as being "discriminatory, unjustified and not supported by the facts and the law pertaining thereto."

The Council's answer defends that the evidence adduced at the hearing, "supplemented by citizen protest", amply supported the finding that the location of the premises for which transfer was applied is one of the most, if not the most, hazardous, uncontrolled intersections in the city and the extent of the traffic hazard justified denial.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties hereto to present testimony and cross-examine witnesses. Transcripts of testimony taken at the municipal hearings held were offered in evidence along with exhibits, as will be referred to hereinafter, pursuant to Rule 8 of State Regulation No. 15.

Preliminarily, it should be observed that the issuance or transfer of a liquor license is not an inherent or automatic right. Ridgepark Operating Corp. v. Ridgefield Park, Bulletin 1927, Item 4. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App.Div. 1954).

It is well settled that the local issuing authority is vested with a sound discretion in granting or refusing to grant licenses for the sale of intoxicating beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949), and such discretion will not be disturbed in the absence of a showing of a clear abuse thereof. Blanck v. Magnolia, 38 N.J. 484 (1962). As the court stated in Fanwood v. Rocco, 59 N.J. Super. 306 (1960); aff'd 33 N.J. 404 (1960):

"The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs. of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent. Cf. Cummins v. Board of Adjustment of Borough of Leonia, 39 N.J. Super. 452 (App.Div. 1956), certification denied 21 N.J. 550 (1956)."

"...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable.\*\*\* However, when the municipal action was unreasonable \*\*\* or improperly grounded \*\*\* the Director will grant such relief or take such action as is appropriate." Common Council of Hightstown v. Hedy's Bar, 86

N.J. Super. 561 at p.563 (App.Div. 1965).

Transcripts of hearings before the Council on April 7 and April 14, 1970 reflect testimony taken of Police Chief Thomas P. Ryan, Max Priegel (Chief Building Inspector) and Gladys Levine (president of the local PTA), Maureen Orcutt, Jerry Hersch and John McIntyre (residents of the municipality). These witnesses protested the transfer. Leonard Rothman (the principal officer of the corporate appellant) and a surveyor who prepared the map of the area testified in support of the said application for transfer. A map of the area was offered into evidence.

In addition to that map the Council had before it a memorandum of the City Inspectors, letters of the Health Officer, letter of the PTA of Roosevelt School, petitions of citizens and a chart of the bars in the community. These exhibits, together with transcripts of the meetings, were made part of the record of this appeal.

At the hearing in the Division, testimony was offered of Leonard Rothman, the thrust of whose testimony was that he is a realtor and an attorney whose office is in the same building to which the application for transfer related. He was once vice chairman of the Traffic Advisory Committee and is familiar with the traffic problems surrounding the intersection of Grand Avenue and Van Nostrand Avenue, the easterly corner of which would house the license as proposed. The present traffic difficulties will soon be swept away by the installation of a traffic signal at the corners and such installation is anticipated shortly.

Sergeant Robert O'Connor of the Englewood Police Department testified that the intersection in question was a very complex one and a very dangerous one for both pedestrians as well as vehicles.

Chief of Police Thomas P. Ryan also testified that the presence of another licensed premises at that corner would add to the problem both from the anticipated "drunks" possibly coming from it and certainly from the added cars to be parked nearby. The proposed few traffic stalls to be provided for off-street parking would be far from ample. He noted that there have been more than forty accidents at or near this intersection during the past few years. "The entire intersection on both sides of the ramp on Grand Avenue have been a focal point for accidents."

At this plenary de novo hearing, Police Sergeant Robert O'Connor exhibited a film showing motion of cars and pedestrians at the intersection. The film was produced in anticipation of this appeal. Admittedly taken before the highest rush of traffic, because of failing light at late afternoon, the film did show a busy intersection. Although the film did not show the acute flow of traffic during the height of the rush hours, it fortified the testimony of the Council's six witnesses as to their apprehension of the traffic situation in this area. Further, it was apparent from their remarks at the hearing below that the members of the Council were aware of the traffic conditions at this intersection to a greater degree than displayed by the film.

From all of the testimony, the exhibits and the film, I am persuaded that the intersection of Grand and Van Nostrand Avenues is an extremely complex one. The placing of a policeman to direct traffic was withdrawn some time ago because it was felt, as the Chief of Police testified, that he might be killed in the

traffic chaos. The map and testimony reveal there is a convergence of traffic curable only by the installation of traffic signals but there is presently no timetable for such installation. It is arguable, however, whether even such installation would satisfactorily obviate the hazards apprehended by the objectors.

The Council has concluded that the placing of the licensed premises would be dangerous in that location and not for the best interests of the public. Their initial approval of transfer with the limitation of hours in which premises could be open was rejected by the Division. It did not sanction opening of the premises for full period at any time.

It should be significantly noted that witnesses for the Council, including Chief Ryan, testified to experiences in this municipality of molestation of residents by intoxicated persons. As Justice Francis, speaking for the Court in Lyons Farms Tavern v. Newark, 55 N.J. 292, 304 stated: "...Crime and violence in the streets of cities have increased substantially in recent years making people reluctant to be abroad at night. Common knowledge tells us that peculiar evils are associated with the sale of alcoholic liquors in public taverns. The release of inhibitions because of consumption of alcohol is commonplace and is more apt to be associated with taverns than with other types of businesses. Fanwood v. Rocco, supra. 33 N.J. at 413. Drunken brawls are more likely to occur in taverns than elsewhere...." "It is no answer to say that the tavern is and will continue to be well conducted or that patrons who show that they have had enough or too much to drink will be denied further service or be asked to leave the premises. It is what such persons do after they take to the public streets and byways that the neighbors fear."

He added:

"We have no doubt that a municipal alcoholic beverage control board may reasonably honor local sentiment against the grant of a new liquor license or a place-to-place transfer of an existing one. Fanwood v. Rocco, supra. clearly expounded the view...."

The Council considered the objections reflected in the testimony, and the petition of objectors in its determination.

Hence, the issue, simply stated is, was the action of the Council reasonable, well grounded and void of caprice? Was its determination the result of thoughtful evaluation of facts stemming from some investigation of the circumstances surrounding the application?

Whether or not a place-to-place transfer should be granted in a case of this nature is within the sound discretion of the municipal issuing authority. Once it so acts, its action may be reversed on appeal only in the event that the decision of the Council represents an unreasonable exercise of discretion on the basis of evidence presented. On appeal it is not the function of the Director to substitute his judgment for that of the issuing authority, but, rather, to affirm if adequate and reasonable support for its action can be found in the record. Lyons Farms Tavern, Inc. v. Newark, et al., supra. (55 N.J. at p. 307).

I am convinced that the Council acted reasonably and circumspectly in light of all the circumstances herein, and was fully warranted in its decision denying appellant's application. I, therefore, find that appellant has failed to sustain the burden

of establishing that the action of the Council was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant, and a written answer to said exceptions was filed by the attorney for respondent.

I have fully analyzed and considered the exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

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

Accordingly, it is, on this 5th day of April 1971,

ORDERED that the action of respondent Common Council of the City of Englewood be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH  
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FOUL LANGUAGE - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GRAND VIEW CAFE, INC.  
t/a Grand View Cafe  
195 Ogden Avenue  
Jersey City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-463, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

-----  
Miller, Hochman, Meyerson & Miller, Esqs., by Gerald D. Miller, Esq., Attorneys for Licensee.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, September 27, 1970 it (1) sold a pint bottle of whiskey for consumption off the licensed premises, in violation of Rule 1 of State Regulation No. 38, and (2) permitted foul, filthy and obscene language (by patrons) on the premises, in violation of Rule 5 of State Regulation No. 20, and to a third charge that in its application for current license it failed to disclose a record of a prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for ten days effective May 13, 1969 for sale of alcoholic beverages in violation of Rule 1 of State Regulation No. 38, the subject of the third charge herein. Re Grand View Cafe, Inc., Bulletin 1864, Item 9.

The prior record of suspension for similar violation occurring within the past five years considered, the license will be suspended on the first charge for thirty days (Re Culver & Culver, Bulletin 1874, Item 4), on the second charge for ten days (Re Brierhurst Associates, Inc., Bulletin 1919, Item 6), and on the third charge for ten days (Re Bock, Bulletin 1933, Item 7), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 31st day of March 1971,

ORDERED that Plenary Retail Consumption License C-463, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Grand View Cafe, Inc., t/a Grand View Cafe, for premises 195 Ogden Avenue, Jersey City, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m. Monday, April 12, 1971, and terminating at 2 a.m. Thursday, May 27, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - RETAILER PURCHASING ALCOHOLIC BEVERAGES FROM OTHER THAN NEW JERSEY MANUFACTURER OR WHOLE-SALER - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS - NO REMISSION FOR PLEA - DEFERRED EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against  
Sauter's Steak Pub, Inc.  
153 Bergen Blvd.  
Fairview, N. J.,  
Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Fairview.  
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CONCLUSIONS  
and  
ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

"On June 18, 1970, or prior thereto, you the holder of a plenary retail consumption license, purchased or obtained a case of quart bottles of Canadian Club Blended Canadian Whisky, except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 15 of State Regulation No. 20."

Licensee corporation, by affidavits of its president and vice president, states that the case of whisky in question was purchased from a licensed individual in New Jersey but that it does not wish to disclose his identity.

Absent prior record, but deeming the violation aggravated by reason of licensee corporation's declination to disclose the identity of its participant in the violation, the license will be suspended for thirty days, without any remission for the plea entered.

Report of recent investigation discloses that the licensed premises have been completely destroyed by fire and that the licensed business is not presently being conducted. Thus no effective penalty can be imposed at this time. Hence, the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the licensed business has been resumed on a substantial basis by the licensee or any transferee of the licensee. Re Kearny Yacht Club, Inc., A Corp., Bulletin 1843, Item 4.

Accordingly, it is, on this 30th day of March 1971,

ORDERED that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Fairview to Sauter's Steak Pub, Inc., for premises 153 Bergen Blvd., Fairview, be and the same is hereby suspended for thirty (30) days, the effective dates of such suspension to be fixed by further order, as aforesaid.

RICHARD C. McDONOUGH  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY - (GO-GO GIRLS) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRANK CAPRIO  
t/a Camelot  
402 - 3rd Street  
East Newark, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of East Newark.

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Licensee, Pro se.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 1, 1970 he permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the date alleged a "go-go" girl, during her dancing routine, removed her bra, leaving herself completely topless, sans even pasties, and in that state performed for the entertainment of the customers and patrons.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Elmcrest Inn, Inc., Bulletin 1860, Item 5.

Accordingly, it is, on this 31st day of March 1971,

ORDERED that Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of East Newark to Frank Caprio, t/a Camelot, for premises 402-3rd Street, East Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, April 12, 1971, and terminating at 2 a.m. Friday, May 7, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (CARD PLAYING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

CONSTANCE M. PILEWSKI )  
t/a Buckeye Tavern & Liquor Store )  
640 Grier Avenue )  
Elizabeth, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-72, issued by the City Council of the City of Elizabeth. )

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Licensee, Pro Se.  
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 13, 1971, she permitted gambling, viz., the playing of a card game for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Kolibas, Bulletin 1911, Item 12.

Accordingly, it is, on this 1st day of April 1971,

ORDERED that Plenary Retail Consumption License C-72, issued by the City Council of the City of Elizabeth to Constance M. Pilewski, t/a Buckeye Tavern & Liquor Store, for premises 640 Grier Avenue, Elizabeth, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, April 12, 1971, and terminating at 2 a.m. Thursday, April 22, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGE NOT TRULY LABELED - FALSE STATEMENT IN APPLICATION - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

CONVERST CUTTINO )  
t/a Springwood Bar & Grill )  
26 Valley Street )  
Union Township (Union County) )  
PO Vaux Hall, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-43, issued by the Township Committee of the Township of Union. )

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Kein, Pollatschek & Iacopino, Esqs., by Julius R. Pollatschek, Esq., Attorneys for Licensee )  
Walter H. Cleaver, Esq., Appearing for Division )

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on January 18, 1971, he possessed an alcoholic beverage in a bottle which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20, and (2) in application for current license he failed to disclose a prior suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of three suspensions of licenses -- two by the Director for similar violation, one for twenty days effective October 25, 1960, and the other for fifteen days effective April 4, 1968, non-disclosure of this last mentioned suspension being the subject of the second charge (Re Cuttino, Bulletins 1364, Item 9 and 1792, Item 3), and the third by the municipal issuing authority for three days effective June 29, 1970, for permitting the premises to be open during hours prohibited by local ordinance.

The suspension of license for similar violation in 1960 occurring more than ten years ago disregarded in admeasuring the penalty, but considering the record of the two suspensions occurring within the past five years, one similar in 1968 and the other dissimilar in 1970, the license will be suspended on the first charge for twenty-five days (Re Sundown Bar & Grill, Inc., Bulletin 1477, Item 9), and on the second charge for ten days (Re Jule's Bar, Inc., Bulletin 1939, Item 2), to which will be added fifteen days by reason of fact that this is the licensee's fourth violation, or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 7th day of April 1971, )

ORDERED that Plenary Retail Consumption License C-43, issued by the Township Committee of the Township of Union to Converst Cuttino, t/a Springwood Bar & Grill, for premises 26 Valley Street, Union Township, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m. Wednesday, April 21, 1971, and terminating at 2 a.m. Saturday, June 5, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYED PENDING APPEAL.

Auto.Susp. #332 )  
 In the Matter of a Petition to Lift )  
 the Automatic Suspension of Plenary )  
 Retail Consumption License C-11, ) ON PETITION  
 issued by the Borough Council of the ) ORDER  
 Borough of Union Beach to )  
 )  
 SALVATORE SENA )  
 t/a Village Inn )  
 900-902 Union Avenue )  
 Union Beach, N. J. )

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Nicholas LaCorte, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division, that on August 12, 1970 the petitioner-licensee was fined \$100.00 and \$10.00 costs in the Union Beach Municipal Court after pleading guilty to a charge of sale to minors on May 23, 1970, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that in disciplinary proceedings instituted by the municipal issuing authority against the petitioner-licensee because of said sale of alcoholic beverages to minors, his license was suspended for thirty days. Upon appeal filed by petitioner-licensee to the Division from the suspension of his license, an order was entered on September 16, 1970, staying the operation of suspension pending the determination of the appeal.

In fairness to petitioner, I conclude that, at this time, the effect of the automatic suspension should be temporarily stayed, pending the outcome of the disciplinary appeal, at which time a supplementary petition to lift the automatic suspension may be filed with me by the petitioner. Re Lark, Inc., Bulletin 1600, Item 7.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

RICHARD C. McDONOUGH  
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

Gallo Wine Sales of New Jersey, Inc.  
520 Division Street, Elizabeth, N. J.  
Application filed May 18, 1971 for additional warehouse license for premises Hainesport Industrial Park, Marne Highway & Delaware Avenue, Hainesport, N. J. in connection with Plenary Wholesale License W-43.

Kern Distributing Co., Inc.  
69-73 Lee Avenue, Haledon, N. J.  
Application filed May 19, 1971 for place-to-place transfer of Limited Wholesale License WL-45 from 303-309 Manchester Avenue, North Haledon, N. J.

New Jersey State Library

  
Richard C. McDonough  
Director