

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

BULLETIN 2120

October 25, 1973

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1. APPELLATE DECISIONS - HARRY'S BAR & GRILL, INC. v. ROSELLE PARK.

Harry's Bar & Grill, Inc.,)	
t/a Harry's Bar & Grill,)	
)	
Appellant,)	On Appeal
)	
v.)	CONCLUSIONS
)	and
Borough Council of the Borough)	ORDER
of Roselle Park,)	
)	
Respondent.)	

Pisano & Triarsi, Esqs., by Joseph J. Triarsi, Esq., Attorneys
for Appellant
Wilentz, Goldman & Spitzer, Esqs., by Louis F. Locascio, Esq.,
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the Borough of Roselle Park (hereinafter Council) which, on April 12, 1973, found appellant guilty of a charge alleging that on March 8, 1973, it allowed, permitted and suffered persons to be on its licensed premises after 2:00 a.m. in violation of its Municipal Ordinance No. 377, the applicable part of which will hereinafter be set forth. In consequence thereof, appellant's license was suspended for fifteen days. Appellant was also charged with permitting the consumption of alcoholic beverages during hours prohibited by the said ordinance. This charge was dismissed by the Council.

Upon the filing of this appeal, an order was entered by the Director on April 25, 1973, staying the Council's order of suspension pending the determination of this appeal.

Appellant alleges that permitting persons to remain on the premises after 2:00 a.m. is neither prohibited nor proscribed by the aforesaid ordinance; and, further, that the penalty imposed by the Council was excessive. These contentions were denied by the Council.

The transcript of the proceedings before the Council on April 11, 1973, was admitted into evidence, supplemented by oral argument and the receipt of additional exhibits in evidence at this de novo hearing, in accordance with Rules 6 and 8 of State Regulation No. 15.

From the transcript of the testimony taken before the Council, the following factual situation upon which its findings were predicated, emerges:

About two o'clock on the morning of March 8, 1973, Deputy Chief Maher made an observation of the interior of appellant's licensed premises, saw four people therein and called for the assistance of a radio car, the officers in which confirmed that observation and entered the premises. Of the four persons within, one was a part owner, another was a bartender, the third was an off-duty police officer of a neighboring community, and the fourth was a female friend of the owner. The hour was then past closing time but the lady guest had been observed consuming some drink. The off-duty police officer explained his presence as a volunteer escort to the home of the owner who would be carrying the day's receipts. The female alleged that she was a one-time employee in the establishment, but, on this evening, she too was awaiting departure of the owner, and had been given a drink of non-alcoholic beverage after the closing hour.

The subject ordinance provides in part:

"During the hours sales of alcoholic beverages are prohibited, the entire licensed premises shall also be closed. The hours referred to shall be Eastern Standard Time...."

Admittedly, the doorway was locked and the lights dimmed. The sole question before the Council and determinable on this appeal is: Does the ordinance requiring closing of premises concomitantly require that no persons be within the licensed premises after closing hours.

It has been long established that a closing hour requirement also carries with it a prohibition against the presence of patrons or guests in the licensed establishment after the proscribed hour. Re Four Hundred Social Club, Inc., Bulletin 242, Item 8; Re Casarico, Bulletin 268, Item 1. Cf. Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3.

In oral argument before this Division as well as before the Council, appellant vigorously contended that all of the four persons within the establishment were connected with the management, hence not patrons or such members of the public excludable at closing hour.

The uncontroverted testimony elicited from appellant's witnesses confirmed that the part owner and bartender were in process of "cleaning up". The presence of the police officer awaiting the owner's departure for escort purposes may be condoned by way of a volunteer employee present for a particular purpose. Cf. The Big Top Cafe v. Newark, Bulletin , Item .

However, testimony of the female present contained the candid admission that she had no employment status on the night in question and her total employment by the appellant had, if it existed at all, terminated months before. She was present merely to await the departure of the owner and, after the prohibited hour, was served with a soda. She was obviously a guest, if not a patron, and her presence after the hour of closing was prohibited under the ordinance.

A further argument, advanced by appellant, that the penalty was excessive is without merit. A suspension of fifteen days for like offense is consistent with Division precedents. See Re Brady's, Bulletin 2096, Item 2M; Brighton Holding Co. Inc. v. Newark, Bulletin 2095, Item 2; Gach v. Irvington, Bulletin 2058, Item 1; Sanderson v. Woodstown, Bulletin 2037, Item 1.

It is, accordingly, recommended that an order be entered affirming the Council's action, dismissing the appeal, vacating the order staying the Council's order of suspension pending the determination of this appeal and fixing the effective dates for the suspension of the license heretofore imposed by the Council and stayed by the said order.

Conclusions and Order

Written exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15 by attorney for appellant. No answering argument was filed by respondent.

I have carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report, and the written exceptions thereto. Although these exceptions were filed out of time, I have fully examined and considered them, and find that the said exceptions have either been fully considered in the Hearer's report or are lacking in merit. Consequently, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 23rd day of August 1973,

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

ORDERED that the order dated April 25, 1973 staying the Council's order of suspension pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Roselle Park to Harry's Bar & Grill, Inc., t/a The Cannonball for premises 404 East Westfield Avenue, Roselle Park, be and the same is hereby suspended for fifteen (15) days, commencing 2:00 a.m. on Thursday, September 6, 1973, and terminating 2:00 a.m. Friday, September 21, 1973.

Robert E. Bower
Director

2. APPELLATE DECISIONS - TOWN COCKTAIL BAR, INC. v. NUTLEY.

Town Cocktail Bar, Inc.,)
t/a Town Cocktail Bar,)
Appellant,)
v.)
Board of Commissioners of)
the Town of Nutley,)
Respondent.)
-----)

On Appeal

CONCLUSIONS and ORDER

William Osterweil, Esq., Attorney for Appellant
James M. Piro, 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 respondent Board of Commissioners of the Town of Nutley (hereinafter Board) which on April 3, 1973 suspended the plenary retail consumption license of appellant for ten days, in consequence of a finding of guilt of a charge alleging that on January 12, 1973 it served alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Appellant's petition of appeal contended that such action by the Board was arbitrary because it was contrary to the weight of evidence and that the Board improperly permitted the introduction of evidence not relevant to the issue before it. The Board denied these contentions, asserting that the Board acted properly in determining the evidence before it.

Upon filing of the appeal the Director, by order dated April 27, 1973, stayed the suspension imposed by the Board pending determination of the appeal.

The appeal was heard de novo in accordance with Rule 6 of State Regulation No. 15, with full opportunity given counsel to introduce testimony and cross-examine witnesses. The transcript of testimony at the hearings held by the Board, by stipulation, was accepted into evidence and was supplemented by evidence offered in the hearing before this Division. Rule 8 of State Regulation No. 15.

Detective Sergeant Salvatore Centanni of the Nutley Police Department testified that he was on duty on January 12, 1973, at 9:43 p.m. and was making a routine check of appellant's licensed premises when he observed David --- seated at the bar drinking beer from a glass. He knew David to be a minor and approached him. In addition to the glass of beer there appeared to be eighty cents in change lying on the bar directly in front of the alleged minor who picked up the change as he was escorted from the establishment.

Detective Alfred J. Ciccone testified that he was in the company of Sergeant Centanni and saw David with a glass of beer which he had taken from his lips and placed down on the bar. He recounted a conversation with David, who admitted being seventeen years old and having used fictitious identification to purchase a glass of beer of the bartender. On cross-examination the witness admitted that David denied the change lying on the bar was his. There were no fictitious identification papers on David's person.

David --- testified that he was born April 29, 1955, and on January 12, 1973 he entered appellant's tavern alone with a single purpose of talking to a friend of his, several of whom were there. One of those friends left the bar-stool temporarily and David took that stool and lifted up a glass of beer that was on the bar, had it in his hand, but never actually drank from it. David added that he told the detectives that he had used a fictitious identification, saying "And I knew I was in trouble because I had a beer in front of me -- it was in my hand. And I was just trying to make any excuse, just -- you know -- to get out of it." On cross examination David vigorously denied taking any drink, offering to subject himself to a breatholater test. He stated that the friend whose stool, beer and change he had taken left the premises because of the presence of the police.

Bartender Jeffrey Bouton and bartender Ronald Vassallo both denied serving anything to David on that evening and denied seeing him drink any beer or other beverage. Fred Lane (a long-time acquaintance of David) testified that he was seated next to David who was in the premises just a few minutes before the arrival of the detectives. David neither purchased nor drank any beer. He was indefinite about the possibility of David having a glass of beer in his hand, saying "He might have been playing around with it." He could not recall David picking up the change on the bar, nor could he recall if the occupant of the stool taken by David ever came back to it.

The Board determined the matter by a three-to-two vote; one of the dissenting members commented upon the casting of his negative vote, "I would like to state that there's enough question in my mind as to whether the State proved its case by the preponderance of the evidence to prevent me from voting guilty." One other member of the Board shared his view, but the majority voted in favor of the adoption of the resolution.

The Director's function in matters of this kind is not to reverse the determination of the municipal issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1; Montepuro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

In matters of this kind we are dealing with a purely disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported only by a preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Although there is a measure of conflict in the testimony presented, that of the two police detectives is forthright and convincing. The testimony of the minor David contained admissions of untruthfulness in a signed statement made in which he admitted consuming the beer. At the hearing before the Board he stated, "I figured someone might get him in trouble because it was his beer that I was drinking." He admitted being ready to drink from it and was just "running my fingers up and down the glass." The Board, which had the benefit of observing and listening to the testimony of David, concluded his denial of being served and consuming the glass of beer was untrue. The testimony of David's friend Lane was also unconvincing and incredible.

Appellant would have the Board and this Division believe a preposterous account. David held the glass of another boy who was never called to testify and never identified himself to the police. That boy was allegedly entitled to the eighty cents change (which David took); however, he never returned to his seat at the bar but departed because of the presence of the police. The Board properly concluded such account unworthy of belief.

I am satisfied that respondent has proved its case by a fair preponderance of the believable evidence. Thus appellant has failed to meet the burden of establishing that the action of respondent herein was erroneous. Rule 6 of State Regulation No. 15.

It is accordingly recommended that the action of the Board be affirmed, the appeal be dismissed, and that the suspension heretofore imposed by the Board and stayed by the Director pending this appeal be reimposed.

Conclusions and Order

Written exceptions to the Hearer's report were filed within the time prescribed in Rule 14 of State Regulation No. 15 by attorney for appellant. No answering argument was filed by respondent.

Having carefully considered the entire record herein, including transcripts of testimony, exhibits, Hearer's report, and exceptions thereto which I find have either been fully considered in the Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 23rd day of August 1973,

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

ORDERED that the order dated April 27, 1973, staying the Board's order of suspension pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-9, issued by the Board of Commissioners of the Town of Nutley to Town Cocktail Bar, Inc., t/a Town Cocktail Bar, for premises 396-398-400 Centre Street, Nutley, be and the same is hereby suspended for ten (10) days, commencing 2 a.m. Wednesday, September 5, 1973, and terminating at 2 a.m. Saturday, September 15, 1973.

Robert E. Bower,
Director.

3. DISCIPLINARY PROCEEDINGS - NUISANCE - SALE OF CONTROLLED DANGEROUS SUBSTANCES - LICENSE SUSPENDED FOR 100 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
)
 Broadway Bill (N.J. Corp.))
 t/a Broadway Bill)
 253 Broadway)
 Newark, New Jersey,)
)
 Holder of Plenary Retail Consumption)
 License C-88, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Newark.)
 -----)

Conclusions
and
Order

William Osterweil, Esq., Attorney for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on April 3, 10, 11 and 19, 1973, it permitted unlawful activity pertaining to a controlled dangerous substance as defined in N.J.S.A. 24:21-1 et seq. on the licensed premises and, further, permitted the licensed premises to be conducted in such manner as to constitute a nuisance in that persons employed in the premises procured or sold such dangerous substance there, in violation of Rules 4 and 5 of State Regulation No. 20.

ABC agent D testified that on April 3, 1973, in the company of a detective of the New Jersey State Police, he entered the licensed premises as part of an undercover investigation. This investigation was part of a large collective investigation by State and Federal agencies of licensed premises in this general area which were suspected of harboring narcotics peddlars and engaging in unlawful narcotics activity.

A patron (later identified as Hiraldo Santiago and called Watusi) approached them and offered to sell narcotics. The officer and the agent were acting the roles of drug users and the agent purchased two glassine envelopes containing hard drugs, using marked money for the purchase. The sole employee present, a barmaid later identified as Joyce Brooks, was engaged in conversation by agent D on the subject of the completed narcotics purchase.

Agent D further testified that both he and State Police Detective Stengel, who had accompanied him to the premises on April

3, returned about noon on April 10, 1973, for a brief visit which did not disclose the presence of any "activity", meaning the presence of narcotics drug pushers. Returning three hours later, both the agent and the detective entered and shortly thereafter were approached by a male, later identified as Neil Butler, to whom in due course agent D gave \$10 in marked money. Butler was observed taking the money to a female seated along the bar who, upon accepting the money, gave Butler an envelope which contained narcotics. Butler passed that envelope to the agent.

Agent D testified that, while both officers were present on that date, a male entered with what appeared to be an invoice in his hands, spoke to barmaid Joyce who referred him to the female who had accepted the marked money. She in turn directed that male to bring in his delivery of cases of beer. The female was later identified as Ruth Lanier.

Shortly thereafter Butler was observed going through a door leading to a cellar and returning with a bottle of wine which he placed behind the bar. On cross examination the agent admitted he did not see Ruth Lanier behind the bar, nor did he see Butler serve any customers.

The following day both officers returned to the premises and on this date were accompanied by agent P. Butler was again present and asked agent D if he wished to make a purchase. Upon being informed that agent D would do so, Butler explained that, as he worked on the premises, the transaction would have to be accomplished in the lavatory. However, Butler and the agent walked out of the front doorway of the premises, where he called up to a window above the premises. Ruth Lanier appeared at the window and, a few moments later, threw out a bag to Butler. The bag apparently contained narcotics paraphernalia. The agents returned to the interior of the premises where the drug transaction was completed.

Agent D testified that, finally, on April 19, 1973, a return to the premises was arranged with the State Police Detective Stengel and with other officers, both of this Division and of the Narcotic Squad of a combined law-enforcement team. A list of marked money was prepared. Agent D and Detective Stengel entered the premises. Butler was again present and came over to them. Agent D advised that he wished to buy a larger quantity of narcotic drugs than he had previously. Butler again walked down the bar to Ruth Lanier, to whom he handed a marked twenty-dollar bill which agent D had passed to him. An additional ten-dollar bill, also given him by the agent, was in turn passed to Ruth Lanier, who put both bills in her bra. Butler then gave the agent three glassine envelopes. Thereafter further conversation about narcotics took place among the officers, Butler, Lanier and barmaid Joyce. During the visit Butler prepared a drink for a patron. While preparing to leave, other officers of

the raiding party entered, the narcotics were recovered from the agent and the marked money was obtained from the person of Lanier.

State Police Detective Frederick J. Stengel testified in substantial corroboration of the testimony of agent D. He added that on the April 3 visit the barmaid was preparing drinks directly in front of them when Watusi produced the narcotic drugs and received payment. On cross examination he admitted that he did not see Butler mix any drinks on the occasion of their visits but he did see Butler behind the bar putting some glasses on it. While further admitting that he did not see Ruth Lanier behind the bar or engaged in any physical activity, he did overhear barmaid Joyce tell a deliveryman that he would have to see Ruth, meaning Ruth Lanier.

ABC agent B testified that he was part of the raiding party on April 19, 1973, and that the marked money was recovered from the person of Ruth Lanier by Police Matron Mason. He affirmed that the narcotics purchased were determined to have been part heroin. Police Matron Mason and Division Chemist Moore testified in corroboration of agent B's testimony. Chemist Moore testified that an analysis of the substance presented to the Division for analysis as seized by the agents contained a narcotic drug, i.e., heroin. She admitted that the analysis did not reveal the substance to be "pure" heroin, indicating that pure heroin is rarely packaged for sale without being diluted with other substances; however, the basic ingredient of the drug presented for analysis was heroin.

At the close of the Division's presentation, counsel for the licensee moved for dismissal of the complaint on the ground that no proof was advanced that the licensee or its agents were either participants in the sale of drugs or knowingly permitted such sale. A determination of the motion was reserved. However, it is recommended that the motion be denied.

Testifying on behalf of the licensee, Ruth Ann Davis stated that she has used the name Lanier and that about two years ago she had worked in the licensed premises. In this connection a list of employees obtained at the time of the raid, which disclosed her name, was exhibited to her and she confirmed her identity as being the same person listed. She described her presence within the premises as that of a patron. She did admit doing odd jobs for the licensee for which she received a few dollars. Although she had once been listed as a manager of the premises, she had no such connection for a long period but, as she was familiar with the operation of the premises, the barmaid might consult her advice. She denied that she ever received more than two dollars at any one time or had she ever really acted as manager, and was never on the payroll as such. She further denied that any money she received from the sale of the narcotic drugs was ever given to the licensee.

The principal stockholder of the licensee corporation, Willie Saunders, testified that he was not present during the visits of the officers. While Ruth Lanier's name appears on the employment list, she had no connection with the premises for more than two years. He further admitted that on occasions Ruth Lanier was asked to do errands for the business and, only in consequence of her being present at the time, such duties had to be done. Neil Butler was not, nor ever had been, employed in the premises. Had he known of any narcotic drug activity by either, they would have been forbidden entry. He has barred about twenty other patrons previously who were known narcotics peddlars or suspected of narcotics activity.

Additionally, Saunders testified that he is in the premises from early morning opening to mid-morning, and thereafter returns at early evening to remain until closing. During his absence his barmaid Joyce, who has been so employed for about nine months, is in charge.

A proffer of proof was made that Joyce Brooks would testify, if present, that she was unaware of any conversation among the agents and others concerning any sale or possession of narcotics. Such proffer was accepted.

Neil Butler testified that he was never employed in the premises, but used to "clean up the cellar." He denied ever serving drinks to patrons or bringing up cases from the cellar. He would leave the premises whenever Saunders arrived. As he was in the premises daily, he admitted assisting the new barmaid.

It is apparent that a purely factual question has been presented for determination. In matters of this nature we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 36 N.J. Super. 512, aff'd 20 N.J. 373.

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

After carefully considering and evaluating the testimony of the witnesses herein, I accept as factual and credible the agents' version of the activities which took place as they accounted it.

The admission by Ruth Lanier that she did direct the placement of the beer delivery, as well as the admission that her advice was solicited by the barmaid toward the resolution of management questions, result in the imperative finding that she was acting as an agent of the licensee.

Butler's freedom of activities within the premises, his visit to the cellar to secure a bottle of wine, and his placement of glasses upon the bar place him in a position of being, if not an employee or agent of the licensee, in such confidence that his actions within the establishment would be accepted by the employee-barmaid as a usual and accepted activity.

The barmaid herself, serving the agents while a purchase of narcotic drugs was taking place right in front of her, gives rise to an inescapable conclusion that an agent of the licensee knew of the illegal activity. Certainly the repeated purchases, open and uncovert, were of such magnitude that the licensee or its employee should have known such activity was a continuing one.

Rule 4 of State Regulation No. 20 proscribes any illegal activity concerning the narcotic drugs as here involved. Rule 5 of that same regulation is stated as follows:

"No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy, indecent or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The testimony of Ruth Lanier contains the admission that she does serve the licensee in an employee capacity on occasions, even though the compensation for such services is miniscule. Her name appears on the list of employees and, although the principal stockholder of the licensee corporation denied the currency of the list, the Division has a right to rely upon such list. Cf. Rule 16(b) of State Regulation No. 20. To allege that Ruth Lanier is not such employee, the licensee is offering a patently self-serving declaration.

I am satisfied that the Division has established the charges herein by a preponderance of the credible evidence. The account of the ABC agents and that of the State Police Detective was forthright, credible and painstakingly accurate. The testimony offered on behalf of the licensee by both Lanier and Butler was devoid of believable substance.

It is recommended, therefore, that the licensee be found guilty of the charges herein. Absent prior record, it is further recommended that the license be suspended for one hundred eighty days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 29th day of August 1973,

ORDERED that Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Broadway Bill (N.J. Corp.), t/a Broadway Bill, for premises 253 Broadway, Newark, be and the same is hereby suspended for one hundred eighty (180) days, commencing at 2 a.m. Wednesday, September 12, 1973, and terminating at 2 a.m. Monday, March 11, 1974.

ROBERT E. BOWER
DIRECTOR

4. APPELLATE DECISIONS - GRAHAM v. EAST NEWARK - ORDER.

Raymond D. Graham,)	
Appellant,)	
v.)	On Appeal
Borough Council of the)	
Borough of East Newark,)	
Respondent.)	

O R D E R

John J. Salvest, Esq., Attorney for Appellant
Joseph F. McCarthy, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from the action of the Borough Council of the Borough of East Newark (hereinafter Council) which on June 18, 1973 denied appellant's application for renewal of his plenary retail consumption license for premises 16 Reynolds Avenue, East Newark.

At the de novo hearing herein pursuant to Rule 6 of State Regulation No. 15, the following facts were stipulated: Appellant's license has been continuously renewed following a fire which occurred in the then-appellant's premises at 400 Passaic Avenue to, but not including the present licensing year,

subject to the special condition that the situs of the license was for identification only and not to be used for a premises from which alcoholic beverages could be purveyed; that in conjunction with appellant's present application no other conditions were attached thereon. Thereupon, by agreement of counsel for the parties hereto, the following stipulation was made:

- (a) The respondent Council, the municipal issuing authority, shall promptly grant renewal of appellant's plenary retail consumption license for the ensuing licensing period, which said license shall not actually be issued to appellant, but shall be held by said Council.
- (b) The appellant shall promptly secure a new and proper location for such license for which place-to-place application for transfer shall be timely made.
- (c) Upon the failure of appellant to secure a new location approved by the Council for the said license with the licensed business being conducted thereon, within the present licensing period, the Council shall thereafter not renew appellant's license for the subsequent licensing period.

Good cause appearing, I shall approve said stipulation and enter an order in accordance therewith.

Accordingly, it is, on this 27th day of August 1973,

ORDERED that the action of the respondent Borough Council of the Borough of East Newark be and the same is hereby reversed, and the Council be and is hereby directed to approve appellant's application for the renewal of his plenary retail consumption license for the 1973-74 licensing period, expressly subject to the following conditions:

1. The said license shall be held by the Council and not actually endorse such license unless and until appellant shall have secured a situs for the licensed premises approved by the Council.
2. That if, at the termination of the 1973-74 licensing period, appellant has not secured such approved site for his said license and does not have such licensed business in full and complete operation, the said license shall not thereafter be renewed for the subsequent licensing period.


Robert E. Bower
Director