

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 MARKET STREET, CN-087
TRENTON, NEW JERSEY 08625

BULLETIN 2442

JUNE 7, 1985

TABLE OF CONTENTS

ITEM

1. RECENT LEGISLATION: ADDITION OF LIMOUSINES TO PLENARY RETAIL TRANSIT LICENSE STATUTE - CONSOLIDATION OF WORDING IN CLASS C LICENSE STATUTE - (N.J.S.A. 33:1-12) - TEXT OF NEW DEFINITION OF "LIMOUSINE" AND TEXT OF AMENDED STATUTE.
2. READOPTED AND AMENDED REGULATION - PRODUCT INFORMATION FILING: BRAND REGISTRATION (N.J.A.C. 13:2-33) TEXT OF AMENDED AND READOPTED REGULATION.
3. PLENARY RETAIL TRANSIT LICENSES FOR LIMOUSINES--PROCEDURE FOR LICENSING - APPLICATION FORM.
4. DIRECTOR'S ADVISORY OPINION - LICENSEE MAY ACCEPT PAYMENT FROM UNDERAGE PERSON FOR ALCOHOLIC BEVERAGES SERVED TO FAMILY MEMBER OVER AGE 21.
5. NOTICE TO RETAIL LICENSEES: COUNTERFEIT PENNSYLVANIA DRIVER'S LICENSES BEING UTILIZED BY UNDERAGE PERSONS TO ATTEMPT TO PROVE AGE.
6. STATE LICENSE TRANSACTIONS - APRIL 26, 1985 TO DATE.
7. DISCIPLINARY PROCEEDINGS (EGG HARBOR) - FINDING THAT CLUB LICENSEE NOT A BONA FIDE CLUB AND REVOKING LICENSE - NOTE OF AFFIRMANCE BY APPELLATE DIVISION.
8. ADMINISTRATIVE RULING (EAST RUTHERFORD) - CONCLUSION AND ORDER AUTHORIZING PRIOR AND CURRENT RENEWALS OF INACTIVE LICENSE AND PLACING SPECIAL CONDITION OF NO FURTHER RENEWAL ON LICENSE - REVIEW OF PURPOSE AND EFFECT OF N.J.S.A. 33:1-12.39 IN OPINION.

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

BULLETIN 2442

June 7, 1985

1. RECENT LEGISLATION: ADDITION OF LIMOUSINES TO PLENARY
RETAIL TRANSIT LICENSE STATUTE - CONSOLIDATION OF WORDING
IN CLASS C LICENSE STATUTE - (N.J.S.A. 33:1-12) - TEXT OF
NEW DEFINITION OF "LIMOUSINE" AND TEXT OF AMENDED STATUTE.

On April 26, 1985, Governor Kean signed A-661 principally sponsored by Assemblyman Marsella, as P.L. 1985, c. 157, thereby permitting limousine owners to be issued plenary retail transit licenses to permit service of alcoholic beverages in limousines under certain circumstances.

The first section of the new law adds a definition of "Limousine" to the definitions in N.J.S.A. 33:1-1, which definitions apply generally throughout the Alcoholic Beverage Control laws. The definition, which serves to delineate the type of vehicle and circumstances under which the licensure can now occur, limits the size of the vehicle to one that has a capacity of nine or fewer passengers, not counting the driver. It also calls for the limousine to be licensed to be one that is used in the business of carrying passengers for hire pursuant to a charter, specific contract or agreement to pay a fare or price agreed upon in advance or furnished as an accommodation for a patron in connection with other business purposes.

The text of the amendment to N.J.S.A. 33:1-1, which adds the definition of "Limousine," reads as follows:

33:1-1. Definitions

* * *

aa. "Limousine." A vehicle with a carrying capacity of not more than nine passengers, not including the driver, used in the business of carrying passengers for hire which is hired by charter or for a particular contract, or by the day or hour or other fixed period, or to transport passengers to a specified place, or which charges a fare or price agreed upon in advance between the operator and the passenger or which is furnished as an accommodation for a patron in connection with other business purposes. This shall not include taxicabs, hotel or airport shuttles and buses or buses employed solely in transporting school children or teachers to and from school, nor vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

* * *

The second section of P.L. 1985, c. 157, primarily amends

subsection 4 of N.J.S.A. 33:1-12 to add the limousine to the modes of transportation for which Plenary Retail Transit Licenses may be issued. It provides for an annual license fee of \$25.00 for each limousine to be licensed. It also provides that the alcoholic beverages to be sold in a boat or limousine may be purchased from a wholesaler or from a retailer whose license privilege permits the sale of alcoholic beverages in original containers for off-premises consumption. (Retail licenses who might make such sales to licensees holding plenary retail transit licenses for boats or limousines are cautioned that there may be certain federal requirements or restrictions that must be dealt with and that they must furnish invoices to the purchasing licensee.)

The second section of the new law also reconciles the discrepancy that has existed in N.J.S.A. 33:1-12 since 1976, when L. 1976, c. 44, sec. 3, and L. 1976, c. 54, sec. 1 each amended different parts of N.J.S.A. 33:1-12.

The full text of N.J.S.A. 33:1-12 (as amended, L. 1985, c. 157, effective April 26, 1985) now reads as follows:

33:1-12. Class C licenses; subdivisions; fees

Class C licenses shall be subdivided and classified as follows:

Plenary retail consumption license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business is carried on, except as hereinafter provided. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages; or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$200.00 and not more than \$2,000.00. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or \$500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail consumption license shall be granted within its respective municipality.

Seasonal retail consumption license. 2. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises, during the summer session from May 1 until November 14, inclusive, or during the winter season from November 15 until April 30, inclusive; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business is carried on, except as hereinafter provided. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons; or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at 75% of the fee fixed by said board or body for plenary retail consumption licenses. The governing board or body of each municipality may, by ordinance, enact that no seasonal retail consumption license shall be granted within its respective municipality.

Plenary retail distribution license. 3. a. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers. The governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, except that any such ordinance, heretofore or hereafter adopted, shall not prohibit the retail sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this act, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks, ice, and nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$100.00, and not more than \$2,000.00. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or \$500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality.

Limited retail distribution license. 3. b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than 72 fluid ounces for consumption off the licensed premises, but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto. The fee for this license shall be fixed by the governing body or board of the municipality in which the licensed premises are situated, by ordinance, at not less than \$25.00 and not more than \$50.00. The governing board or body of each municipality may, by ordinance, enact that no limited retail distribution license shall be granted within its respective municipality.

Plenary retail transit license. 4. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages, for consumption only, on railroad trains, airplanes, limousines and boats, while in transit. The fee for this license for use by a railroad or air transport company shall be \$300.00, for use by the owners of limousines shall be \$25.00 per vehicle and, for use on a boat shall be \$50.00 on a boat 65 feet or less in length, \$100.00 on a boat more than 65 feet in length but not more than 110 feet in length, and \$300.00 on a boat more than 110 feet in length; such boat lengths shall be determined in the manner prescribed by the Bureau of Customs of the United States Government or any federal agency successor thereto for boat measurement in connection with issuance of Marine Documents. A license issued under this provision to a railroad or air transport company shall cover all railroad cars and planes operated by any such company within the State of New Jersey. A license for a boat or limousine issued under this provision shall apply only to the particular boat or limousine for which issued, and shall permit the purchase of alcoholic beverages for sale or service in a boat or limousine to be made from any Class A and B licensee or from any Class C licensee whose license privilege permits the sale of alcoholic beverages in original containers for off-premises consumption. An interest in a plenary retail transit license issued in accordance with this section shall be excluded in determining the maximum number of retail licenses permitted under P. L. 1962, c. 152 (C. 33:1-12.31 et seq.).

Club license. 5. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$50.00 and not more than \$150.00. The governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the Commissioner of Alcoholic Beverage control by rules and regulations.

2. READOPTED AND AMENDED REGULATION - PRODUCT INFORMATION FILING:
BRAND REGISTRATION (N.J.A.C. 13:2-33) - TEXT OF AMENDED AND
READOPTED REGULATION.

In order to implement P.L. 1984, c. 233, (N.J.S.A. 33:1-2, effective January 27, 1985) (see Bulletin 2438, Item 1,) the Division has readopted N.J.A.C. 13:2-33, with amendments, which became effective upon its promulgation in the New Jersey Register on June 3, 1985. The amendments clarify the guidelines for brand registration, set the fees, and provide for a one-time filing, as opposed to the prior practice of annual filing, unless amendments to the filing are applicable.

The full text of N.J.A.C. 13:2-33 is now as follows:

SUBCHAPTER 33. PRODUCT INFORMATION FILING:
BRAND REGISTRATION

13:2-33.1 Brand registration schedule

(a) No licensee shall knowingly sell, offer for sale, deliver, receive or purchase, for resale in New Jersey, any alcoholic beverage, including private label brands owned by a retailer and exclusive brands owned by a manufacturer or wholesaler and offered for sale or sold by such manufacturer or wholesaler exclusively to one New Jersey retailer or affiliated retailers, unless there is first filed with the Director of the Division of Alcoholic Beverage Control a schedule, for each separate alcoholic beverage product, listing the following:

1. The full and correct brand or trade name;
2. Its nature and type;
3. Its age or vintage and proof or percentage of alcoholic content when stated on the label;
4. The sizes of standard packaging and the standard number of unit containers per standard case;
5. The date of label approval granted by the Federal Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.), together with a copy of the B.A.T.F. Form 1649;
6. The names and license numbers of each New Jersey Class B licensee designated by the filer to be an authorized distributor of the product at wholesale;
7. The full name, address, telephone number, taxpayer identification number and New Jersey license number (if any) of the filer; and
8. An indication whether the schedule is an original filing or an amendment to any existing one.

(b) The brand registration schedule shall be filed by:

1. The manufacturer, importer or wholesaler who owns the brand or trade name and label; or
2. An importer or a wholesaler selling such brand who is appointed as authorized agent by the brand owner for the purpose of filing the brand registration schedule; or
3. In the case of private label brands, by the manufacturer or wholesaler supplying such private label brand to the retailer or by any wholesaler having authority, in writing, from the retailer or affiliated retailers owning such private label brand, except where the alcoholic beverages are imported by the retailer under a special permit issued by the director, in which case the retailer shall file the schedule and the labels.

(c) Whenever any change occurs, including but not limited to the addition or deletion of an authorized wholesaler, the filer of the brand registration schedule shall file an amended brand registration schedule within ten days after the occurrence of such change.

13:2-33.2 Filing fees and forms

(a) Each filing of an original brand registration schedule shall be accompanied by a non-refundable fee of \$10.00 and each filing of an amendment to a previously filed brand registration schedule shall be accompanied by a non-refundable fee of \$7.00. Such fees shall be payable to the Division of Alcoholic Beverage Control.

(b) All filings shall be made on a form which the director shall provide for the filing of brand registration schedules. Filers, however, may utilize a photocopy of the form.

As Adopted, R. 1985 d. 279, eff. June 3, 1985. See 17 N.J.R. 799 (a), 17 N.J.R. 1423(a).

3. PLENARY RETAIL TRANSIT LICENSES FOR LIMOUSINES--PROCEDURE FOR LICENSING - APPLICATION FORM

With the signing of P.L. 1985, c. 157 (See Item 1, this Bulletin), in order to implement the act in as simple a manner as possible, the Division's Licensing Bureau has developed a six page application and a simplified set of instructions. These are available by mail from the Licensing Bureau, Division of Alcoholic Beverage Control, CN 087, Trenton, NJ 08625 or they may be picked up at Division offices. Photocopies of the license application or any pertinent pages may also be utilized. Any questions should be addressed to the Licensing Bureau at (609) 984-2736.

A reduced size facsimile of the Application Instructions and the Limousine License Application follows:

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
CN-087
TRENTON, NJ 08625-0087
(609) 984-2830

APPLICATION INSTRUCTIONS

1. New applicants for a Retail Transit License-Limousine must complete the full application. The original of the application is to be submitted to the Division of Alcoholic Beverage Control with the required fee. A photocopy is to be retained at the applicant's office. A photocopy of page 4 with a copy of the license certificate is to be carried in the vehicle glove compartment. The original license certificate is to be maintained at the office address with the photo copy of the full application.
2. The fee for a Retail Transit License-Limousine is computed on the basis of \$25.00 for each vehicle to be licensed. The fee is to be paid by certified check or money order, payable to the Division of Alcoholic Beverage Control, and must accompany the application.
3. Notice of application shall be published once a week for two weeks successively, at least seven days apart, in a newspaper printed in the English language, published and circulated in the New Jersey municipality in which the limousine service's office is located. If the limousine service has no New Jersey office, the notice of application shall be published in the municipality wherein the duly authorized agent within the State, upon whom service of process may be made, is located or in a New Jersey daily newspaper of general circulation. The notice shall include the name of the applicant, individual, partnership, or corporation, and shall offer opportunity for objection to be made to the Director, Division of Alcoholic Beverage Control. An affidavit of publication must be furnished by the newspaper.
4. When a licensee whose vehicles have been licensed wishes to add or substitute vehicles, this may be done by merely submitting a page #4 and a page #5. For each added or substituted vehicle, a fee of \$25.00 must accompany the pages #4 and #5.
5. If an applicant is a corporation and changes its corporate structure, it must submit pages #1, 2, 3, and 5.
6. The Retail Transit License-Limousine is renewable annually on July 1st of each year. Renewal application forms will be provided to each licensee. The first license year will run until June 30, 1986.
7. When the license is issued, an insignia will be furnished to be affixed to the rear bumper of the licensed limousine. Copies of page 4 and the license certificate are also to be carried in the glove compartment.
8. If alcoholic beverages are to be stored in any location other than the licensee's address shown in item 1 on page 1, or in the limousine, the applicant must apply to the Director of the Division of Alcoholic Beverage Control for a storage permit. An application form for a storage permit is available from the Division of Alcoholic Beverage Control. The fee for this permit is \$25.00 per year, renewable concurrently with the Retail Transit License-Limousine, on July 1.
9. In accord with the Federal Privacy Act of 1974, disclosure of Social Security number information is voluntary.

ABC-LMD 01-5/85

Page 1

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
LICENSE APPLICATION
RETAIL TRANSIT-LINDSINE
N.J.S.A. 33: 1-12(4)

Division Use Only:
ABC State Assigned License Number 30 ___-13-
Date Filed: ___/___/___
License Period Applied For: From ___/___/___ To 06 / 30 / ___

Check the appropriate box:
Initial application [] Change of corporate structure []
Application made on behalf of:
An individual [] A partnership [] Business corporation []
Number of licenses included in this application []

- 1. Full name of applicant
Street address of applicant
Municipality County State
2. Mailing address, if different from address given above:
3. Telephone number ()
4. Trade name(s) under which business is conducted. All trade names or D/B/A's must be listed.
5. Does the applicant intend to store alcoholic beverages at a location other than the address in question #1, or in the license(s)?
6. If applicant is a corporation:
A. Corporate name:
Principal address:
B. Is the corporation now an existing, valid corporation?
C. Date chartered or incorporated: ___/___/___

ABC-LMD-01-5/85

Page 2

Division Use Only
ABC State Assigned License Number 30 ___-13-

- D. Incorporated under the laws of the State of
E. If not incorporated under the laws of New Jersey, are you authorized to do business in New Jersey?
F. Has the corporation's charter ever been suspended or revoked in New Jersey?
G. Corporations shall supply New Jersey or Federal Taxpayer Identification Number (T.I.N.)
H. Name and address of registered or authorized agent in New Jersey upon whom service of process in any proceedings against the applicant, pursuant to the New Jersey Alcoholic Beverage Law, the Alcoholic Beverage Tax Law, or proceedings in a state or U.S. District Court, may be made:
I. If the applicant or any other person mentioned in this license application, or anyone with a beneficial interest in it, is a police officer or holds any official position pursuant to which you or they are entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever, print the name and title of the person, and the employing body:
J. Does the applicant or any other person mentioned in this license application, or anyone with a beneficial interest in it, have any interest directly or indirectly, in any brewery, winery, distillery, rectifying and blending plant, importing or wholesale alcoholic beverage business, either as owner or part owner, landlord, tenant, mortgage holder, or as a stockholder, officer, director, agent, employee or otherwise?
K. Has the applicant or any other person mentioned in this license application, or anyone with a beneficial interest in it:
A. Ever applied for an alcoholic beverage license in New Jersey which was denied?
B. Held an interest in a New Jersey alcoholic beverage license which was surrendered, suspended, had fine imposed in lieu of suspension, not renewed, revoked or cancelled within the past 5 years of this date?
C. Ever been convicted of a crime?
(Note: if any answer to A, B, or C above is "Yes", attach a statement giving details)

ABC-Lim-01-5/85

Page 3

Division Use Only

ABC State Assigned License Number 30 _____-13-_____

- 10. Has the applicant agreed to permit anyone to receive or agreed to pay anyone (by way of salary or otherwise) all or any percentage of the gross receipts or net profit or income derived from the alcoholic beverage business to be conducted under the license applied for? Yes No
(If yes, attach statement giving details with copy of any written agreements, etc.)
- 11. Does the applicant or anyone mentioned in this application owe the State of New Jersey or any municipality any license fee, penalty, interest or alcoholic beverage tax, which has accrued pursuant to the Alcoholic Beverage Tax Law, the Alcoholic Beverage Law, or any state law or municipal ordinance dealing with alcoholic beverages? Yes No
- 12. How licensees must supply this information: State dates when notice of application will be published, and the name of the newspaper.
First insertion: ___/___/___ Second insertion: ___/___/___ Newspaper Name: _____

13. Complete the information in the spaces provided for the applicant and any individual holding beneficial interest in the applicant. Information must be complete for individual owners; each partner in a partnership; and all stockholders, officers, and managers or other individuals of a corporation. (Only stockholders owning or controlling 1% or more of outstanding stock need be listed.) Use as many pages of page 3A as are necessary.

First Name _____ MI _____ Last Name _____ Social Security No. _____
 Home Address _____ Driver's License Number _____ State _____
 City _____ State _____ Zip Code _____ Date of Birth ___/___/___ % of Business Owned or Controlled _____ No. of Shares _____

Check the block(s) which describe this person's position(s) or title(s): Sole Owner Partner Stockholder President
 Vice-President Secretary Treasurer Director Trustee Other Officer Manager Agent Executor/Administrator
 Receiver/Assignee Beneficiary Other (Specify) _____

ABC-Lim-01-5/85

Page 3A

Division Use Only

ABC State Assigned License Number 30 _____-13-_____

This page 3A is sheet of

13. Complete the information in the spaces provided for the applicant and any individual holding beneficial interest in the applicant. Information must be complete for individual owners; each partner in a partnership; and all stockholders, officers, and managers or other individuals of a corporation. (Only stockholders owning or controlling 1% or more of outstanding stock need be listed.) Use as many page 3A as are necessary.

First Name _____ MI _____ Last Name _____ Social Security No. _____
 Home Address _____ Driver's License Number _____ State _____
 City _____ State _____ Zip Code _____ Date of Birth ___/___/___ % of Business Owned or Controlled _____ No. of Shares _____

Check the block(s) which describe this person's position(s) or title(s): Sole Owner Partner Stockholder President
 Vice-President Secretary Treasurer Director Trustee Other Officer Manager Agent Executor/Administrator
 Receiver/Assignee Beneficiary Other (Specify) _____

First Name _____ MI _____ Last Name _____ Social Security No. _____
 Home Address _____ Driver's License Number _____ State _____
 City _____ State _____ Zip Code _____ Date of Birth ___/___/___ % of Business Owned or Controlled _____ No. of Shares _____

Check the block(s) which describe this person's position(s) or title(s): Sole Owner Partner Stockholder President
 Vice-President Secretary Treasurer Director Trustee Other Officer Manager Agent Executor/Administrator
 Receiver/Assignee Beneficiary Other (Specify) _____

ABC-Limo-01-5/85

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

Page 4

Division Use Only
ABC State Assigned License Number 30 _____ -13- _____

A separate page 4 must be completed for each limousine.

14. Name of applicant: _____
15. Check One: New Limousine Added Limousine Substituted
for _____
(Describe former licensed vehicle including V.I.N.)

Attach to original of this page a photo copy of state vehicle registration.

16. Limousine:
Year _____
Make _____
Model _____
Vehicle Identification Number (V.I.N.): _____
State of Registration: _____
License Plate Number: _____

Attach in this space (preferably with glue) a color photograph (not smaller than 2 1/2 x 3 1/4, and not larger than 5" x 7") showing a view of one side and the front or rear of the limousine so that the license plate is legible in photo.

17. Name and address of owner of vehicle:

18. If vehicle is leased or financed by applicant, give name and address of lessor or lienholder

Attach to original of this page a copy of lease or finance agreement.

Division use only

ABC-Limo-01-5/85

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

Page 5

Division Use Only
ABC STATE ASSIGNED LICENSE NUMBER 30 _____ -13- _____

AFFIDAVIT

License Period Applied For From _____ / _____ / _____ To _____ / _____ / _____

The Following Pages are Attached and Form the Entire Application:		State of _____	} ss.: 1. The Individual applicant, or 2. Members of the Partnership applicant, or 3. _____ of _____ (President/Vice-President) (Corporation)
Number of Sheets of Each Page	Page	Country of _____	
1	1		consent(s) that, as provided by law, the applicant's premises and the licensed limousine(s) may be inspected and searched without warrant at all hours by those persons authorized to enforce the alcoholic beverage control laws of the State of New Jersey; and, being duly sworn according to law, upon his/har/their oath(s), depose(s) and say(s) that he/she is (they are) the person(s) duly authorized to sign the application; that in instance of corporate ownership, the signator is authorized by corporate resolution to sign on behalf of the corporation; and that the contents of this application represent complete disclosure of fact, and that the contents of application are true.
2	1		
3	1		
4	1		
5	1		

AFFIDAVIT MUST BE NOTARIZED BY DULY AUTHORIZED NOTARY PUBLIC OR AN ATTORNEY AT LAW OF NEW JERSEY

Sworn to and subscribed before me this _____ day of _____ 19 _____

(Signature of Individual Applicant/ Sole Proprietor)

OR _____
(Partnership Name)

(Signature of General Partner)

(Signature of Officer Administering Oath)

OR _____
(Corporate Name)

(Print Name of Officer Administering Oath)

By _____
(Signature of Corporate President or Vice-President)

(Title of Officer Administering Oath)

Attest: _____

Secretary

(Date of Expiration of Commission (if applicable))

AFFIX CORPORATE SEAL (if applicable)

4. DIRECTOR'S ADVISORY OPINION - LICENSEE MAY ACCEPT PAYMENT FROM UNDERAGE PERSON FOR ALCOHOLIC BEVERAGES SERVED TO FAMILY MEMBER OVER AGE 21.

An inquiry has been received from a retail consumption licensee regarding the permissibility of allowing an underage person to "pick up the tab" for a family group when that bill includes alcoholic beverages consumed by the members of the family over 21 years of age. This is apparently a fairly common occurrence, especially on a holiday such as Mother's Day when a young adult or older teenager might take his or her mother and family out to dinner, which includes either cocktails or wine, or both.

Although N.J.S.A. 33:1-77 literally proscribes anyone from selling alcoholic beverages to a person under the legal age for purchasing alcoholic beverages, it is the opinion of the Director that such "sale" contemplates the element of delivery of the alcoholic beverage to or for the underage person as well as receipt of payment from such underage person. If the alcoholic beverages are served only to persons over 21, it is permissible for payment to be received from a family member under such age. Of course, the licensee should be careful that the adult member who has been served the alcoholic beverage does not share or give any to the underage family member, but this applies no matter who pays the bill.

5. NOTICE TO RETAIL LICENSEES: COUNTERFEIT PENNSYLVANIA DRIVER'S LICENSES BEING UTILIZED BY UNDERAGE PERSONS TO ATTEMPT TO PROVE AGE.

It has come to the attention of the Division that underage persons are able to purchase from illegal sources counterfeit Pennsylvania driver's licenses which bear their own photographs and signatures (to match the given names), plus a fictitious date of birth which shows them to be 21 years old. The counterfeit licenses bear a close resemblance to valid Pennsylvania licenses but upon comparison show defects. These counterfeit "licenses" are being utilized by underage persons to attempt to purchase alcoholic beverages in New Jersey. They are believed to be very prevalent in the southeastern New Jersey counties and those areas easily accessible to or proximate to Philadelphia.

The "licenses" that have come to the attention of the Division, through the astuteness of a Cape May County licensee, have pictures of boys who are obviously very young. Licensees should be wary of this when a Pennsylvania license is presented and it is suggested that additional proof of age also be requested. Licensees are also reminded that a successful defense to a charge of selling to an underage person requires not only reliance on a photo driver's

license or A.B.C. identification card, but also that the appearance of the purchaser is such that an ordinary prudent person would believe him or her to be of legal age (N.J.S.A. 33:1-77). (See also Bulletin 2437, Item 7).

In scrutinizing Pennsylvania photo driver's licenses, the valid license has either "Commonwealth of Pennsylvania" (older licenses), or on newer licenses it has "PENNSYLVANIA" in block letters that are almost as wide as they are tall. In the case of the counterfeit licenses that have come to the attention of the Division, the word "PENNSYLVANIA" is in lettering that is obviously taller than it is wide, as can be seen below:

Upper right hand corner
of valid license:



PENNSYLVANIA
DRIVER'S LICENSE

Upper right hand corners
of two counterfeit licenses:



PENNSYLVANIA
DRIVER'S LICENSE



PENNSYLVANIA
DRIVER'S LICENSE

If any licensee believes that a person is presenting a counterfeit Pennsylvania license, it is recommended that the police be called. If anyone "abandons" the counterfeit license by fleeing the premises, it is requested that the counterfeit license be forwarded to the Director so that it can be forwarded to other authorities.

6. STATE LICENSE TRANSACTIONS - APRIL 26, 1985 TO DATE:

The following transactions have taken place with reference to state-issued licenses since April 26, 1985:

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

STATUS ON STATE LICENSES

AS OF JUNE 7, 1985

LICENSE TYPE	NUMBER	STATUS
Transportation license Atkinson-Intermodel Systems, Inc. 480-A Duncan Avenue Jersey City, NJ 07306 From: 144 Pennsylvania Avenue Kearny, NJ 07032	3400-20-843-002	Place to Place trans. iss. eff. 04/29/85
Limited Wholesale license Beaver Wine Company 5 Parkside Avenue North Brunswick, NJ 08902	3401-25-274-001	Place to Place trans. to incl. Expansion of Premise iss. eff. 04/29/85
Warehouse address: Marlboro Industrial Park 1 Boundry Road Marlboro, NJ 07727		

LICENSE TYPE	NUMBER	STATUS
Transportation license System Freight, Inc. 9101 Tonnelle Avenue North Bergen, NJ 07047 From: 115 Moonachie Avenue Moonachie, NJ 07074	3401-20-099-002	Place to Place trans. iss. eff. 04/29/85
Transportation license Grato and Sons Trk Co., Inc. 120 Tyler Street Port Newark, NJ 07114	3401-20-306-001	New lic. iss. eff. 04/29/85
State Beverage Distributors Newark Beverage Incorporated 206 Vanderpool Street Newark, NJ 07114 From: 208 Vanderpool Street Newark, NJ 07114	3400-19-196-004	Place to Place trans. iss. eff. 04/30/85
Limited Wholesale license Farber Distributing Corp. 213 Vanderpool Street Newark, NJ 07114 From: 15-19 Union Street Newark, NJ 07105	3400-25-895-005	Place to Place trans. iss. eff. 04/30/85
Limited Wholesale license Newark Beverage, Inc. 206 Vanderpool Street Newark, NJ 07114 From: 208 Vanderpool Street Newark, NJ 07114	3401-25-289-002	Place to Place trans. iss. eff. 04/30/85
Additional Warehouse license Farber Distributing Corp. 208-212 Vanderpool Street Newark, NJ 07114	3401-24-307-001	New lic. iss. eff. 04/30/85
Additional Warehouse license Farber Distributing Corp. 203 Miller Street Newark, NJ 07114	3401-24-308-001	New lic. iss. eff. 04/30/85
Limited Wholesale license Global Beverage, Inc. 130 Fieldcrest Avenue Edison, NJ 08817	3401-25-309-001	New lic. iss. eff. 05/06/85
State Beverage Distributors license Trentacoste Distributing, Inc. 304 Connecticut Drive Burlington, NJ 08016 From: Delaware Valley Dist., Inc.	3400-19-213-002	Person to Person trans. iss. eff. 05/06/85
Plenary Retail Transit license Wreck Raiders, Inc. Boat Black Whale II No. 575127 Centre St. and West Avenue Beach Haven, NJ 08008 From: "Deborah C"	3401-13-245-002	Place to Place trans. iss. eff. 05/06/85
Plenary Wholesale license National Distillers & Chemical Corp. 60 Cutter Mill Road Great Neck, NY 11021	3400-23-054-002	Place to Place trans. iss. eff. 05/07/85
Warehouse address: 125 Christie Street Newark, NJ 07105		
Limited Wholesale license Vinimport, Inc. 9 St. Francis Street, 3rd fl. Newark, NJ 07105	3401-25-310-001	New lic. iss. eff. 05/07/85

LICENSE TYPE	NUMBER	STATUS
State Beverage Distributors license Carlos A. Rodriguez 662 River Street Paterson, NJ 07514	3401-19-311-001	New lic. iss. eff. 05/07/85
Retail Transit license Gentleman Jim's of N.J., Inc. Boat MV Cpae May - No. 676257 Cape May-Lewes Ferry (Del. Bay) No. Cape May, NJ 08204	3401-13-313-001	New lic. iss. eff. 05/16/85
Limited Wholesale license South Jersey Bottling Co., Inc. 266 S. Pine Street Camden, NJ 08103	3401-25-314-001	New lic. iss. eff. 05/16/85
Plenary Wholesale license Shaw Ross International Importers, Inc. 1010 Northwest 159 Drive Miami, FL 33169	3401-23-315-001	New lic. iss. eff. 05/16/85
Plenary Wholesale license Gordon's Dry Gin Co., Ltd. 800-840 W. Edgar Road Linden, NJ 07036	3400-23-039-001	Surrendered & Cancelled eff. 05/16/85
Rectifier and Blender license The Distillers Company Limited 800-840 West Edgar Road Linden, NJ 07036	3400-15-366-001	Surrendered & Cancelled eff. 05/16/85
Transportation license The Wine Group, Inc. 1875 Rt. 88 E. P.O. Box 752 Brick, NJ 08723	3401-20-201-001	Surrendered & Cancelled eff. 05/17/85
Public Warehouse license William Grant & Sons, Inc. 130 Fieldcrest Avenue Edison, NJ 08837	3400-28-146-002	Place to Place trans. to incl. Expansion iss. eff. 05/21/85
Limited Wholesale license May Importing Company, Inc. 103 North 7th Street Camden, NJ 08102	3401-25-008-003	Change of Corporate Structure iss. eff. 05/21/85
Additional Warehouse license Kramer Beverage Co., Inc. 406 Englis Creek Avenue McKee City, NJ 08232	3401-24-317-001	New lic. iss. eff. 05/22/85
Limited Wholesale license Claudio P. Iodice 41 Tompkins Point Road Newark, NJ 07105 From: 170-172-174 Malvern St. Newark, NJ 07105	3401-25-007-003	Place to Place trans. iss. eff. 05/24/85
Transportation license American Truck Lines, Inc. P.O. Box 904 Bellmawr, NJ 08031	3401-20-318-001	New lic. iss. eff. 05/29/85

LICENSE TYPE	NUMBER	STATUS
Transportation license Confidence Transportation, Inc. 54 Sheridan Avenue Elmira, NY 14903 From: Customized Transportation, Inc.	3401-20-194-001	Change in Corporate Name iss. eff. 05/30/85
Limited Wholesale license Gouli United Trade Co., Inc. 107-40 Queens Blvd. Forest Hills, NY 11375	3401-25-320-001	New lic. iss. eff. 05/30/85
Transportation license BFT Transport, Inc. 31 Fargo Street South Boston, MA 02127	3401-20-321-001	New lic. iss. eff. 05/30/85
Limited Wholesale Chateau Rouge Corp. 1 Loretto Avenue Hawthorne, NJ 07506	3401-25-322-001	New lic. iss. eff. 05/31/85
Annual State Permit RCE Food Services, Incorporated Flanders Valley Golf Course Flanders, NJ 07836	3401-14-312-001	New lic. iss. eff. 05/17/85
Annual State Permit Food Concepts, Inc. at Sunset Valley Golf Club West Sunset Road Pequannock, NJ 07444	3401-14-316-001	New lic. iss. eff. 05/24/85
Annual State Permit Donato Brezzi Rt. 524 Allair Road Farmingdale, NJ 07727	3401-14-319-001	New lic. iss. eff. 05/24/85

7. DISCIPLINARY PROCEEDINGS (EGG HARBOR) - FINDING THAT CLUB LICENSEE NOT A BONA FIDE CLUB AND REVOKING LICENSE - NOTE OF AFFIRMANCE BY APPELLATE DIVISION.

Text begins on next page.

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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL CONCLUSIONS FINDING LICENSEE IS NOT A <u>BONA FIDE CLUB</u> AND FINAL ORDER REVOKING LICENSE.
HOLLY GOLF AND COUNTRY CLUB, INC., Mays Landing-Somers Point Road Egg Harbor Township, N.J.	:	OAL DKT. NO. ABC 7337-83 AGENCY DKT. NO. S-14,162 H-7483-9
HOLDER OF CLUB LICENSE NO. 0108-31-033-002 ISSUED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR	:	:

Carol L. Widemon, Deputy Attorney General, for Petitioner
(Irwin I. Kimmelman, Attorney General of New Jersey)

Lewis J. Schweller, Esq., Attorney for Respondent

INITIAL DECISION BELOW

HONORABLE J. ROGER PERSICHILLI, Administrative Law Judge

Decided: April 25, 1984

Received: April 26, 1984

BY THE DIRECTOR:

Written Exceptions were filed both by the Deputy Attorney General representing the Division as well as by the Licensee's attorney, as provided by N.J.A.C. 13:2-19.6. In her Exceptions, the Deputy Attorney General takes issue with the Administrative Law Judge's conclusions concerning certain of the charges preferred against the Licensee, as well as the Judge's recommended penalty that the license be suspended. In contrast, the Licensee's attorney takes Exception to the Administrative Law Judge's finding that the Licensee was not operating as a bona fide club. In addition, the Licensee, in reply to the Deputy Attorney General's Exceptions, argues that the Judge's decision was correct in finding that there was no violation of N.J.A.C. 13:2-8.12 regarding the failure to keep true books of account. The time provided to make a final decision in this matter was extended to July 25, 1984 by a properly executed Order of Extension.

The Licensee was charged with seven (7) violations dealing with having had its license improvidently issued for failing to comply with the appropriate regulations concerning club licensees, including that from the year 1979 to the date of the charges, the Licensee's applications either contained information and/or failed to disclose information which would have established the fact that it was not a bona fide club and therefore not entitled to hold a club license; in violation of N.J.A.C. 13:2-8.2. The Administrative Law Judge found that the Holly Club was not a bona fide club within the meaning of N.J.A.C. 13:2-8.2. Based upon this finding, the finding that the club failed to submit a membership list with its application from 1975 through

1982, and a finding that it served alcoholic beverages to persons not bona fide members of its club or bona fide guests of any members, in violation of N.J.A.C. 13:2-8.8(a), the Judge recommended that the license be suspended for 8 days, as well as indefinitely suspended thereafter until such time as the conditions of operation of its club license had been corrected to the Director of the Alcoholic Beverage Control Division's satisfaction. For the reasons stated below, I shall accept the Administrative Law Judge's basic factual findings, but I reject his conclusions of law and recommended penalties, as noted.

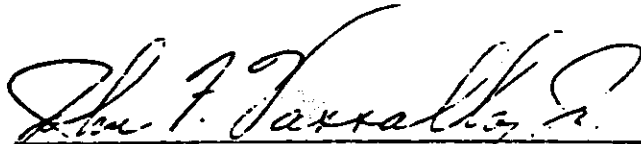
N.J.S.A. 33:1-12(5) states, in part, that "club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the commissioner (now Director) of Alcoholic Beverage Control by rules and regulations." Such rules and regulations are further contained in subchapter 8, of Title 13, Chapter 2, of the New Jersey Administrative Code. Pursuant to N.J.A.C. 13:2-8.2, it is provided that "club licenses shall be issued only to bona fide clubs." The Administrative Law Judge found that the Holly Club is not a bona fide club within the meaning of N.J.A.C. 13:2-8.2. (Initial Decision p.12.) The Judge also found that Matthew Hudson owns 100% of the shares of the Holly Golf Club. (Id. p.4.) There is further evidence that the license was used in a profit making capacity, since there was basically a lease-out of the license to Enna Enterprises, which conducted the sale of food and beverages to the Holly Club members and as compensation, retained all funds derived from the sale of alcoholic beverages after payment of all normal operating costs. (Id. pp. 4-5.) Based upon these factual findings, it is clear that the Licensee in this case, the Holly Golf and Country Club, Inc., was not a bona fide club entitled to hold a club license as provided by New Jersey Statutes and Regulations. Accordingly, the only proper disposition of this matter is to require revocation of the license. Such being the case, all other charges discussed in the Initial Decision are mooted by my determination.

It should be noted, however, that the Licensee was not harmed by the omission of the term "not" from N.J.A.C. 13:2-8.8, since the Administrative code booklet containing this omission was not published until after the charges were served on the Licensee. Prior publications correctly contained the proper regulatory language. It is further noted that this is the Division of Alcoholic Beverage Control and not a "Commission" as is contained on page 8 of the Initial Decision.

As previously noted, revocation is the only proper course of action in this case. Suspension is not a potential remedy because it is unreasonable to expect that this profit making organization can be properly converted into a not-for-profit entity organized for the benefit of the club members. Therefore, it is inconceivable to fathom how the present Licensee could be a proper holder of a club license and thus it makes no sense to suspend the Licensee pending such implausible corrective action. However, if in the future, a new entity is organized for the proper purposes, and for the benefit of club members as a not-for-profit association, such entity can apply to the local issuing authority for issuance of a club license, upon compliance with all the requirements of N.J.A.C. 13:2-8.1 et seq. With respect to the present Licensee, however, it is noted that the provisions of N.J.S.A. 33:1-31 will apply.

Accordingly, it is on this 25th day of July, 1984,

ORDERED that the Club License No. 0108-31-033-002 issued by the Township Committee of the Township of Egg Harbor to Holly Golf and Country Club, Inc., for premises at Mays Landing-Somers Point Rd., Egg Harbor Township, New Jersey, be and the same is hereby revoked, effective immediately.



JOHN F. VASSALLO, JR.
DIRECTOR

APPENDIX: INITIAL DECISION BELOW - OMITTED FROM BULLETIN

AFFIRMANCE BY APPELLATE DIVISION

The foregoing July 25, 1984 Final Conclusions and Order of Revocation was affirmed by the Superior Court of New Jersey, Appellate Division, in a Per Curiam opinion decided May 9, 1985 (App. Div. Docket No. A-5546-83T6).

In its opinion the Appellate Division, after reviewing the facts of the case, said:

"Based on the foregoing proofs, the administrative law judge concluded that Holly was not a bona fide club. The Director, in accepting this conclusion, also noted that

'There is further evidence that the license was used in a profit making capacity, since there was basically a lease-out of the license to Enna Enterprises, which conducted the sale of food and beverages to the Holly Club members and as compensation, retained all funds derived from the sale of alcoholic beverages after payment of all normal operating costs. Based upon these factual findings, it is clear that the Licensee in this case, the Holly Golf and Country Club, Inc., was not a bona fide club entitled to hold a club license as provided by New Jersey Statutes and Regulations. Accordingly, the only proper disposition of this matter is to require revocation of the license.'

"We are satisfied that the Director's findings are entirely consistent with the proofs, which virtually compelled the conclusion that the sole purpose of Holly's existence was to provide the profit-making restaurant in the clubhouse with an opportunity to sell alcoholic beverages to its patrons. It was therefore not a club

within the intendment of either the statute or the regulation.

"With respect to the penalty, the Director rejected the administrative law judge's suspension recommendation reasoning that

'Suspension is not a potential remedy because it is unreasonable to expect that this profit making organization can be properly converted into a not-for-profit entity organized for the benefit of the club members. Therefore, it is inconceivable to fathom how the present Licensee could be a proper holder of a club license and thus it makes no sense to suspend the Licensee pending such implausible corrective action. However, if in the future, a new entity is organized for the proper purposes, and for the benefit of club members as a not-for-profit association, such entity can apply to the local issuing authority for issuance of a club license, upon compliance with all the requirements of N.J.A.C. 13:2-8.1 et seq.'

"The patent good sense of the Director's reasoning obviously precludes our interference with his imposition of the revocation penalty, which, under the circumstances, can hardly be regarded as either arbitrary or excessive. See, e.g., In re Garay, 89 N.J. 104 (1982); Knoble v. Waterfront Comm. of N.Y. Harbor, 67 N.J. 427 (1975); In re Marvin Gastman, 147 N.J. Super. 101 (App. Div. 1977)."

8. ADMINISTRATIVE RULING (EAST RUTHERFORD) - CONCLUSION AND ORDER AUTHORIZING PRIOR AND CURRENT RENEWALS OF INACTIVE LICENSE AND PLACING SPECIAL CONDITION OF NO FURTHER RENEWAL ON LICENSE - REVIEW OF PURPOSE AND EFFECT OF N.J.S.A. 33:1-12.39 IN OPINION.

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

IN THE MATTER OF THE APPLICATION
FOR EXTENSION OF RENEWAL OF

SILWAD CORPORATION

HOLDER OF PLENARY RETAIL CONSUMPTION
LICENSE NUMBER 0212-33-019-001 ISSUED
BY THE MAYOR AND COUNCIL OF THE
BOROUGH OF EAST RUTHERFORD

FINAL CONCLUSION AND FINAL ORDER
AUTHORIZING RENEWAL OF THE LICENSE
FOR THE 1978-79, 1979-80, 1980-81,
1981-82, 1982-83, 1983-84, NUNC PRO TUNC
AND THE 1984-85 LICENSE TERM
AND PLACING A SPECIAL CONDITION
UPON THE LICENSE

OAL DKT. NO. ABC 4672-84
AGENCY DKT. NO. 05-84-362

Peter J. Melchionne, Esq., Attorney for Petitioner
(Robert S. Damiano, Esq.)

Beverly M. Wurth, Esq., Attorney for the Borough of East Rutherford
(Alfred A. Porro, Jr. Esq.)

INITIAL DECISION BELOW

HONORABLE GEORGE PERSELAY, ADMINISTRATIVE LAW JUDGE

Decided: November 2, 1984

Received: November 5, 1984

BY THE DIRECTOR:

No Written Exceptions were filed by any party with regards to the above captioned initial decision as provided by N.J.A.C. 13:2-19.6. The time provided the Director to make a final determination of this matter was extended until February 26, 1985 by properly executed Orders of Extension dated December 6, 1984 and February 1, 1985, respectively.

The Silwad Corporation petitioned the Director under date of May 25, 1984 for authorization to renew Plenary Retail Consumption License Number 0212-22-019-001 issued by the Mayor and Council of the Borough of East Rutherford for 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84, nunc pro tunc and the 1984-85 license term. A supplemental petition, dated June 15, 1984 was received and filed by the Division. The Petition was forwarded to the Office of Administrative Law as a contested case pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and was docketed on June 27, 1984.

The matter was heard on September 14, 1984 and the record was extended to June 20, 1984 to entertain the receipt of certain documents by the Petitioner.

At the hearing, the only witness to testify was Mr. Amin Gani, President of the Petitioner, Silwad Corporation. Mr. Gani testified that the license became inactive during the year 1974 when the lease for the licensed premises was terminated by the owner of the building. (TR12, L-15). The witness further testified that since that time he has attempted to find a suitable location to place the license and reactivate it but has been unsuccessful due in large part to the 500 foot distance between licensed premises ordinance of the Borough of East Rutherford. (TR12, L-24). The witness states that since 1974, it has made approximately eight (8) attempts to locate the license at various locations within the municipality. Four of these locations violated the distance between premises ordinance of the municipality. One, at the time of closing, was allegedly voided for lack of clear title. Another was voided since the purposed use violated the zoning laws regarding the Meadowlands Development. One was voided as a result of the corporation entering into receivership and one was not consummated since the building was considered an historical site and apparently pursuant to Borough ordinances, the building's structure could not be changed. The witness testified that at some point in time he consulted with his attorney who drew a map of the Borough with all the existing premises and found that there was a "very very slim chance of finding an available location" that was not within 500 feet of an existing premises. (TR7, L-15).

I note that there is no corroborating or documentary evidence submitted to the court or the map as testified to by the witness demonstrating the extent and the efforts that the witness testified to in placement of the license at the different locations. In addition, the petitions as previously set out above were submitted and included by the Office of Administrative Law Judge as part of the record. These petitions basically reiterate the Petitioner's testimony and lists those locations which, in the eleven (11) year period, the Petitioner attempted to locate the license. Again, no additional documentation was submitted to substantiate the statements and testimony given by the Petitioner. In addition, the Petitioner submitted for evidence a Resolution dated June 19, 1984 by the Mayor and Council of the Borough of East Rutherford stating that it has no objection to the renewal of the subject license.

The Petitioner stated that over the last three or four years it has been negotiating a transfer of the license to an existing restaurant which does not violate the issuing authority distance ordinance or any other distance requirements set out in State statute or regulation. (TR8, L9). The Petitioner indicates that if the relief requested is granted that the municipality will authorize the transfer. (TR1, L4).

I note that nowhere in the record is there any documentation of this transaction such as signed contracts or agreements substantiating this testimony.

The licensee further testified that for the years in question, he filed the necessary license renewal applications together with the municipal and State fees, all of which were accepted and that the Mayor and Council of the Borough of East Rutherford in each of those years with the exception of the 1984-85 license term renewed the license without informing him that anything additional was necessary in order to complete the renewal procedure. With regards to the 1984-85 license application, the witness testified that the Borough Clerk informed him that the license could not be renewed by the municipality until authorization was received from the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 33:1-12.39.

The Administrative Law Judge in recommending authorization to renew pursuant to the above captioned statute for the previous years, nunc pro tunc and for the 1984-85 license term, stated in his recommendations "It is apparent to this Judge that the applicant has made a good faith effort to relocate its license. It would appear that good cause has been shown that the applicant has made reasonable and active efforts to resume the active use of the license, but has been thwarted in its pursuit by circumstance existing within the community. It is readily apparent that the prior application for approval to renew the license between the year 1980 and the present application would have been inappropriate since there was no location in which to renew the license. The purpose of the statute is not to forfeit licenses which had good cause for not being presently active, but to require preliminary hearing to ascertain if there was good cause for the non-use of the license." (Italics Added). I totally disagree with this statement and, therefore, reject these findings of the Administration Law Judge.

A license is not an asset or a property right, but rather "(a) license is a temporary privilege to conduct business in a sensitive and strictly regulated industry." Butler Oak Tavern vs. the Director of the Division of Alcoholic Beverage Control 20 N.J. 373, 381 (1956); In the Matter of the Great Atlantic and Pacific Tea Company, Inc., ABC Bulletin 2351 Item 2. This privilege is for one licensing term, namely, from July 1 through June 30 of the following year and must annually be renewed by the issuing authority pursuant to N.J.S.A. 33:1-12.13. In October of 1977, the State placed a condition upon the renewal of any inactive Class C license with the passing of N.J.S.A. 33:1-12.39. The obvious purpose of the Statute was initially to halt the continuous renewal of license which had no status and were not actively used. This is noted in the sponsor's statement of the Act which stated "...the purpose of this bill is to prohibit the renewal of Class C Alcoholic Beverage Licenses in certain cases." L.1977c246, Section 1.

In addition, the Assembly Committee on Commerce, Banking and Insurance stated "(this) Legislation would prohibit the renewal of a Class C liquor license in the event that such license has not been actively used in connection with the operation of a licensed premise within a period of two years prior to the commencement date of the license period, for which the renewal is filed unless such renewal is authorized by the Director of the Division of Alcoholic Beverage Control..." The New Jersey Senate Committee on Law, Public Safety and Defense commented that "(the) purpose of this bill is to provide for the retirement of unused Class C alcoholic beverage licenses, by prohibiting their renewal, if they are not actively used for two years preceding the renewal date."

The operative purpose or effect of the Statute was to insure that licenses which are inactive will resume active status within the two year period or be terminated unless the licensee can demonstrate to the Director's satisfaction "good cause" to allow the license to continue in its inactive state. The licensee has the burden of proving by a preponderance of evidence that "good cause" exists. In re Norwick, Inc., ABC Bulletin 2368, Item 2.

The Legislature, by choosing not to specifically define the factors that establish good cause, have left the same to the Director who will determine whether good cause exists on a case by case basis. In Re The Petition of the Great Atlantic and Pacific Tea Company, ABC Bulletin 2351, Item 1. "Good Cause" ultimately involves an evaluation of the facts and circumstances of each individual case to determine whether the inability of an applicant under N.J.S.A. 33:1-12.39 to activate its license is justifiable. Consideration is given to those factors which demonstrate a willingness on the part of the applicant to attempt to activate the license, the specific efforts taken, factors outside the control of the applicant which delay or thwart the efforts to activate, the monetary expenditures incurred towards activation, the need or necessity for any further active licenses in the community, and the prognosis as to when the license will be activated. See In the Matter of the Petition of the Great Atlantic and Pacific Tea Company, ABC Bulletin 2350, Item 2. In the Matter of the Petition of Great Atlantic and Pacific Tea Company, ABC Bulletin 2351, Item 1. In the Matter of the Petition of Samuel T. Garrison and Robert C. Garrison, ABC Bulletin 2352, Item 3. In the Matter of the Petition of T-J's Liquor and Lounge, Inc., ABC Bulletin 2359, Item 3. In the Matter of the Petition of 4200 Corporation, ABC Bulletin 2363, Item 3. In the Matter of the Petition of Yorkview Corporation, ABC Bulletin 2365, Item 1. In the Matter of the Petition of Normic, Inc., ABC Bulletin 2368, Item 2. In the Matter of the Petition of Lincoln.

Motors, Inc., ABC Bulletin 2376, Item 2. In the Matter of the Petition of Thomas and Rina Francesconi, ABC Bulletin 2410, Item 1. In the Matter of the Petition of Giacomo Menei, ABC Bulletin 2412, Item 3. In the Matter of the Petition of Magfra, Inc., ABC Bulletin 2412, Item 2.

In evaluating the issue of "good cause", it should also be noted that the Statute indicates that if the licensee is deprived of the use of the licensed premises because of fire, eminent domain or casualty, a standard of "good faith effort" to resume active use of the license shall be applied. It is significant that the Legislature required good cause for renewal in other cases involving two years of license inactivity. Thus, the Legislature distinguished "good cause" from "good faith". Therefore, to establish good cause to the satisfaction of the Director, a Petitioner must not only demonstrate efforts to activate the license but emphasis must be directed to proof of a realistic prognosis as to when it expects the license to be actively used based upon the facts and circumstances of each individual case. See in the Matter of the Petition of the West End Racquet Club, ABC Bulletin 2367, Item 1. To construe this distinction in any other matter would not only render the distinction meaningless but would undermine the operative intent of the Statute.

In reviewing the testimony, I will grant authorization to renew the license for the 1984-85 license term based upon the licensee's testimony that the license will be activated presumably before the end of the current license term. I note, however, that without this testimony, such authorization would have been denied.

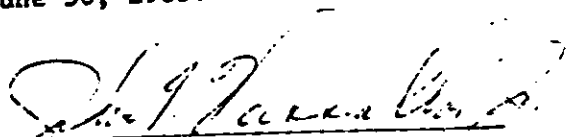
The Petitioner produced no evidence that demonstrated in the past that the continued inactivity was the result of a temporary or finite situation which, when resolved, would allow the immediate activation of the license. The factors presented clearly established that the overwhelming reason for inactivity was the fact that the number of existing licenses issued by the Borough of East Rutherford far exceed the available locations for placing them. This situation represents one which is prevalent throughout the State. There is currently 525 municipalities that issue plenary licenses. Currently, the Division records reveal that 467 those municipalities either exceed or are at the maximum number of licenses based upon the population limitation as set out in N.J.S.A. 33:1-12.14 et seq. In addition, of the 9,933 plenary retail consumption and distribution licenses issued in the State of New Jersey, 619 or 6.23% are inactive. Therefore, it is readily apparent that due to the excess number of existing licenses, those licenses that are currently inactive in many instances, will be unable to realistically meet the statutory requirements of N.J.S.A. 33:1-12.39 since they will be unable to locate alternative premises. With specific regards to the present Petition, the evidence indicates that the ordinances of the municipality at least passively seek to freeze the existing licenses to the existing locations. Thus, should the existing site become unavailable, the ability to relocate the license as has been demonstrated by the Petitioner, are almost nonexistent. Therefore, to require only good faith efforts without a prognosis of reactivation as indicated by the Office of Administrative Law Judge recommendations would not only be illogical but contrary to the legislative intent of the Statute. The Petitioner, however, testified that a location is available to place the license which meets the municipal restrictions of the municipal ordinances and it should be activated upon transfer. I will, therefore, based upon the particular facts of this case, authorize renewal of the license for the 1984-85 license term.

The Office of Administrative Law recommendations also note that the prior applications for approval to renew the license for the prior years would be inappropriate since no location existed. I note a review of the Statute does not exempt those inactive licenses from the requirements of the Statute. As previously indicated, a majority of the inactive licenses are inactive because they do not have locations available. To exempt these licenses from the statutory requirements is not only illogical but would create the very situation the Legislature sought to cure. The licensee, however, states that its failure to petition the Director in those previous license terms was based upon the action of the municipality of East Rutherford which accepted the Petitioner's application form and necessary fees and renewed the license. The Petitioner claims that by such action, it was led to believe that it had completed all the necessary steps or requirements for renewal and that no further action was required on its part to complete the renewal process. It was not until the current license term when the Division notified the Borough that the license could not be renewed without the Director's authorization, that it became aware of the statutory requirements. While the failure or negligence of the Borough of East Rutherford did not eliminate the licensee's statutory responsibility, I do find that the licensee relied to its detriment upon the municipal action and assumed the license was valid. Therefore, although no petition for authorization pursuant to the aforementioned statute, was filed for the 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 license terms, and that these renewals were improperly granted, I shall in this instance, based upon the facts as presented, grant such authorization for renewal for the license terms 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 nunc pro tunc. See In the Matter of the Petition of Joseph A. Colillo and Donald Malloy, ABC Bulletin 2402, Item 1.

Accordingly, it is on this 25th day of February, 1985


ORDERED, that the Mayor and Council of the Borough of East Rutherford, be and the same, are hereby authorized to consider the application for renewal of the subject license for 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 nunc pro tunc and for the 1984-85 license term, and to thereupon, grant or deny such application in the reasonable exercise of its discretion, and it is further

ORDERED, that should the Mayor and Council of the Borough of East Rutherford grant renewal of said license for the 1984-85 license term, it shall place a condition upon said license stating that no further renewals of this license shall be allowed unless the license is being actively used at an approved location on or before June 30, 1985.



JOHN F. VASSALLO, JR.
DIRECTOR

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PUBLICATION OF BULLETIN 2442 IS HEREBY DIRECTED THIS
7TH DAY OF JUNE, 1985.


JOHN F. VASSALLO, JR.
DIRECTOR

PUBLICATION OF BULLETIN 2442 IS HEREBY DIRECTED THIS
7TH DAY OF JUNE, 1985.


JOHN F. VASSALLO, JR.
DIRECTOR