

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

BULLETIN 2106

July 10, 1973

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1. APPELLATE DECISIONS - CAMP BAR & LIQUORS, INC. v. NEWARK.

Camp Bar & Liquors, Inc.,	)	
t/a Jake's Tavern,	)	
Appellant,	)	On Appeal
v.	)	
Municipal Board of Alcoholic	)	CONCLUSIONS
Beverage Control of the City	)	and
of Newark,	)	ORDER
Respondent.	)	
-----)	)	
Mayer and Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for	)	Appellant
William H. Walls, Esq., by Althean A. Lester, Esq., Attorney 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 (Board) whereby it suspended appellant's license for fifteen days, effective December 21, 1970, after finding the appellant guilty of allowing, permitting and suffering the sale and delivery of an alcoholic beverage in its original container for off-premises consumption on Sunday, November 2, 1969, in violation of Rule 1 of State Regulation No. 38.

Upon the filing of the appeal, an order was entered by the Director on December 14, 1970, staying the Board's order of suspension pending the determination of this appeal.

Appellant alleges that the action of the Board was erroneous because its decision was contrary to the weight of the evidence, and no legal evidence was adduced in support of the charge. The Board, in its answer, denies that its action was erroneous or contrary to the weight of the evidence and defends that there was adequate evidence to substantiate the charge herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceeding before the Board was submitted pursuant to Rule 8 of State Regulation No. 15, with oral argument presented by counsel for both parties.

The transcript discloses the following testimony:

James Bryant testified on behalf of the Board that he entered the licensed premises at 10:45 a.m. Sunday, November 2, 1969, used the bathroom facility and purchased a bottle of White Label Scotch for \$5.25. He did not pay cash, but had it charged to his account. He stated that he is an infrequent customer of appellant.

He had a conversation with Sol Lefkowitz (the bartender), during which conversation the transaction was concluded, and almost immediately thereafter the police entered and arrested him. He was then taken to the local precinct station where he gave a written statement to the same effect as hereinabove.

On cross examination, he testified that he had not purchased the bottle on Sunday, A.M., but rather that he had purchased it early on the evening of Saturday, November 1, 1969. He continued that on Sunday morning, he was on his way to a friend's house to watch a football game, with the bottle in his belt, when he stopped at the licensed premises to use the toilet facilities. After doing so, he had a brief conversation with the bartender and during the conversation the police entered, found the bottle in his possession and arrested him.

Detective Cliff Minor testified that he has been a member of the Newark Police Department for six years and has been assigned to investigate vice, gambling and liquor violations for the past one and one half years.

Pursuant to a specific assignment, he was positioned near the licensed premises at 10:45 a.m. November 2, 1969, and observed several persons enter and leave. He also observed Bryant and Favern Robinson enter and he entered shortly thereafter. As he entered he observed Bryant placing a pint bottle of White Label Scotch whisky in his pocket. Thereupon, he questioned Bryant who admitted making the purchase that morning. He also questioned Robinson and each later gave a signed sworn statement at precinct headquarters. Sol Lefkowitz was tending bar at that time.

On cross examination he testified that he took no statement from Lefkowitz; he advised Bryant that he did not have to make a statement; Bryant who said he could read, read the statement over to himself before signing. Detective Flannery was with Minor during the entire incident, and Flannery prepared the investigative report.

On redirect examination he testified that he read the statement to Bryant; Flannery was with him during the entire incident and it is ordinary procedure for one of the two officers to submit a report rather than both.

On redirect examination, Bryant testified that he did give a statement to Officers Minor and Flannery on November 2, 1969. He cannot read or write; he can understand English but he did not understand the statement as it was read back to him by Officer Minor. He then signed the statement. He was confused and frightened at the time; he did not understand what was in the statement; he has had no formal schooling; he did not tell Officer Minor that he could not read.

Sol Lefkowitz, sixty-nine years of age, testified for the licensee that he has been employed by the licensee for approximately three years. On November 2, 1969, he entered at approximately 9:00 a.m., and proceeded with his regular clean-up duties, Bryant entered and asked to use the toilet facility. When he returned the police entered, searched Bryant and found the bottle of scotch whisky. Bryant told the police he had purchased the bottle the night before. The price of a pint of White Label Scotch is \$4.65 for off-premises consumption, but \$5.25 when sold for consumption on the premises with set-ups. He concluded that he did not sell the pint to Bryant on Sunday, November 2, 1969, and that he is under strict orders from his employer not to sell liquor on Sunday morning.

On cross examination he testified that he had been mopping the floors and opened two doors at approximately 10:00 a.m. to speed drying the floors; Bryant entered sometime between 10:00 and 11:00 a.m. Finally, he insisted that the licensee has no charge accounts.

Over objection of counsel for the appellant, Detective Minor testified, in rebuttal that a pint bottle of White Label Scotch was seized from the person of Bryant at the scene of the incident. He identified an unopened pint bottle of White Label Scotch offered in evidence by pointing out the initials of Bryant and Flannery, which initials were placed thereon in his presence. Since the seizure was made on Sunday, November 2, 1969, the item was not delivered to the property room until Monday, November 3, 1969, and he had not seen the bottle again thereafter until the instant hearing.

Counsel objected to the presentation of this evidence on two grounds: "... no analysis of the contents ... and no proof of continuity of possession of the bottle from the time of the arrest down to the date of the hearing."

"Whether the requisite chain of possession has been sufficiently established to justify admission of the exhibit is a matter committed to the discretion of the trial judge... It is not necessary for the party introducing such evidence to negate every possibility of substitution or change in condition between the event and the time of trial, especially where as here, the custodian has been an arm of the State. The question is one of reasonable probability that no tampering has occurred." State v. Brown, 99 N.J. Supn 22 at 27, 28 (App. Div. 1968). See State v. Farfalla,

113 N.J. Super. 557 (App. Div. 1971). In the Brown case an envelope containing money with the seal broken (emphasis mine) was admitted. In the instant matter the seal on the bottle remained unbroken and Bryant and Flannery initialed the bottle in the presence of the witness.

Even though no chemical analysis was made of the exhibit, the testimony by Bryant that he ordered White Label Scotch, and the testimony by the officer that he seized a bottle of White Label Scotch from Bryant creates the permissible inference that the bottle was actually a bottle of White Label Scotch and is therefore an alcoholic beverage within the statutory definition. R.S. 33:1-1(b).

Since there was a sharp conflict in the testimony adduced before the Board, it became the function of the Board to evaluate the testimony, after observing the demeanor of the witnesses, and to give weight to such testimony as it found credible. The general principle of law is that a trier of fact may accept in whole, reject in whole, or may accept in part or reject in part, the testimony of a witness. He must determine the credibility of a witness and act accordingly. 98 C.J.S. Evidence p 32; State v. Wesler, 137 N.J.L. 311 (1948), aff'd 1 N.J. 58.

I am mindful of the conflicting versions of the incident as described by Bryant, wherein on cross examination, he testified directly in contradiction of his direct testimony relative to the alleged purchase. I neither justify nor condone his change in testimony but considering the circumstances, and the lack of formal education, this disparity can be understood. However, a realistic analysis leads me to believe that the Board reasonably concluded, having had the opportunity to observe the witness, that the direct testimony of Bryant was the more credible and by application of the rule in State v. Wesler, supra, the Board could properly make such evaluation.

The testimony of Detective Minor that upon his entrance he observed Bryant putting the bottle in his pocket serves further to support the reasonableness of the Board's conclusions.

Further, I believe it is inconsonant with common experience to accept an explanation under the facts and circumstances herein that this alcoholic beverage was purchased on the previous night. Re Billy Miller's Club 88 Inc. v. Newark, Bulletin 1455, Item 1.

I am persuaded that the evidence on the whole supports the decision reached by the Board.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion, is upon the appellant. The ultimate test in these matters is one of reasonableness on the part of the Board. Or to put it another way: could the Board, as reasonable men, acting reasonably, have come to its determination based on the credible evidence presented. Cf Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

I conclude, therefore, that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, and I recommend that an order be entered affirming the action of the Board, dismissing the appeal, vacating the Director's order staying the suspension herein, and fixing the effective date for suspension of the license as imposed by the Board.

#### 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 the appellant. No answering argument was filed by respondent.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report and the 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.

However, the appellant has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971, in the event that the recommendations of the Hearer were adopted and the action of the Board is affirmed.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the appellant to pay a fine of \$200.00 in lieu of suspension.

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

ORDERED that the determination of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark 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 December 14, 1970 entered herein, staying the Board's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that appellant's offer in compromise to pay a fine in lieu of suspension is approved, and the fine in the sum of \$200.00 is hereby accepted in lieu of the suspension of license for fifteen (15) days, heretofore imposed by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

2. APPELLATE DECISIONS - NOBLEMEN'S CLUB v. NEWARK.

Noblemen's Club (N.J. Corp.),	)	
t/a Noblemen's Club,	)	
	)	
Appellant,	)	
v.	)	On Appeal
	)	
Municipal Board of Alcoholic	)	
Beverage Control of the City	)	CONCLUSIONS and ORDER
of Newark,	)	
	)	
Respondent.	)	
-----	)	

Elias I. Cohen, Esq., Attorney for Appellant.  
 William H. Walls, Esq., by Salvatore Perillo, Esq., Attorney  
 for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 284-286 Sussex Avenue, Newark, appeals from the action of respondent Board which on October 30, 1972 found appellant guilty of a sale and delivery on February 8, 1972 of an alcoholic beverage to a minor, age 18, in violation of Rule 1 of State Regulation No. 20. The Board suspended appellant's license for fifteen days effective January 8, 1973.

Upon filing of this appeal an order was entered by the Director on January 4, 1973, staying the Board's action pending determination of this appeal.

In its petition of appeal appellant alleges that the Board's action was erroneous because it was contrary to the weight of the evidence.

The Board in its answer denied that its action was erroneous and asserted that it was based upon factual testimony, upon which it made its determination.

The transcript of the proceedings by the Board on October 30, 1972 was admitted into evidence, supplemented by testimony adduced at this appeal de novo hearing, in accordance with Rules 6 and 8 of State Regulation No. 15.

A review of the transcript of the hearing held by the Board reflects the following:

Lawrence ---, age 18 on the day alleged, entered appellant's licensed premises between 8 and 9 p.m. and purchased four six-packs of beer from a barmaid identified as Pearly Pitt.

She did not ask him for any identification.

Police Officer Louis De Lovallo of the local Police Department testified that, while patrolling the area of appellant's licensed premises on February 8, 1972, at approximately 8:40 p.m., he observed Lawrence --- emerge from the licensed premises with two brown bags in his possession. Because of Lawrence's youthful appearance, he confronted Lawrence and found that he had twenty-four cans of beer in his possession, whereupon he placed him under arrest.

Detective Robert Iacobucci, of the local Police Department, gave the following account: On February 8, 1972, at approximately 9 p.m., he was requested to investigate the matter of the alleged sale of beer to the minor. Upon ascertaining from the minor that he had purchased it at the licensed premises, he accompanied the minor to the licensed premises, where the minor identified Pearly Pitt as the barmaid who sold him the beer.

On behalf of appellant, Pearly Pitt testified that she was new on the job; that, when Lawrence ordered the beer, the lights were dim; Lawrence appeared to be twenty-one years of age and she therefore sold him the beer. On cross examination Pitt asserted that she did not ask him for identification because he appeared to be over twenty-one years of age.

Rosevelt Friday, secretary of the corporate appellant, testified that during the six or seven years that appellant has been in business at its present location it has never been charged with any violation of the Alcoholic Beverage Law.

At the de novo hearing Pearly Pitt reiterated that she sold the beer to the minor because he appeared to be over twenty-one years of age. On cross examination Pitt conceded that she did not request identification, proof of age or a written representation of the minor relative to his age.

Counsel for appellant argued that the Board should have produced the minor at this hearing in order to afford the Hearer an opportunity to note the minor's appearance relative to his age since the barmaid relied upon his appearance that he was of age. In this connection it should be noted that Rule 8 of State Regulation No. 15 provides that where, as here, respondent gives notice of its intention to rely on the transcript below, appellant may subpoena any of the witnesses who testified in the proceedings before the Board. Having failed to do so, it cannot now complain that it was prejudiced by the absence of the minor at this hearing. See E.A.V. Liquors and Bar, Inc. v. Paterson, Bulletin 1702, Item 1.

In any event, the production of the minor at this hearing would not have altered the result for the reasons hereinafter expressed.

It is apparent that the factual complex is not in dispute. A sale was made to a minor and no written representation obtained with respect to his age. This Division is, as was respondent, bound by the imperative legislative provisions, and I find that there was herein an unmistakable statutory violation.

In R.S. 33:1-77 the statute contains the following proviso:

"... that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."  
(Emphasis ours.)

It is abundantly clear that at no time was this minor requested or required to make a written representation by appellant's agent. Thus an essential element of a defense was lacking and appellant failed to comply with the regulatory requirements. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

I am satisfied that respondent has proved its case by a fair preponderance of the credible evidence, indeed by substantial 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.

Accordingly it is recommended that an order be entered affirming respondent's action, dismissing the appeal, and fixing the effective dates of suspension which was stayed by the Director pending entry of the order herein.

Conclusions and Order

No exceptions to the Hearer's report were filed within the time limited by Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 1st day of May 1973,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark 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 January 4, 1973 staying the Board'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-106, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Noblemen's Club (N.J. Corp.), t/a Noblemen's Club for premises 284-286 Sussex Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing 2:00 a.m. on Monday, May 14, 1973, and terminating 2:00 a.m. Tuesday, May 29, 1973.

Robert E. Bower  
Director

3. APPELLATE DECISIONS - 482 JACKSON AVENUE CORP. v. JERSEY CITY.

482 Jackson Avenue Corp., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City )  
 of Jersey City, )  
 )  
 Respondent. )  
 ----- )

On Appeal

CONCLUSIONS and ORDER

Krivit, Levitov, Miller, Galdieri & De Luca, Esqs., by  
 Spencer N. Miller, Esq. and James A. Galdieri, Esq.,  
 Attorneys for Appellant  
 Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for  
 Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which by resolution adopted January 31, 1973, denied appellant's application for a place-to-place transfer of its plenary retail consumption license from 482 Jackson Avenue to 493-495 Jackson Avenue, Jersey City.

The resolution of the Board outlined the objections raised before it and the arguments advanced by the applicant and concluded as follows:

"... the Board hereby determines that this tavern constitutes and represents a nuisance and objectionable to the neighbors in the vicinity thereof. The application ... is hereby denied."

The petition of appeal of appellant responded to the objections advanced at the hearing before the Board and alleged that the Board's action was the result of undue political pressure and that there was no legal or statutory impediment to the granting of the application for transfer. The Board answered that its action was proper based upon overwhelming proof that appellant's tavern is a nuisance and is objectionable to the neighbors in its vicinity.

The appeal was heard *de novo*, with full opportunity afforded all of the parties to introduce evidence and cross-examine witnesses, in accordance with Rule 6 of State Regulation No. 15.

Appellant introduced the testimony of Sharon B. Jeffries and Rose Marie Cromer, two of three principal stockholders and officers of appellant corporation. From their uncontroverted testimony it appeared that the existing licensed premises at 482 Jackson Avenue consists of a typical neighborhood tavern lying within an area taken by a municipal redevelopment project. Thus being forced to move, the corporation took title to a building and land at 493-495 Jackson Avenue, about one hundred-fifty feet away, located on the opposite side of the street and at the corner of Jackson and Atlantic Avenues. The property consists of an old, run-down building housing a candy store and two other stores, with apartments above. The purchase price was \$18,000, which has been paid, and the building requires renovation, now in progress, the cost of which was approximated at \$20,000. The purchase of the new property and commencement of renovations antedated the application for transfer because appellant considered the granting of a transfer to another licensee in the area just two months previous set precedent for approval upon which it could rely. The area is saturated with bars, and places to which licenses may be removed are scarce. Appellant's new premises will be a distinct improvement, constructually and aesthetically, and, when premises are completed, the objections should lose validity.

The Board produced numerous objectors to the granting of the transfer. Fred W. Martin, a nearby resident, stated that he is a former member of the municipal Council and has lived in the area more than forty-five years. He described the existing licensed premises as a focal point for loiterers and has an unsavory reputation. While he made telephone complaints to the police, he never formalized his objections before, and aided the preparation and implementation of a petition to the Board which carried the names of neighborhood objectors.

Reverend Charles Epps, Pastor of a nearby church and principal of a local high school, made an impassioned plea with great sincerity against the grant of the transfer. He characterized the area as a ghetto in which the bars are a breeding place for crime to such a degree that the residents live in perpetual fear. He gave a candid appraisal of the heavy duty the black community has imposed upon itself to uplift the area and to eradicate the local crime spots. While his attack was directed against taverns generally, appellant's premises appeared to be a particular sore spot.

Another Pastor of a nearby church, Reverend Henry B. Percy, testified that loitering about bars and taverns breeds problems resulting in continual fears of pedestrians to walk the streets.

Audrey Link, a housewife with two teen-age children, who lives close by both locations, testified that the loitering on the street generally would increase if appellant was successful in its application as the new location is on a corner which carries a heavier pedestrian traffic. She felt that she and her children would be subjected to rudeness and placed in fear

to an even greater extent than present if the tavern were permitted to occupy the proposed transfer site.

Another Pastor, Reverend B. J. Johnson, whose church is a few blocks away from the proposed transfer location, testified in general corroboration of that of his colleagues. He repeated that the area has a high crime rate and that loiterers use bad language in the presence of both women and children.

Ruth King and Alvan Martin, both property owners in the immediate vicinity to the subject premises, reiterated the prime objections to the loiterers over whom appellant had minimal control and recited their increased fears as to the new location.

Finally, the Board produced the testimony of Carl M. Boyd, a local realtor whose home is approximately two blocks from the subject premises. In his opinion the benefits from the redevelopment scheme would be partially reduced if the proposed location was utilized in that the office of the redevelopment agency is directly across the street and prospective applicants for redevelopment property would be discouraged from applying if loitering was tolerated across the street from the redevelopment office. Additionally, he noted that some mercantile establishments have been permitted to continue operating in this area because they were considered to be beneficial and assets in the neighborhood, but appellant's premises were a detriment.

It has long been determined that there is no inherent right by a licensee to a transfer of license. The issuing authority may grant or deny a transfer in its exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Zicherman v. Driscoll, 133 N.J.L. 586 (1946). As was said in Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960), aff'd 33 N.J. 404 (1960).

"... No person is entitled to [transfer of a license] as a matter of law.... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial...."

Later restated in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), the court opined:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action.... Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the

record...."

Hence, the crucial issue presented is whether or not the action of the Board was reasonable under the circumstances. The test of reasonableness is not easily applied; what would appear reasonable under one set of circumstances may be equally unreasonable in another. Certainly, in the instant matter the Board's motives appeared pure and its compassion for the problems of the area is commendable. The genuine struggle by the witnesses presented on behalf of the Board, to uplift the area and to remove the sociological blemishes that scar the area receive the commendation by the Board as well as this Division. Certainly the removal of certain bars and taverns from the area would erase focal points for admitted anti-social behavior. The justifiable indignation of the residents to those conditions forcing a life of perpetual fear should be recognized and stringent measures should be adopted for its removal.

However sympathetic to the problems the Director of this Division may be, other long established principles relative to transfers of licenses must also be applied. It has been repeatedly held that a licensee forced to vacate premises or unable to use the designated place of license for cause other than the licensee's action may obtain transfer under such circumstances. Club Warren, Inc. v. Newark, Bulletin 1585, Item 4.

From the uncontroverted testimony of appellant's corporate officers it appears that appellant could not remain in its present location; the taking by the local redevelopment agency required removal of the premises and, to that end, the nearest practical location was obtained. No new licenses would be created in the area, and the problems manifest in the area would remain unabated by the transfer, albeit not improved. Tagliaferro v. Newark, Bulletin 1710, Item 1; Helms et als. v. Newark, Bulletin 1936, Item 3.

Additionally, the courts have supported the doctrine that "An owner of a liquor license or privilege acquires through his investment therein an interest which is entitled to some measure of protection in connection with a transfer." Lakewood v. Brandt, 38 N.J. Super. 462, at 463 (App.Div. 1955).

There was a complete absence of testimony touching upon the operation of the licensed premises as such. The allegation that the operation of appellant's existing establishment has been without an adjudicated record of violations was uncontroverted. There was complete absence of testimony which would indicate that the loitering in front of the premises was in any way encouraged or condoned by appellant's officers. From

the abundance of testimony, it may be concluded that loitering is an indigenous evil in the entire area magnetized by the numerous bars and taverns.

It is apparent that appellant's premises presently and proposed represented to the objectors a totality of all of the difficulties they experience in the area. Their ire, although directed toward appellant's application, really was pointed against all of the ghetto-bred problems. Their interests were therefore to rid themselves of a license, reduce the number of bars and do this by means of attack upon the application.

Jersey City is the second-largest municipality in our State; it enjoys a well-organized and directed Police Department of which the residents are justly proud. The loitering, crime, addiction to drugs and concomitant evils are police problems and should be vigorously attacked by that department. Certainly local ordinances exist which would permit the sweeping of sidewalks of loiterers and the reduction of residents' fears.

However, appellant should not take solace in any mistaken belief that the sincere registered complaints of objectors are empty as applied to it. Upon any application for renewal of license, the objectors and affected residents may, where cause is shown, object to renewal to a sympathetic Board. Appellant should so operate its establishment that, by incurring the aid of the police, the evils of loiterers and others may be eliminated, making thereby its licensed premises a credit to the neighborhood. See The Cafe, Inc. v. Passaic, Bulletin 2063, Item 2, in which unruly crowds in front of the licensed premises were enough to deny renewal.

Accordingly I find the action of the Board technically unreasonable and an abuse of discretion in denying the transfer in question. Under the circumstances, I conclude that appellant has sustained its burden, pursuant to Rule 6 of State Regulation No. 15, of establishing that the action of the Board was erroneous and should be reversed.

It is accordingly recommended that an order be entered reversing the action of the Board, and directing it to grant the place-to-place transfer of appellant's license in accordance with the application filed therefor, expressly subject to the completion of the proposed premises and upon compliance with municipal and statutory regulations.

#### Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for respondent Board, and answer to said exceptions was filed by the attorney for appellant, pursuant to Rule 14 of State Regulation No. 15.

In his exceptions the attorney for the Board argues that the recommendations of the Hearer in rejection of the resolution of the Board were contrary to the mandate of Lyons Farms Tavern, Inc. v. Newark, supra, requiring affirmation of the Board's action by the Director.

Having carefully considered the entire record herein, including transcript of the testimony, the Hearer's report, the exceptions filed with respect thereto and the answer to those exceptions, I agree with the recommended finding of the Hearer that the action of the Board in denying the application of appellant for a place-to-place transfer to a place almost diagonally across the street from its present location was both arbitrary and unreasonable.

The doctrine of Lyons Farms, supra, and that of Fanwood v. Rocco, supra, both cited by the Hearer in his report, is to the effect that the action of the issuing authority, to be affirmed, must be reasonable. The Hearer found factually that the action of the Board was not reasonable in the circumstances, to which conclusion I concur.

Accordingly, it is, on this 16th day of May 1973,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby reversed and respondent is hereby directed to approve appellant's application for a place-to-place transfer of its plenary retail consumption license from premises 482 Jackson Avenue to 493-495 Jackson Avenue, Jersey City, in accordance with the application filed therefor; and it is further

ORDERED that, upon the grant of appellant's application for transfer of said license, the said license shall not actually be issued but shall be held in custody by the Board until appellant shall have completed the anticipated construction in accordance with plans filed and requirements of local regulations.

Robert E. Bower,  
Director.

## 4. NOTICE TO ALL LICENSEES - CONTINUATION OF EMERGENCY PRICE FREEZE.

TO ALL LICENSEES:

By Executive Order of June 13, 1973, President Nixon imposed a price freeze upon the sale of most commodities, including alcoholic beverages sold at wholesale or retail. This price freeze became effective June 13, 1973 and, in general, prohibits the sale of alcoholic beverages at prices higher than the highest price at which a particular item was sold during the freeze base period of June 1 to June 8, 1973. At the time such freeze was imposed, this Division had already received most price filings to become effective July 1, 1973 and was processing for publication all the price filings scheduled to be included in the Division's Wholesale Price List and Minimum Consumer Resale Price List to become effective July 1, 1973. Many of these filings, however, are of prices higher than the prices frozen by the President's order. In this connection, it is noted that there is much uncertainty in the trade as to which prices are or are not covered by the freeze order. Further, there is insufficient time to resolve these questions and to incorporate many changes of prices in the price lists between now and July 1, 1973.

Under the circumstances, I hereby find that an emergency exists in connection with the administration of State Regulations No. 30 and 34 by reason of the President's Executive Order. I therefore hereby continue in effect, on and after July 1, 1973 and until my further order, all price listings published in the Quarterly Minimum Consumer Resale Price List dated April 9, 1973 scheduled to expire June 30, 1973, and all currently effective minimum consumer resale price filings of private labels and exclusive brands scheduled to expire June 30, 1973. I also hereby continue in effect, on and after July 1, 1973 and until the end of July 30, 1973, or until my sooner order, all price listings published in the Quarterly Wholesale Price List dated April 9, 1973 scheduled to expire June 30, 1973. At the same time, I hereby continue in effect, on and after July 1, 1973 and until my further order, all manufacturer and wholesaler-to-wholesaler price filings scheduled to expire June 30, 1973.

It is expected that future developments concerning the price freeze will be watched closely and that this Division will take appropriate action to implement any changes which affect the rulings made herein. In the interim, it is requested that all licensees cooperate with this office to effectuate these emergency actions.

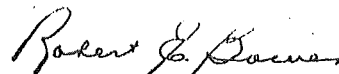
ROBERT E. BOWER  
DIRECTOR

Dated: June 20, 1973

## 5. STATE LICENSES - NEW APPLICATION FILED.

Ark Beverages, Inc.  
t/a Valley Beverage Dist.  
360 Nelson Avenue  
Cliffside Park, New Jersey

Application filed July 9, 1973 for  
place-to-place transfer of State  
Beverage Distributor's License SBD-204  
from 121 Meadow Street, Hackensack,  
New Jersey.

  
Robert E. Bower  
Director