

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2403

June 17, 1981

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - FAWN, INC. v. UNION.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2403

June 17, 1981

1. APPELLATE DECISIONS - FAWN, INC. v. UNION.

#4365  
Fawn, Inc., )  
t/a Nickal's Vous II, )  
Appellant, )  
vs. )  
Township Committee of the )  
Township of Union, )  
Respondent. )  
----- )  
ON APPEAL  
CONCLUSIONS  
AND  
ORDER

Theodore J. Ramankow, Esq., Appearing for Appellant.  
Joseph L. Garrubbo, Esq., Appearing for Respondent.

INITIAL DECISION BELOW

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: April 7, 1980

Received: April 8, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision Below were filed on behalf of the parties hereto pursuant to N.J.A.C. 13:2-17.6.

A license is a privilege. It is well-settled that a licensee must keep his place and his patronage under his control, and is responsible for conditions both inside and outside his premises. Capri v. East Newark, Bulletin 1853, Item 3; A's Inn, Inc. v. South Belmar, Bulletin 2220, Item 1. This principle was articulated as early as 1936, in the landmark case of Conte v. Princeton, Bulletin 139, Item 8. The reason for the imposition of such a strict rule is that the liquor business is an exceptional one, and courts have always dealt with it exceptionally. See X-L Liquors v. Taylor, 17 N.J. 44 (1955); Mazza v. Cavicchia, 15 N.J. 498 (1954).

As the Administrative Law Judge noted, the police "have responded or were requested or have established their own surveillance of the premises" on 67 occasions. However, only on 15 occasions were the calls well-founded. The licensee had 23 occasions to summon police for removal of undesirable individuals, and, in 19 other instances, the complaints were apparently unfounded.

Nevertheless, the large number of complaints which required police response indicate that the premises required a great amount of attention of the limited police manpower in this municipality that should have been reasonably required.

However, I agree, generally, with Judge Jarrett that the licensee has exhibited good faith efforts to operate this facility in a law-abiding manner, through its efforts to upgrade the patronage, selectively excluding certain patrons and flagging others who were not well-behaved. Additionally, it voluntarily eliminated live bands, and later even live piano music, because it was dissatisfied with the type of patronage that they were attracting.

The licensee repeatedly called police for assistance in dealing with unruly or previously "flagged" patrons - a procedure to which I have subscribed - - but unfortunately, sometimes licensees find themselves in a Catch 22 situation, where if they don't call the police for assistance, they permit a potentially illegal or violent situation to exist; on the other hand, when police are asked for assistance, it reflects negatively on the establishment.

It is also understandable that a licensee has limited control over where its patronage can legally park on public streets; nor is he a guarantor of their behavior when they leave the immediate area of his premises. His obligation diminishes in direct proportion to their distance from his premises.

The record clearly manifests that some of the complaints or many of the complaints made by its neighbors are patently frivolous, over-reactive and not of the dimension which should have required police response.

I find that the application of the appellant could have been dealt with by less harsh means than outright non-renewal of the license. Non-renewal should not be considered unless the licensee has clearly demonstrated by his behavior that anything less than non-renewal would disserve the public good.

Thus, having considered the entire record herein, including the transcript of testimony, the exhibits and the Initial Decision, I concur in the findings and conclusions contained in the said Initial Decision as hereinbelow expressly modified by the imposition of special conditions to the said renewal.

Special conditions may be imposed, directed to existing problems, and may work to "allay fears harbored by the community", Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44 (1975). Special conditions may be initiated by the Director on appeal to this Division, Cf. Moon Star, Inc. v. Jersey City, Bulletin 2130, Item 3; Essnjay, Inc. v. Perth Amboy, Bulletin 2222, Item

1; Belmar v. Division of Alcoholic Beverage Control, 58 N.J. Super. 423, (App. Div. 1958). The special conditions set forth in the Order herein are, in my judgment, reasonably required to serve the best interests of the community, Borko v. Mansfield Township, Bulletin 1894, Item 3.

Accordingly, it is, on this 20th day of May, 1980,

ORDERED that the action of the respondent, Township Committee of the Township of Union be and the same is hereby reversed, and the said respondent is hereby directed to approve appellant's application for renewal of its said license for the 1979-80 license term, which said renewal shall be made expressly subject to the following special conditions:

1. All windows and doors of the said licensed premises shall remain closed, other than for ingress and egress, irrespective of weather or season;

2. The licensee's employees shall police an area of at least 150 feet in all directions of its establishment and remove all bar-related litter;

3. Licensee shall employ a special police officer or other security personnel who shall be on duty from 9:00 P.M. to closing on Thursday, Friday and Saturday evenings to maintain and assure peace and quiet in and outside of the said premises; and shall prevent the removal of drinks in glasses or bottles from the said premises;

4. Licensee shall discontinue sales of package goods for off-premises consumption after 10:00 P.M. on Thursday, Friday and Saturday evenings; and it is further

ORDERED that my Order to Show Cause dated June 29, 1979 be and the same is hereby vacated.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX

INITIAL DECISION BELOW

In the Matter of:	)	
FAWN, INC. t/a	)	<u>INITIAL DECISION</u>
NICKAL'S VOUS II	)	OAL DKT. NO. A.B.C. 2856-79
vs.	)	Agency Dkt. No. 4365
TOWNSHIP COMMITTEE OF	)	
THE TOWNSHIP OF UNION	)	

Appearances:

Theodore J. Ramankow, Esq.  
attorney for Petitioners, Fawn, Inc.

Joseph L. Garrubbo, Esq.  
attorney for Respondent, Township of Union

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This was the return date of an order to show cause filed on behalf of the Petitioners, on June 29, 1979 with Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, praying for an extension of Petitioner's liquor license pending a final determination and directing that the matter be heard before the Director of the Division of Alcoholic Beverage Control.

On June 29, 1979, the Director of the Division of Alcoholic Beverage Control signed an order to show cause, extending liquor license #2019-33-015-002 pending a de novo hearing and a final determination as to the renewal of the liquor license for Fawn, Inc. t/a Nickal's Vous II.

The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on January 22 and 23, 1980 at the Union County Administration Building, Freeholder's Room, Elizabeth, New Jersey and final memoranda of law were received by the Court on February 25, 1980. The issues of the hearing are:

1. Whether or not the Director of the Division of Alcoholic Beverage Control and the Office of Administrative Law have jurisdiction over the matter in that no final determination was arrived at by the Municipal Alcoholic Beverage Control Board and that Petitioner failed to exhaust his administrative remedies prior to the appeal.
2. Whether or not the liquor license for Fawn, Inc., t/a Nickal's Vous II should be granted an additional term for the year 1979-80.

It was stipulated to by all parties that the Court could rely on transcripts of testimony taken before the Township Committee on June 20, 1979 and June 27, 1979 in lieu of the Municipal Alcoholic Beverage Control Board having to present those witnesses that had previously appeared before them.

The Town, at its prior meetings, presented eight witnesses who testified to various complaints that they had with regard to the establishment. In addition, the Township presented Detective Robert Wagner at the January 22, 1979 meeting.

The Municipality's witnesses testified as follows.

Mary Collins, who resides at 345 Roseland Place, stated that she has been kept awake or awakened due to noise, yelling and screaming as well as persons vomiting and using profanity. She resides approximately one and a half blocks from the establishment with her back yard facing in the direction of Nickal's Vous II. She candidly admitted that she really could not tell whether the persons making the noise or performing the acts were coming from the tavern or were just attracted to the area due to the ball field that is across from her home or the wooded area in the immediate vicinity. However, she did testify that she has observed young individuals drinking on the side of the tavern's building.

Under cross examination she stated that she was a resident of the area for 11 years. The noise she had heard normally occurred sometime during the hours of 11:30 p.m. and 2:00 a.m. On another occasion she had observed a male individual walk around the side of the tavern's building and urinate on the wall. She candidly admitted that she did not see the individual come from the tavern but assumed that he had done so since he was walking from the direction of same. She also admitted to having never complained to the establishment nor to the special police officer who was on duty.

She related an incident that occurred to her neighbor, Mr. Kletzin, at 349 Roseland Place, with regard to a broken fence. She stated that the fence was broken by juveniles approximately 15 or 16 years of age.

John Casey, who resides at 355 Roseland Place, testified and presented bottles found in his yard. On June 14, 1979 at approximately 6:00 p.m. he observed a male in his mid 50's exit his vehicle, walk across the street, fall down while attempting to step up on the curb and stagger to the premises. He stated the individual returned approximately 45 minutes later and reentered his vehicle and went to sleep. Mr. Casey called the police and later observed them speaking to the individual who then left the scene. He also complained of finding a sign and pole in his yard which had been removed from the corner. In addition he observed a male and female return from the vicinity of the establishment, enter a vehicle and kiss and fondle each other at 4 o'clock in the afternoon. He also complained that the rear window of his father-in-law's vehicle was smashed but he did not know who did it. He hears profanity, more particularly the word "fuck" being uttered by many alleged patrons.

Under cross examination he admitted that he never saw the person who put the sign in his yard nor did he observe anyone smash his father-in-law's car window. He has observed the special police officer to chase kids from the corner of the vicinity of Vous II. When questioned with regard to the two individuals he observed fondling in the motor vehicle he stated that he made his observations from the roof of his home and that he never requested them to move but merely observed them until he was noticed.

Mary Collins, under recross examination, testified that she had picked up a bag of bottles which later was established to have been gathered in the park and wooded area approximately a block away from the premises. Said area is frequented by juveniles.

The next hearing day was June 27, 1979. At said hearing Patrick Lynch, who has resided at 1181 Magie Avenue for the past six years testified that his property is adjacent to the establishment, separated by a six foot alley way. He has two children, age 4 years and 15 months. The tavern was at the location when he first moved in and he moved into said home only after investigating the type of clientele that the establishment catered to. It was his testimony that the establishment catered to a business lunch clientele and that said premises was closed 9:30 p.m. during the week and was not open on Sunday. Under the present management this has changed. He described the premises as having three openings on his side of the building, a doorway, a bathroom window and an air vent, all facing his bedroom. He stated that he hears the juke box and the pool balls clicking together as well as voices and noise at least six times a week. All the noises and disturbances he hears occur after 9:00 p.m. and allegedly the juke box plays beyond the 2:00 a.m. closing time.

He recalled that on Mother's Day in 1979 a band was playing which disturbed both he and his wife. When asked whether or not he had ever been awakened with regard to the establishment he stated that approximately 20 to 25 times during the past year. Also when questioned with regard to the age of the general clientele of the establishment he stated that it was a young crowd and that same has not changed since a prior agreement with the municipality.

Under cross examination he admitted that the establishment did have live music prior to June of 1978 but since that time they have not had same except on the one occasion, which was Mother's Day. He stated he hears the juke box as well as the pool balls clicking together at least two to three times a week. He admitted to having never been in the premises since the new owners took over and that he never contacted the tavern whenever an alleged disturbance occurred.

Under redirect examination he admitted that since the special police officer has been employed with the establishment that the noise level or frequency of noise of persons outside the establishment has not changed.

Under recross examination he stated that his wife has called him on several occasions at approximately 2:30 a.m. crying and complaining about the tavern. In addition she is in her third pregnancy.

The Mayor then examined him with regard to his complaints wherein he testified that the exhaust fan, which is now covered, is not sufficiently covered to control the noise and that he hears the juke box, pool balls noise as well as voices through same. He admitted to having never complained to anyone with regard to the juke box noise.

Donna Lynch then testified that on January 11, 1979 at approximately 11:30 p.m. she was awakened by loud noises inside and outside the tavern. She admitted to being exhausted by 9:00 or 10:00 p.m. She detested hearing foul language in front of her home as well as the noise that comes from the premises every night. It was her testimony that she hears the cue stick as it strikes the pool balls and girls and fellows shouting at each other inside the premises. She has been awakened approximately 100 times within the past year either from motorcycles revving up and leaving or patrons making noise within the premises. She, in addition, has heard bottles thrown from cars and car doors slamming, which disturbs her. Mrs. Lynch stated that she began complaining about the new establishment immediately upon the sale to the new owners. She is extremely frightened of the noise and believes that the patrons are going to stone her front window, though this has never occurred.

On February 1, 1979 at approximately 1:30 a.m. her daughter woke up crying, she went to her daughter, picked her up and went downstairs and admitted that all was quiet at the time. Shortly thereafter she heard shouting from patrons exiting the premises, car doors slamming and then a loud smashing noise which later was determined to be either a rock or cue ball thrown through the establishment's window. She feels very uncertain about living in the neighborhood and has nightmares that patrons are going to come through her front window. She wants to move and has called her husband approximately six times to complain about the establishment.

Under cross examination she admitted that no one has ever come through a window nor have any stones been hurled through same. She said she can not stand the smell of beer and does not like liquor or booze being around her. She admitted that she hates taverns and that she did not want to move into her present home because of its proximity to the Vous II. She had complained about the establishment prior to the new owners taking possession of same and had continued making said complaints to whomever would listen. She was instrumental in distributing a petition complaining about the tavern but admitted that she was unable to obtain the signature of her next door neighbor who resided at 1187 Magie Avenue.

When examined by the Mayor she merely stated that she assumed that the persons making the noise outside of the premises came from the tavern and that Fridays, Saturdays and Sundays are the most frequent periods of time when noise emanates in the neighborhood. She was then questioned with regard to her statements about hearing noise from the premises after 2:00 a.m. and admitted that she had no knowledge of any after hours consumption. She also admitted to having complained once to Mr. Wallenstein when she saw him out in front of the premises and also admitted that the noise has stopped to a certain degree after the hiring of a special police officer.

John H. Dwyer, who resides at 1105 Byron Avenue for the past two years, stated that in April of 1979 at approximately 12:30 a.m., while he was returning home from work he observed two males with beers in their hands coming from the direction of the Vous II. They crossed the street, walked up his neighbor's lawn and urinated on same. He yelled at the individuals but was highly insulted by them. Also on Election Day in 1978 he observed approximately five Elizabeth police vehicles facing the Vous II and later learned that they were present to assist in dispersal of a large number of motorcycles.

He admitted to having called the Union Police and Elizabeth Police approximately 20 times in the past year about noise and individuals sitting in their vehicles, playing their music loud. On Sunday, October 29, 1978 at approximately 11:30 to 11:45 a.m. he observed six persons exit their vehicle, try the front door of the establishment and then enter the alley way. He never observed them to exit. He called the police at approximately 11:50 a.m., who responded at 11:58 a.m., entered the premises and then exited. He stated that he is not certain whether or not alcohol had been served prior to noon on that Sunday or any other Sunday.

Under cross examination he stated that he called the Elizabeth Police due to vehicles pulling up in front of his home with their music loud and leaving same to purchase beer from the tavern. On at least one occasion that he recalled he had to call the police to disperse the individuals.

Under redirect examination he stated he observed individuals urinate on his neighbor's yard two or three times and that said urination occurred in March or April of 1979.

Ruth Goldberg, of 1169 Magie Avenue, testified that she has lived in the area for five and one half years and that since the spring of 1978 to date the crowd that frequents Nickal's Vous II is still as young and noisy as before. She has observed individuals standing in front of the establishment two or three times a week as well as individuals double parked while talking to others. In addition, she has observed fighting in the street which took place approximately every two weeks. On June 19, 1979 she heard and

observed two vehicles stopped in the street with the occupants screaming and cursing at each other for approximately 15 minutes. She, on that particular instance, did not call the police nor had she on any other occasion. She also testified that she observed on at least six occasions in the past license year, individuals urinating on the lawn, the acts of urination normally occur after midnight. On one particular Monday night she confronted an individual who appeared to be about to urinate on her hedges. Upon her confronting the individual he immediately jumped into a vehicle parked at the curb and left the area. She then spoke to the special police officer who was standing on the corner near her home, who informed her that the individual had created trouble in the area before and is not welcomed at the establishment.

The special police officer was identified as Joe Royzla. She also admitted that she could not say whether or not the youth came from the tavern.

Under cross examination by the Mayor, she stated that the noise she hears is from outside the tavern but she is certain that the individuals came from the tavern. She also admitted that she has observed patrons stagger and sway and has heard the special officer request that the individuals who loiter in the area not make any noise.

Detective Robert Wagner testified on June 27, prior to the matter being adjourned, that the police responded 52 times to the Vous II during the licensed year 1978-79. The matter was then adjourned wherein Petitioner Nickal's Vous II submitted a request to the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, for an extension on their 1979-80 license. The Director granted the extension and retained jurisdiction as to the determination whether or not the licensee should receive a permanent license.

Detective Wagner then testified on January 22, 1980 that he was and is employed by the Township of Union as a detective in charge of licensing. It is his responsibility to retain all incident reports for each establishment in the town, which is divided into sectors. The establishment known as Nickal's Vous II is located in Section 66 D as is Begger's Banquet, Village Drugs and Yellowstone, all of which are liquor establishments. Begger's Banquet is approximately one block from Vous II. The Village Drugs is located two to two and one half blocks, with Vous II located between both establishments. He then testified that between June 1978 and June 1979 there were 47 incident reports filed with regard to the establishment. He also stated that he had occasion to visit and surveil the premises. He noticed bottles and cans on the lawn of some of the premises but at no time while present did he observe any violation other than parking, with regard to Vous II. He also, on many occasions, stood in the alley way and driveway belonging to the Lynch property but at no time could hear any noises which he could deem to be a nuisance. He spoke with the owners with regard to the various complaints lodged against the establishment and they

acknowledged some difficulty trying to correct same in that individuals they have barred from the tavern have returned on several occasions and created disturbances both inside and outside the premises. It was his opinion that Vous II was becoming a nuisance to the public welfare and interest but he did not form any conclusions as to the continuation of the license.

Under cross examination he admitted that there were 45 calls made to the police department, 15 were made by individuals resulting in a finding of an actual need. However, not all of those times were as a result of an act or acts of the establishment or its patrons. Twenty-three calls were made by the bar requesting assistance in removing individuals who were not wanted on the premises and who refused to leave or where the establishment recognized that they had a large crowd on hand and desired some assistance in making sure that there were no disturbances of any nature upon the termination of the evening. In addition there were 29 calls made which were unfounded and can only be cited as questionable in nature. Those 29 calls cannot be attributed to the actual operation of the establishment and are therefore not considered in the court's determination. He admitted that he had advised the establishment to call the police whenever it wished or found the need for assistance.

Under redirect it was his testimony that the owners had admitted to him that they could not control the problem.

Donald J. Ebert, Chief of the Union Township Police, testified that he has served in that position for five years and has been employed with the Township for 31 years. He lives around the corner from the Vous II. It was his testimony that disorderly crowds do frequent the establishment but they occur on an irregular basis. He stated that sometimes three or four persons will hold a loud conversation outside the premises or at various other spots in the neighborhood but that they do not affect him nor do they last longer than two to five minutes. He said these types of disturbances are hard to control or catch and usually by the time the police respond they are gone. He held a meeting on May 29, 1979 with the owners of the premises concerning the problems and based on his own personal observations prepared a memo and ordered over-time for patrol of the area. He stated that part of the problem in this particular situation is that the establishment is located in the middle of a residential area.

Under cross examination he stated that he has lived in the area since 1976 and has not been personally disturbed by any of the noise and has only heard noises on six occasions in the last few years. He has never observed anyone urinating, fornicating or necking in the vicinity of Vous II.

There is a park located at the end of Roseland which caters to young people but he does not attribute the young people who have created disturbances to the Vous II.

Based upon his own personal knowledge he stated that the problems in the area have diminished when the police increase the patrol using marked vehicles. He candidly admitted that he based his conclusions and recommendations concerning the operation of the Vous II partially on the previous owners' experiences and not so much on the act or actions of the present owners. He did state that parking was a problem and that Byron Terrace was made a one-way street because of the parking situation and the narrowness of the street. The street is approximately 35 feet wide with no curbing.

He admitted that some of the incident reports that had been attributed to the Vous II was automobile accidents as well as parking problems. In addition he stated that in the vicinity of Begger's Banquet, which is approximately one block from Vous II, there have been four accidents in one year but they have not been cited for any nuisance action as the Vous II has. The location where the Vous II is situated has been a tavern for over 31 years and used to cater primarily to the neighborhood. However, as society changed so did the establishment and it now caters to a younger more mobile crowd. He has patronized the establishment approximately three times in two years.

The State rested its case and Petitioner presented four witnesses, Richard Koug, Patricia Sinnott, Alvin Wollentin, and Lois Mattson-Storch.

Richard Koug testified that he has frequented the establishment for the past six years. When he first began patronizing the premises it was an older crowd but at present the establishment leans towards a young one. The new owners, unlike the previous owner, have attempted to change the atmosphere and crowd of the establishment to an older working crowd.

He described the lunch time patrons as being blue collar workers and the evening patrons as being a younger, more educated working crowd. He frequents the bar approximately three to four times a week, even though he does not drink, to visit friends and enjoy the company of other individuals at the premises. At no time, that he has been present, has he heard noise inside the premises and in fact described the noise as not being as loud as the prior owners. In addition he had never heard any noise outside the premises when he had exited or when he is entering same.

The crowd that frequents the Vous II is a very orderly, ruly and mannerable crowd. On mornings that he is going to work he has noticed, at least one or two times a week, that the owners or an employee of the establishment is cleaning up or policing the area, collecting any refuse that may have been left in the area either by patrons or other individuals. The Vous II has a special police officer employed by it which patrols both inside and outside of the premises.

Under cross examination he stated that he works for a propane company as a driver and lives about five or six blocks from the establishment. He goes to Vous II on Monday, Thursday, Friday and Saturday and noted that the crowd is usually larger towards the end of the week than the beginning except on Mondays during football season. He has observed individuals park their vehicles too close to stop signs or with their rear extending into a yellow area, but other than that he has not detected any other violations. He described himself as being friendly with the owners and again reiterated that he has observed the owners looking for and picking up refuse.

He himself has noticed that some of the bottles picked up by the owners were not that of the establishment and he assumed that they were left there by non-patrons. He stated he is 27 years old and had gone to the establishment when it was known as DJ's but only patronized it approximately one or two times a week. He stated that DJ's crowd was about 35 years and up and that when same was sold and renamed the Rendezvous the crowd became a very young, 18 year old crowd and he did not patronize them.

The size of the crowd that patronizes the Vous II on Fridays and Saturdays was described as approximately 50 people.

He was not aware of any incidents or problems at the bar but admitted to having observed persons talking loud on occasion, approximately five or six times, or standing outside approximately 15 or 20 times. He described the evening crowd as being substantially younger than the day crowd but that there was no greater noise in the evening than during the lunch hour. He said that the noise complained of by the neighbors, to the best of his knowledge, was with regard to noise from within the building but that he did not hear too many requests for them to be quiet on the inside and did not find the noise to be loud enough to be categorized as a nuisance.

Under redirect examination he stated that previous owners who had the Rendezvous were not as clean about the establishment or as courteous about the noise problem as the present owners and the noise has greatly decreased from that of the previous owners.

Patricia Sinnott testified that she is employed by the Union County Welfare Department and started frequenting Vous II about two years ago. She patronizes same three times a week, on Tuesday, Wednesday and Thursday. However, she has observed special police officer present on the premises on Thursday, Friday and Saturday. She had no direct knowledge of complaints herself but had heard from other patrons that the neighbors had complained. She described the age bracket of the Vous II as being in the 20's and early 30's.

Under cross examination she stated that she goes there because there are people in her own age bracket that frequent the establishment. In addition there are not many individuals who are 18 or 19 who frequent or are permitted to patronize the establishment. She has observed parking violations in the area but is not certain that the individuals who are so parking are patrons of the Vous II.

Lois Mattson-Storch testified that she has been a patron since the establishment has opened and that the individuals who patronize Vous II are in their mid to late 20's. Prior to the new management taking over the premises the age bracket was late teens and early college age individuals. She is employed by the Bridgeway House Psychiatric Rehabilitation Center and goes to the premises once a week. She has never observed anyone acting unruly or any fights.

Under cross examination she stated that the place was very pleasurable and it was somewhere she can go and hold a conversation without having to shout or be disturbed. She admitted to being a friend of one of the owners, Mr. Forte, for approximately 10 or 12 years and started going to the premises due to her acquaintance with him. She is aware of the difficulties involving the neighbors and has observed individuals standing outside but never observed them seated in their cars.

Alvin Wollentin testified that he is the president of Fawn, Inc., and one of the owners of Nickal's Vous II, same being purchased in August 1977. He originally worked in the business full-time but at present is only working same part-time.

He recalled having a meeting with Commissioners Lenards and Roberts just prior to the renewal of the present license year and stated that when the license was renewed in 1978 there were no restrictions on the license. In addition when the license was purchased in 1977 there were no restrictions at the time and was advised by the purchaser as well as the Township that the business could be open for the full hours as prescribed by the Town ordinances.

When the establishment was originally opened he had live entertainment but due to the noise factor and complaints he terminated it, opting for entertainment appealing to a more mature and orderly crowd. He was aware of the complaint lodged by Mrs. Lynch with regard to the pool balls gliding on the pool table but felt there was nothing that could be done with regard to same other than discontinuing the pool table all together, and he opted not to do so.

His original statement at the time of the first meeting with the Township upon the 1978 renewal was that he would attempt to turn the place into a piano type bar but found that it was not profitable to do so. Therefore he eliminated the piano player, gave better treatment to the patrons he wished to keep than those he did not. As a result, those individuals who he did not wish as patrons gradually weeded themselves out while those who he wished to retain brought in their peers, colleagues, friends and other favorable clientele.

In addition, in the late fall or early winter of 1978, he employed the services of special police officer which was provided to him by Lt. O'Rourke of the Union Police Department. Mr. Wollentin admitted that there had been certain problems with regard to unwanted

patrons such as one patron throwing a bar chair across the bar, breaking a bottle of liquor. Another patron assaulted the bartender. Mr. Wollentin testified that he polices the area of Bryon every morning or has someone whom he now employs to do so to collect whatever beer bottles and refuse may have been left in the area by parties who have purchased packaged goods to take out or dumped their refuse in the area. In addition he stated that he has never received any complaints from tenants above his premises nor has he been informed by police of the numerous parking violations which they allege to occur in the vicinity of his establishment.

Under cross examination he stated that he is the managing editor of Carnegie Press, having become a partner in same in August of 1978 and that he had started part-time with Carnegie Press and eventually moved to full-time in February of 1979. He described Mr. Forte as being partner, secretary and treasurer of Fawn, Inc. and a full-time employee of Vous II. Mr. Forte works six days a week, 10 hours a day and he works approximately two hours a day, seven days a week.

He admitted to having received one noise complaint from Mrs. Goldberg and none from any other neighbors in the area. Mr. Wollentin also had no knowledge or information that would support the position that the complaints were valid and in fact took the position that many of the complaints were unfounded; they were an attempt by the residents who did not desire a tavern in the area to force him out of business.

The matter was then concluded and memoranda were ordered to be submitted by all parties.

After having observed all the witnesses for both sides and having considered the entire record, including the testimony and exhibits submitted into evidence, together with the arguments of counsel, the Court makes the following findings of fact:

1. Petitioner, Fawn, Inc., t/a Nickal's Vous II is the owner of plenary retail consumption license number 2019-33-015-002 located at 1175 Magie Avenue, Union Township, New Jersey and was so owned during the licensed period complained of.
2. There have been 45 different occasions that the police were requested to respond for one reason or another but arrests were only effectuated on two or three occasions as the result of the responses.
3. There have been complaints of noise made by alleged patrons of the establishment.
4. On 67 occasions either the police have responded or were requested or have established their own surveillance of the premises.

Out of those only on 15 occasions where the police received a complaint was same founded, 23 times the bar made requests for removal of individuals unwanted on the premises and 29 times the complaints were unfounded.

5. The owners of the premises have taken every precautionary and necessary step in an attempt to comply with the desires of the Township of Union's local alcoholic beverage control board.
6. Bottles have been left on individuals' lawns but their majority of said bottles did not belong nor have been distributed or sold by the establishment.
7. There were occasions when individuals have urinated in the neighborhood but only two of those occasions could be attributed to patrons of the establishment.
8. Mrs. Lynch has complained to the Township Police Department on numerous occasions with regard to the operation of the Nickal's Vous II. However, the Court finds that Mrs. Lynch is an extremely nervous, high-strung individual with a vivid imagination and an engraved prejudice against all liquor establishments.
9. Mary Collins, a neighbor of Donald J. Ebert, complained of patrons constantly keeping her awake while Mr. Ebert testified that in the two years that the establishment has been run by the present owners, only on six occasions has he been disturbed by noise. Also, that there has been one occasion where individuals, believed to be patrons of Nickal's Vous II, have been observed to kiss in a parked vehicle.
10. That Mary Collins presented a bag of beer bottles which she collected in a park and wooded area which is approximately a block and a half away from the establishment of Nickal's Vous II.
11. That Ms. Collins bears a degree of prejudice against the establishment.
12. That Detective Wagner, upon examination of the noise emanating from Nickal's Vous II while performing surveillance of said premises, noted that the noise emanating is not of a nuisance nature.

13. That When Detective Wagner performed various surveillances on numerous occasions he did not find any violations other than parking.
14. That Detective Wagner requested the establishment to contact the police department whenever it had any problems with unwanted patrons or felt that it might need the assistance of the police due to a possible disturbance.
15. That the establishment caters to a crowd 20 and older.
16. That the neighbors in the area are dissatisfied in having a licensed liquor establishment in the neighborhood.

The grant or denial of an alcoholic beverage license rests in the sound discretion of the local Alcoholic Beverage Control Board in the first instance. In order to prevail in this appeal the Appellant must show that the local Alcoholic Beverage Control Board has acted unreasonably and that said Board's actions constituted a clear abuse of their discretion. The burden of proof in establishing that the action of the council was erroneous rests entirely with the Appellant and the decision of the local Alcoholic Beverage Control Board should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion, unwarranted finding of fact or mistake of law by the Board.

The responsibility of the licensee is to maintain its premises in an orderly and lawful fashion and be responsible for conditions both inside and outside of the licensed premises that are caused by the patrons thereof. It is also clear that a licensing authority such as the local Alcoholic Beverage Control board has the right to exercise discretion to determine, in light of the surrounding circumstances and conditions, what is good for the Township of Union.

The matter of Kevin A. Schmidt, t/a Eve's Plumb vs. Borough Council of the Borough of Bogota, an unpublished decision by the Alcoholic Beverage Control agency, Bulletin number 2245, is the most pertinent matter of record. The neighbors in that particular instance complained of conditions emanating from the licensed premises that interrupted and at times prevented sleep; complaints of noise and shouting by youthful patrons past midnight on their way to and from the tavern. In addition, it spoke of bottles and other debris littering lawns, walks and driveways, urination on plants, shrubs and walls, illegal parking which often blocked driveways and fire hydrants, foul language, etc. There was extensive testimony on behalf of the Township of Union with regard to alleged violations similar to those in the matter of Kevin A. Schmidt. However, many of the witnesses, based upon their testimony, exhibited an absolute prejudice against either this establishment

or any licensed establishment dispensing alcoholic beverages in the neighborhood. Therefore, their testimony cannot or should not be given the full weight of that of an impartial or non-biased individual. In addition, with regard to testimony of bottles in the area, there was sufficient rebuttal testimony that many of the bottles found were not those sold by the establishment in question, even though they might have been left in the area by patrons or individuals who were barred admittance to the premises. As to the testimony of the Lynchs, Mrs. Lynch is absolutely prejudiced against any liquor establishment and Mr. Lynch is prejudiced against this particular establishment in his attempt to placate his wife. Therefore the Court totally discounts their testimony with regard to such noise violations as pool balls clicking, loud music and voices. Especially in light of Detective Wagner's testimony that on many occasions he surveilled the premises, stood between the premises and never heard any noise that was of a nuisance nature. In addition, the Court must discount Mrs. Collins' testimony since her neighbor, Chief Ebert, who resides by the premises as well, stated that in the past two years he has only been disturbed six times. It is apparent that she is attempting or is being persuaded by those individuals who have an axe to grind in this particular instance and not by her good conscience or sense of fair play.

The violations, as testified to, noise, littering as well as urination problems, must be cleared up. The Court concludes that there has been an attempt by the establishment to do so but they have not been totally successful in rectifying the problem.

In addition, they are being penalized by the municipal Alcoholic Beverage Control Board as well as by Detective Wagner for requesting police assistance even after being instructed to do so by Detective Wagner.

In every business dealing with the public there is going to be occasions when police assistance is going to be requested or disturbances are going to occur. It is only when such situations are of a continuing nature that drastic measures must be employed and the court concludes that such is not the case in the present instance. There were 67 occasions when the police responded or surveilled the premises and of all those times only 15 were non-establishment requests which were valid. Clearly this is not sufficient to warrant revocation or non-renewal of the liquor license.

There is no real way of substantiating the alleged numerous complaints unless they are documented and substantiated and in this instance when the witnesses were closely examined by the attorney for the licensee the number of instances either reduced or were shown to be tainted by prejudice.

The Court concludes that bottles have been left in the area but it is apparent that the licensee is taking the necessary steps to maintain a clean neighborhood by policing and cleaning same. As to the urination problem, it is the most difficult to control short of requesting all patrons who exit the premises to go to the bathroom first, which request would be totally unreasonable.

The Court finds, with regard to the Township's motion that the Director lacks jurisdiction to hear this particular matter without the municipality first arriving at a determination, rejects said argument for the following reasons: N.J.S.A. 33:1-22, which covers appeals to the Commissioner from actions from issuing authorities with respect to license; procedure permits the Director, where an Order to Show Cause has been filed for an extension pending the final determination, to retain jurisdiction of same to arrive at that determination.

The Court concludes in this particular instance, that the Municipality refused to issue an extension of the liquor license prior to its expiration date and that the Director of the New Jersey Division of Alcoholic Beverage Control did exercise its authority under said statute and granted an extension of the liquor license while retaining jurisdiction pending a de novo hearing to determine whether or not said license should be renewed. Therefore, the Court will only rule with regard to the initial objection as to the renewal of the license.

The COURT CONCLUDES that there is insufficient evidence to justify non-renewal of the license. Therefore, the Court grants the renewal of the liquor license for the 1979-80 license year.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

+++++



Joseph H. Lerner  
Director