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

BULLETIN 2125 DECEMBER 10, 1973

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - T. V. MOTEL, INC. v. EAST WINDSOR.

T. V. Motel, Inc., t/a T. V. Motel and Leopard Lounge,

Appellant,

v.

Township Council of the Township of East Windsor,

Respondent.

On Appeal

CONCLUSIONS and ORDER

Beninati & La Morte, Esqs., by Frank A. La Morte, Esq., Attorneys for Appellant
Mason, Griffin, Moore & Pierson, Esqs., by G. Thomas Reynolds, Jr., Esq., Attorneys for Respondent

BY THE DIRECTOR:

This is an appeal from the action of the Township Council of the Township of East Windsor (hereinafter Council) which on August 14, 1973 approved and then promptly denied renewal of appellant's plenary retail consumption license for the 1973-74 license period. The immediate reversal of the Council's action was the result of its determination that the vote taken on the resolution to grant renewal resulted in two members voting for, two members voting against, two members abstaining, and one member being absent; hence there was no majority vote for approval of said resolution.

Appellant contended in its petition that, although a hearing was afforded to it, there were no reasons ascribed to the action of the Council. The Council answered that it failed to renew appellant's application for renewal in that the owner of ninety-nine percent. of its corporate stock was a "person of unfit character;" that renewal is against the welfare and public safety of the residents of the community, and that employees of the appellant's business were persons of "unfit character."

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15. By telephone information received immediately prior to the hearing, counsel for the Council indicated that it would not be represented at the hearing herein and no defense to the appeal would be interposed. The receipt of testimony was thus limited to that offered by appellant.

Raymond Amato testified that he is the owner of ninety-nine percent. of the capital stock of appellant corporation. He acquired this interest in appellant corporation in September 1972; the remaining one percent. of the stock is held by a prior owner and constitutes a silent interest in the operation of the licensed business. He denied that he or any person employed by the corporation has any criminal record and that a full interrogation of any prospective witness as to his background, particularly as to criminality, was made before hiring. He has never been visited by any police official respecting himself or any employee and he could neither surmise nor conjecture the origin of the implications upon which the "unfit character" label was attached, to him or his employees.

He recounted a long history of association with the alcoholic beverage industry beginning in 1950 when he acquired an interest in an establishment in Newark. Thereafter, and on different occasions and for different periods, he had interests in restaurants with alcoholic beverage licenses in South Plainfield and Florham Park. In each of these municipalities, including respondent Township, he had been routinely fingerprinted. The acquisition of his interest in appellant corporation gave rise to a complete investigation of his ownership by agents of this Division in October 1972, which concluded with a favorable report.

At the conclusion of testimony appellant immediately waived a Hearer's report and requested the matter be determined forthwith by the Director.

From the uncontroverted testimony of Amato, coupled with the total lack of evidence in support of the contentions advanced in respondent's answer, it is apparent that the action of the Council was both unreasonable and arbitrary.

"It has been a long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings .... Common fairness to the licensee has been the basis for this policy." Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2. The record of a licensee during the prior licensing period should be considered in the determination of license renewal. Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Salmanowitz v. Hightstown, Bulletin 807, Item 2.

As it is firmly established that the grant or renewal of an alcoholic beverage license rests in the sound discretion of the Board in the first instance (Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App.Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962)), it is equally anticipated that that discretion be soundly used. However, where there is a manifest abuse of its discretion, the Director is authorized to reverse the action of the Council. The Florence Methodist Church v. Florence Tp., 38 N.J. Super. 85 (1955); Blanck v. Magnolia, supra; cf. Belmar v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 423 (1958).

In the instant matter only four members of the Council made any expression whatever, and of the three remaining two members were silent. Thus of the seven members (one of whom was absent), no majority voiced an expression either to grant or deny the application. The Council had an obligation to act and should have done so.

The answer to the petition of appeal alleged that the appellant's principal corporate owner was "unfit" and that the employees were "unfit" to be associated with a liquor license. No proof whatever, cognizable before this Division, arose in support of those contentions. To the contrary, the uncontroverted evidence indicated that the principal stock owner has a long and apparently unblemished record of connection with establishments enjoying a license privilege. As nothing whatever was advanced to the contrary, or anything advanced in support of the contention that unfit employees were employed in the licensed premises, the actions of the Council were manifestly arbitrary and capricious.

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

ORDERED that the action of respondent Township Council of the Township of East Windsor in denying appellant's application for renewal of its plenary retail consumption license is hereby reversed and the Council is hereby directed to grant renewal of appellant's license for the 1973-74 license period in accordance with the application filed therefor.

Robert E. Bower,
Director.

2. APPELLATE DECISIONS - CONN v. DOVER.

Donald R. Conn, t/a Three Star Tavern,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and
Board of Aldermen of the Town of Dover,	)	ORDER
Respondent.	)	

Young & Sears, Esqs., by Christopher R. Falcon, Esq., Attorneys for Appellant
Hugh E. De Fazio, Jr., 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 Mayor and Board of Aldermen of the Town of Dover (hereinafter Board) which by unanimous vote of the seven members of the nine-member body present, denied the application for a place-to-place transfer of appellant's plenary Retail consumption license from premises 186 East Blackwell Street to 9 East Blackwell Street, Dover.

In its resolution dated May 23, 1973, the Board set forth the following reasons for its action:

> "1. Blackwell Street is the heart of the business district of the Town of Dover. There is no licensed tavern on Blackwell Street within two blocks in either direction of the applicant's proposed establishment.
>
> 2. Two taverns already exist in the immediate vicinity, and three others exist, within three blocks of the proposed location.
>
> 3. The public interest and the economic viability of the down town business district would be best served by not permitting a retail plenary consumption license at this location.

4. With five taverns in the area (see 2 above) there is no public necessity for another establishment of this type to be located in this section of the business district.

5. The arguments, concerns and objections of the citizens and businessmen are legitimate and convincing."

Appellant contends that the action of the Board was erroneous in that it relied upon the unsubstantiated and overstated protests of objectors; that appellant had an unblemished record of operation in the tavern business; that he was compelled to relocate due to urban development; that the proposed transfer would enhance the area; and that the action of the Board was unreasonable and an abuse of discretion.

The Board, in its answer, denied that its action was erroneous.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to produce testimony and cross-examine witnesses.

Prior to the receipt of oral testimony, it was stipulated that the minutes of the meeting of the Board held on May 23, 1973 included the objections of certain area businessmen; that appellant did operate a tavern at 50 East Blackwell Street; that he was required to vacate those premises because of Urban Renewal Development; that appellant requested and did receive relocation assistance in the sum of $2,500.00 pursuant to State and Federal laws because of his displacement; that appellant sought and did receive a transfer of liquor license from the 50 East Blackwell Street to 186 East Blackwell Street, in the year 1971; that appellant, after receiving the transfer of license applied to the Dover Board of Adjustment for variance; that he was granted the variance to operate a tavern at that location, subject to the condition that he tear down a frame building at the rear of the plot within one year, and a two-story building within five years, and that no appeal was taken of the conditions imposed by the Board of Adjustment.

I

The dispositive issue in these matters is: Did the Board act reasonably and in the best interests of the municipality? It is basic that a transfer of a liquor license to other premises is not an inherent or automatic right. 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. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306,320 (App. Div. 1960), aff'd 33 N.J. 404 (1960):

"...No person is entitled to [the transfer of a license] as a matter of law...."

and

"...If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial...."

In this connection it may be well to quote further from Fanwood v. Rocco, supra:

"The primary purpose of the act is to promote temperance (R.S. 33:1-39) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs of City of Hoboken [135 N.J.L. 502 (E. & A. 1947).] Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent.

The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'" Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, 135 N.J.L. 502 (1947).

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

"...Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for.... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the recent case of Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970), the court stated:

"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. Once the municipal Board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. 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...."

Appellant, Donald R. Conn, testified that he had operated a tavern at 50 East Blackwell Street for seven years until he was compelled to transfer his establishment because of the Urban Renewal project two years ago, to the present site, 186 East Blackwell Street, which is approximately two and one-half blocks distant from the proposed site. The condition imposed by the Board of Adjustment requiring him to tear down two of the buildings on the plot would impose extreme hardship upon him because he would lose the rental income which he would have applied to the mortgage payments.

Harold D. White, a part-time bartender while it was located at 50 East Blackwell Street, employed on an average of once a week and who has, on other occasions, patronized the establishment with his wife, testified that the establishment was operated in an orderly and proper manner.

Willard Hedden, the mayor and a member of the Board, testified that the reasons stated in the resolution denying the transfer expressed his thinking and was the unanimous thinking of the Board members present at the meeting. The greatest concentration of commercial establishments is located on Blackwell Street. The desire of the members of the Board to keep the two block area of the proposed transfer site free of taverns, was in the public interest and met with the approbation of the Chamber of Commerce.

There is no off-street parking adjacent to the proposed location. The nearest off-street parking is located one-block distant. The witness asserted that it was the Board's feeling that the appellant could operate at his present location, and that the Board would have given the matter favorable consideration if he had appealed the decision of the Board of Adjustment. The denial of the transfer was not be be construed as a reflection upon appellant's business ability or the conduct of his business.

Upon reviewing the factual complex, which was ably presented by the litigants herein, and applying the controlling principles hereinabove set forth, it is my view that the appellant has failed to meet the burden of establishing that the action of

the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is apparent that appellant did not desire to utilize his present location for the reason that he felt that the conditions imposed by the local Board of Adjustment rendered that location unattractive from an economic viewpoint. However, it is well established that this does not constitute a valid reason for the approval of an application for transfer. It is elementary that concern for a licensee's own financial problem will not be elevated above the public interest. Smith v. Bosco and Jersey City, 66 N.J. Super. 165 (App. Div. 1961); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

In fact, as the court pointed out in Nordco, the determinant is merely whether the refusal to grant the said transfer was the result of intentional discrimination or other arbitrary action. (43 N.J. Super. at p.288.) In Fanwood v. Rocco, supra at p.404 (1960) the court stated:

> "The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

I do not believe that the Board was unsympathetic to the dilemma of the appellant, although, as I have noted, his personal problem was based more on economics than on any other single factor. Nevertheless, the Board took into consideration the views of the objecting residents and the public interest. As the court stated in Fanwood v. Rocco, supra (33 N.J.404);

> "Similarly, the municipal governing body may reasonably decline to issue a license because of the proximity of the premises to a church or school even though the church or school is beyond the 200 foot area outlawed by R.S. 33:1-76.
>
> And it appears clear to us that, consistent with and in furtherance of the foregoing, the municipal governing body may reasonably honor local sentiments by declining to license taverns and package stores in designated areas within the municipality."

And further:

> "The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the convenience of residents who purchase alcoholic beverages but also

> for the sentiments of residents who are unsympathetic or hostile to their sale."

In Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970) the court stated:

> "Responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place... is primarily committed to municipal authorities. N.J.S.A. 33:1-19, 24... In allocating spheres of operation between the State Division and municipal authorities, the Legislature wisely recognized that ordinarily local officials are thoroughly familiar with the community's characteristics...the nature of the particular area....
>
> "Obviously, when the lawmakers delegated to local boards the duty 'to enforce primarily' the provisions of the act it invested them with a high responsibility, a wide discretion and intended their principal guide to be the public interest. Lubliner v. Paterson, 33 N.J. 428, 446 (1960).

In Lyons Farms Tavern the Supreme Court re-emphasized the theme of Fanwood that the Director may not disregard the municipal governing body's authority to decline to license the operation of any taverns or package stores in a business section, particularly where there is widespread local sentiment in favor of keeping the area free of taverns and package stores. In honoring the expressed sentiment, the governing body does not act at all unreasonably.

I find that the best interests of the municipality, were circumspectly evaluated by the Board in reaching its ultimate determination.

A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject, of course, to review by this Division in the event of an abuse thereof. Blanck v. Magnolia, 38 N.J. 484 (1962). The action of a municipal issuing authority may not be reversed by the Director unless he finds the act to have been clearly against the logic and effect of the presented facts. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra.

Therefore, after considering all of the evidence herein, including the transcript of the testimony, the stipulations, the exhibits and the argument of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of Board and dismissing the appeal.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

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

ORDERED that the action of the respondent Board of Aldermen of the Town of Dover be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
ACTING DIRECTOR

3. APPELLATE DECISIONS - CONNOR v. MILLBURN ET AL.

John R. Connor, Appellant, v. Township Committee of the Township of Millburn, and Edward J. Flynn, t/a Flynn's Tavern, Respondents.	)	On Appeal CONCLUSIONS and ORDER

Appellant, Pro se
Eugene T. O'Toole, Esq., Attorney for Respondent Township
John Anthony Lombardi, Esq., Attorney for Respondent Edward J. Flynn.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of Township Committee of the Township of Millburn (hereinafter Committee) which renewed the plenary retail consumption license of respondent Edward J. Flynn for the 1973-74 license period.

The petition of appeal alleges only that the Committee acted erroneously; no grounds were set forth in support of this allegation. The petition additionally demands that the Director place appellant's name on the license and remove therefrom the name of respondent Flynn.

At the outset of the de novo hearing in this Division, appellant was advised that the relief sought, i.e., the demand that the Director substitute his name for that of respondent Flynn on the plenary retail consumption license which the Committee had issued to Flynn was without the purview of this action. The Director's authority is limited to a determination, upon proper proofs presented, as to whether the license was improvidently issued or was issued to someone who was disqualified, or holding a license for another disqualified person.

In its answer to the petition of appeal, the Committee responded that it had heard from both licensee and appellant, and it determined that the respondent Flynn had been made sole owner of the premises. In his answer, respondent Flynn contended that he acquired title to the license by way of sheriff's sale held May 16, 1972; that his license had been renewed for the 1972-73 licensing period; and the claim of appellant for a determination of an interest in the license had been the subject to proceedings instituted in the Superior Court, and thereafter in the Appellate Division of the Superior Court where the possessory rights of respondent had been determined and affirmed.

Appellant was cautioned at the commencement of the hearing that determinations of legal interests of licensees, beyond the subject of qualification of licensees, was not justiciable before the Division. Matters pertaining to adverse or ancillary rights to licenses or the property involved are reviewable before a civil court of plenary jurisdiction, not before the Director.

Absent any specifics being alleged upon which the action of the Committee could be determined as erroneous, appellant was directed to specify the gounds of his appeal. He alleged as his principal ground of appeal that respondent Flynn had, between 1949 and 1968, failed to include as a co-licensee the name of his mother, Mary A. Connor, as well as Mary Ellen Flynn. Additionally, he advanced the thesis that as Mary A. Connor had on January 31, 1972 assigned her interest in Flynn's license to him, the absence of his name on such license application was such fraudulent act by Flynn as to constitute a disqualification.

Those being the sole contentions of appellant and no specifics other than those being advanced, it became apparent that his appeal lacked legal or factual substance.

Rule 3 of State Regulation No. 15 requires appeals from actions of municipal authorities be taken within thirty days from the action complained of. That action as obvious from the appellant's contentions was, at very latest, August of 1972, when the renewal for the 1972-73 licensing period would have been accomplished. Had any facts been alleged by appellant to have

occurred within the immediate past licensing period, his appeal, in that respect, may have been well founded. However, despite every entreaty, appellant urged no other ground than the contention that respondent Flynn, up until 1968, had failed to name a co-owner in his license application.

No allegation was made concerning any facts or circumstances occurring within the immediate past licensing period. Hence, the appeal was not timely made and, in fact, was at least a year late. Neither in his petition nor at the hearing did appellant offer or allege any facts concerning the immediate past licensing period, or any disqualification of respondent Flynn.

Compounding the difficulty of obtaining the grounds of the appeal was appellant's attitude and manner at the hearing herein. Because he appeared pro se, an explanation of the scope of such appeal was given to him at the outset, which, instead of developing an orderly posture of presentation of the matter, seemed only to incur appellant's wrath. That ire reflected itself in his telling one of the respondent's counsel who posed an objection to "shut up"; to the other counsel, upon objection raised, to "please sit down"; and to the hearing officer "I wish you would be quiet". Such contumacious conduct not only obstructed an orderly proceeding, but prevented the attorneys for respondents from properly presenting a defanse to this action.

I conclude that the appellant has failed to establish that the action of the Committee was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Committee be affirmed, and the appeal herein be dismissed.

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 transcript of the testimony, exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

ORDERED that the action of respondent Township Committee of the Township of Millburn be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner,
Acting Director.

4. APPELLATE DECISIONS - FRAJAC TAVERN, INC. v. PATERSON.

Frajac Tavern, Inc., t/a 217 Club, Appellant, v.	)	On Appeal
Board of Alcoholic Beverage Control for the City of Paterson, Respondent.	)	CONCLUSIONS and ORDER

Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq., Attorneys for Appellant
Adolph A. Romei, Esq., by Ralph L. DeLuccia, Jr., 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 Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which on June 27, 1973, denied renewal of appellant's plenary retail consumption license on the ground that the application when filed was not accompanied by the required fee.

Appellant contended that at the time of filing of the application a check accompanying the application, although thereafter marked "Insufficient funds", was later made "good" or, in the alternative, the funds representing the amount of the check were available.

While the facts in this matter were substantially similar to the companion matters of Blue Note Lounge, Inc. and E A V Liquor & Bar, Inc., on appeals filed jointly by the same counsel, a separate report is prepared in that the facts were in themselves not identical, although the applicable law is substantially the same.

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

The Board generally denied the substantive contentions advanced by appellant. However, the resolution adopted by the Board asserted that at the time it acted upon appellant's application it did not have the requisite fees in hand.

Testimony taken of William W. Harris, Secretary of

respondent Board, indicated that he received appellant's renewal application from its sole stockholder on June 8, 1973, to which was accompanied a check for the renewal fee. Thereafter he was advised by the Tax Receiver of Paterson that the check had been returned marked "Insufficient funds." He promptly called Jackson and spoke to Mrs. Jackson, advising her of the dishonor.

No further response occurring, he advised the Board concurrent with its June 27 meeting that the fees had not been paid, and the Board determined not to renew the license. Following that meeting Jackson visited his office and offered payment. On cross examination Harris admitted he did not know Jackson and his wife were separated and that, other than the initial telephone call, had done nothing further concerning the invalid check.

Frank Jackson testified that he purchased the subject licensed premises a mere three months prior to the renewal date; that he was separated from his wife although she still takes care of the bookkeeping for his establishment. Mrs. Jackson did inform him of Harris' call and he directed her to forward a proper check by return mail to the Board. He testified that she did so but mistakenly submitted the check to this Division. He asserted that at the time of June 27, 1973, he did not know that the check had been misdirected and in fact did not know of the action of the Board in denying renewal of his license until the following day when his counsel advised him of that action. He had the funds available and, at the hearing of the matter in this Division, offered payment in cash to Secretary Harris, who accepted the sum in escrow pending determination of this appeal.

It was apparent from the testimony of Jackson that his knowledge of requirements and regulations pertinent to the conduct of an establishment for the sale of alcoholic beverages is minimal. None the less, a short three months before, the Board approved a person-to-person transfer of the premises to him. Since it appears that appellant qualified for the said renewal and has met all procedural requirements except for the payment of the requisite filing fee, I conclude that appellant should in fairness be afforded an opportunity to secure renewal of his license.

N.J.S.A. 33:1-12.18 permits the acceptance of applications for renewal not filed within time when circumstances exist indicating that the improper filing was beyond the control of the applicant. In a parallel matter it was held that confusion on the part of an applicant as to the time requirement of filing should not result in a loss of license if, under the facts in that matter, the application would have been timely made had the applicant understood the proper application of the law to his case. Cf. Albert C. Wall, Inc. v. Gloucester City, Bulletin 1997, Item 2. Similarly, the misdirection of the fee to an improper agency in the instant matter involves a ministerial and procedural act which was heretofore complied with, without substantial prejudice to the Board.

Hence it is recommended that the action of the Board be reversed; that the required fee previously paid and now in the Board's hands in escrow be accepted nunc pro tunc, and the Board be directed to renew appellant's license in accordance with the application filed therefor.

Conclusions and Order

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

Having carefully considered the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 30th day of October 1973,

ORDERED that the action of respondent in denying renewal of appellant's plenary retail consumption license be and the same is hereby reversed; and it is further

ORDERED that the Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby directed to renew appellant's plenary retail consumption licenses for the 1973-74 license period nunc pro tunc in accordance with the applications filed therefor.

ROBERT E. BOWER
DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

MCC Presidential, Inc.
t/a L. N. Renault & Sons, Inc.,
Renault Winery, L. N. Renault Winery,
Champagne Vintners, St. George Winery of
N.J.
Bremen Avenue & Liebig Street
Galloway Township, New Jersey
Application filed November 30, 1973
for person-to-person transfer of
Plenary Winery License V-13 and
Additional Warehouse License AW-7
for premises S.W. Corner Norfolk Ave.
& Agassiz Street, Egg Harbor City,
New Jersey, from L. N. Renault & Sons, Inc.

Robert E. Bower
Robert E. Bower
Director