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

BULLETIN 2217 March 3, 1976

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - SIMONSEN, INC. v. ASBURY PARK.

Simonsen, Inc., t/a Drift In, Appellant, v. City Council of the City of Asbury Park, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Barrett, Jacobowitz & Bass, Esqs., by Peter B. Bass, Esq., Attorneys for Appellant
Norman H. Mesnikoff, 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 the City Council of the City of Asbury Park, (hereinafter Council), which, on July 16, 1975, denied renewal of appellant's Plenary Retail Consumption License C-2, for the current licensing period, for premises 911 Kingsley Street, Asbury Park.

Appellant contends that: the Council's action was arbitrary and capricious; the decision was based upon legally insufficient evidence; and, appellant has been discriminated against, in that the Council has granted the renewal of other alcoholic beverage licenses whose operation has created far greater public disturbances than has the operation of appellant's license.

The Council answered that the grounds for denying the renewal of license are that the operation of the licensed premises constitutes a public nuisance, and the combined operation thereunder would be detrimental to the general welfare of the citizens of Asbury Park.

A de novo hearing was held in this Division, at which the parties had full opportunity to offer evidence and cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. Additionally, the transcript of the proceedings before the Council was admitted into evidence, pursuant to Rule 8 of State Regulation No. 15.

Upon the filing of the appeal, the Division entered an order, on July 10, 1975, extending the term of appellant's license pending the determination of this appeal. The resolution adopted by the Council following the hearing held on July 2, 1975 sets forth the following:

> "BE IT RESOLVED by the Mayor and Council of the City of Asbury Park that, as the result of evidence and testimony adduced at hearings held on July 2, 1975, that the application of Simonsen Inc. trading as The Drift In, 911 Kingsley Street, Asbury Park, for a renewal of its retail alcoholic beverage license C-2 for the year commencing July 1, 1975 be and is herewith denied."

The transcript of the proceedings before the Council, upon which the foregoing resolution was based, reveals that testimony was elicited of five persons who either own property, or reside, within close proximity to the appellant's premises.

Jacob and Idelle Edelstein, co-owners of five cottages adjacent to the subject premises, testified that patrons of the Drift In trespass on cottage grounds, breaking windows, discarding beer bottles, sitting on a parapet wall between the cottages and the Drift In, using abusive language, and being generally noisy and boisterous. In addition, a gate between the premises and the first cottage was torn down several times and finally had to be nailed closed.

Idelle Edelstein asserted that former tenants who had rented the cottages in previous years, have refused to renew their tenancies this past year because of the existent situation, and that for the first time in twelve years, she has had empty cottages.

Anthony Lordi, Sr., owner of another cottage in the area, testified that patrons leaving the licensed premises stop at the the corner where his cottage is located, lean against the porch of his cottage, and use abusive and profane language.

Angelo Carlucci, the owner of a home in the area, testified that he finds empty beer bottles in front of his home every morning, although he admitted that he did not know where the bottles came from; that there are two other taverns within the same block.

John R. Corbo testified that he cannot sell his house which is in close proximity to the Drift In, and he attributes the inability to sell the house to the noise emanating from the licensed premises.

Radomir Jovanovic, Secretary-treasurer and fifty percent stockholder in the corporate appellant, testified that, since March 1, 1975, the subject premises has employed an Asbury Park Special Police

Officer, because the premises had been frequented by a "motorcycle gang" in the past. Jovanovic stated the officer is stationed at the front door, every evening from 8:30 p.m. until 3:30 a.m., checking the identifications and keeping general control over persons entering and leaving the premises.

James Cook, employed at present as the above-mentioned special policeman, testified that his duties include checking identifications, preventing persons from leaving the premises with alcoholic beverages in hand, and dispersing people who congregate outside the premises. Cook acknowledged that some of the persons dispersed then congregated at nearby street corners.

At the Division hearing, testimony was again elicited from Jacob and Idelle Edelstein, who, in addition to the above complaints, stated that the constant loud music emanating from the premises, coupled with the noise of the motorcycles owned by certain patrons, greatly contributed to the objectionable conditions. Jacob Edelstein acknowledged that the conditions complained of were confined to summer weekends. It was his opinion that an additional security guard, charged with control of the exterior area of the premises, would not correct the situation.

Radomir Jovanovic testified that he does not feel a second security officer is necessary. He has cancelled the loud bands he employed previously; and has now employed three or four bands who play music of a slower tempo, with less volume.

James Cook reiterated his duties, stating that the live bands have lowered the volume of their music and that, in addition, the owner has ordered soundproofing material for the front window. Jovanovic corroborated this last point, although it was noted that the material, allegedly ordered six weeks ago, has not been received or installed to date.

Andrew Huisman, an Asbury Park policeman, testified that the licensed premises are controlled, that the music is loud, as in all of the beach area establishments, and that people do congregate in front of the premises, but are moved along by the special police officer. This witness was called to the premises, while on duty, on two separate occasions in the early part of June 1975, in each instance to disperse certain "motocycle people" the appellant did not want inside its premises.

Huisman added that the music can be heard outside when the door is closed, but that it is muffled. Furthermore, since August 11, 1975, the City of Asbury Park has assigned a foot patrol policeman to patrol this overall tavern area and to ensure that there is no congestion in front of the taverns.

In rebuttal testimony, Jacob Edelstein stated that people are still congregating outside the premises; that the volume of the music has not decreased since July 2, 1975; and that the special police officer does not disperse people from in front of the tavern.

Radomir Jovanovic, in reply, stated that since July 2, 1975, he has discontinued the practice of assessing a cover charge at the door in order to eliminate a cause of crowds lining up outside the door; and, that he would be agreeable to the hiring of an additional security guard to ensure that no one congregates on the outside of the premises.

I

The dispositive issue in these matters is: Did the Council act reasonably and in the best interests of the municipality with due regard to fundamental fairness? It is basic that the action of the municipality must be reasonable in equating the rights of the licensee with the paramount rights of the public. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

Hence, the issue can be narrowed to a determination whether the evidence herein justified the action of the Council in refusing to renew appellant's license. The applicable legal principles pertinent to a determination require the burden of proof in all cases which involve discretionary matters where applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970). The denial of renewal has been held not to represent a forfeiture of any property right. A liquor license is a privilege and a renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor at retail. No licensee has a vested right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (1946).

As early as in Conte v. Princeton, Bulletin 139, Item 8, the well established principle was cited to the effect that a licensee is responsible for conditions both in and outside his licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1.

A licensee must keep his place and his patronage under control and is responsible for conditions both outside and inside his premises. Galasso v. Bloomfield, Bulletin 1387, Item 1. In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. Blanck v. Magnolia, 38 N.J. 484 (1962). In the matter of the licensing, the responsibility of a local issuing authority is "high", its discretion is "wide" and its guide is "the public interest".

Lubliner v. Paterson, 33 N.J. 428 (1960) at 446. Thus, entirely apart from the consideration as to the appellant's culpability for the above-described conditions existing at this establishment, the broad question posed before the Council on appellant's application for renewal was whether, in the light of the surrounding circumstances and conditions it was in the public interest for this tavern to continue to operate. The objective judgment of the Council was that its continuance would be inimical to the public interest. R.O.P.E. Inc. v. Fort Lee, Bulletin 1966, Item 1.

The appellant was under an obligation to keep the outside of his premises free from obtreperous persons. However, the proofs are not preponderantly clear that the conditions objected to, in areas adjacent to the premises, are, in fact, caused by patrons of appellant's establishment. There was uncontroverted testimony elicited that two other licensed establishments are in operation within the same block.

Bearing this in mind, I have also been impressed by the efforts which were apparently made by the owner of the premises to disperse these crowds. He has cooperated with the police, informing them, on at least two occasions, of the presence of certain undesirable elements outside his premises, which elements were subsequently dispersed by the police.

In addition, a local police officer testified that the premises are controlled and that the people who congregate in front of the premises are moved along by the special police officer employed by the premises. There was also testimony that, in apparent acknowledgment of the nuisance problem existent in this general tavern area, the City of Asbury Park has assigned a foot-patrolman to cover this area, to ensure that there is no congestion in front of the taverns.

Furthermore, the appellant has taken steps since July 2, 1975, to remedy the situation, having discontinued the practice of assessing a cover charge at the door (to ensure immediate entrance and eliminate a cause of crowds lining up outside), and allegedly reducing the volume of the live music emanating from the premises.

It is significant that no disciplinary proceedings were instituted against the appellant by the local issuing authority. While the conditions on the outside of this tavern are not to be condoned, it seems plainly apparent that this tavern was not much different, if at all, from the other taverns in the area, and that it was permitted to function in the aforementioned manner without any warning from the Council. If the operation of the business of the tavern was of the degree of nuisance that the Council's action in denying renewal the license would seem to imply, reason would dictate that the Council

should have instituted disciplinary proceedings long before the time for renewal. Had the Council done so, and thereafter the conditions persisted, an affirmance of the Council's determination would be fully warranted.

It is understandable that local issuing authorities, at times, withhold the institution of disciplinary proceedings with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the business. This is not to say that a prior warning is necessary in every case. There may be conduct so indisputably bad that a single instance would warrant revocation or the refusal to renew; but, this is not such a case. See Monesson v. Lakewood, Bulletin 657, Item 1; Salmanowitz v. Hightstown, Bulletin 807, Item 2; see also Bayonne v. B. & L. Tavern, Inc., and Division of Alcoholic Beverage Control (App. Div. 1963), not officially reported, reprinted in Bulletin 1509, Item 1, and aff'd, 42 N.J. 131 (1964).

> "It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local issuing authority. Common fairness to the licensee has been the basis for this policy. If undesirable conditions develop...the local authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired." Stratford Inn, Inc., v. Avon-by-the-Sea, Bulletin 1775, Item 2.

I am persuaded, upon examination of the entire record herein, that the appellant has made good faith efforts to improve the condition which exists and that the appellant should be given another opportunity to demonstrate its worthiness to hold an alcoholic beverage license. This recommendation is made subject to the following special condition:

> Two special police officers shall be forthwith employed by appellant, one of whom shall be responsible solely for the control of the area in front of and alongside of the licensed premises on Fridays, Saturdays and Sundays, from 8:00 p.m. until closing, on those weekends commencing with and inclusive of the weekend immediately preceding the last Monday in the month of May, through the weekend immediately preceding the first Monday in the month of September.

In the event of appellant's failure to comply with the said special condition, or the development of undesirable conditions in the future, the Council always has the power, which they should promptly exercise, to institute formal disciplinary proceedings to effect the suspension or revocation of the said license, in accordance with the provisions of N.J. S.A. 33: 1-31, even at a time prior to the expiration of the licensing period herein renewed.

I conclude that the appellant has sustained its burden, required by Rule 6 of State Regulation No. 15, of establishing that the action of the Council was erroneous and should be reversed, subject to the special condition recommended herein.

It is, accordingly, recommended that an order be entered, reversing the action of the Council and directing the Council to renew the said license for the current licensing period, expressly subject to the special condition hereinabove set forth.

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 transcripts 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 11th day of December 1975,

ORDERED that the action of the respondent City Council of the City of Asbury Park be and the same is hereby reversed; and it is further

ORDERED that the Council is hereby directed to renew the said license for the current licensing period, which renewal shall be made expressly subject to the following special condition

Two special Police Officers shall be forthwith employed by the appellant, one of whom shall be responsible solely for the control of the area in front of and along side of the licensed premises on Fridays, Saturdays and Sundays, from 8:00 p.m. until closing, on those weekends commencing with, and inclusive of the weekend immediately preceding the last Monday in the month of May through and including the weekend immediately preceding the first Monday in the month of September.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - ANNA MARIA v. JERSEY CITY.

Anna Maria, t/a Anthony's Bar, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	)	On Appeal CONCLUSIONS AND ORDER

Scipio L. Africano, Esq., Attorney for Appellant
Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Respondent, Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) denied appellant's application for renewal of her Plenary Retail Consumption License C-126, for the current licensing period. This appeal followed.

Appellant contends that the Director should order the Board to retire her license pursuant to a written agreement between her and the Board on May 6, 1975 or in the alternative to require the Board to renew her license for the current licensing period for premises 589 Communipaw Avenue, Jersey City, its last situs. The Board, in its answer denies that its action in denying renewal was erroneous, and asserts that the subject of retirement of license was not cognizable before the Director. It further defends its action in denying renewal because appellant has no premises, or a right to possession to premises to which a license may be issued.

A de novo appeal was heard in this Division in accordance with Rule 6 of State Regulation No. 15, with full opportunity provided the parties to introduce evidence and to cross-examine witnesses. However, no representative of the Board appeared, it relying entirely upon the content of the resolution adopted by it denying appellant's license. Counsel for appellant indicated that there was no factual controversy involved; the facts were not in dispute, hence only argument was heard in support of appellant's contentions.

The pertinent sections of the subject resolution are as follows:

"The licensee made application on May 6, 1975 for Retirement of Plenary Consumption License C-126 for licensed premises at 589 Communipaw Avenue, New Jersey.

At a hearing before the Board of Alcoholic Beverage Control of Jersey City on June 2, 1975 for licensed premises at 589 Communipaw Avenue, Jersey City, New Jersey, the evidence established that the licensee acquired Plenary Consumption License C-126 about nine years ago. Investigation disclosed that the entire block, inclusive of the property housing this license at 589 Communipaw Avenue, was torn down for urban renewal and redevelopment. The licensee vacated 589 Communipaw Avenue in 1970.

Since 1970 and thru the licensing period 1974-1975, the Board renewed the said Plenary Consumption License C-126 for 589 Communipaw Avenue, Jersey City, New Jersey. This license C-126 became a 'paper' license, without a 'home' since 1970 and should not have been renewed as the renewals were in violation of N.J.S.A. 33:1-12.13 which prohibits the renewal of licenses which are not 'of the same class and type as the expired or expiring license, covers the same licensed premises,---.'

Jersey City Municipal Code, Section 4-4 (b) applied to the licensee who could have located 'elsewhere and within a radius of four thousand feet (4,000') from the premises which the licensee has been or may be compelled to vacate.' No evidence was presented by the licensee to show the seeking of a transfer to another location in Jersey City within a radius of 4,000 feet.

The Board sent out three notices to holders of 'paper' plenary retail consumption and distribution licenses, citing the said N.J.S.A. 33:1-12.13, the necessity of finding a 'home' within the required footage of the Jersey City Municipal Code. The first notice provided for a meeting on Thursday, June 6, 1974, in Room 19, City Hall and Memorandums of February 3, 1975 and May 6, 1975. Since 1970 and to date, a period of five years, the licensee has failed to find a 'home' for this license C-126.

After considering there was no compliance by the licensee with N.J.S.A. 33:1-12.13 and Jersey City Municipal Code, Sec. 4-4 (b) and giving due deliberation, IT IS, THEREFORE, on this 16th day of June 1975, RESOLVED AND ORDERED by the Board of Alcoholic Beverage Control

of Jersey City that Plenary Retail Consumption License C-126 issued to Anna Maria, an Individual, for licensed premises at 589 Communipaw Avenue, Jersey City, New Jersey, cannot be RETIRED, it being an inactive license since 1970."

It has long been held that the period during which a municipal issuing authority may renew a license, the privileges of which have not been exercised, is within the sound discretion of such authority. Hudson-Bergen Package Stores Ass'n. v. Garfield, Bulletin 1976, Item 3; Re Tarantola, Bulletin 570, Item 5.

The Division has held that a complete absence by the applicant of some right to possession of the premises sought to be licensed would deprive the issuing authority of jurisdiction to renew the license. Terlizzi v. Union City, Bulletin 860, Item 2; Kleinberg v. Newark, Bulletin 1049, Item 1. The reasons for requiring possession of licensed premises by a licensee are set forth in detail in Re Haneman, Bulletin 449, Item 4. They are predicated basically upon the proposition that the licensee must be in sufficient control of the licensed premises to be in a position to prevent violations of the Alcoholic Beverage Control statutes.

In short, the municipal issuing authority has the discretionary power to determine if a license is to be renewed, and, in the absence of unreasonableness or arbitrary action, its action will be affirmed by the Director on appeal. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Zicherman v. Driscoll, 133 N.J.L. 586 (1946). The discretion exercised by the municipal issuing authority will not be disturbed in the absence of a showing of a clear abuse thereof. Blanck v. Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, 33 N.J. 404 (1960).

I find that the Board properly exercised its discretion in denying appellant's license. The remaining question revolves about the alternative demand for relief, i.e., that the Director order the Board to retire the license.

The retirement of a license by the Board in Jersey City derives from the adoption of an Ordinance (W-237) permitting the entry into an agreement between the Board and a licensee. To require the Board to perform under the terms of such agreement would require, in turn, the Director to enforce the terms of both the ordinance and the agreement thereunder. Such power is not within the powers delegated to the Director under the statute, N.J.S.A. 33:1-1, et seq.

As the court held in Blanck v. Magnolia, 73 N.J. Super.306 (App. Div. 1962) at p. 311:

"...If a person wished to challenge a municipal

> liquor ordinance on the ground that some step in the statutory procedure for adopting the ordinance had been omitted, it seems clear that he would not be entitled to bring such issue before the Director but would have to seek a judicial ruling by plenary suit, the reason being that the validity of the limitation would not be the issue. So, too, in the instant case. Appellants are not really attacking the limitation as such. They are saying that the ordinance was adopted contrary to law, so that the limitation fixed by the ordinance must fall... Such issue was not justiciable in the administrative proceeding and will not be considered by this court on appeal from the Director's conclusions and order...." See Klein and Tucker v. Fairlawn, Bulletin 1175, Item 3; Seip v. Frenchtown, 79 N.J. Super. 521 (App. Div. 1963).

It is, thus, patently clear that the determination of enforcement of the agreement entered into between the Board and the appellants rests with the courts, and is not cognizable in this Division.

Accordingly, I find that appellant has not met the burden imposed upon her by Rule 6 of State Regulation No. 15, which requires that she must establish that the action of the Board is erroneous and should be reversed. Hence, I recommend that the action of the Board be affirmed and the appeal herein be dismissed.

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 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 11th day of December 1975,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Leonard D. Ronco
Director

3. APPELLATE DECISIONS - NEW COTTON CLUB, INC. v. CARTERET.

New Cotton Club, Inc., A New Jersey Corporation,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Mayor and Council of the Borough of Carteret,	)	
Respondent.	)	

Alfred J. Petit-Clair, Jr., Esq., Attorney for Appellant
Edward J. Dolan, 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 the Mayor and Council of the Borough of Carteret (hereinafter Council) which, on May 6, 1975, denied appellant's application for a person-to-person transfer of Plenary Retail Consumption License C-6 from Michael Papp to the corporate appellant.

Appellant contends that the action of the Council was erroneous because appellant was not afforded the benefit of a statement of reasons upon which the Council grounded its action.

Appellant further contends that Council's denial was the result of "invidious considerations" resulting in an act of discrimination against appellant. The Council in its answer, denied this contention.

A de novo hearing was conducted in this Division, pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses.

Appellant is a corporation with two principal stockholders, Herbert Roberts and Fred Nelson, both of whom testified at the hearing. Since the Council's answer to appellant's petition of appeal consisted principally of an outline of prior criminal convictions of both stockholders, each testified in reference to their prior records.

Herbert Roberts admitted that, thirty-nine years ago, at the age of eighteen years, he was arrested and fined $2.00 for shooting dice. Since that date, there have been no judicial findings against him and, except for a complaint against him that was withdrawn, his record is unblemished.

Fred Nelson, the co-stockholder of appellant corporation, testified that he was convicted in 1971 for gambling and fined $25.00. Thereafter, in 1973, he was again fined for a similar offense. On cross examination, he denied that he had been made aware that a pending criminal arrest matter in which he was charged with possession of stolen property and illegal possession of a handgun had been the basis for Council's denial of the corporate appellant's application. He insisted that the denial of the application was based on racial prejudice.

Testifying on behalf of the Council, Councilman Joseph Citar testified that the denial of appellant's application was based on the Council's consideration of the criminal record of its stockholders, principally Nelson, whose record had been the subject of deep concern. He denied that he and his colleagues knew that the stockholders of the appellant corporation were black; or that their race was a factor in the Council's evaluation of an application for a liquor license in the municipality.

The Council's answer to the petition of appeal contains the following:

> "The investigation disclosed the following police arrest and conviction record:
>
> 'The record of Herbert Wardell Roberts, 727 Cliffwood Ave., Cliffwood Beach, N.J. is as follows:
>
> (1) 6-6-36 Perth Amboy, N.J. Shooting Dice. Fined $2.00.
> (2) 5-5-50 Perth Amboy, N.J. Drunk and Disorderly. Complaint withdrawn.
>
> The record of Fred Nelson, 860 Wolff St., Perth Amboy, N.J. is as follows:
>
> (1) 2-26-60 Middletown Twp. P.D. Carrying Concealed Weapon, No Bill by G.J..
> (2) 5-27-71 State Police West Trenton, Gambling at dice, 2A:112.1 (2 cts.) 1st Ct. Fined $25.00, 2nd Ct. Disch as to Prob. Cause.
> (3) 5-27-72 Perth Amboy, N.J. AA&B (gun) Disch. as to Prob. Cause
> (4) 1-27-73 Madison Twp. Gambling (dice) 2A:112.1 Fined $50.00
> (5) 3-20-75 Arrested in Carteret, 2A:170.30.1 Poss. Stolen Property Gun and 2A:151.41a Illegal Poss. of Handgun, Court Action still pending.

During this investigation it was also learned that Mr. Nelson is now the Manager of Papp's Pub and has a bartender by the name of Owen B. Lamb who also was arrested in Perth Amboy on 2 cts. of AA & B w/gun (2A:90.2) and Poss. Dang. wpn. (2A:151.41) court action still pending.'"

I

It is to be noted at the outset that the Council is not required to delineate its reasoning leading to its denial of appellant's application. Cf. Jay & Jay Realty Corp. v. Long Branch, Bulletin 1602, Item 2. In any event there was ample proof herein that appellant's then-counsel was informed of the reasons for the Council's determination, although not incorporated in the subject resolution.

II

In the consideration and evaluation of the testimony in this appeal de novo certain basic legal principles are applicable. The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. A License to vend intoxicating liquor is merely a temporary permit or privilege to do what would otherwise be illegal. Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947). It is not a contract; it is not property. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). The unique position of a liquor licensee was outlined in Blanck v. Magnolia, 38 N.J. 484 (Sup. Ct. 1962) at p.490:

> "From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied."

Wherever it appears that the municipal issuing authority has determined that the sought-for transfer, if granted, would be contrary to the public good, the Director will unhesitatingly affirm its denial. Chathams and Oehme v. Wallington, Bulletin 1755, Item 2; Barresi v. Ridgefield, Bulletin 1770, Item 2.

However, where it appears that appellant has sustained its burden of showing that the action of the Council in rejecting the application for transfer has acted unreasonably and erroneously, the Director will reject such denial and order the transfer. Walban, Inc. v. Bradley Beach, Bulletin 1894, Item 2; Marsillo v. Randolph, Bulletin 1367, Item 3; Tompkins v. Seaside Heights,

Bulletin 1398, Item 1; 566 Corp. v. Madison, Bulletin 2153, Item 1.

Hence, the test in all of these matters is whether the Council acted in the proper exercise of its discretion and made its determination solely on the basis of what would be in the best interests of the public.

In the instant case, the Council considered the record of Nelson, one of appellant's principal stockholders and found that based upon such record, and in particular, because a charge which involved a serious breach of the law was still pending, it could not approve the application presented by the corporate appellant.

The responsibility for the issuance of liquor licenses to reputable persons who will conduct the licensed business in a reputable manner rests initially with the issuing authority. Fanwood v. Rocco, 33 N.J. 404 (1960); Jay & Jay Realty Corp. v. Long Branch, Bulletin 1602, Item 2.

Reference to "invidious discrimination" by the Council was made in appellant's petition of appeal and in the testimony. Although the Division of Civil Rights is the better forum in which to raise such issues, there was nothing in the record in this matter which could offer persuasive support to the allegation of discrimination. Nowhere did it appear in the record that the Council were improperly motivated; one Councilman candidly admitted he was unaware of the race of appellant's stockholders until after the resolution was adopted.

I conclude that the Council made its determination to deny appellant's application for transfer primarily on the basis of the criminal record of stockholder Nelson.

Accordingly, I find that the appellant has not sustained the burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15. Thus, I recommend that the action of the Council be affirmed and the appeal be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the appellant pursuant to Rule 14 of State Regulation No. 15. No answer to the said exceptions were submitted by the respondent within the time limited by the said rule.

The appellant takes exception to the Hearer's finding that the Council's action did not manifest "invidious discrimination" against the appellant, as was alleged in its petition of appeal.

My scrutiny of the record finds no credible evidence of any such alleged discrimination. Thus, this contention is rejected.

Appellant also alleges that the offenses of which a principal stock holder Nelson was found guilty do not come within the catagory of crimes containing the element of moral turpitude. Therefore, the Council should not have considered them in its consideration of appellant's application.

However, as the Hearer pointed out, the Council properly considered the fact that criminal charges involving the alleged possession of stolen property (gun), and the illegal possession of a hand gun are presently pending against Nelson. These charges do contain the element of moral turpitude. Furthermore, the police records disclose that Nelson is the manager of licensed premises in which a bartender was also arrested on similar charges. Thus, the Council considered these facts in its ultimate determination.

The responsibility for the issuance or transfer of liquor licenses to reputable persons is vested in the local issuing authority. Fanwood v. Rocco, 33 N.J. 404 (1960); Cf. Festa, et al v. Haledon, Bulletin 997, Item 3; Caggy's Tavern, Inc. v. Montclair, Bulletin 1053, Item 1.

It is clear that, under the facts and circumstances herein, the appellant failed to satisfy the Council that the public interest would best be served by its approval of the said transfer application. I find that the record supports the action of the Council and, it follows, the findings of the Hearer.

Having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the written exceptions thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of December 1975,

ORDERED that the action of the respondent Mayor and Council of the Borough of Carteret be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

LEONARD D. RONCO
DIRECTOR

4. STATE LICENSES - NEW APPLICATION FILED.

Glenmore Distilleries Company
1700 Citizens Plaza
Louisville, Kentucky
Application filed March 2, 1976 for person-to-person transfer of Plenary Wholesale License W-24 from Mr. Boston Distiller Corporation, 1010 Massachusetts Avenue, Boston, Massachusetts.

Leonard D. Ronco
Director