

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 2419

November 2, 1981

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ITEM

1. APPELLATE DECISIONS - JANOSKO v. PATERSON.

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

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1. APPELLATE DECISIONS - JANOSKO v. PATERSON.

#4451	:	
ALTA JANOSKO,	:	
APPELLANT,	:	
	:	CONCLUSIONS
VS.	:	AND
	:	ORDER
MUNICIPAL BOARD OF ALCOHOLIC	:	
BEVERAGE CONTROL OF THE CITY	:	
OF PATERSON,	:	
RESPONDENT.	:	

Robert Goodman, Esq., Attorney for Appellant.
Ralph L. DeLuccia, Jr., Esq., Assistant Corporation Counsel, Appearing for
Respondent, Municipal Board of Alcoholic Beverage Control of Paterson.
Anthony F. DeMarco, Esq., Attorney for Respondent, L-J's Tender Trap, Inc.

INITIAL DECISION BELOW

Hon. Frederick Shuffman, Administrative Law Judge

Dated: June 23, 1980

Received: June 24, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the appellant and written Answers were submitted thereto on behalf of Respondent, L-J's Tender Trap, Inc., pursuant to N.J.A.C. 13:2-17.14.

In her Exceptions, the appellant argues that the Administrative Law Judge confused the myriad business and financial transactions between appellant and Seymour Meskin as they related to the license transfer to L-J's Tender Trap, Inc. and other alleged unrelated transactions.

Just as appellant argues in her second Exception, hereinafter discussed, the arrangements between appellant and Meskin cannot be viewed in a vacuum. It is clear that, by obligating herself to guarantee the purchase money mortgages advanced by Meskin to L-J's Tender Trap, Inc., the appellant has intertwined the relevancy of the various financial transactions into the subject appeal.

Both the appellant and Meskin, who appeared as an objector at the hearing before the Board, were clearly seeking to protect and/or enforce purely private business interests within the framework of the subject transfer applications. I reject this Exception as without merit, and concur in the findings and reasoning of the Administrative Law Judge as they relate thereto.

The second Exception of appellant presents issues that can be phrased as follows:

- (1) Were the contemporaneous transfer applications by Brooks to Spina and by Spina to L-J's Tender Trap, Inc., a subterfuge to circumvent the issuing authority's distance-between-premises Ordinance?

- (2) If the answer to the first question is in the affirmative, do they constitute a basis to set aside the transfers under the facts sub judice?

L-J's Tender Trap, Inc. has filed three (3) previous transfer applications seeking to transfer its license from 521 20th Avenue directly to 150 Ellison Street. These applications were denied by the Board in Resolutions dated September 22, 1977, October 26, 1977 and April 25, 1979. The denials were predicated upon non-compliance with the City's distance-between-premises Ordinance and applicant's failure to satisfy the exceptions available where the former licensed premises are lost due to condemnation.

The third denial of transfer was appealed by L-J's Tender Trap to the Division. After hearing at the Office of Administrative Law, I affirmed the Board's denial, and dismissed the appeal. L-J's Tender Trap, Inc. v. Paterson, Bulletin 2357, Item 1, (decided November 5, 1979).

Based upon the facts adduced sub judice, it is clear that the Spina license located at 130 Van Houten Street was the conduit between the Brooks license at 42 Bridge Street and the ultimate location of a license at 150 Ellison Street.

A direct transfer of the Brooks license to 150 Ellison Street would not be possible under existing distance-between-premises ordinances. The transfer of the Brooks license to the Spina licensed premises is not contested as violative, in and of itself, of any ordinance, although the record doesn't specifically indicate compliance exists with the general 1,000 foot rule or exceptions thereunder.

Similarly, it is not contended that the transfer of the Spina license to 150 Ellison Street is violative of any ordinance. In this latter regard, I note that the factual findings embodied in my Conclusions and Order dated November 5, 1979 affirming the denial of the transfer of license to premises at 150 Ellison Street indicates the presence of five (5) existing licensed premises within 420 feet of 150 Ellison Street. The Spina premises is not one of the five listed, and the only way the Spina license could be properly transferred to 150 Ellison Street is if the location of the Spina license is no further distant than 600 feet from 150 Ellison Street.

Because of my inability to adequately adjudicate the propriety of the two transfers in and of themselves upon the record herein, I shall remand the matter to the Board for specific findings therein.

I further find that the proposed two step transfer to ultimately locate a license at 150 Ellison Street is a clear attempt by the principals of L-J's Tender Trap, Inc., and the others involved to circumvent the municipality's distance-between-premises Ordinance. In light of the three prior denials of transfers by L-J's Tender Trap, Inc., based upon the Ordinance, it appears incongruous, absent specific reasoning therefore, that the Board would now permit a gossamer circumvention of same.

Additionally, a finding of public need and necessity for a license at 150 Ellison Street would have to be established, based upon some specified particular benefit which would flow from the proposed operations therein. Clearly, a numerical abundance of licenses in the immediate area exists.

I do not, however, determine the second issue listed at the inception of this Conclusions and Order. If the Board desires, as its policy, to permit their review of transfers to be limited to the four corners of an application and technically possible, I must provide deference in an appeal to a reasonable exercise of discretion.

The holding in Chiafullo v. Long Branch, Bulletin 2286, Item 1 is distinguishable. In Chiafullo, the issuing authority opposed circumvention of its distance-between-premises ordinances by "leap frog" transfers. They denied such transfer attempts from the inception and adopted an ordinance amendment specifically prohibiting same. If a clearly articulated policy of general applicability and uniformity permitting such "leap frog" transfers is expressed, I cannot conclude that the ordinance per se has been violated.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the written memorandum of the parties, the Initial Decision, the written Exceptions filed thereto by appellant and the written Answers submitted on behalf of the respondent, L-J's Tender Trap, Inc., I concur in the basic findings of the Administrative Law Judge, but do not adopt his recommendations based upon the inadequacy of the record herein and the supplemental issues upon which I have requested further development.

Therefore, I shall remand the matter back to the Board for further hearings, if necessary, and findings as hereinabove noted.

Accordingly, it is, on this 1st day of August, 1980,

ORDERED that determination on the appeal herein be and the same is hereby deferred, and said matter be and is hereby remanded to the Municipal Board of Alcoholic Beverage Control of the City of Paterson for further hearing and/or findings consistent with the directions heretofore set forth. Jurisdiction is retained by this Division.

JOSEPH H. LERNER
DIRECTOR

ALTA JANOSKO,)	<u>INITIAL DECISION</u>
Appellant,)	QAL DKT. NO. ABC 0746-80
v.)	LICENSE NO. 1608-33-107-002
)	Appeal No. 4451
DIVISION OF ALCOHOLIC BEVERAGE)	
CONTROL OF THE CITY OF PATERSON)	
Respondent.)	

APPEARANCES:

For the Appellant-Objector:

Robert Goodman, Esq., Attorney for Appellant-Objector

Alta Janosko, Appellant-Objector

For the Respondent and Intervenors:

Ralph L. DeLuccia, Jr., Esq., Assistant Corporation Counsel,
City of Paterson ABC Board

Anthony F. DeMarco, Esq., Attorney for Successful Applicant

Kathleen Gibson, Secretary to the City of Paterson, Alcoholic
Beverage Control Board

Trajanka Ciric, President of L-J's Tender Trap, Inc.
(Successful Applicant)

EXHIBITS:

The Exhibits in this matter are listed and described on a separate sheet at the end of this Initial Decision, identified as Appendix "A" hereof, titled "Exhibits In the Matter of Alta Janosko vs. City of Paterson Alcoholic Beverage Control Board", which Appendix is incorporated herein as a part of this Initial Decision.

THE RECORD:

The proceedings in this matter before Administrative Law Judge Frederick Shuffman on April 3, 1980 are recorded on Judge Shuffman's tape cassette No. H-14-TH-1, said tape having been transcribed by an official court reporter, and the transcription thereof is included in the exhibits as the Court's exhibit C-1. The attorneys for the Appellant-Objector, for the Alcoholic Beverage Control Board of the City of Paterson and for the successful licensee were granted a period of approximately 30 days in which to submit briefs in support of their respective positions in this matter. The brief prepared by Robert I. Goodman, Esq., Attorney for the Appellant-Objector was received on May 8, 1980 and the record closed officially on that date.

BEFORE THE HONORABLE FREDERICK SHUFFMAN, A.L.J.:

Alta Janoska, holder of Retail Plenary Consumption Liquor License No. 1608-33-107-002, the Appellant hereinafter referred to as the Appellant-Objector, requests relief from administrative determinations of the Board of Alcoholic Beverage Control of the City of Paterson approving the issuance and/or transfers of Plenary Retail Consumption Liquor License No. 1608-33-037-002 from Suzanna Brooks, t/a Green Pastures 42 Bridge Street, Paterson, New Jersey to Albert Spina, t/a Town Tavern located at 130 Van Houten Street, Paterson, New Jersey and Plenary Retail Consumption Liquor license No. 1608-33-271-002 to L-J's Tender Trap, Inc., t/a L-J's Tender Trap located 150 Ellison Street, Paterson, New Jersey from Albert Spina t/a Town Tavern located at 130 Van Houten Street, Paterson, New Jersey, which orders were granted on January 2, 1980.

On January 3, 1980, one day after the Alcoholic Beverage Control Board of the City of Paterson granted Plenary Retail Consumption Liquor License No. 1608-33-271-002, the Appellant-Objector filed a Petition of Appeal challenging the approval by the City of Paterson Alcoholic Beverage Control Board of the transfer of said license to L-J's Tender

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Trap Inc. The Division of Alcoholic Beverage Control Board of the City of Paterson, Respondent, filed an answer to said Petition of Appeal on January 9, 1980. On January 16, 1980, the successful transferee, L-J's Tender Trap, Inc., through its attorney Anthony F. DeMarco, Esq., filed an Original Petition To Participate in the hearing herein, a copy of said petition having been forwarded to the attorney for the Appellant-Objector, the attorney for the Respondent, the Alcoholic Beverage Control Board of the City of Paterson, and to Donald L. Raff, Esq., attorney for Albert Spina.

The matter having been previously determined by the Alcoholic Beverage Commission to be a contested case within the meaning and operation of Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the head of the agency having determined, pursuant to N.J.S.A. 52:14F-1, not to conduct the hearing directly, and having thereupon certified and transmitted it to the Office of Administrative Law to assign an Administrative Law Judge to preside over the proceedings and to render a decision thereon as required by law, the Petition To Participate received from the attorney for L-J's Tender Trap, Inc. was transmitted to the Office of Administrative Law for decision, and on March 12, 1980, the undersigned, Frederick Shuffman, A.L.J., granted said request by Letter Order dated March 12, 1980.

The Office of Administrative Law assigned the matter OAL Dkt. No. 00746-80 and set it down for hearing on April 3, 1980 at the Passaic City Administration Building, Pennsylvania Avenue, Paterson, New Jersey. After due and timely notice to all of the parties and/or their legal representatives, a hearing was convened before Administrative Law Judge Frederick Shuffman on the appointed day and at the designated time and place. All parties were given opportunity to be heard, to call witnesses, to submit documentary evidence and to cross-examine adverse witnesses.

With respect to appeals from adverse decisions of local A.B.C. Boards, N.J.S.A. Section 13:2-17.6 titled "De Novo hearing; discovery" provides as follows:

13:2-17.6 De novo hearing; discovery

"All appeals shall be heard de novo, except as otherwise provided in section 8 of this subchapter, and the parties may introduce oral testimony and documentary evidence. The respondent shall first present evidence in support of the action of the municipal issuing

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authority, but the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant. The parties may, upon good cause shown, and at the discretion of the director, have discovery, including written interrogatories or depositions. Failure to comply with the order for discovery may result in appropriate sanctions by the director." (Emphasis added).

Section 8 of this subchapter, the exception noted in just cited and quoted Section 6 of this subchapter, provides as follows:

13:2-17.8 Stipulations, offer of transcript

"Where none of the material facts is disputed, the appeal may be presented, subject to the approval of the director, upon an agreed statement of facts. Where there is available a stenographic transcript or electronic recording of the proceedings before the issuing authority, either party may, if at least three days notice of intention so to do has been given opposing parties, or counsel therefor, offer the transcribed record thereof in lieu of producing said witnesses at the hearing of the appeal. In such event, any opposing party may subpoena witnesses to appear personally, and any party may produce any additional evidence, oral or documentary, at the hearing of the appeal. Subject to the approval of the director, the parties may agree to present the appeal solely upon such stenographic or electronic transcript." (Emphasis added)

Counsel for the City of Paterson, Ralph L. DeLuccia, Jr., Esq., by letter dated March 17, 1980, pursuant to the above quoted provisions of N.J.A.C. 13:2-17-8, on behalf of the Respondent Alcoholic Beverage Control Board of the City of Paterson, submitted the Transcript of the proceedings held before the municipal Alcoholic Beverage Control Board on January 2, 1980 and notified this court as well as counsel for all of the other parties involved that it intended to rely upon said transcript of the hearing held on January 2, 1980 in the matter. In this appeal Robert I. Goodman, Esq., attorney for the Appellant-Objector, also stated that he was willing on behalf of his client, to rely on the record of the hearing below before the Alcoholic Beverage Control Board of the City of Paterson on January 2, 1980.

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My Initial Decision in this matter is based, therefore, on the facts and documents elicited at the said hearing before the Alcoholic Beverage Control Board of the City of Paterson, New Jersey on January 2, 1980 together with the documents considered in, during and in connection with that hearing.

At issue is whether the City of Paterson Alcoholic Beverage Control Board's determinations at its hearing on January 2, 1980 to allow the person-to-person and place-to place Plenary Consumption Liquor Licenses here involved, were reasonably supported by the testimony and other evidence adduced at said hearing. Since the facts in the case are not in dispute, all parties relying on the facts and/or documents adduced at the hearing below, I FIND the facts to be as follows:

FINDINGS OF FACT:

1. On the 14th day of February, 1979, Retail Plenary Consumption License No. 1608-33-107-002 was transferred to Alta Janosko, and she is presently the registered owner of said plenary liquor license but it was not being operated or in use as of December 14, 1979, and is not in operation or being used at present;
2. In or about late 1977 or early 1978, Trajanka Civic, t/a L.J.'s Tender Trap, operating as a restaurant without a plenary retail consumption liquor license, entered into negotiations which ultimately resulted in the signing of two agreements, one between Suzanna Brooks, individually, t/a Green Pastures, residing at 254 12th Avenue, Paterson, New Jersey as a seller and L-J's Tender Trap, Inc. as the buyer of the City of Paterson Retail Consumption License No. 1608-33-034-002* and the other contract between Albert Spina, individually and t/a Town Tavern, located and operating at 130 Van Houten Street, Paterson, New Jersey as the seller and L-J's Tender Trap, Inc. located at 150 Ellison Street, Paterson, New Jersey as the buyer of the City of

* or No. 1608-037-002, both numbers having been used in the papers herein.

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Paterson Retail Consumption License No. 1608-33-271-001. for utilization at 150 Ellison Street, Paterson, New Jersey. In the agreement between Suzanne Brooks and L-J's Tender Trap, Inc., dated December 14, 1979, the agreed consideration to be paid by L-J's Tender Trap, Inc. to Suzanne Brooks for the City of Paterson Retail Consumption License No. 1608-33-034-002 owned by her, was the sum of \$10,000.

3. In the separate agreement executed on the same date, i.e., December 14, 1979 between Albert Spina as the seller and L-J's Tender Trap, Inc. as the buyer of the City of Paterson Retail Consumption Liquor License No. 1608-33-271-001 the total monetary consideration and/or purchase price was \$3,000.
4. In the Brooks-L-J's Tender Trap, Inc. agreement, paragraphs Nos. 6, 7 and 8 provided as follows:
 - "6. This agreement is subject to buyer obtaining all necessary approvals from the State of New Jersey and City of Paterson Alcoholic Beverage Control for said transfer to Albert Spina, t/a Town Tavern.
 7. Seller shall suffer no cost or expenses for said approvals or licensing fees.
 8. This contract is also made expressly contingent upon and subject to a simultaneous approval by the City of Paterson of a transfer of Liquor License No. 1608-33-271-001 to L-J's Tender Trap, Inc., for utilization at 150 Ellison Street, Paterson, New Jersey and the simultaneous and subsequent closing of title:" (Emphasis added).

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5. With reference to the agreement between Albert Spina and L-J's Tender Trap, Inc., also dated December 14, 1979, paragraphs 3, 4 and 5 provide as follows:

"3. This agreement is subject to buyer obtaining all necessary approvals from the State of New Jersey and City of Paterson ABC for said transfer.

4. Sellers shall suffer no cost or expenses for said approvals or licensing fees.

5. This contract is also made expressly contingent upon and subject to a simultaneous approval by the City of Paterson ABC of the transfer of a liquor license 1608-33-134-002 to Albert Spina, seller for utilization at 130 Van Houten Street, Paterson, New Jersey and the simultaneous and subsequent closing of title. (Emphasis added).

6. Said agreement goes on at paragraph 8 thereof to provide as follows:

"8. Seller and buyer shall execute the application for transfer and consent to transfer simultaneous with the execution of this contract and agree to assist each other in obtaining the necessary ABC approvals." (Emphasis)

7. With reference to the agreement between Suzanne Brooks and L-J's Tender Trap, Inc., paragraph 3 thereof provided that the buyer (L-J's Tender Trap, Inc.) was to execute a promissory note and a financing statement on the goods and chattel owned by the buyer and located at 150 Ellison Street, Paterson, New Jersey, said promissory note to be in the amount of \$13,000, payable to the Kensue Company, the principal of which Company is one Seymour Meskin, the Kensue Company having undertaken to provided the \$13,000 needed by L-J's Tender Trap, Inc., to pay the \$10,000 to Suzanne Brooks for her license No. 1608-33-034-002 and the \$3,000 needed by the same buyer, L-J's Tender Trap, Inc., to pay Albert Spina for his City of Paterson liquor License No. 1608-33271-001.

8. This arrangement was devised and worked out between the parties, primarily Trajanka Ciric, President of L-J's Tender Trap, Inc. and Alta Janosko because Mrs. Ciric was desirous of operating a liquor bar at her leased premises previously purchased and owned by her at the 150 Ellison Street, Paterson, New Jersey location and Alta Janoska who had previously been involved in the sale of the equipment at and leasing of the premises at 150 Ellison Street, Paterson, New Jersey to L.J.'s Tender Trap, Inc.
9. L-J's Tender Trap, Inc. not having the \$13,000 in cash required to finance the original deal or later to pay for the \$10,000 for the City of Paterson liquor license No. 1608-33-034-002 and the \$3,000 needed to pay for City of Paterson liquor license No. 1608-33-271-001, it was arranged by the parties that L-J's Tender Trap, Inc. borrow the said \$13,000 from Kensue Company and this was arranged with Kensue's principal, Seymour Meskin, in return for the following items of consideration:
 - a. Execution and delivery by L-J's Tender Trap, Inc. to Ken-sue, Inc. of a promissory note in the principal amount of \$13,000 with interest at the rate of 24 percent per annum;
 - b. An undertaking by Trajanka Ciric as President of L-J's Tender Trap, Inc. to pledge all of the stock in L-J's Tender Trap, Inc. as security for the payment of the sum owing on the afore-described promissory note. The promissory note also provided that in the event of a default by the Corporation under the terms of the note, the holder thereof shall have all of the rights of a secured party under the Uniform Commercial Code as adopted in New Jersey.

- c. The assignment by L-J's Tender Trap, Inc. of the lease that it held, as of the date of the agreement of December 14, 1979, on the premises at 150 Ellison Street, Paterson, New Jersey for a 10-year period which had commenced on August 1, 1977 and which was to end on August 31, 1987.
 - d. A "Personal Guarantee" not only by the stockholders of the buyer, L-J's Tender Trap, Inc., namely Trajanka Ciric and Aleksander Ciric but also by their daughter, Zlatko Ciric, and including, in addition the personal guarantee of Alta Janosko and Joseph Janosko and the guarantee of their wholly owned corporation named Janosko Vending Co., Inc. (Emphasis added).
 - e. Additional security required by the Kensue Company and agreed to by Trajanka Ciric and her husband Aleksander, they together being the owners of all of the stock of L-J's Tender Trap, Inc. (the loan was made to the corporation) was the giving to Kensue of mortgages on certain properties owned by the Cirics, one of which was the Cirics' own home.
10. Seymour Meskin, an accountant for over 40 years, undertook to lend L-J's Tender Trap, Inc. the total sum of \$13,000 in return for the above-described promissory note and the above-listed items as security for the payment of said note but testimony established that he actually gave the L-J's Tender Trap, Inc. only \$8,000, the other \$5,000 going in the form of a check to and endorsed by Alta Janosko, the Appellant-Objector herein. (See transcript of hearing before the Alcoholic Beverage Control Board of the City of Paterson on January 2, 1980 at pages 46 and 47).

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11. When the first mortgagee foreclosed on one of the properties on which Trajonka and Alexander Ciric had given Meskin a second mortgage as additional security for payment of the \$13,000 promissory note, Meskin bought the property in at the Sheriff's sale for approximately \$14,000 and subsequently sold it for approximately \$22,000, yielding a profit to him before expenses of over \$7,000.
12. Seymour Meskin and Alta Janosko had both prior to and subsequent to the L-J's Tender Trap, Inc. deal with Trajanka Ciric, been involved together in other real estate dealings involving real estate wherein bars having liquor licenses were involved, one of them being a piece of property on Grand Street in Paterson, New Jersey where Mrs. Janosko "managed" the deal and also undertook to guarantee the mortgage that Mr. Meskin took back on the property. In each such "deal", Alta Janoska acted as the "finder" and Meskin as the money lender.
13. Mr. Meskin also had a guarantee from Alta Janosko for the full amount of another loan that had been made to her back sometime in 1978.
14. Seymour Meskin presently has an agreement in writing between Alta Janoska and himself, terms and consideration undisclosed, concerning the stock of L.J.'s Tender Trap, Inc., which the Cirics had undertaken to pledge and deliver to him and concerning its 10-year lease on the premises 150 Ellison Avenue, Paterson, New Jersey, which it had assigned to him, the pledge, undertaking to deliver the stock and the assignment of lease all having been made as additional security for the February, 1978, \$13,000. promissory note, if, as and when he acquired them. (See Transcript of the original

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hearing before the local A.B.C. board on January 2, 1980, at page 49.)

15. Seymour Meskin has had and has other dealings with Alta Janosko, as well, having nothing whatever to do with Trajanka Ciric or L-J's Tender Trap, Inc.
16. Notwithstanding the fact that Seymour Meskin had, obtained an excess of some \$7,000 over and above the approximate \$14,000 he paid to buy in the property mortgaged to him by Mrs. Ciric, and notwithstanding the fact that Mrs. Ciric had paid him some moneys and that Mrs. Janosko had made payments to him on account of said loan, Mr. Meskin stated there was now still due and owing to him as of January 2, 1980 on the original \$13,000 loan the sum of \$17,500.
17. Seymour Meskin joined with Alta Janosko in her present appeal and as an "objector" to the granting of license and transfer of City of Paterson liquor license No. 1608-33-271-001, as well as the other license here involved.
18. The promissory note here involved was dated February 27, 1978 and was in the amount of \$13,000 with interest thereon at the rate of 24 percent per annum and it was as security for this note that all of the other security was put up including the undertaking to pledge the stock, the assignment of the lease at 150 Ellison Street, Paterson, New Jersey, the giving of the mortgages on two pieces of property and the personal guarantess of Trajanka Ciric and her husband Aleksander as well as the corporate and personal guarantees of Alta Janosko, her husband and their corporation, Janosko Vending Corporation.

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19. Standing uncontroverted is the testimony of Trajanka .
Ciric that:

1. she received only \$8,000 of the \$13,000 loan on the basis of which she signed the note and gave and/or undertook to deliver the other items security specified in the promissory note; and that
2. It was for this reason that when she finally located and obtained possession of the shareholder's stock in L-J's Tender Trap, Inc. (which she originally thought were lost or destroyed), she did not turn them over to Mr. Meskin.

20. While Mr. Meskin stated that the note had been in default since 30 days after he received it, he admitted that: (1) he had not taken any legal action to obtain possession of the pledged stock; (2) he had never actually obtained possession of the L-J's Tender Trap, Inc. stock; (3) he had never obtained the lease nor had he obtained consent of the landlord to a transfer of the lease to him or ever asked the landlord for said consent as required under paragraph 7 of the lease; (4) he never intended, if he did obtain possession of the leased premises and the stock, to operate a bar at that premises or any place else; and (5) he had never started a lawsuit to recover the money that he had loaned to L-J's Tender Trap, Inc., his position being that the Janoskos and the Janosko Vending Company, Inc. were financially sound and substantial so that with their corporate and personal guarantees in his possession, he had no fears of losing his money (or the interest and other "benefits" that might be engendered as a result of such loans).

21. The premises located at 150 Ellison Street, Paterson, New Jersey is located more than 1500 feet away from the building formerly located at 42 Bridge Street, Paterson, New Jersey, which latter building was demolished and is no longer in existence, and as to which location Suzanne Brooks, individually and t/a Green Pastures owned and held Plenary Retail Consumption Liquor License No. 1608-33-034-002 (said Brooks license being what is termed a "pocket license" because it had no home or place of operation) and which license therefore could not be transferred directly to L-J's Tender Trap, Inc. for it to use and operate under at 150 Ellison Street, Paterson, New Jersey where L-J's Tender Trap, Inc. was operating a restaurant, without being able to sell and/or serve liquor there. (See original transcript of the January 2, 1980 ABC Board hearing, at page 49).
22. Albert Spina who owns City of Paterson Liquor License No. 1608-33-271-001, was licensed to operate his tavern business under it at 130 Van Houten Street, Paterson, New Jersey and this address and/or location was within 1500 feet of L-J's Tender Trap, Inc. leased premises at 150 Ellison Street, Paterson, New Jersey.
23. Trajanka Ciric, President of L-J's Tender Trap, Inc., desirous of obtaining a plenary liquor license so that she could operate under it at her leased premises at 150 Ellison Street, Paterson, New Jersey arranged, with the assistance and cooperation of Alta Janosko, to have Suzanne Brooks sell and transfer her pocket license No. 1608-33-0344-002 to Albert Spina at his leased premises at 130 Van Houten Street, Paterson, New Jersey in consideration of the payment to Brooks the sum of \$10,000. by L-J's Tender Trap, Inc. and at the same time arranged for Albert Spina, individually and t/a

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Town Tavern operating at 130 Van Houten Street, Paterson, New Jersey under City of Paterson Retail Consumption Liquor License No. 1608-33-037-002 to sell and transfer his said license to L-J's Tender Trap, Inc., which was located within 1500 feet of his licensed premises at 130 Van Houston Street, Paterson, N. J. so that L-J's Tender Trap, Inc. would be able to operate under his said license, said undertaking on his part being in consideration of the payment to him by L-J's Tender Trap, Inc. of the sum of \$3,000, plus a "replacement" license so he could continue to operate his tavern business at his same location.

24. In its liquor license application to the City of Paterson Division of Alcoholic Beverage Control dated December 14, which application was prepared by Trajauka Ciric with the aid of her attorney's secretary, Mrs. Ciric, for and on behalf of L-J's Tender Trap, Inc., at page 7 of said application, put an "X" in the box alongside of the answer "No" to the question which reads as follows:

"1. Does any individual, partnership, corporation or association other than the applicant,

A. Have any interest, direct or indirect in the license applied for, or is the stock of any stockholder held in escrow or pledged in any way?"

The same question was answered in the same way, and in the same handwriting (not Mrs. Ciric's) in the application of the same date, i.e., December 14, 1979, for the transfer of the Brooks person-to-person and place-to-place Plenary Consumption Liquor License No. 1608-33-034-(sic)-002.

25. Prior applications made by L-J's Tender Trap, Inc. for transfer of a plenary liquor license to enable it to operate at 150 Ellison Street, Paterson, New Jersey, had been denied

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on 09-14-77, 10-26-77 and 04-25-79, respectively, for reasons not specified in the papers in file in the current matter.

26. All of the above listed facts were made known to the three-man Alcoholic Beverage Control Board of the City of Paterson, New Jersey in one or more hearings before it during the year 1979 and in and during the hearing on the two current transfer applications held before it on January 2, 1980.
27. The opposition and objections of Appellant - Objector, Alta Janosko, and her Co-objector, Seymour Meskin, were not based on the economic impact these two transfers would have on the neighborhood, the need for these taverns at said locations or on whether the neighborhood would be adversely affected by the granting of the transfers of said licenses and, as a matter of fact, it was conceded that no more licenses were being issued than were already in existence, that the neighborhoods involved were of the same general type and close to each other even though the building at the Brooks' location on Bridge Street, where the building no longer exists, is more than 1500 feet away from the L-J's Tender Trap, Inc.'s leased location at 150 Ellison Street, Paterson, New Jersey.
28. In the exercise of its judgment and discretion, the City of Paterson Alcoholic Beverage Control Board, with full knowledge of all of the above listed facts and details, decided that since there were no new or additional licenses being issued and since there was no transferring of licenses from one type of area to another type of area, the area involved being a business area where there have been taverns located for a good many years, the transfer and issuance of these two plenary consumption liquor licenses would have no adverse affect on the community as a whole and would in

fact serve a beneficial effect in that a pocket license currently not in operation was being put to the use for which it was originally issued; and it then approved their transfers.

THE APPELLANT- OBJECTOR'S POSITION AND ARGUMENT

The appellant-objector, Alta Janosko, and her "Co-Objector", Seymour Meskin, argue that the "device" used by L-J's Tender Trap, Inc. of purchasing the two separate plenary consumption liquor licenses, one going from Suzanna Brooks from her at this point in time non-existent location at 42 Bridge Street, Paterson, New Jersey to Albert Spina at 130 Van Houten Street, Paterson, New Jersey and the sale and transfer of Albert Spina's plenary consumption liquor license from his and its location at 130 Van Houten Street, Paterson, New Jersey to L-J's Tender Trap, Inc. at 150 Ellison Street, Paterson, New Jersey constituted a "device" and/or "vehicle" by which, in actuality, the Suzanna Brooks pocket license No. 1608-33-034-002, located beyond 1500 feet from 150 Ellison Street, Paterson, New Jersey, was being illegally transferred in violation of section 1(b) of "An Ordinance Concerning Alcoholic Beverages and amending sections 2:3-3(b) and (c), 2:3-4(b) and (c) and 2:3-6(b) and (c) of the Revised Ordinances of the City of Paterson, which so far as here pertinent reads as follows:

"AN ORDINANCE CONCERNING ALCOHOLIC BEVERAGES AND AMENDING SECTIONS 2:3-3 (b) and (c), 2:3-4(b) and (c) and 2:3-6(b) and (c) OF THE REVISED ORDINANCES OF THE CITY OF PATERSON BE IT ORDAINED BY THE BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON AS FOLLOWS:

SECTION 1: That Sections 2:3-3 LIMITATION ON LOCATION OF PREMISES HOLDING PLENARY RETAIL CONSUMPTION LICENSE: 1,000 FOOT RULE AND EXCEPTIONS THERETO, (b) and (c) be and are hereby amended to read as follows:

(b) notwithstanding the foregoing provisions paragraph "(a)" of this section the local issuing authority may allow the transfer of a plenary retail consumption license to within 1,500 feet of the

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premises wherein the license is located at the time of the said transfer, where the licensed premises is being taken for any municipal, county, state or federal project, or where the licensed premises is destroyed to the extent that it can no longer be used for the purpose for which the license was issued and it is not intended to restore the same. If such a transfer is granted, no plenary retail consumption license shall be transferred to the premises or part thereof so vacated by such transfer." (Emphasis added).

The objectors argue further that the fact that L-J's Tender Trap, Inc. marked an "X" alongside of the word "No" in answer to the question whether any individual, partnership, corporation or association other than the applicant had any interest, directly or indirectly in the license applied for or whether the stock of any stockholder was held in escrow or pledged in any way, constituted a material and substantial misrepresentation to the Alcoholic Beverage Control Board so as to require the denial of the application.

Their last argument is that Alta Janosko holds a Plenary Consumption Liquor License issued by the City of Paterson. Plenary License No. 1608-33-107-003, and that while this license is not in use and is in actuality a "pocket license" because its owner Alta Janosko has no premises in which to operate said license, since the licensee's last address is shown as "150 Ellison Street, Paterson, New Jersey", there results an impermissible granting of two plenary licenses at and for the same address, 150 Ellison Street, Paterson, New Jersey.

ANALYSIS OF THE FACTS AND THE APPLICATION OF THE
LAW TO THOSE FACTS:

Having reviewed and carefully considered all of the testimony adduced at the hearing below as well as the documents marked in evidence in that hearing, all of which were considered by the City of Paterson Alcoholic Beverage Control Board, I FIND that the Appellant-Objector's position and arguments in opposition to the transfer of both of the plenary consumption liquor licenses granted by the City of Paterson Alcoholic Beverage Control Board, after hearing on January 2, 1980, are without merit.

First of all, before the City of Paterson Alcoholic Beverage Control Board granted and approved the transfer of each of these two plenary consumption liquor licenses, ie. the Brooks license No. 1608-33-034-002 from its no-longer-in-existence building located at 42 Bridge Street, Paterson, New Jersey, to the Albert Spina at his location at 130 Van Houten Street, Paterson, New Jersey and the Albert Spina owned Plenary Consumption Liquor License No. 1608-33-271-001 operated by him at 130 Van Houten Street, Paterson, New Jersey, to L-J's Tender Trap, Inc. for its operation and use at 150 Ellison Street, Paterson, New Jersey, it was fully informed of all of the details of the transaction including the fact that the contracts of sale were contingent on of its (the Board's) approval of those transfers. The Board probed into, examined and discussed all of the ramifications of such a transfer including the possible use by others of their approval of this particular transaction as precedent for others to come in to apply for a similar transfers designed to circumvent the 1,500 feet limitation set forth in the City of Paterson's Municipal Ordinances Nos. 2:3-3(b) and (c), et seq., and in its judgment and discretion decided to approve the transfer of these liquor licenses.

As I view it, Trajanka Ciric, President of L-J's Tender Trap, Inc. had a right to purchase the plenary license owned by Albert Spina, t/a Town Tavern operating at 130 Van Houten Street, Paterson, New Jersey, which was within 1,500 feet of her leased premises at 150 Ellison Street, Paterson, New Jersey. I see nothing wrong in her having to pay for that plenary license which was available to her by way of purchase and which was suitable for her in terms of distance, whatever it was necessary for her to pay including not only the basic \$3,000 purchase price but also the other consideration required by Mr. Spina, that consideration being a plenary license to replace the one that he was selling to her, which would enable him to continue to operate his tavern at his location at 130 Van Houten Street in Paterson, New Jersey. Trajanka Ciric was resourceful in being able to locate a substitute plenary consumption liquor license to turn over to Albert Spina as a part of the consideration, this being in fact the most important part of the consideration that he required to induce him to sell her his plenary consumption liquor license.

Therefore, were this an isolated transaction standing by itself without all of the background ramifications involved in this case, I would find no difficulty in coming to the conclusion that the Alcoholic Beverage Control Board of the City of Paterson was justified, on the facts and on the law, in approving the transfer and issuance of these person-to-person and place-to-place plenary consumption liquor licenses from and to the persons and places here involved.

But this was not a simple, straight forward transaction. It was, on the contrary, a most complex transaction. The facts establish very clearly that Alta Janosko was very much a moving party and a participant in this entire transaction which involved as its basic key feature the transfer of these liquor licenses from the original persons and places to the transferee persons and places. The "deal" never could have been consummated without the Janoskas' full knowledge and cooperation and their providing and/or arranging for and giving their own personal and corporate guarantees to provide the financing needed by L-J's Tender Trap, Inc. to consummate the deal. While Mrs. Ciric may have had some prior business contact with Seymour Meskin, it is quite obvious from the record that Alta Janosko had a longstanding and continuing business relationship with Seymour Meskin and the deals that she arranged with him were profitable for her to such an extent that she was willing to and did in fact in all these transactions lend both her corporate and her personal guarantee, as well as her husband's personal guarantee, to each and every one of the transactions in which she was involved with said Seymour Meskin. The facts show that in order to induce said Seymour Meskin, her Co-Objector, to finance this entire deal with an alleged loan of \$13,000 (\$10,000 for L-J's Tender Trap, Inc. to pay to Suzanna Brooks for her City of Paterson plenary consumption liquor license, and \$3,000 for it to pay Albert Spina for his City of Paterson Liquor license), she undertook to personally guarantee the repayment of the promissory note given to Mr. Meskin by L-J's Tender Trap, Inc. She did not do that out of the goodness of her heart. She did that because she was a part of a deal that she was anxious to put through, a deal which had both present and potential profit for herself. Therefore, Appellant-Objector's argument on this point is specious, lacking in merit and honesty, and must be rejected. She helped to arrange the deal, was fully cognizant of its terms and objectives, including the overcoming of the distance limitations of the ordinances, and put up her credit and the personal guarantees of herself, her husband and their jointly owned corporation to insure that Seymour Meskin would finance it. She cannot now be heard to argue that that deal was "illegal" and violative of the law.

While it is clear from the above-cited and quoted sections 13:2-17 et seq. of the New Jersey Administrative Code that all appeals from decisions of the local Alcoholic Beverage Control Board shall be heard de novo, it is well established in case law that "... although the Director conducts a de novo hearing in the event of an appeal from municipal action, 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 can be found in the record". Lyons Farm Tavern vs. Board of A.B.C. Newark, 55 N.J. 292, 303, (1970). See also Fanwood vs. Rocco, 33 N.J. 404 (1960) and Passarella v. Board of Commissioner's of Atlantic City, 1 N.J. Super. 313, 64 A.2d 361.

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Even though the administrative procedure has been amended so that the Director may, on a determination by him that the matter is a contested case, certify such a case to the Office of Administrative Law to assign an Administrative Law Judge to preside over the proceedings and to render a decision thereon, the substantive law of the state has not been changed. In Rajah Liquors vs. the Division of A.B.C., 33 N.J. Super. 598, 600 (App. Div. 1955), the court indicated that the scope of review before the State Division of Alcoholic Beverage Control on an appeal such as this, is to make a determination as to whether or not the local board acted reasonably or made a manifest mistake, notwithstanding the fact that testimony can be taken de novo on the appeal from such a local board's decision.

In view of the unique nature of the liquor business and the broad discretion vested in the local issuing authorities with respect to the regulation of said liquor business, the role of the Director of the Alcoholic Beverage Commission and now that of the Office of Administrative Law on an appeal such as this by an objector to the decision of the local Alcoholic Beverage Control Board is to review the record below, together with any additional evidence adduced at and during the hearing on appeal, if any was in fact offered and adduced, to determine whether or not reasonable support for the decision of the local board can be found in that record. See Lyons Farm Tavern vs. Newark, Super, page 103.

My review of the record adduced below convinces me that the objections raised by the Appellant-Objector and her Co-Objector herein to the transfers were specious and without merit and were based upon considerations wholly apart from whether or not the interest of the municipality would be served by the approval of the transfers. They filed their opposition and objections to achieve certain personal business objectives, beneficial solely to themselves, which objectives might possibly be attained by the enforcement of certain alleged business contractual rights Appellant-Objector and her Co-Objector claimed to have against the successful licensee, L.J.'s Tender Trap, Inc., and its stockholders, Trajanka and Aleksander Ciric. A quasi-judicial hearing before the Office of Administrative Law with regard to the validity and propriety of permitting the license transfers and the resulting issuance of the licenses here under consideration is not the proper forum to resolve those claimed contractual rights. The argument of counsel for the successful licensee L-J's Tender Trap, Inc. that the legality of the transactions by and between the parties and the consequences thereof must be resolved in the proper forum for such disputes and that the proper form for such disputes is in the judicial courts

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rather than before the Alcoholic Beverage Control Commission or the Office of Administrative Law is a valid one. *Iavicoli v Di Marco et al.* 142 N.J.eq 699, 61A 2d 572. The Office of Administrative Law is quasi-judicial in nature and its function is not to resolve legal business disputes between parties.

With reference to the Appellant-Objector's argument that L-J's Tender Trap, Inc. answered "No" to the question on page 7 of the License Application with regard to whether the stock of any stockholder was held in escrow or pledged in any way, the City of Paterson's Alcoholic Beverage Control Board considered that question too and decided that on the basis of all of the facts plus Mrs. Ciric's limited command of the spoken and written English language, her incorrect answer was an inadvertence and was not done for the purpose of deceiving the Board. It found that while she had undertaken to pledge and deliver the stock in L-J's Tender Trap, Inc. to Seymour Meskin, this had never been done and Mr. Meskin had never pursued his legal rights, over a period of two years, to compel the turnover of those stocks as additional security for the payment of the promissory note given to him by Mrs. Ciric.

In arriving at its determination to grant and/or permit the transfer of the two liquor license here under consideration, Commissioner Hawk stated very clearly that this was a special and unique situation and that he has the right to exercise discretionary powers in connection with his duties as a member of the City of Paterson Alcoholic Beverage Control Board and that since there were no new licenses being issued and since those licenses that were being transferred were all in a business area and would have no adverse impact and effect on the community, it was his decision that the transfers should be approved. The other two members of the board joined him in voting in favor of the approval of these transfers (see original transcript, page 104).

With reference to Retail Plenary Consumption License No. 1608-33-107-002, presently owned by Appellant-Objector Alta Janosko, that license is an inactive license since it has no "home" or situs of operation. The Alcohol Beverage Control Board for the purpose of bookkeeping lists its address as 150 Ellison Street, Paterson, New Jersey but that license is not in operation or operable because it has no place to operate. Alta Janosko cannot operate at 150 Ellison Street, because she doesn't have the lease for premises and therefore cannot operate at that address. For that reason said license remains inactive but designated. City of Paterson was justified in approving the transfer and issuance of these person-to-person and place-to-place liquor licenses from and to the peoples and the places involved.

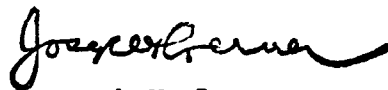
In the matter before me, the sole question is whether the Alcoholic Beverage Control Board of the City of Paterson acted properly and within its discretionary powers in granting the two plenary licenses here under consideration, and I FIND that it did so act and its approval of them hereby IS AFFIRMED.

While the determination of the City of Paterson's Alcoholic Beverage Control Board are hereby IS AFFIRMED in its entirety, the matter is hereby REMANDED to said Board to see that the successful applicant's answer to Question No. 1A on page 7 of its License Application is corrected to reflect the facts as disclosed as fully and candidly disclosed to said Board at its hearing on the applications for transfers held before it on January 2, 1980.

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 Joseph H. Lerner 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 my Initial Decision with Joseph H. Lerner for consideration.

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Joseph H. Lerner
Director