

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

BULLETIN 2376

November 19, 1980

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STATE OF NEW JERSEY
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BULLETIN 2376

November 19, 1980

1. APPELLATE DECISIONS - DODD'S DUNES, INC. v. EGG HARBOR.

#4358

Dodd's Dunes, Inc.,	:	
	:	
Appellant,	:	ORDER
	:	
vs.	:	DISMISSING
	:	
Township Committee of the	:	APPEAL
Township of Egg Harbor,	:	
	:	
Respondent.	:	

Thomas C. Brown, Esq., Attorney for Appellant.
Michael Jacobson, Esq., Attorney for Respondent.

Initial Decision Below

Hon. R. Jackson Dwyer, Administrative Law Judge

Dated: January 18, 1980 - Received: January 22, 1980

BY THE DIRECTOR:

This is an appeal from the action of the Township Committee of Egg Harbor Township which, by Resolution dated June 27, 1979, denied appellant's application to renew its license for the 1979-80 license term.

Upon filing the appeal, the Director, by Order dated June 29, 1979, extended said license pending determination of the appeal.

Prior to the scheduled hearing at the Office of Administrative Law, the parties amicably agreed to settle their disputes. The terms of resolution are set forth at length in a settlement stipulation annexed to the Initial Decision, and provide, in essence, for a renewal of appellant's license for the 1979-80 license term subject to five (5) Special Conditions.

In consequence thereof, the appellant moves to withdraw its appeal. Good cause appearing I shall grant the request.

Accordingly, it is, on this 7th day of February, 1980,

ORDERED that appellant's motion to withdraw its appeal be and is hereby granted and the within appeal be and the same is hereby dismissed; and it is further

ORDERED that, upon the adoption by the Township Committee of Egg Harbor Township of a Resolution approving renewal of appellant's license for the 1979-80 license term with the Special Conditions affixed thereto, my Order of June 29, 1979 extending the license pending appeal be and the same is hereby vacated.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision with Stipulation of Settlement

IN THE MATTER OF:	:	INITIAL DECISION
	:	
DODD'S DUNES, INC.	:	OAL DKT. NO. ABC 2858.79
	:	AGENCY DKT. NO. 4358
v.	:	
	:	
THE TOWNSHIP COMMITTEE OF	:	
THE TOWNSHIP OF EGG HARBOR	:	
	:	

APPEARANCES:

Michael Jacobson, Esq. for
The Township Committee of Egg Harbor

Thomas C. Brown, Esq. for
Dodd's Dunes, Inc.

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

This is an appeal by Dodd's Dunes, Inc., located at Longport-Somers Point Blvd., Egg Harbor Township, from a determination of the Township Committee of the Township of Egg Harbor on June 27, 1979 which refused to renew appellant's Plenary Retail Consumption License No. 0108-33-015-002 for the license year July 1, 1979 to June 30, 1980.

Appellant filed a notice of appeal with Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control. On June 29, 1979, the Director of the Division of Alcoholic Beverage Control issued an Order to Show Cause temporarily renewing the license and setting the matter down for a de novo appeal pursuant to R.S. 33:1-22 and N.J.A.C. 13:2-17.6. The matter was then transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was scheduled for January 25, 1980.

The parties have amicably agreed to settle their dispute and have filed a Consent Order of Stipulation of Settlement which was forwarded to the Administrative Law Judge by both parties (a copy of which is attached hereto).

For the foregoing reasons, I CONCLUDE that there is no longer a contested case before me and the matter IS DISMISSED.

I recommend that the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, approve the agreement entered into by the parties.

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

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

~~Plaintiff~~ Appellant,

DODD'S DUNES, INC.,

vs.

~~Defendant~~ Respondent,

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
EGG HARBOR.

STATE OF NEW JERSEY,
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. abc-2858-79
AGENCY DOCKET NO. 4358
NAME OF AGENCY: Division of
A.B.C., R. JACKSON DWYER, A.L.J.

STIPULATION OF SETTLEMENT

This matter coming on before the Office of Administrative Law, R. Jackson Dwyer, Administrative Judge presiding, as the result of a Notice of Appeal and Petition of Appeal having been filed by Thomas C. Brown, attorney for Appellant, with the Division of Alcoholic Beverage Control as the result of action taken by the Respondent on June 27, 1979; and an answer to Petition of Appeal having been filed by Michael Jacobson, Esq., attorney for Respondent, Township of Egg Harbor; and the attorneys for the respective parties having conferred and wishing to settle the dispute between the parties;

IT IS HEREBY STIPULATED and AGREED that the Township Committee of the Township of Egg Harbor shall renew the plenary retail consumption liquor license of Dodd's Dunes, Inc., license #0108-33-015-001, for the license year July 1, 1979 to June 30, 1980 on the following conditions:

1. Prior to reopening the establishment and operating the same as a night club, the Appellant will provide uniformed security personnel from a private security agency consisting of six uniformed personnel to be stationed four in the parking lot and two at the door of the premises on all nights on which the premises is operated.

2. The Appellant shall continue to maintain regular doormen on the premises to check age proof and prevent intoxicated persons from entering the premises.

3. Installation on the interior of the premises of a security lighting system that would allow bartenders to notify security personnel of potential difficulty in any area of the premises.

4. Additional lighting to be installed in the parking area for security purposes and installation of either fencing or guard rails to prevent patrons from parking immediately adjacent to the pavement of Longport-Somers Point Road and Coastal Highway.

5. Prior to any reopening of the premises, Dodds Dunes, Inc., the Appellant, will submit a site plan acceptable to the Township through it's regulatory agency.

IT IS FURTHER STIPULATED and AGREED that the Notice of Appeal filed by the Appellant on June 28, 1979 is hereby withdrawn and this matter shall be marked "settled".

I hereby consent to the entry of the within stipulation.

Thomas C. Brown, Attorney for Appellant
Michael Jacobson, Attorney for Respondent

STIPULATION APPROVED:

R. Jackson Dwyer, A.L.J. 1/18/80

Dated: December 20, 1979

2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF LINDEN MOTOR INN, INC.

In the Matter of the Petition of	:	
	:	
Linden Motor Inn, Inc.	:	CONCLUSIONS
	:	
Holder of Plenary Retail Consumption	:	AND
License No. 2009-33-088-002 issued	:	
by the Municipal Board of Alcoholic	:	ORDER
Beverage Control of the City of Linden.	:	
-----	:	
Sevack, Posnock and Zitomer, Esqs., by Milton Sevack, Esq.,	:	
Attorneys for Petitioner.	:	

Initial Decision Below

Hon. Ken R. Springer, Administrative Law Judge

Dated: January 2, 1980 - Received: January 4, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were filed herein pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein including the transcript of the testimony and the Initial Decision of the Administrative Law Judge, I concur in the finding that the petitioner has established good cause for my authorization of petitioner to apply to the local issuing authority for renewal of the subject license.

I want to point out, however, that this is the second consecutive license term upon which such authorization is granted. While I am mindful of the efforts made by the petitioner to obtain suitable premises and activate the said license, I do not believe that it was the Legislative intent to indefinitely renew such authorizations. Therefore, the petitioner is advised that this authorization is given with the understanding that this license must become operational during the 1979-80 license term.

Accordingly, it is, on this 7th day of February, 1980,

ORDERED that the Municipal Board of Alcoholic Beverage Control of the City of Linden be and is hereby authorized to consider the application for renewal of petitioner's plenary retail consumption license for the 1979-80 license term, and, in the reasonable exercise of its discretion to grant or deny the said renewal; and it is further

ORDERED that in the event that the said application for renewal is granted, the license shall be subject to the special condition that its certificate shall not be delivered unless and until an approved situs for the license is ready for occupancy.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

IN RE:)	<u>INITIAL DECISION</u>
PETITION FOR RENEWAL)	OAL DKT. NO. ABC 4278-79
OF LICENSE OF LINDEN)	
MOTOR INN, INC.)	

APPEARANCES:

Milton Sevack for the petitioner, Linden Motor Inn, Inc.
(Sevack, Posnock, & Zitomer, Attorneys)

BEFORE THE HONORABLE KEN R. SPRINGER, A.L.J.:

Pursuant to N.J.S.A. 33:1-12.39, the Linden Motor Inn, Inc. ("petitioner") seeks authorization from the Director of Alcohol Beverage Control ("Director") to apply to the City of Linden for renewal of its plenary retail consumption liquor license for the 1979-80 term. The Division of Alcoholic Beverage Control ("Division") transmitted this matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 42:14F-1 et seq. A hearing was held on November 20, 1979. All parties were given the opportunity to be heard and to cross-examine witnesses. In accordance with N.J.S.A. 33:1-12.39, the sole issue is whether or not good cause can be shown by the petitioner for renewal of a plenary retail consumption license which has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period. The Division advised the Office of Administrative Law that it would not participate at the hearing, but would leave the petitioner to its proofs establishing good cause.

During the hearing, the following documents were entered into evidence:

- Exhibit A-1 A copy of an affidavit of Dennis J. Valvano, Jr., dated March 1978.
- Exhibit A-2 A copy of an affidavit of Dennis J. Valvano, Jr., dated July 12, 1979.

At the outset, counsel for the petitioner traced the procedural history of this license. On April 11, 1977, the original liquor license was issued to Ben Den Construction, Inc., subject to the condition that it not become effective until the Building Inspector of the City of Linden certified that a building to be constructed on the premises, known as 10 North Wood Avenue, had been completed. Subsequently, the license was renewed for the 1977-78 term. As set forth in the affidavit marked Exhibit A-1, on October 19, 1977, the premises was conveyed to petitioner. It was further represented by counsel that an appropriate approval was obtained for a corresponding transfer of the liquor license from Ben Den Construction Co., Inc., to petitioner. Meanwhile, on October 3, 1977, L. 1977 c. 246, (N.J.S.A. 33:1-12.39), took effect. On April 27, 1978, a hearing was held before Walter S. Cleaver, Legal Assistant to the Director, on the renewal of the license for the 1978-79 term. As a result of this hearing, the Director found good cause and the matter was referred to the local authority which granted the requested renewal. Currently, petitioner is asking for the renewal of its license for the 1979-80 term.

The relevant testimony was as follows:

Milton Sevac, ("Sevac"), a New Jersey attorney, testified that the liquor license will be used at a hotel which will be constructed on the premises. Since issuance of the last renewal, several lending institutions recommended by the New Jersey Economic Development Authority ("EDA") have been contacted with respect to possible financing. According to Sevac, both the EDA and local officials are supportive of the project which would help rehabilitate the community. Nevertheless, prospective lenders felt the originally proposed project was too small to be economically feasible. Therefore, the owner of the corporate petitioner acquired an adjacent tract of land so that a substantially larger structure could be built. Revised plans contemplate almost doubling the number of hotel rooms from 105 to approximately 200, adding several conference or meeting rooms and building a larger banquet hall than previously proposed. In the course of the intervening year, petitioner has reappeared before the local Zoning Board, the local Planning Board, and the County Planning Board to obtain the necessary approvals for the

more ambitious project. Sevack gave his assurance that such approvals have been obtained and all that remains is to find the required financing. Approximately \$4,800,000 is needed to complete the project. To date, petitioner has already incurred significant expenses including engineering fees, architectural fees, legal fees and the cost of demolishing existing buildings on the premises. Sevack put the total investment thus far at \$500,000 or more.

Recently, franchise arrangements for the new hotel have been switched from the Downtowner to Ramada Inn. Sevack anticipates that this change should enhance petitioner's position to secure adequate financing. To Sevack's knowledge, Dennis J. Valvano, Jr., one of the principals of the petitioner, is still actively engaged in seeking financing for the project. Two weeks ago, Valvano had a meeting with a group of potential investors. Information about the project, including materials supplied by the EDA, is being packaged into a booklet for the purpose of making a presentation to another group of investors. A meeting was held at City Hall to explore the availability of funds for urban renewal. In Sevack's view, no avenue is being left unexplored in attempting to get financing. While immediate prospects for funding are not good, Sevack anticipates that in early 1980 the mortgage market may become more settled and at that time a commitment might be forthcoming.

In conclusion, Sevack emphasized that many people in the community have expressed interest in the success of this project. It is planned that the completed hotel would provide employment for over 190 persons. Aside from loss of a substantial investment, Sevack argued, denial of this petition would deprive the people of this area of an opportunity for future jobs.

After carefully reviewing all of the evidence and the testimony and having observed the demeanor of the witness, I FIND:

1. Petitioner, Linden Motor Inn, Inc., is the holder of a Class C plenary retail consumption liquor license issued to it by the City of Linden, New Jersey.
2. On April 11, 1977, the original liquor license was issued to Ben Den Construction Co., Inc. Petitioner obtained this license by transfer from Ben Den Construction Co., Inc.

3. On October 19, 1977, the premises known as 10 North Wood Avenue was conveyed to petitioner from Ben Den Construction Co., Inc.
4. Petitioner plans to use its liquor license in connection with a hotel complex to be constructed on this property.
5. With the authorization of the Director of the Division of Alcoholic Beverage Control, petitioner applied for and received a renewal of its liquor license for the 1978-79 term.
6. At the suggestion of financial institutions to which it applied for a loan, petitioner has acquired an adjacent tract of land and enlarged its planned facilities to almost double its original size. Revised plans also call for additional conference or meeting rooms and a larger banquet hall.
7. Since last year, petitioner has reappeared before the Zoning Board of the City of Linden, the Planning Board of the City of Linden, and the County Planning Board to obtain the necessary approvals for the larger facilities.
8. At present, all the required governmental approvals have been obtained and petitioner is actively seeking financing for its hotel project.
9. Petitioner has already invested approximately \$500,000 in this project and requires approximately \$4,800,000 to complete construction of the hotel.
10. In the event the project becomes a reality, the hotel would provide employment opportunity for a substantial number of people, and would contribute to the redevelopment of an urban community.

Based on the facts adduced at the hearing and the applicable law, I CONCLUDE that the "good cause" required by statute has been shown. N.J.S.A. 33:1-12.9 provides that Class C licenses not actively used in connection with the operation of a licensed premises within the past two years shall not be renewed unless the Director of the Division finds good cause to warrant a further application for renewal. This statute is remedial in nature and designed to halt the continuous renewal of any license which had no situs and was not actively used. Previously these licenses, so-called "pocket licenses", were

renewed continuously year after year without any attempt by the holder to use or dispose of them.

The determination by the Director of whether good cause has been established will be made on a case by case basis, applying recognized judicial concepts associated with that term and prior decisions of the Division concerning the renewal of inactive licenses. A.B.C. Bulletin 2289, Item 1 (1978). Good cause means a substantial reason, one that affords a legal excuse. Whether substantial reasons exist is for the court to determine under the facts and circumstances. Pines v. District Court in and for Woodbury County, 233 Iowa 1284, 10 N.W. 2d 574, 583 (Sup. Ct. 1943). It has been said that good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer to which the decision is committed. Wilson v. Morris, 369 S.W. 2d 402, 407 (Mo. 1963).

In the present matter, petitioner is actively engaged in trying to obtain the funding required to complete its hotel project. Since the prior renewal for the 1978-79 term, petitioner has substantially redesigned its project to make it more attractive for potential investors and has appeared before governmental bodies in furtherance of its revised plans. Delay has not been caused by the inactivity of petitioner, but rather by the difficulty of getting a mortgage commitment under current market conditions. Completion of the hotel project would be of benefit to the community in providing jobs and rehabilitating the business area. From the facts presented, it is evident that petitioner has been acting in good faith to get its property ready for use in connection with its liquor license.

For the foregoing reason, it is ORDERED that that governing body of the City of Linden is hereby authorized, in its discretion, to consider the application for renewal of petitioner's liquor license for the 1979-80 term, subject to the special condition that, if renewed, the license certificate shall not be delivered unless and until an approved situs for the license is ready for occupancy.

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

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

3. ORDER OF REMAND - IN THE MATTER OF THE PETITION OF ALFRED E. FARALDI, PURSUANT TO N.J.S.A. 33:1-12.39.

In the Matter of the Petition of	:	
	:	
Alfred E. Faraldi	:	ORDER
	:	
Holder of Plenary Retail Distribution	:	OF
License No. 1219-44-017-001 issued by	:	
the Mayor and Council of the Borough	:	REMAND
of Fort Lee.	:	
-----	:	
Richard C. McDonough, Esq., Attorney for Petitioner	:	

Initial Decision Below

Hon. Thomas Crawford, Administrative Law Judge

DATED: January 10, 1980 - Received: January 11, 1980

BY THE DIRECTOR:

Subsequent to the receipt of the Initial Decision, the petitioner filed a Notice of Motion pursuant to proposed regulation N.J.A.C. 19:65-16.5(c) seeking an Order of Remand to the Office of Administrative Law for the following reasons and purposes:

(1) to produce further testimony and legal arguments relative to the Administrative Law Judge's Finding No. 5, and specifically, to develop the record concerning the import and validity of the provision contained in the prior Special Ruling dated July 11, 1978 that "no further renewals will be authorized"; and

(2) to require the Administrative Law Judge to enter more complete findings of fact and articulate the basis for his determination.

I am satisfied from my cursory review of the transcript, that the relief requested in the petitioner's application is warranted. Good cause appearing, I shall grant the request, and remand the matter to the Office of Administrative Law.

Accordingly, it is, on this 11th day of February, 1980,

ORDERED that Petitioner's application sub judice be and is hereby granted, and the entire matter be and is hereby remanded to Administrative Law Judge Thomas M. Crawford for supplementation of the record and Initial Decision in accordance with the directions and issues contained in (1) and (2) supra, which are incorporated herein as if set forth at length.

JOSEPH H. LERNER
DIRECTOR

In the Matter of:

INITIAL DECISION

The Application for Extension of Renewal of Shop-Rite of Fort Lee, Inc. (Alfred E. Faraldi) Holder of Plenary Retail Distribution License #0219-44-017-001, Issued by The Mayor and Council of the Borough of Fort Lee

O.A.L. DKT. # A.B.C. 4268-79

APPEARANCES:

Richard C. McDonough, Esq., Mantoloking, New Jersey, for Petitioner

EXHIBITS:

See Scheduled Attached

BEFORE THE HONORABLE THOMAS CRAWFORD, A.L.J.:

The licensee, Shop-Rite of Fort Lee, Inc., (Petitioner), filed a petition with the Division of Alcoholic Beverage Control for a renewal of an inactive license pursuant to N.J.S.A. 33:1-12.39.

The Division of Alcoholic Beverage Control transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on November 20, 1979 and the record was closed on November 28, 1979.

The issue in the case is limited by N.J.S.A. 33:1-12.39 to whether Petitioner establishes "good cause" for an extension.

The testimony shows that Petitioner purchased the license in July 1974 for \$33,000. Currently there are forty-five (45) alcoholic beverage licenses in New Jersey trading under the Shop-Rite logo. These individually owned stores advertise cooperatively in accordance with the Division of Alcoholic Beverage Control rules and regulations. It was Petitioner's intention, to find a suitable location and become part of this cooperative trading as Shop-Rite Liquors.

Petitioner purchased this license with a specific location in mind. That location, a nine (9) acre redevelopment location in The Fort Lee business district known as the George Washington Shopping Center, entered into bankruptcy as a result of criminal activities discovered by the then Fort Lee Mayor Burt Ross. As a result of this situation Petitioner's negotiations with the development owner were never finalized.

The record reveals that since April 1977, Petitioner through two (2) individual brokers has been looking for an economically viable location. Specifically, forty (40) locations in the Boro of Fort Lee have been inspected with a view toward either acquisition or lease. Of the locations that have been economically feasible, Petitioner has either encountered difficulty with the lease commitments to existing tenants or has lost out to competitive bidders. Recently, Petitioner has been attempting to sell the license in effort to recoup as much of his investment as possible.

Exhibit P-1 in evidence shows that on July 11, 1978 the Division of Alcoholic Beverage Control issued a Special Ruling extending Petitioner's license for the 1978-79 license term with the condition that "said license shall become operational during the 1978-79 license period and no further renewals will be authorized".

N.J.S.A. 33:1-12.9 appears designed to halt the continuous renewal of licenses which have no situs and are not actively used. The exception for "good cause" affords applicants an opportunity to renew a license for active use in the near future either in themselves or a subsequent transferee.

After reviewing the record in this matter, I FIND:

1. The Petitioner, Shop-Rite of Fort Lee, Inc. (Alfred E. Faraldi) is the holder of Plenary Retail Distribution License 0219-44-017-001 issued by the Mayor and Council of the Borough of Fort Lee.
2. Petitioner first obtained this license by transfer in July 1974.
3. Petitioner has never used this license as part of its activities and operations.
4. Petitioner has no firm prospects either for operation or sale of the license.
5. The July 11, 1978 Special Ruling of the Division of Alcoholic Beverage Control (Ex. P-1) stated that "any renewal (of license 0219-44-017-001) which may be granted shall be subject to the special conditions that said license shall become operational during the 1978-79 licensing period, and no further renewals will be authorized".

Therefore, based on the above findings, I CONCLUDE that the "good cause" required by N.J.S.A. 33:1-12.39 has not been established and the application for extension of renewal of Plenary Retail Distribution License 0219-44-017-001 is DENIED.

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

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

EXHIBITS:

- P-1 Special Ruling by Director Lerner dated 7/11/78
- P-2 Renewal Application
- P-3 Request for Hearing dated 7/25/79 and Letter from Marotta & De Miglio to Mr. Mc Donough dated 6/15/79
- P-4A Letter from Mr. McDonough to Clerk of Borough of Fort Lee
- P-4B Affidavit of Mailing
- P-5 Closing Statement
- P-6 List of Expenditures compiled by Mr. Faraldi
- P-7 Letter from Mr. Faraldi & Mr. Najarian to Bridge View Realty dated 1/6/75
- P-8 Letter from Mr. Kelly to Mr. Schepisi dated 7/28/78;
Letter from Mr. Schepisi to Mr. Kelly dated 6/26/78;
Contract; Stop Payment Release Request
- P-9 John N. Mandis - Diagram
- P-10 Letter from Marotta & De Migilio to Mr. McDonough dated 6/15/79; Letter from Mr. Mc Donough to Mr. Najarian dated 6/25/79; Request for Hearing dated 6/25/79
- P-11A Letter from Sol Kugler dated 2/1/77
- P-11B Letter from Washington Bridge Center to Sol Kugler dated 12/5/78
- P-11C Agreement for Sale of Liquor License to Sol Kugler dated May 1979
- P-12 Work Sheets as compiled by Mr. Faraldi
- P-13 List of Prospective Sites as compiled by Mr. Faraldi

4. APPELLATE DECISIONS - RON ROB, INC. v. ATLANTIC CITY.

#4432
Ron Rob, Inc.,

Appellant,

vs.

Board of Commissioners of the
City of Atlantic City,

Respondent.

CONCLUSIONS

AND

ORDER

Vasser, Rimm, Spitalnick & Mazin, Esqs., by David A.
Spitalnick, Esq., Attorneys for Appellant.
Steven W. Smoger, Esq., Attorney for Respondent

BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City (hereinafter Board) which, by Resolution dated October 11, 1979, denied appellant's application for renewal of its license for the 1979-80 license term.

The sole basis for the Board's denial was the Special Ruling of the Director, Division of Alcoholic Beverage Control, dated September 26, 1979, which found renewal therein would be contrary to the public interest. N.J.A.C. 13:2-3.10. Additionally, the sole reason for the adverse Special Ruling was the appellant's failure to comply with the provisions of N.J.S.A. 33:1-12.39.

Upon the filing of the appeal, the license was extended for the 1979-80 license term by my Order dated December 6, 1979, pending determination of the appeal.

In conjunction with the appeal, the appellant submitted affidavits and documents for the purposes of establishing that there have been "good faith" efforts to attempt to activate this license as required by N.J.-S.A. 33:1-12.39.

I have reviewed the affidavits and documents and find that the appellant has made "good faith" efforts to activate its license. These efforts included entry of agreements to sell the license on August 10, 1978 and July 3, 1979. The first agreement is still pending Task Force review of the purchaser. Intervening these agreements were several stated negotiations to transfer the license, and legal proceedings to determine proper ownership of the stock of the corporate licensee.

Besides the efforts to find a purchaser for this license, I give particular weight to the Superior Court proceedings to resolve the ownership issue of the corporate stock and the representation of counsel by letter dated November 20, 1979, that said matter can be settled if the license can be sold with the proceeds being distributed to the appropriate parties.

I am further advised that the Task Force has no other basis to recommend an adverse Special Ruling on the renewal of this license.

Therefore, I shall reverse my Special Ruling of September 26, 1979 and do hereby find that the appellant has satisfied the provisions of N.J.S.A. 33:1-12.39 and renewal of the appellant's license for the 1979-80 license term would not be contrary to the public interest.

I shall reverse the denial of renewal and remand the matter to the Board of Commissioners to act upon appellant's application for renewal for the 1979-80 license term, and to either grant or deny same in the exercise of its discretion.

Accordingly, it is, on this 8th day of February, 1980,

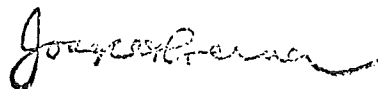
ORDERED that the appellant's petition for relief pursuant to N.J.S.A. 33:1-12.39 contained with the subject appeal, be and is hereby granted; and it is further

ORDERED that my Special Ruling of September 26, 1979 be and the same is hereby reversed; and it is further

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and is hereby reversed; and it is further

ORDERED that the within matter be and is hereby remanded to the Board of Commissioners for consideration of appellant's application for renewal of its license for the 1979-80 license term, and, to either grant or deny same in the exercise of its discretion; if renewal is granted, it shall be made expressly subject to a Special Condition that the license must become operational during the 1979-80 license term; and it is further

ORDERED that appellant's license be and the same is extended for the 1979-80 license term until such time as the Board acts upon its application for renewal on the remand set forth herein.



JOSEPH H. LERNER
DIRECTOR