

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1367

December 21, 1960

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1367

December 21, 1960

1. APPELLATE DECISIONS - 279 CLUB, INC. v. NEWARK.

279 Club, Inc.	)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
	)	AND ORDER
Municipal Board of Alcoholic	)	
Beverage Control of the City of	)	
Newark,	)	
Respondent.	)	

-----  
Waldor & Beckerman, Esqs., by Milton A. Waldor, Esq., Attorneys  
for Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of Respondent Board whereby on June 28, 1960 it unanimously denied appellant's application for renewal of its plenary retail Consumption license for the 1960-61 licensing period for premises 279 West Kinney Street, Newark.

"Upon the filing of the petition of appeal an order dated June 30, 1960 was entered by the Director extending the term of the 1959-60 license until further order herein. Rule 12 of State Regulation No. 15.

"Appellant sets forth as its grounds of appeal that (a) respondent acted in an arbitrary, capricious and discriminatory manner; (b) violated constitutional rights of appellant and (c) conducted no hearing at which appellant was permitted to enter a defense to charges.

"Respondent Board in its answer denies the allegations in the petition of appeal and contends that its decision was 'based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the denial of the application substantiated such action!.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings held before the respondent Board was received in evidence, and additional testimony was presented on behalf of appellant, pursuant to Rule 8 of said Regulation.

"A notice addressed to appellant dated June 24, 1960 and signed by the Secretary of the respondent Board read as follows:

'You are hereby requested to appear before this authority on Tuesday at 3:30 P.M. June 28, 1960 in the Public Meeting Room, Basement Room 13-21 City Hall, Newark, New Jersey.'

"It appears from the transcript of the proceedings held on June 28, 1960 before the respondent Board that Captain Edward V. Weber, Commanding Officer of the Fourth Police Precinct, in whose jurisdiction the defendant's licensed premises are located, in response to a question asked by the Chairman of the respondent Board, answered 'I have no convictions. I don't know of anything else. I received no complaints or letters about the place, only this one where a man tending bar was charged with having possession of marijuana and that is pending before the Grand Jury'.

"No witnesses were either sworn or examined at the proceedings before the respondent Board. The decision on the application for renewal was reserved and Saul Weissman, president of appellant-licensee, was advised by the Secretary of the Board to 'call the office and I will let you know the Board's action'. Apparently subsequent thereto, the Secretary announced 'In the case of 279 Club, Inc., the Board in caucus, in its meeting room B-21, Basement, City Hall, Newark, N. J., reviewed all the facts concerning this licensee and after taking everything into consideration voted unanimously to deny the application for renewal'.

"At the within hearing on appeal from the Board's action, Saul Weissman, aforementioned, testified that during the 1959-60 licensing period, because of trouble with the burglar alarm system, police officers came to his licensed establishment on to occasions and on one other occasion when the officers made a search of the premises. Weissman testified that he had no knowledge that marijuana allegedly belonging to his son was found on the premises as a result of the search.

"The attorney for appellant contends that the proceeding before the respondent Board did not constitute a hearing as required by Sec. 3.34 of Revised Ordinances of Newark dated May 1, 1954 as amended, which provides as follows:

'In the event any application for the renewal of license shall be questioned by the local issuing authority for any reason ~~and~~ then the applicant for renewal of such license shall be given notice of the reasons of the local issuing authority ~~and~~ and a day shall be set for hearing before the local issuing authority upon due notice to the applicant of the day of hearing in order that the applicant may be afforded an opportunity to show cause why the application should be granted.

If, after hearing, the local issuing authority is of the opinion that application for the renewal of license shall not be granted, it shall refuse to grant renewal, setting forth reasons for refusal in the minutes of its meeting.'

"Judge Clapp, in Nordco, Inc., v. State, 43 N. J. Super. 277, speaking for the Appellate Division of the Superior Court of New Jersey, discussed the provision in question of the Newark ordinance. In the Nordco, Inc. case the notice of the purported hearing charged the licensee with improper conduct in the operation and made particular reference to an 'hours' violation without mentioning a brawl that had occurred which resulted in the preceding licensing year to a suspension of its license. Furthermore, in said case a police captain, although unsworn, was examined and subjected to a 'fairly full cross-examination'. The appellate court apparently was satisfied that other undisputed factors were presented and that Nordco, Inc.'s attorney was given an adequate opportunity to argue

the question whether, in view of the undisputed facts disclosed, the license should nevertheless issue. Although the court concluded that in its opinion that 'substantial justice' had been accomplished, it specifically cautioned the local issuing authority that it would not sanction a disregard of the municipal ordinance in the future so that factual issues falling within the scope of the ordinance should be resolved through a hearing, conducted in the manner referred to in Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950) because 'only in this fashion in the ordinary case can justice be done (as it should be done) "in the initial consideration itself". Fifth Street Pier Corp. v. City of Hoboken, 22 N.J. 326, 337 (1956).'

"In the instant case the notice served upon the appellant gave no indication whatsoever why it was requested to appear before the respondent Board, and, therefore, Saul Weissman, president of appellant corporation, who appeared at the stated time, was not apprized that his operation of the tavern was questioned. The police captain was asked to give his opinion with reference to the operation of the premises during preceding licensing term. He said he received no complaints about the place and the only thing that was found was that a bartender, employed by appellant, was charged with possession of marijuana, which matter was then pending before the Grand Jury.

"At the hearing of the appeal herein, the respondent Board produced no additional testimony, but rested its case on the stenographic transcript of the proceedings before it. The record is so sparse and the proceedings so informal that it is impossible to make a recommendation to the Director either to reverse or affirm the respondent Board's action. Saul Weissman testified at the hearing of the appeal and in substance denied that narcotics were found on the licensed premises.

"Under the circumstances appearing in this case, I have no alternative but to recommend that the matter of renewal of appellant's license for the current licensing period be remanded to respondent Board so that it may schedule a hearing and then proceed, in accordance with provision of its ordinance appertaining thereto."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 24th day of October 1960,

ORDERED that the matter be remanded to respondent in order that it may schedule a hearing and then proceed pursuant to the provisions of the local ordinance applicable thereto.

WILLIAM HOWE DAVIS  
DIRECTOR

2. APPELLATE DECISIONS - LOS PANCHOS, INC. v. NEWARK.

LOS PANCHOS, INC., t/a )  
CLUB COZY, )

Appellant, )

v. )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )

Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Waldor & Beckerman, Esqs., by Milton A. Waldor, Esq., Attorneys  
for Appellant  
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it unanimously denied appellant's application for renewal of its plenary retail consumption license for the 1960-61 licensing year for premises 57-59 Parkhurst Street (and 2nd floor addition), Newark.

"Upon the filing of the appeal an order, dated June 29, 1960, was entered by the director extending the term of the 1959-60 license until the entry of a further order herein. R.S. 33:1-22.

"Appellant alleges that the action of respondent was erroneous because (a) it was not given the opportunity of having a hearing before respondent, and (b) the action of respondent was an abuse of its discretion.

"In its answer respondent alleges that its decision was based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the denial of the application substantiated such action.

"It is the general rule that, in the absence of a written objection, an issuing authority is not required to hold any hearing upon an application to renew a license provided that it makes a thorough investigation on its own initiative. Utrecht v. Hopatcong, Bulletin 1154, Item 7; Murray v. Wanaque, Bulletin 1170, Item 1; Rule 8 of State Regulation No. 2. However, the City of Newark has adopted an ordinance (Sec. 3.34 of Revised Ordinances of Newark), the pertinent portions of which provide that:

'In the event any application for the renewal of license shall be questioned by the local issuing authority for any reason or in the event that an objection shall be filed in opposition to the application, then the applicant \*\*\* shall be given notice of the reasons of the local issuing authority or of the objector and a day shall be set for a hearing before the local issuing authority upon due notice to the applicant of the day of hearing in order that the applicant may be afforded an opportunity to show cause why the application should be granted.'

"The evidence in this case discloses that a notice, dated June 15, 1960, was served by respondent on the appellant merely requesting it to appear before respondent on June 21, 1960. A transcript of the proceedings on June 21, 1960, has been introduced into evidence herein. The transcript shows that Oscar Marty (who is a stockholder of appellant corporation and manager of the licensed premises) appeared before the Board and was then advised for the first time that he had been summoned with reference to a noise complaint and that an investigator had been in the vicinity of the licensed premises on June 18 and reported that the sound of entertainment was audible across the street. The following conversation then took place:

'The Chairman: You have had trouble there before.  
Mr. Panchos (Mr. Marty): I know. I take care of the place in good order and there is no noise from the place.'

The Chairman: Don't come in here and tell us there is no noise in the place. That is why we have you here today. There is noise from the entertainment.

Mr. Panchos: There is the same people always complaining. In front there is a lady. She lives there. She no make complaint and she lives there. There is a rooming house there.'

"The Chairman then advised Mr. Marty that 'all we want is the noise stopped.' 'We will hold the license till the noise has stopped.'

"The evidence further shows that a notice dated June 24, 1960, was served by respondent on appellant requesting it to appear on June 28, 1960, with reference to a noise complaint 'that has been preferred by you.' On June 25, 1960, respondent received a letter signed by 'A Property Owner' complaining of noise at appellant's premises. On June 28, 1960, Mr. Marty, his present attorney and ten witnesses appeared before respondent. A transcript of the proceedings on June 28, 1960, has also been introduced into evidence. On June 28 the applications for renewal filed by appellant and two other licensees were considered. At that time the Chairman announced that 'We have already heard these cases last week' and refused to hear any further testimony on behalf of appellant herein. Commissioner Cerefice stated that he had made a personal inspection of appellant's premises and the noise is and was very, very bad. Appellant's application was then denied.

"At the hearing of the appeal respondent introduced into evidence the two transcripts and the letter received on June 25, 1960, hereinabove referred to. On behalf of appellant, five persons who live in the immediate vicinity of appellant's premises testified that they have never been disturbed by noise from the premises. Oscar Marty testified that appellant has no prior adjudicated record; that there is a large hall on the second floor of the licensed premises; that appellant hires a six-piece band to play on week-ends in the hall; that he was summoned before the Board about eight months ago because of a noise complaint but that he has since nailed the windows so that they cannot be opened and that there is now no excessive noise from the playing of the band.

"After considering all the evidence herein, it is doubtful if respondent Board complied with the requirements of the Newark ordinance. Nordco Inc. v. Div. of A.B.C., 43 N. J. Super. 277. It is true that in the Nordco case the Court concluded that the

appellant therein had not been prejudiced because the testimony below and on appeal to the Division was sufficient to sustain denial. However, in this case there is little, if any, testimony to sustain the action of respondent. A denial of renewal must be based on reasonable grounds or it will be reversed. Kleinberg v. Harrison, Bulletin 984, Item 2. It is recommended, therefore, that an order be entered reversing the action of respondent and ordering respondent to issue a renewal of appellant's license. If, in the future, appellant permits any disturbance or unnecessary noise on its premises, disciplinary proceedings may be instituted. Moreover, the manner in which the premises are conducted may be considered by respondent if and when appellant applies for a further renewal of its license."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Nevertheless it is my duty to decide whether the action of respondent should be reversed, as recommended, or remanded to respondent with instructions to comply with the cited section of the local ordinance.

Primarily, it is the duty of respondent Board to administer the issuance of retail licenses in the municipality. R.S. 33:1-19. In considering applications for renewal, the Newark Board is required to comply with the provisions of the local ordinance. It has failed to do so. As stated by Judge Clapp in Nordco, Inc. v. Div. of A.B.C., supra:

"We are by no means sanctioning a disregard of the Newark ordinance in the future. On the contrary, factual issues before the Newark board, which fall within the scope of the ordinance, should be resolved through a hearing, conducted in the manner referred to in Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950)."

Accordingly, it is, on this 25th day of October 1960,

ORDERED that the matter be remanded to respondent in order that it may schedule a hearing and then proceed pursuant to the provisions of the local ordinance applicable thereto.

WILLIAM HOWE DAVIS  
DIRECTOR

3. APPELLATE DECISIONS - MARSILLO v. RANDOLPH.

VICTOR J. MARSILLO, t/a )  
 SAINS HOTEL BAR & GRILL, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 TOWNSHIP COMMITTEE OF THE )  
 TOWNSHIP OF RANDOLPH, )  
 )  
 Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
 Leo J. Berg, Esq., Attorney for Appellant.  
 Young and Sears, Esqs., by Harry D. Sears, Esq., Attorneys for  
 Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied an application for renewal of appellant's plenary retail consumption license for premises on Brookside Road, Mt. Freedom, Randolph Township.

"From the evidence it appears that since 1937 Samuel H. Sains (alone or in partnership with another) held a plenary retail consumption license for the premises in question; that the said license was transferred, effective May 26, 1960, from Sains to appellant; that since said date Sains has been employed by appellant as manager of the business and that on June 30, 1960, respondent adopted a resolution denying appellant's application for renewal of his license.

"The sole question raised herein is the fitness of appellant to hold a liquor license. Appellant alleges that, under the facts and circumstances of this case, respondent's action was arbitrary and unreasonable.

"In his youth appellant had a very bad record. In 1927, when eighteen years of age, he was convicted in Massachusetts of grand larceny and sentenced to a reformatory. In 1928 he was convicted in Pennsylvania of robbery and sentenced to serve from twelve to twenty-four years in prison. He was paroled in December 1935 and has not been convicted of any crime since that time.

"In 1942 appellant applied to the then Commissioner of Alcoholic Beverage Control, pursuant to R.S. 33:1-31.2, for an order lifting his statutory disqualification. On March 5, 1942, the Commissioner entered an order removing his statutory disqualification because of the aforesaid convictions. Bulletin 498, Item 7. Thereafter appellant held a liquor license for premises in Secaucus for a period of about one year; a liquor license for premises in Newark from 1947 to 1950, and a liquor license for other premises in Newark from 1953 to 1955. His record as a licensee is clear. During this period he managed numerous boxers and admits that he met numerous boxing managers, some of whom may have had past criminal records. He testified that he was never brought before any Commission for an infraction of the laws pertaining to boxing. He is married and has four children, one of whom was adopted by him and his wife in 1948. Appellant also testified that he has received from a Governor of Pennsylvania a full pardon as to his 1928 conviction. From his evidence as to his activities during the past twenty-five years and the evidence of his character witnesses, I am satisfied that,

despite his poor record in his youth, appellant has completely rehabilitated himself.

"When appellant's application for renewal came before respondent for consideration, one member of the Township Committee disqualified himself and the other four members voted to deny the application. At the hearing held herein each of these four members testified. From their testimony I am satisfied that Committeemen Bauer, Raupp and McMurtrie would not have voted to deny the application merely because of appellant's convictions in 1927 and 1928. They testified that they voted to deny because of the information furnished to them by Committeeman Brumell, which information is hereinafter set forth.

"At the hearing herein Helen M. Bauer, Township Clerk, testified that appellant's application for renewal was considered by the Township Committee at a meeting held on June 16, at which time a motion made by Committeeman Brumell that the application be withheld for further study until June 27 was seconded and carried. The Clerk further testified that at the meeting on June 27 Committeeman Brumell stated that he had received certain confidential information by telephone from Washington, D. C., as a result of which it was his opinion that approval of the application might attract an undesirable element into Randolph Township and that the meeting was then adjourned to June 30 in order that Committeeman Brumell might further his investigation and secure documentary evidence.

"At the hearing herein Committeeman Brumell testified that, during the course of his investigation, he contacted by telephone agents of certain Senatorial Investigating Committees in Washington. He testified that these agents told him that Victor Marsillo was an intimate friend and close associate of notorious gangsters and criminals not only in this area but throughout the country; that they mentioned five names, including 'Anastasia' and 'Moretti'; that they stated that elements involved with the Apalachin group, so-called Mafia, had been moving into New Jersey and that this could possibly be the beginning of an attempt to use Randolph Township as headquarters. Committeeman Brumell further testified that he subsequently obtained a confidential letter from counsel for one of these Committees which states that Victor Marsillo associates with 'all the leading racketeers in boxing'; that he discussed this information with and displayed this letter to the other members of the Township Committee at a caucus held prior to the meeting on June 30, at which the application was denied.

"In his testimony appellant denied that he ever knew Anastasia or Moretti. He admitted that he knew one of the other five mentioned, but denied that he had ever done business with him. He admitted that he knew the other two of the five mentioned and identified them as fight managers, with whom he did business years ago. Of course, there is nothing in the record to indicate that the latter two are gangsters or racketeers. Appellant also denied that any criminals or persons of ill repute were ever on the licensed premises and states that there is no intention to use the hotel as a fight-camp.

"The use, either in criminal cases or cases involving administrative and regulatory actions, of the type of evidence presented by respondent herein is discussed in Greene v. McElroy, 360 U.S. 474; 3 L. ed. 2nd 1377; 79 S. Ct. 1400 (1959). Such evidence was admitted herein for the purpose of ascertaining the reasons which prompted the members of the Township Committee to deny the application. If there were the slightest evidence to support the information received, I would, without any hesitation, recommend an affirmance of respondent's action. An application for a liquor license may be denied when it appears that applicant is an unfit person, even if he has never been convicted of a crime. Sylvester v. South Belmar, Bulletin 38, Item 15; Hodanish v. Trenton, Bulletin 121, Item 6. However, in this case it appears from all the evidence that appellant

has rehabilitated himself during the past twenty-five years; that there is no evidence that he associates with racketeers or gangsters and a complete lack of evidence that he is in any way connected with the Apalachin group or so-called Mafia. The care and attention given to this case by the members of the Township Committee is to be commended but, upon the record presented, I find that their action in denying renewal of the license was unreasonable. For the reasons aforesaid, I recommend that an order be entered reversing respondent's action.

"One other matter must be considered. In his application appellant disclosed his conviction in 1928 but failed to disclose his conviction in 1927. He testified that the application was prepared by another person and that he signed and swore to the application without reading it. However, Chief of Police Okun testified that, during his investigation, applicant disclosed his complete criminal record. Under the circumstances, I conclude that appellant had no intention of misleading the issuing authority and recommend that he be given the opportunity to amend his application by disclosing the additional conviction."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

After examining the testimony and exhibits herein, and considering the briefs filed by the attorneys for appellant and respondent, I concur in the findings and conclusions of the Hearer. In reversing the action of the local Board, I am giving particular consideration to the fact that it originally approved the transfer of this license to the appellant in May 1960 as a result of which appellant no doubt expended a substantial sum in the acquisition of said license from the prior owner as well as other sums of money in his brief operation of the licensed premises.

Had the local Board at the outset refused transfer of the license for the reasons stated when it denied renewal, I would have given greater weight to its decision as the appellant would have remained in status quo had I affirmed its action.

In addition, the fact that appellant held three retail liquor licenses commencing in 1947 and as recently as 1955 without a single suspension for an infraction of the alcoholic beverage rules and regulations should militate in his favor. Should the fears of the local Board be realized and the operation of the licensed premises by appellant becomes detrimental to the best interests of the community, recourse may always be had through proceedings to revoke or suspend the license in question or by refusing to renew the same upon expiration thereof. The appellant is at least entitled to prove that his rehabilitation is complete, that he is a law-abiding citizen and that he will sincerely and conscientiously live up to the rules and regulations (both State and Municipal) governing the operation of his licensed premises. The future is up to him.

Accordingly, it, on this 26th day of October 1960,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to permit appellant to amend his application by disclosing the additional conviction and to renew appellant's license for the 1960-61 licensing period, in accordance with the application heretofore filed, as so amended.

WILLIAM HOWE DAVIS  
DIRECTOR

4. APPELLATE DECISIONS - YOUNG MEN'S AND YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF NEWARK v. NEWARK AND SPRING MANOR, INC.

YOUNG MEN'S AND YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF NEWARK AND VICINITY, )

Appellant, )

v. )

ON APPEAL CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK AND SPRING MANOR, INC., )

Respondents. )

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Victor J. Parsonnet, Esq., Attorney for Appellant.  
Morton M. Poznak, Esq., by Thomas E. Weinstock, Esq., Attorney for Respondent Spring Manor, Inc.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent Board.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board which, by resolution dated February 2, 1960, approved an application for a place-to-place transfer of a plenary retail consumption license held by respondent Spring Manor, Inc., from 57-59 Beacon Street to a building to be erected at 70-74 Jones Street, Newark.

"Appellant, in its petition of appeal, alleges that (1) the location of a tavern in close proximity to its southwest branch will subject children and adults attending appellant's establishment to influences injurious to the character building and moral education values appellant is endeavoring to develop; (2) need for the tavern was not proven and (3) the granting of the transfer was against the weight of the evidence.

"Respondent Board, in its answer, denies appellant's allegations and contends that the grounds upon which it predicated its action was the factual testimony adduced before it, from which, in its sound discretion, it concluded that the transfer should be granted.

"Respondent Spring Manor, Inc. entered a written appearance contending that respondent Board did not err in its decision and that appellant's appeal was taken out of time.

"When the matter came on for hearing on the appeal, respondent Board offered in evidence the transcript of the proceedings before it and further testimony was adduced by appellant and respondent Spring Manor, Inc., the latter offering several exhibits which were received in evidence.

"To understand the issue to be determined herein, a brief chronology respecting the license in question is deemed pertinent. On June 9, 1959 respondent Board denied an application by Spring Manor, Inc. for a place-to-place transfer of its license, which application was identical with that under consideration herein. Spring Manor, Inc. appealed from said denial (Spring Manor, Inc. v. Newark, Bulletin 1319, Item 4) and the Director, having found that no reason was given by respondent for rejecting the application for transfer, concluded that respondent's action was arbitrary and unreasonable and reversed that authority's determination on the

record presented. However, respondent was not directed to transfer the license because the license had expired and, although it was renewed for the old premises for the 1959-60 licensing year, Spring Manor, Inc. had not applied for transfer of the renewed license. Thereafter, Spring Manor, Inc. filed the application for transfer which was granted by respondent Board and is the subject of the appeal herein. Pending the determination of the appeal, the 1959-60 license expired and on June 30, 1960 it was renewed for the sole purpose of permitting the transfer.

"It appears from the facts set forth in Spring Manor, Inc. v. Newark, supra that appellant herein and the Urban League of Essex County had submitted letters to respondent Board objecting to the issuance of Spring Manor's application for transfer of its license on the ground that there are two existing taverns and a package store on the side of Jones Street opposite to that of the proposed site to which Spring Manor, Inc. sought to have its license transferred; that their agencies attracted teen-aged children, hence, there would be danger to the general moral structure of the area and it was urged on behalf of a property owner at 75 Jones Street that there would be an undue concentration of licenses which would affect real estate values in the neighborhood.

"In the cited case, supra, the Director said: 'It may be noted that if the denial of transfer is based upon undue concentration of licenses in the area, it would run counter to the principle that transfer from one location to another in the same area does not constitute undue concentration of licenses. On the other hand, if denied because of the objection of the two social agencies, such denial could possibly rest on firm ground if more fully developed.'

"Having reviewed the transcript of the proceedings on the appeal herein, I find that the objections raised by appellant are essentially the same as those raised before respondent Board when that authority considered the two applications filed by Spring Manor, Inc. The alleged injurious influences to which children and others in the area would be subjected are purely conjectural and there is no evidence to indicate that the officers and shareholders of the corporate-licensee are unfit persons. I find further from the testimony adduced in all the proceedings respecting the transfer of the license in question and from the exhibits in evidence that the site to which the license has been transferred is in a second-class commercial section of the city and is in the same area as the licensee's former premises; that the proposed building will not only enhance the neighborhood but will tend to increase property value therein and that the land adjacent to the proposed building and owned by the licensee will afford ample parking facilities for its patrons.

"While it is true that generally the question of public necessity and convenience is paramount in determining whether a license should be granted for a particular location, the instant case does not involve the issuance of a new license but a place-to-place transfer of an existing license within the same business area. In such cases, it has been held that the mere fact that other licensees also serve the same neighborhood is not a valid reason to deny a place-to-place transfer from one location in a neighborhood to another location in the same neighborhood since no increase in concentration of licenses results from such transfer. Kupay v. Passaic, Bulletin 803, Item 9; Geltzeiler v. Newark, Bulletin 1171, Item 1; Spring Manor, Inc. v. Newark, supra.

"The burden of proof to establish that the action of

respondent Board was erroneous rests with appellant. Rule 6 of State Regulation No. 15. The evidence presented in the instant case does not indicate any improper motivation on the part of the members of respondent Board and their grant of the transfer appears to be a reasonable exercise of their discretion. I conclude, therefore, that appellant has failed to sustain the burden of proof resting upon it and I recommend that an order be entered affirming the action of respondent Board and dismissing the appeal and directing respondent Board to issue the license to Spring Manor, Inc. if and when the building is completed in compliance with the plans and specifications heretofore filed with respondent Board. In view of the aforesaid, it is deemed unnecessary to pass upon the jurisdictional question raised by respondent Spring Manor, Inc."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the transcripts, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 26th day of October 1960,

ORDERED that the action of respondent Board be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed. Respondent Board is directed to issue the license to respondent Spring Manor, Inc., if and when the building is completed in accordance with the plans and specifications filed with said Board.

WILLIAM HOWE DAVIS  
DIRECTOR

5. APPELLATE DECISIONS - CATTS v. LOWER PENNS NECK.

Case #2 )  
SARAH J. CATTS AND NORMAN D. CATTS, )  
t/a "GALA INN", )

Appellants, )

ON APPEAL  
ORDER

v. )

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF LOWER PENNS NECK, )

Respondent

-----  
Harper & Telsey, Esqs., by David C. Harper, Esq., Attorneys for Appellants.

J. Bernard Rogovoy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The above appeal was taken from the action of respondent whereby it denied an application for the transfer of appellants' License C-7 from 39-41 Main Street to 402 Hook Road, Pennsville, Township of Lower Penns Neck.

Prior to the hearing, a stipulation of dismissal, signed by the attorneys for the respective parties, was filed with me. No reason appearing to the contrary,

It is, on this 27th day of October 1960,

ORDERED that the above appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

6. APPELLATE DECISIONS - LANG v. CLIFTON.

PAULA LANG,	)	
	)	
Appellant	)	
	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF CLIFTON,	)	
	)	
Respondent	)	

-----  
 Joseph P. Winberry, Esq., Attorney for Appellant.  
 Edward F. Johnson, Esq., by Manfred Triebel, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on June 27, 1960 whereby it unanimously denied an application for the renewal for the 1960-61 licensing year of a plenary retail consumption license formerly held by Erwin Lang, deceased. The premises in question are located at 541 River Road, Clifton, N. J.

"The petition of appeal is limited to an appeal from the refusal of an application to grant a plenary retail consumption license to Paula Lang for the 1960-61 licensing year for the premises in question. The actual history of the 1959-60 license for the premises is that Erwin Lang died August 1, 1959 while the holder of such license; that physical possession of the premises was taken for state use by a state agency of New Jersey on or about September 3, 1959; that this license was extended on September 28, 1959 pursuant to law to Joseph P. Winberry, executor of the estate of Erwin Lang; that the entire building housing the licensed premises was demolished by the State agency on October 3, 1959; that on June 15, 1960 three applications were filed with respondent, one for a person-to-person transfer from Joseph P. Winberry as executor of Erwin Lang to Paula Lang for the balance of the 1959-60 licensing year, the other a place-to-place transfer to a proposed building on the same premises for the same period, and the third an application for renewal of such transferred license. On these three applications, in completing the 'affidavit by individual applicant' as provided for in such application, the name of Paula Lang is typed as the name of the affiant and in the place for signature, underneath which the name of Joseph P. Winberry is signed and underneath the signature is typed 'Joseph P. Winberry, attorney for Paula Lang' and a notary public has signed this purported affidavit of Paula Lang.

"The resolution of denial adopted by respondent on June 27, 1960 reads:

'RESOLVED that the applications for a person to person transfer of PRC -18 from Joseph P. Winberry, Executor of the Estate of Erwin Lang, deceased, to Paula Lang, and place-to-place transfer PRC -18 from

Paula Lang from 541 River Road to premises to be constructed at 541 River Road, and renewal of PRC -18 for the year 1960-61, be and the same are hereby denied for the following reasons:

1. The applications for place to place transfer and the 1960-61 renewal applications have not been executed by the proper party, and
2. The place to place transfer is incomplete in that no approved plans and specifications are on file with the Board of Alcoholic Beverage Control.'

"The grounds of appeal set forth in the petition are as follows:

- '(a) The applications for the place to place transfer and the renewal were executed by Joseph P. Winberry, as attorney for Paula Lang, since she still is visiting Germany. There is no specific prohibition against an attorney acting for a party in the making of an application; and
- '(b) Plans and specifications for the place to place transfer could not be submitted due to a hardship, viz., Mrs. Lang went to Germany for a visit on December 23, 1959 and became ill there, and has been unable to return. Her expected return date is now July 18th, doctor permitting.
- '(c) This is not a strict case where a place to place transfer is required. The original license was issued for 541 River Road; the State of New Jersey took over one-half of the premises and tore down the building thereon; there still remains sufficient property upon which to erect a building and continue the business on the same premises, hence, there is no need for a place to place transfer.
- '(d) Appellant requested a ninety-(90) day extension within which to file plans and specifications on a hardship basis because of the illness and absence of Mrs. Lang. Same was denied and appellant feels that the denial thereof was arbitrary and capricious.'

"The requirement that an application for a license must be signed and sworn to by the applicant in person is statutory. R.S. 33:1-25. The pertinent part of such statute reads:

'All applications shall be duly sworn to by each of the applicants, except in the case of applicants in the military service of the United States whose applications may be signed in their behalf by an attorney-in-fact holding a power of attorney in form approved by the commissioner, and except in cases of applications by corporations which shall be duly sworn to by the president or vice-president. All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts

in the securing of a license are grounds for suspension or revocation of the license.'

"A similar provision (R.S. 33:1-26) specifically governing application for the transfer of a license reads:

'\*\*\*which application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to such transfer,\*\*\*'

"This statute leaves no room for construction in this regard. Re Newman, Bulletin 555, Item 7; Newark Tavern Association, Inc. v. Newark and Subalpina Mutual Aid Society of Newark, Bulletin 874, Item 5.

"It appears that the building for which the license was originally issued has been completely demolished. The requirement of filing, with the application, plans and specifications for a new building at 541 River Road and inserting notice thereof in advertising such notice of application (Rules 1 and 2 of State Regulation No. 2; Rules 2 and 4 of State Regulation No. 6) is to enable the local issuing authority and any other person interested therein to determine if such proposed building will be sufficient and satisfactory. Passarella v. Atlantic City and Venafro, Bulletin 818, Item 1.

"Failure to file such plans and specifications with the application and to insert notice that they have been filed when advertising the notice of application, in a case where the building is not yet constructed, deprives the local issuing authority of jurisdiction to act upon the application. Woodbridge Twp. Liquor Dealers, Inc. & Starrick v. Woodbridge and Chicken Barn, Inc., Bulletin 1315, Item 2; Memorial Presbyterian Church v. Vineland and Lee Taylor's, Inc., and Mendini and Tubertini v. Vineland and Lee Taylor's Inc., Bulletin 1346, Item 2.

"For the reasons above expressed these two requirements are not technical but, on the contrary, are fundamental to the vesting of jurisdiction in a local issuing authority to consider an application and cannot be waived. It is, therefore, recommended that an order be entered affirming the action of the respondent and dismissing the appeal."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations, except that I believe that the appeal should be retained until my further order, rather than presently dismissed, in order to afford the executor of the deceased licensee substantial justice.

It appears that at the expiration of the 1959-1960 license such executor was the holder of such license, although the licensed building had been demolished. So far as appears, there was no objection to the continuance of such license; the defects in the application for person-to-person and place-to-place transfers and for renewal while jurisdictional, were procedural and incorrect due to misconception of the licensee or her attorney as to proper procedure. This may be corrected by amendment of the place-to-place and renewal applications.

I shall therefore remand the matter to the respondent to enable it to consider and act upon amended application to transfer the 1959-1960 license from place to place, nunc pro tunc, as of June 30, 1960, if Joseph P. Winberry, as Executor of the Estate of Erwin Lang, amends such application to read as his application, as Executor, with a further amendment by reciting that tentative plans and specifications of the proposed building have been filed, with the notation that it is not possible for him to file more specific plans and specifications for reasons beyond his control, and that revised plans will be filed when circumstances permit, and notices of intention, so worded and corrected, are readvertised in proper form. The respondent may then, in the exercise of its discretion, grant or deny such application.

Contemporaneous with the above amendments and corrections of the application, the executor may amend the application to renew the license for the 1960-1961 licensing year in similar manner, and readvertise his notices of intention as above, and if respondent first grants the place-to-place transfer, it may grant, subject to a completion-of-premises special condition, or deny such renewal application, in its discretion.

Accordingly, it is, on this 31st day of October, 1960,

ORDERED that the matter be and the same is hereby remanded to respondent Municipal Board of Alcoholic Beverage Control of the City of Clifton to consider the merits of the applications for place-to-place transfer and renewal of the license as heretofore referred to, if amended, and proper notices of such amended application are published, in accordance with the opinion herein, reserving the disposition of the appeal until the further order of the Director.

  
William Howe Davis  
Director