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

BULLETIN 2250

April 4, 1977

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1. APPELLATE DECISIONS - GIORDANO v. JERSEY CITY.

Joseph Giordano, t/a Joey G's Lounge, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent.	On Appeal CONCLUSIONS AND ORDER

Joseph Giordano, Appellant, Pro se
Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which, on February 24, 1976 suspended appellant's Plenary Retail Consumption License C-173, for premises 390 Summit Avenue, Jersey City, for ten days, following a finding that appellant violated Rule 16 of State Regulation No. 20, in that he did not have a completed E-141 form. The effective date of the suspension, March 15, 1976, was stayed by Order of the Director of this Division, dated March 12, 1976, pending the determination of this appeal.

The Petition of Appeal filed by appellant discloses as its purpose that "The entire substance and purpose of this appeal is to petition for leniency in the imposition of the proposed fine in this matter...." In its Answer, the Board responded that its determination was the natural following of the entry of a non vult plea by appellant, and that it did not possess power or authority to levy a fine.

As there was no justiciable issue presented; all facts surrounding the appeal were uncontroverted, no testimony was received nor evidence presented.

The Division file respecting this appellant reveals only that appellant's license was suspended for ten days by the

respondent Board on a finding of guilty to a charge alleging that the appellant permitted unauthorized persons within the premises after permitted hours, in violation of the local ordinance. The ten-day suspension did not become effective, however, as the Director of this Division permitted appellant to pay a fine in lieu thereof.

As the above offense occurred about three months prior to the present offense, the Board added five days to its penalty by reason of the dissimilar offense occurring within five years. A remission of five days on such penalty was allowed by the Board resulting from appellant's plea of non vult, to the charge.

It is recommended that the action of the Board be affirmed and the appeal be dismissed.

It is further recommended that the Director approve appellant's application for the payment of a monetary fine in lieu of the suspension of ten days imposed by the Board, also which monetary fine take into consideration the dissimilar offense occurring within the prior three months.

Conclusions and Order

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

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

Accordingly, it is, on this 10th day of December 1976,

ORDERED that Plenary Retail Consumption License C-173, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph Giordano, t/a Joey G's Lounge for premise 390 Summit Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. on Monday, January 3, 1977 and terminating at 2:00 a.m. on Thursday, January 13, 1977.

Joseph H. Lerner
Director

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against

333 Club, Inc.
t/a 333 Club
533 Shaler Boulevard
Ridgefield, N.J.

Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Ridgefield.

CONCLUSIONS AND ORDER

Samuel R. De Luca, Esq., by Joseph W. Gallagher, Esq., Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded "not guilty" to the following charges:

"1. On or about, during and between, April 12, 1975 and May 31, 1975, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 6 of State Regulation No. 20.

2. On May 31, 1975, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises slips, tickets, books, records, documents, memorandum and other writing pertaining to unlawful gambling; in violation of Rule 7 of State Regulation No. 20."

On May 1, 1975, an order was signed by the Assignment Judge of the Superior Court of New Jersey, County of Bergen, permitting the interception of wire communications (commonly known as a wire tap) from telephone facilities (two lines) installed at licensee's licensed premises pursuant to the New Jersey Wiretapping and Electronic Surveillance Control Act. The order was granted to obtain evidence concerning illegal bookmaking and lottery activities alleged to be taking place.

Kenneth Nass, a technician investigator employed by the Bergen County Prosecutor's Office testified that he was the person assigned to install the electronic devices used to intercept all

telephonic communications into and out of the subject corporate licensee's two telephone lines -- one public, the other private.

Jay Berman, another investigator on the Bergen County Prosecutor's staff testified that he visited subject licensee's premises on a number of occasions, commencing April 12, 1975 for the purpose of observing possible illegal activities conducted. His findings later became the basis for the wiretap orders, subsequent indictments, and the charges preferred in this Division.

He described, in detail, conversations, phone calls made and received, money being passed, open discussion relative to bets and sporting events upon which the wagers were made, and in general, those activities which became the grounds upon which the Bergen County Prosecutor obtained the Court Orders permitting the wiretaps.

While the wiretaps were operating, Berman continued to maintain his surveillance, observing and noting who used the phones, and the times the calls were placed or received, to coordinate with the wiretap recordings being made. As the tape was played during the hearing, Berman described what he observed at the licensed premises, while the conversations were unfolding.

The gist of the tape recordings was the placing of numbers (lottery) and horse race bets by persons using code numbers in lieu of names, and identified by Berman as Anthony Cirillo, a fifty percent stockholder of the licensee, and Mickey Lukach, a person who frequented the establishment, and appeared to have a "free run" of the premises.

Berman participated in the execution of search and arrest warrants issued for the aforementioned two persons on May 31, 1975. He identified the slips that his search of Mickey Lukach revealed, and which were entered in evidence. He also searched Lukach's vehicle and seized other documents which were admitted into evidence.

Andrew G. Troy, another investigator attached to the Bergen County prosecutor's office, testified that he also participated in the raid, and found one of the pieces of paper upon which bets were recorded, and which was admitted into evidence.

William G. Thorne, another investigator described his role in the execution of the search and arrest warrants. He placed Anthony Cirillo under arrest and searched his person. Thorne described two slips of paper he recovered from Cirillo's pants pocket. He also searched Cirillo's automobile and obtained evidence therefrom which was described and entered into evidence. Other evidence was recovered from a garbage can in the kitchen area.

ABC Agent D'A who had twelve years experience in undercover work involving about 150 gambling investigations, as

well as a substantial educational background in cases relating to gambling procedures, identified the slips as betting slips, and explained the methods of numbers lottery. He also reviewed every conversation on the tapes relative to gambling and explained the significance of each, further stating that these conversations were, as alleged, gambling information being transmitted by phone.

The licensee did not produce any witnesses, in defense of the charges. He argued that the wiretap was illegal for the reason that the application was procedurally defective. I find this argument to be specious. An administrative proceeding is not the proper forum in which to raise procedural questions concerning a Superior Court matter as their findings are presumed valid on their face. The authority to review is vested only in a court of competent jurisdiction. Blanck v. Magnolia, 73 N.J. Super. 306 (App. Div. 1962) reversed on other grounds, 38 N.J. 484 (1962); Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940).

It is basic that, in adjudicating disciplinary matters, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had the opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony and the evidence herein.

I am persuaded that the testimony of Investigator Berman relative to his observations relating to illegal gambling activities engaged in by corporate licensee's major stockholder, Cirillo, any by, Lukach, is factual, clear and credible. Also the testimony of Agent D'A in interpreting the meaning of the seized documents and tape recorded telephonic conversations left no doubt that the premises were being used as a base for commercialized gambling in violation of the quoted rules.

It it well-established that, in disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by its agents, servants or employees. Rule 33 of State

Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Accordingly, after a careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, I conclude and find that the Division has established the truth of the charges and recommend that it be adjudged guilty thereof.

Licensee has no prior chargeable record, I therefore, recommend that the license be suspended for one-hundred twenty (120) days.

Conclusions and Order

No Exceptions to the Hearer's report were filed within the time limited by Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 10th day of December 1976,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Ridgefield to 333 Club, Inc. t/a 333 Club for premises 533 Shaler Boulevard, Ridgefield, be and the same is hereby suspended for one-hundred twenty (120) days, commencing at 3:00 a.m. Monday, January 3, 1977 and terminating at 3:00 a.m. on Tuesday, May 3, 1977.

Joseph H. Lerner
Director

3. APPELLATE DECISIONS - EMERSONS, LTD. OF CINNAMINSON, INC. v. CINNAMINSON.

Emersons, Ltd. of Cinnaminson, Inc., t/a Emersons, Ltd., Appellant,	:	On Appeal
v.	:	
Township Committee of the Township of Cinnaminson, Acting as the Municipal Board of Alcoholic Beverage Control, Respondent.	:	CONCLUSIONS and ORDER

Maurer & Maurer, Esqs., by Barry D. Maurer, Esq., Attorneys for Appellant
Farrell, Eynon, Madden & Lundgren, Esqs., by William L. Lundgren, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of the Township Committee of the Township of Cinnaminson (hereinafter Committee) which returned appellant's application and fee for license renewal for the 1976-77 licensing period, for the stated reason that the license was forfeited and it would not consider the application. No hearing was held relative to the said application.

A de novo hearing was granted appellant pursuant to Rule 6 of State Regulation No. 15, at which the parties were afforded the opportunity to present evidence pursuant thereto and cross examine witnesses. The parties chose to submit an agreed set of facts and documents to substantiate statements made, and their respective contentions. Rule 8 of State Regulation No. 15.

The appellant acquired the premises through the purchase of all the assets, real and personal, of the prior owners for $415,000.00 on or about December 13, 1972. Extensive alterations were made immediately; and barely two weeks after reopening under "Emersons" management, it suffered a major fire on February 13, 1973, which totally destroyed the premises.

The insurance carrier refused to settle the loss, and litigation was instituted in Federal Court. Eventually, the U.S. Court of Appeals affirmed the lower Court decision in favor of Emersons, who realized less the $150,000.00 exclusive of costs and legal fees, this past year.

Subsequent to the fire, appellant attempted, unsuccessfully, to raise the money necessary to rebuild. The mortgage market was practically non-existant at that time, and it could not raise the necessary monies.

Ultimately, it became apparent that appellant could not be successful and the site would have to be sold if any part of it's investment was to be recouped. A buyer was found, and a conditional contract of sale was entered into, one of the conditions being that Emersons would obtain a license for the current year. The sales price is $250,000.00.

In June 1973 the Committee refused to issue a license for the year 1973-74 because no premises existed. An appeal was taken to this Division; and, as a result, the matter was settled and the appeal dismissed. Pursuant to the terms of settlement, the Committee passed a resolution in June 1974 stating that a 1973-74 license would be issued nunc pro tunc; but would be held by the Township Clerk, and, that, upon payment of the appropriate fees and filing of the application, a license would be issued for the 1974-75 license period.

There was a sporadic correspondence between the parties in 1975 and 1976. On December 4, 1975 the Township Committee met with Emersons management and their attorneys. On June 15th,1976 Emersons entered into a conditional contract of sale, and the buyers together with their lawyer met with the Committee on June 23rd,1976. They presented sketches and plans for proposed rebuilding of the licensed premises. They also submitted a copy of the aforementioned conditional contract. At no time during this meeting did anyone suggest that the license had been deemed by the Committee to have been forfeited.

The Committee contends that, based upon appellant's representations that it intended to rebuild, it thereupon renewed the license during this period. It felt that the posting of a "For Sale" sign was a breach of this understanding. It was motivated by its desire to have a functioning licensee who would provide a fair share of taxes, it felt that promises made in the past by Emersons were not fulfilled.

Appellant Corporate licensee contends that, had it received a prompt and reasonable insurance settlement, it would have been able to rebuild. When it became apparent that this would be a protracted matter, it turned to the mortgage market which, regretfully, had all but ceased to function, precluding its only other source of capital. It pursued this endeavor in a proper business-like manner; however, it was unsuccessful for reasons that were unforseeable initially and also beyond its ability to control. Nothing that it did, or failed to do, would give rise to an inference of non-user or abandonment.

Initially it should be noted that the decision whether or not a license should be issued rests within the sound discretion of the local issuing authority in the first instance. Blanck v. Magnolia, 38 N.J. 484; Fiory v. Ridgewood, Bulletin 1932, Item 1 (and cases cited therein).

It has long been held that a liquor license is merely a privilege and no one is entitled thereto as a matter of right. Paul v. Gloucester County, 50 N.J.L. 585 (1888). However, an owner of a license or privilege acquires through his investment an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App.Div.1955). Hence,where a license has been renewed for prior licensing period, a refusal to renew thereafter must be founded upon valid and substantial grounds supported by the weight of the evidence. R.B&W. Corporation v. North Caldwell, Bulletin 1921, Item 1.

The application of fairness has long been a hallmark in the administration of this Division.

> "As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with 'fair recognition of the fact that justice to the litigant is always the polestar'." Berelman v. Camden, Bulletin 1940, Item 1. Cf. Barbire v. Wry 75 N.J. Super. 327 (App.Div.1962). Martindell v. Martindell, 21 N.J. 341 at 349 (1956).

Generally, mere non-use will not, of itself, void a license. However, a municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period unless convincing evidence in explanation and justification of non-user is adduced. Re Hudson-Bergen Package Stores Assoc. v. Garfield et al. Bulletin 1976, Item 3.

> "To accomplish abandonment, the facts or circumstances must clearly indicate such an intention. Abandonment is a question of intention. Non-user is a fact in determining it, but is not, even for twenty years, conclusive evidence in itself of an abandonment. Raritan Water Power Co. v. Veghte, et al., 21 N.J. Eq. 463 (1969) at p.480."

Further:

> "Since abandonment bespeaks a voluntary relinquishment and involves the element of intention, mere non-user, though a fact to be considered, is not of itself adequate to sustain such a finding." River Development v. Liberty Corp., 29 N.J. 239 (1959) at p.241."

It is clear that the facts elicited in the instant matter indicate an intention on the part of appellant to continue the existence of the license in question.

I have examined all of the correspondence submitted and find nothing whatsoever to indicate, as Committee claims, that the Committee had set and advised appellant certain deadlines relative to the commencement of reconstruction. If this were the case, it would be reasonable to expect the circumstance would have been discussed with the proposed purchasers and their lawyer at the June 23, 1976 meeting, held for the specific purpose of acquainting the Township officials of the imminent sale and plans for reconstruction.

If, as stated, the Committee's main concern was to replace a valuable tax ratable as soon as possible, this fact should have been communicated, in writing, to the appellant, coupled with special conditions attached to the issuance of the last license approved by it.

Upon considering the totality of the evidence and the precedents cited, it is in my view, that it would be in the public interest to permit appellant (or its transferee) opportunity of crystalizing its efforts to create the locus of its license within the conditions as hereinbelow set

forth. Cf. Stockton Hotel Operating Co., Inc., v. Sea Girt, Bulletin 1709, Item 1; Clover Leaf Cafe, Inc. v. Glocester, Bulletin 2062, Item 1, Cooke v. Hope, Bulletin 2096 Item 3.

It is, therefore, recommended that an order be entered reversing the action of the Committee and directing it to grant the application of appellant for renewal of the said license, nunc pro tunc but the license shall not actually be issued to appellant until and unless the following conditions are met:

(a) that the appellant (or its transferee) apply for and obtain necessary municipal site plan approval for use of subject property for license purposes:

(b) the business to be conducted under the license shall be in full operation by and before the expiration of current license or such further extension thereof as may be granted;

(c) upon compliance with the above conditions and of all statutory requirements, the said license shall be endorsed and delivered to appellant;

(d) if municipal approval for use of site is not granted, or if the building construction has not been completed, and the licensed premises is not in full operation within the time set forth herein, or any extension of time thereof which may be granted by the Committee or the Director of the Division, the license shall be cancelled.

Conclusion and Order

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

Having carefully considered the entire matter herein including the transcript of the testimony and the Hearer's Report I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein, except that I shall set the time within which the business to be conducted under the license must be in full operation, as ninety-days from the date of this order or any extension thereof that may be granted by the Committee or the Director of the Division.

Accordingly, it is on this 13th day of December 1976,

ORDERED that the respondent Council's action be and the same is hereby reversed; and it is further

ORDERED that the Council is hereby directed to grant appellant's application for renewal of its license, nunc pro tunc but the license shall not actually be issued to appellant until and unless the following conditions are met:

(a) that the appellant (or its transferee) apply for and obtain necessary municipal site plan approval for use of subject property for license purposes;

(b) the business to be conducted under the license shall be in full operation by and before ninety days from the date of this order or an extension thereof as may be granted;

(c) upon compliance with the above conditions and of all statutory requirements, the said license shall be endorsed and delivered to appellant;

(d) if municipal approval for use of site is not granted, or if the building construction has not been completed, and the licensed premises is not in full operation within the time set forth herein, or any extension of time thereof which may be granted by the Committee or the Director of the Division, the license shall be cancelled.

JOSEPH H. LERNER
DIRECTOR

4. APPELLATE DECISIONS - MICHIDA CORPORATION v. JACKSON.

Michida Corporation, Appellant, v. Township Committee of the Township of Jackson, Respondent.	On Appeal CONCLUSIONS AND ORDER

Morgan, Melhuish, Monaghan and Spielvogel, Esqs., by Elliot Abrutyn, Esq., Attorneys for Appellant
Joseph F. Martone, Esq., Attorney for Respondent
Bathgate and Wegener, Esqs., by Lawrence E. Bathgate II, Esq., Attorneys for Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Township Committee of the Township of Jackson (hereinafter Committee) which, on July 13, 1976, denied appellant's application for a place-to-place transfer of its Plenary Retail Consumption License C-1, from a location on New Egypt Road to a situs at Lot 34, Block 120, Jackson Township.

Appellant contends that the conclusion reached by the Committee was contrary to the evidence before it, and that it arrived at its findings without competent evidence. The Committee denies these contentions and averrs that, in its judgment, as articulated in its Resolution, there were sufficient reasons for denial of appellant's application.

The Committee determined, in its Resolution, that the public good would not be best served by permitting the transfer, because the proposed situs is too near a church-school and would be in an existing bowling alley frequented by juveniles. In addition, there would be insufficient parking and the present zoning ordinance would be violated. In short, the appellant had not satisfied the Committee that an additional alcoholic beverage license was needed in that area of the community and on its most heavily commercially developed street.

Another ground for rejection of transfer by Committee was a section of the Township Code which prohibits transfers of "retail distribution licenses" within two miles of a "retail consumption license"; (Section 37-2). Appellant rightfully contends that the Committee improperly applied this section of its Code in that reference therein is to retail "distribution" licenses and the subject transfer was to a retail "consumption" license.

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

One of the two owners of the corporate stock of appellant corporation, Michael Caiafa, testified that the present license situs is at a tavern with limited patronage in a completely rural portion of the township. He purchased the business in March of 1976, and, thereafter, had the opportunity to move the license to the local bowling lanes in which he could construct a cocktail lounge.

The owner of the bowling alley, Bruno Tropeano, affirmed that he had arranged to permit Caiafa to lease a portion of his building for a cocktail lounge. He believed that such addition would be for the benefit of the patronage of his alleys who are, for the most part, local residents. He will have adequate parking in a fenced-in area. The church-school referred to in the Committee's resolution is about 1,500 feet from the proposed cocktail lounge. Most of the children attending the said school are driven there by bus, hence none would be passing the proposed licensed premises.

A professional Traffic-Engineer, Robert Nelson, testified that the creation of a cocktail lounge within the bowling alley structure would not alter the existing traffic flow to and from the bowling alley. He conjectured that the inclusion of a cocktail lounge would undoubtedly spread the departure and arrival concentration toward a more even flow.

The local Zoning Officer, Donald C. Strout, testified that the subject bowling alley is located in a B-2 zone and, that a cocktail lounge is not permitted in a B-2 zone; only in a B-3 zone. In short, a variance would be required by the Board of Adjustment for the cocktail lounge to be located in the bowling alley.

In its argument in support of this appeal, appellant vigorously confronts each of the reasons advanced by the Committee in its resolution. Firstly, as hereinabove indicated, it called attention to the inapplicability of Section 37-2 of the Code. Secondly, it challenged the reference to the local zoning ordinance

restriction, citing Lubliner v. Paterson, 33 N.J. 428 (1960) and Englewood v. Lacqua, 92 N.J. Super. (App. Div. 1966) as its authority for the challenge. Thirdly, it urges application of the premise that the Committee, once it accepted the traffic engineer as an "expert", was bound by that expert's opinion; hence, the Committee should not have concluded that there would be a negative traffic impact if the transfer was granted. Fourthly, its finding that a church-school was not "nearby" because the distance between them was in excess of 1,500 feet, was in error.

The Committee, in oral summation of counsel, reiterated its position enunciated in its resolution, that in its belief the subject transfer would not be in the best interest of the public.

Initially, it is observed that there is no inherent or automatic right to transfer of an alcoholic beverage license. The issuance of a retail liquor license, in the first instance, rests within the sound discretion of the local issuing authority; and, in an absence of abuse of such discretion, the action of the authority should not be disturbed by the Director of this Division. Hudson-Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502 (1947). The action of the Committee may not be reversed in the absence of manifest mistake or other abuse of discretion. Florence Methodist Church v. Florence, 38 N.J. Super 85 (App. Div. 1965).

However, when the municipal action is unreasonable or improperly grounded, the Director may grant such relief or take such action as is appropriate. Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965).

Where a municipal issuing authority determines to reject a site of a transfer application to an area which the municipality wishes to be free from liquor establishments, its determination will not be altered on appeal by the Director, following his settled practice not to substitute his opinion for that of the municipal board. Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44 (1975).

The burden of establishing that the action of the Committee was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, Bulletin 1981, Item 1; Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (1949).

Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director who may reverse its action in the event of any abuse thereof.

However, action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, supra; Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970) in which it was held, at p. 303, "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action".

It is apparent that the Committee made its determination not to approve the transfer principally because it did not consider the proposed location served the public interest. It listed several reasons to buttress its belief, some of which reasons in and by themselves had little if any merit.

However, as above indicated, the principal basis for its action was apparent. It did not consider a cocktail lounge in the local bowling alley a beneficial location for the license; that, in its view, such location, in consideration of all aspects, would not benefit the public. Absent improper motives which is not alleged here, such conclusion should not be disturbed. The controlling principle herein is that the Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority. Fanwood v. Rocco, supra.

I conclude that the appellant has failed to sustain the burden imposed upon it under Rule 6 of State Regulation No.15 of establishing that the action of the Committee was erroneous and should be reversed.

It is, therefore recommended that an Order be entered affirming the action of the Committee and dismissing the appeal. Brick Church Pub v. East Orange, Bulletin 2232, Item 4.

Conclusions and Order

Written Exceptions to the Hearer's report with supportive argument, were filed by the appellant, pursuant to Rule 14 of State Regulation No. 15.

Appellant contends that, in view of the Hearer's finding that the Committee inaccurately applied its local distance Ordinance which relates only to "distribution" licenses and not to "consumption" licenses, the Committee's action was arbitrary. Appellant's contention lacks merit.

From my examination and analysis of the record, I find that there is ample evidence to support the Committee's determination. Applying the doctrine of Fanwood v. Rocco, Supra, I find that there is sufficient basis for the Committee

to have determined that a license in the area of the proposed transfer would be contrary to the public interest.

The Hearer gave great weight to the concern of the Committee to the presence of juveniles within the bowling-alley structure into which the appellant desired to transfer the licensed premises, and that their presence would not be beneficial to the Community. The Committee's concern deserves merit, not censure. For this reason alone, the Committee, in the lawful exercise of its circumspect discretion, was justified in denying the transfer. Cf. Lyons Farms Tavern, Inc. v. Newark, Supra.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the Exceptions thereto filed on behalf of the appellant, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of December 1976,

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

Joseph H. Lerner
Director