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 2307 January 4, 1979

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1. APPELLATE DECISIONS - FERRY GLASS BAR, INC. v. NEWARK.

Ferry Glass Bar, Inc. t/a Portugal Glass Bar, Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	ORDER

Irvin L. Solondz, Esq., Attorney for Appellant.
Salvatore Perillo, Esq., by Robert B. Tolins, 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 Newark (Board) which, on November 11, 1977, suspended appellant's Plenary Retail Consumption License C-365, for premises 238 Ferry Street, Newark, New Jersey for fifteen (15) days, effective January 2, 1978, following a finding of guilt to a charge alleging that, on May 3, 1977, appellant failed to facilitate, hindered and delayed in investigation, inspection and examination at its licensed premises being conducted by police officers of the City of Newark; in violation of N.J.S.A. 33:1-35.

Upon the filing of the appeal, the suspension was stayed by Order of the Director, entered on December 30, 1977, pending determination of this appeal.

Appellant alleges that the action of the Board was erroneous for the following stated reasons:

(1) Factually, there was no violation of the statute and the finding by the Board was erroneous;

(2) The Petitioner had been previously found "not guilty" of the same offense in criminal and/or quasi-criminal hearings arising out of the same evidence utilized at the local A.B.C. hearing;

(3) The Board failed to permit Petitioner to present constitutional and legal argument at the hearing held before it;

(4) The Board failed to permit cross-examination of witnesses and presentation of admisable evidence, so as to deny a fair hearing on the disciplinary proceedings before it;

(5) The Board acted in an arbitrary and capricious manner in holding the hearing and in making its determination;

(6) The Board failed to make proper findings of facts or conclusion upon which a suspension order could be issued;

(7) The Chairman of the Board was the victim of an alleged assault and battery by the local elected officials on the night of the hearing, and was unable to sit as a fair and impartial hearer.

(8) The conclusion of the Board was against the weight of the evidence.

(9) The Board imposed a harsh and excessive penalty in light of the licensee's unblemished record.

The Board, in its answer, denies the substantive allegations of the petition and alleges that its action was based upon sufficient facts and the lawful exercise of its powers.

The matter was heard de novo in this Division, pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony under oath and cross-examine witnesses. Additionally, the Board submitted the stenographic transcript of the proceedings held before it, pursuant to Rule 8 of State Regulation No. 15.

The transcript of the hearing before the Board reflects that Officer George Litwyn of the Newark Police Department testified in support of the charges. On May 3, 1977, he was on duty in a police radio car driven by Officer Peter J. Leone. They were summoned to answer a call that there was a fight in progress on Ferry Street, in the vicinity of appellant's licensed premises. Upon arriving at the scene, he observed "a large fight in the street." He estimated that there were approximately fifty (50) perxons in the immediate area. As he exited the radio car (dressed in police uniform) and was about to approach the group, he observed one of the participants in the fight run into the appellant's tavern. He was about to enter the tavern in pursuit of the individual who was fleeing, when a male, identified as Anthony DeMoura, impeded the officer's entrance. DeMoura is the husband of the sole stock-

holder of corporate appellant and tended bar part-time at the premises. The officer asserted that DeMoura told him he had no right to enter the premises, and to "stay the hell out of his tavern." At that time, Officer Leone informed Litwyn that the individual he was looking for had departed from the tavern. Officer Litwyn then returned to the area where the fight had taken place, in order to complete his assignment.

Upon completion of his street assignment, Officer Litwyn reentered the tavern and observed Officer Leone and DeMoura engaging in a conversation relative to the liquor license. DeMoura refused to show the license to either officer and told them to "get the hell out of his tavern." DeMoura told them that they had no right to be in the tavern and he didn't care that they were police officers.

At this point, their superior officers were notified. Sergeant DeGori responded with Officer Moore and asked to see the liquor license. Upon DeMoura's refusal, he was placed under arrest. After being placed under arrest, DeMoura was again asked for the license. He told the officers to get it themselves.

On cross-examination, the witness testified that he did not know the origination of the call to quell the disturbance. There was no complaint of any problems in the tavern.

In order to gain entrance into the tavern, Officer Litwyn found it necessary to push DeMoura aside. He did not knock him down.

The testimony proceeded as follows:

> Q. He (DeMoura) told you physically he couldn't reach up to get it?
>
> A. He never said that to me. Never, when I was in the place, did the man tell me he could not reach the license. He told me to get the hell out of his tavern. He told me to stay out and if I wanted it to get it myself.
>
> Q. Didn't he tell you he couldn't get it, it's right there, you can get it yourself?
>
> A. No, he didn't tell me that. Not one time while I was there did he ever say that to me or to my partner or to the Sergeant.

Police Officer Peter J. Leone, who accompanied Officer Litwyn to the scene of the aforementioned street disturbance,

testified that, after making an investigation of the incident on the street, he then observed Officer Litwyn "just inside the doorway" of the tavern. DeMoura was trying to block his entrance. Leone then informed Litwyn that the male he was seeking (identified as Anthony Lombadosi) had left the tavern.

Both police officers then proceeded to complete their investigation of the disturbance in the street. Upon completion of the investigation, Officer Leone informed DeMoura that he wanted to see the license. DeMoura, on several occasions, told Leone that he was not going to show him the license, told him to get out and that he had no authority in the barroom. Leone was dressed in a policeman's uniform. Leone called in for a superior officer and in response thereto, Sergeant DeGori, accompanied by Officer Moore, entered appellant's premises.

Continuing, Officer Leone testified as follows:

> I advised the Sergeant what had occurred. I advised him I asked the licensee for the license on several occasions and he would not show it to me and he told me to get out. At this time, Sergeant DeGori asked the man for the license and he told Sergeant DeGori to get out, also.

The license was obtained from behind the bar by Officer Moore.

On cross-examination, Officer Leone testified that, as he was leaving the tavern with Officer Litwyn on the first occasion in order to resume the investigation of the street disturbance, DeMoura told the officers "to stay the hell out."

In defense of the charge, Anthony DeMoura testified that, having witnessed a fight in progress in front of the building wherein the tavern is located, which attracted fifty or sixty onlookers, he called the police department.

DeMoura explained that in response to the call, Officer Leone entered the barroom while he (DeMoura) was behind the bar. He requested Leone to take care of the disturbance outside. After approximately ten or fifteen minutes Leone returned to the barroom alone. DeMoura was still behind the bar. He asserted that he never saw the other officer (referring to Litwyn)before . He denied that he ever pushed or shoved any police officer. In response to the question whether any police officer shoved him, he responded that he didn't recall.

DeMoura admitted that Officer Leone asked for the liquor license. He testified that he told the officer that he had been in the premises before; that he had asked for the license before;

that he knew where the license was located; and that the officer knew that there was no way that he, himself, could reach for it. Neither of the two police officers who testified at the hearing, before the Board, took the license down. He denied directing profanities at the officers or stopping them from going behind the bar to get the license. He denied being at the doorway of the tavern.

In addition to the receipt of the transcript in evidence, police officers Litwyn and Leone were produced at the Division hearing and testified. This was done in order to meet appellant's contention that it was not afforded full opportunity to cross-examine the officers at the hearing held by the Board.

Despite an intensive cross-examination, the testimony elicited from the police officers at the subject appeal hearing was consistent with their testimony before the Board relative to the matters germane to the determination of the charge.

On cross-examination, Officer Leone explained that on the day in question, that is May 3, 1977, he did not see the license prior to asking for it. When he asked for the license on prior occasions, DeMoura would produce it from behind the bar.

On cross-examination, the witness reiterated that DeMoura physically blocked Officer Litwyn's entrance into the barroom by standing in the doorway. Litwyn did not know that Lombadosi left the tavern until he was informed thereof by Leone. Leone further asserted that upon requesting patrons to leave the appellant's premises, DeMoura told them that they (the police officers) had no right to be in the premises, and that the patrons did not have to leave.

Both officers denied having any ill feeling toward DeMoura.

At the de novo hearing, DeMoura testified in support of the appellant that, due to a physical impairment, he uses a four-legged cane to walk, except when he is working behind the bar when he holds on to both sides of the bar.

He asserted that on the day in question, he summoned the police due to a large crowd which had congregated attendant to an automobile accident in the adjoining street. As a result, a fight ensued and he was fearful that damage would be done to the tavern windows.

In response to his call to the police, Officer Leone walked through the open door. No patrons were in the barroom at that time.

Continuing, DeMoura testified as follows:

> He (Leone) came in instead of breaking up the crowd outside. I asked him, What are you doing in here? Will you please break up that crowd outside? He had been in several times before in the last three or four months. He'd come in and harassed me.

Officer Leone left the premises, and returned several minutes later. Upon being asked concerning any conversation he had with Leone, DeMoura replied as follows:

> I believe he asked me to see the license. I said to him, "You know where the license is, it is there. He said, "Well, get it down for me." I said, "you know I can't get it down for you, we've gone through this before on other occasions."

DeMoura explained that the license was always on display behind the bar. He did not physically impede Leone's progress in the barroom, nor did he attempt to prevent him from going behind the bar to get the license. It was his recollection that Leone took down the license. It was also his recollection that the officer who accompanied Leone in the police car stayed outside the premises. DeMoura was not informed of an alleged A.B.C. violation.

DeMoura asserted that on several occasions prior to May 3, 1977, Leone entered appellant's premises to confront and question youthful appearing patrons concerning their age.

On cross-examination, the witness reiterated that no police officer, other than Officer Leone, attempted to enter appellant's premises. He denied that the male identified as Anthony Lombadosi entered the premises.

Concerning the taking down of the license, DeMoura testified as follows:

> Q. Do you have an exact recollection of who took the license down from the wall after it had been requested that you produce it?
>
> A. Actually, no.
>
> THE HEARER: Did you take it down?
>
> HE WITNESS: I don't know, sir, because everything happened so fast. I don't know whether he took it down or I told him to take it down because he's been in so many times. Or, he either forced

me to go into the back room and drag the six-foot ladder out and climb up on the ladder to get the license town.

MR. SOLONDZ: you don't know?

THE WITNESS: I don't know.

The witness first asserted that he did not know whether or not any police officer other than Officer Leone, entered the licensed premises. He later acknowledged that it was possible that a Sergeant DeGori entered the premisss, and that a "tall officer" took the license down from the wall.

Prior to evaluating the factual merits, I shall consider certain challenges to these proceedings raised in the petition of appeal.

Appellant contends that the finding of "not guilty" in the Municipal Court of the same offense is binding in the subject proceedings. Not so. The fact that DeMoura was found "not guilty" of the criminal charge filed against him of failing to produce for inspection the liquor license is irrelevant in arriving at a determination of the subject charge. This is an action against the license and not against an individual. Furthermore, the subject action is a civil proceeding and, thus, the truth of the charge must be established by a fair preponderance of the credible evidence only. The charges filed in the Municipal Court against the licensee's employee, are criminal in nature, and guilt had to be established beyond a reasonable doubt. The Panda v. Driscoll, 135 N.J.L. 164(E. & A. 1947); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); In re Schneider, 12 N.J. Super. 449, 454 (App. Div. 1951).

Appellant maintains that the Board failed to permit it to present constitutional and legal argument at the hearing; failed to permit cross-examination of witnesses; and otherwise denied it a fair hearing and acted in an arbitrary and capricious manner.

It has been uniformally held that procedural irregularities or infirmities, which may have occurred at the time of hearing before the Board, are cured at this appeal de novo, because the appellant is given full opportunity to be heard and to offer legal argument and testimony in support of its petition. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943); Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App. Div. 1957); Maglies v. Helmetta, Bulletin 2021, Item 1, and cases cited therein.

The sharp, factual conflict presented by the evidence herein makes the issue of credibility of critical importance.

Preliminarily, it should be observed that we are dealing with a purely disciplinary action. Such action is civil in nature, and not criminal. In re Schneider, supra. Thus the proof must be supported only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra.

There is a sharp conflict in the testimony of the witnesses produced by both appellant and the Board. Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. No testimony need be believed, but rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

I have carefully analyzed the testimony of the police officers and of appellant's witness, DeMoura, and set forth a large quantum thereof in order to obtain a proper perspective relative thereto, and thus arrive at a proper determination herein.

DeMoura, at first, denied that any police officer other than Leone entered appellant's premises. Later, he conceded that Sergeant DeGori entered the premiees and a tall officer took down the license. It is apparent to me that DeMoura's account was prompted by self-interest.

On the other hand, I am persuaded that the testimony of Officers Litwyn and Leone relative to DeMoura's refusal to take down the license for inspection and DeMoura's blocking of Litwyn's passage into the licensed premiese had a substantial ring of truth. I find that it was not contrived or improperly motivated in order to inculpate an innocent licensee. I have taken particular note that both police officers were subject to extensive cross-examination by the competent attorney for the appellant, and their testimony did not deviate.

The burden of establishing that the Board acted erroneously, and in an abuse of its discretion, is upon appellant. The ultimate test in these matters is one of reasonableness in the part of the Board. Or, to put it another way; could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Lyons Farm Tavern v. Municipal Board of Alcoholic Beverage Control, Newark, 55 N.J. 292, 303 (1970); Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, supra at 282.

My examination of the facts in the entire record, and the applicable law generates no doubt that the truth of the charge was established by a fair preponderance of the credible evidence. I further conclude that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

Appellant's assertion that the penalty imposed by the Board was excessive is without merit. The suspension imposed by the Board is consonant with this Division's practice in similar cases.

Additionally, it should be observed that the suspension imposed in local disciplinary proceedings rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Director to reduce the suspension is limited to those situations where it is manifestly unreasonable. Sventy and Wilson, Inc., v. Point Pleasant Beach, Bulletin 1930, Item 1. See also, Pom Bon, Inc., V. Cliffside Park, Bulletin 1897, Item 1, and cases cited therein, wherein a penalty of revocation of license was not disturbed; Delroz, Inc., v. West Orange, Bulletin 1755, Item 1; affirmed (App. Div. 1968), opinion not approved for publication.

The remaining grounds alleged in the petition of appeal were either abandoned, or are patently lacking in merit.

Accordingly, it is recommended that an order be entered affirming the Board's action, dismissing the appeal, and reimposing the suspension imposed by the Board.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the appellant, and written Answers thereto were submitted by the respondent, pursuant to N.J.A.C. 13:2-17.14 (formerly Rule 14 of State Regulation No. 15).

In its Exceptions, the appellant asserts that the submission of the transcript before the Board and its use to "refresh" recollections of the Board's witnesses or form a component part of the Hearer's Report, was error. The transcript was admitted into evidence at the conclusions of the de novo appeal in this Division with no objection from appellant.

Appellant was represented by the same attorney at the hearings before the Board, and in this Division, and ample opportunity to cross-examine witnesses for the Board was provided. Thus, while strict compliance with the procedure to submit transcripts pursuant

to N.J.A.C. 13:2-17.8 has not been followed, I find no substantive breach of due process or prejudice to appellant. Thus, I reject this Exception as without merit.

Appellant next argues that there was no basis for an investigation inside the appellant's premises; that the proofs indicate that the license certificate was available for the police officer's inspection; and there was no hindering of an investigation by appellant's employee.

The record supports a reasonable nexus for the police to inquire at appellant's premises. A large disturbance proximate to the licensed premises was occurring and a person who apparently was a participant, was seen entering the appellant's premises. In any event, by virtue of the provisions of N.J.S.A. 33:1-35, the police had the authority to enter and question the appellant's employees.

The factual findings of the Hearer as to proofs of the hindering charge is clearly supported by the record as a whole. Therefore, I find no merit to this Exception.

The last Exceptions seeking to invoke the doctrine of collateral estoppel or res judicata had been raised at the hearing, and is correctly resolved in the Hearer's Report. This Exception is without merit.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's Report, the written Exceptions taken by appellant and the written Answers thereto by respondent, I concur with the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of October, 1978,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed; and it is further

ORDERED that my Order of December 30, 1977, staying the suspension pending determination of the appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License 0714-33-262-002 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ferry Glass Bar, Inc., for premises 238 Ferry Street, Newark, subsequently transferred to Minho Bar & Restaurant, Inc., 238 Ferry Street, Newark, be and the same is hereby suspended for fifteen (15) days commencing 2:00 a.m, on Monday, November 6, 1978 and terminating 2:00 a.m., Tuesday, November 21, 1978.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - MAR-NAN COMPANY, INC. v. HADDON.

Mar-Nan Company, Inc., Appellant, v. Board of Commissioners of the Township of Haddon, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

John A. DeFalco, Esq., Attorney for Appellant.
Michael A. Orlando, Esq., Attorney for Respondent.
John D. Wilson, Esq., Attorney for Transferor.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

This is an appeal from the action of the Board of Commissioners of the Township of Haddon (hereinafter Board) which, on March 21, 1978, adopted a resolution denying appellant's application for a person-to-person transfer of Plenary Retail Consumption License, C-7, from Williamsbury Colony Inn to appellant.

Appellant contends, in its Petition of Appeal, that the action of the Board was arbitrary, unreasonable, and a clear abuse of its discretion. The Board denies these contentions in its Answer.

An appeal de novo was held in this Division, pursuant to N.J.A.C. 13:2-17.6 (Rule 6 of State Regulation No. 15), at which the parties were permitted to introduce evidence and cross-examine witnesses. In lieu thereof, appellant offered oral argument of counsel including a proffer of proof of an alleged uncontroverted factual situation.

The respondents denied the factual allegations advanced by counsel for appellant, and introduced the testimony of William P. Bolletino, who is the president of Williamsburg Colony Inn, the transferor. Mr. Bolletino explained that a contract of sale was entered into with the assignor to appellant for sale of land and the subject plenary retail consumption license, which had been located thereto prior to a fire a few years ago. A prior similar contract had not come to fruition as the Board denied the prior buyers' application for transfer. Bolletino knew the Board required detailed plans and sketches of the proposed new licensed premises and advised appellant's assignor of such requirement. The consent to transfer given by his company was conditional upon such plans being acceptable by the Board.

Bolletino further testified that no plans, surveys or sketches were ever submitted to him for examination and, at the hearing before the Board, no detailed plans were offered.

John D. Wilson, Esq., attorney representing the transferor, testified that he had seen a large sheet which apparently contained three views of a building which resembled a typical fast-food service building. There was no interior plan or such other sketch which would have clarified for the Board the appellant's intentions.

The burden of establishing that the action of the municipal issuing authority is erroneous and should be reversed rests entirely with appellant. N.J.A.C. 13:2-17.6, (Rule 6 of State Regulation No. 15).

In its resolutuion, the Board stated as its reasons for denial that "the applicant for such transfer did not submit any plans or specifications of the proposed licensed premises for review by the Commissioners."

At the hearing in this Division, appellant maintained that no plans or specifications, other than the preliminary elevation sketch, were prepared, in the belief that preliminary to such detailed plans, the approval of the planning board would have to be obtained. The attorney for the Board disputed that contention.

It appears that the crucial issue herein is whether the Board acted reasonably and in the best interest of the community. It is a firmly established principle that a transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4: Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

The Legislature has entrusted to municipal issuing authorities the initial authority, and charged them with the duty, to approve or disapprove transfers of municipal alcoholic beverage licenses. The action of the Board in either approving or denying an application for such transfer may not be reversed by the Director unless he finds that " . . . the act of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947).

From extensive colloquy among counsel, it appears that the Board was adamant in its requirement that it view a total proposal of an applicant before it would favorably consider the transfer. Such total proposal was admittedly not before it, nor was any offered at the hearing in this Division.

It is quite reasonable for the Board to know what it is asked to approve. Additionally, N.J.S.A. 33:1-24 mandates the Board to " . . . investigate applicants and to inspect premises sought to be licensed, . . ." The thrust of such requirement

is that the Board must have the facts before it. The duty of providing such facts as to what was proposed to be erected as a licensed premises fell squarely upon appellant. That duty was not met.

Absent improper motivation, which has neither been alleged nor evidenced, the action of the Board, based upon proper and bona fide use of its lawful discretion, must be affirmed. Hudson Bergen County Liquor Stores Ass'n v. Hoboken, supra.

I thus find and conclude that appellant has failed to sustain the burden of establishing that the action of the Board was unreasonable, erroneous, or constituted an abuse of its discretionary power. N.J.A.C. 13:2-17-6, (Rule 6 of State Regulation No. 15).

I therefore, recommend that an order be entered affirming the action of the Board and dismissing the appeal.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14 (formerly 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 24th day of October, 1978,

ORDERED that the action of the Board of Commissioners of the Township of Haddon be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - BOWS GROUP, INC. v. AVON-BY-THE-SEA.

Bows Group, Inc.,
t/a Norwood Inn,

Appellant,

v.

Board of Commissioners
of the Borough of Avon-by-the-Sea,

Respondent.

CONCLUSIONS

AND

ORDER

Louis J. Casagrande, Esq., Attorney for Appellant.
Daniel J. Healy, Esq., Attorney for Borough-respondent.

BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the Borough of Avon-by-the-Sea (hereafter Board) which, on May 11, 1978, denied appellant's application for renewal of its seasonal retail consumption license issued for premises known as "Norwood Inn".

In its Petition of Appeal, appellant contends that the basis for the denial was its alleged failure to comply with certain building requirements prior to the proposed date of opening of the premises. The Board denies this contention in its Answer and refers to a host of complaints to the municipal officials by citizens generated by the preceding year's conduct of appellant's patrons.

By Order to Show Cause dated May 12, 1978, the subject license was extended by the Director pending determination of the appeal.

A de novo appeal was held in this Division pursuant to Sec. 13:2-17.6 of New Jersey Administrative Code, at which the parties were permitted to introduce evidence and to cross-examine witnesses. At the outset of the hearing, counsel requested an opportunity to confer with the Hearing Officer with respect to the order of introduction of testimony. That conference resulted in the admission that the Board had not, at the time of the hearing before it, considered the issuance of the license with special conditions attached thereto which would tend to eliminate the causes for the objections. It was stipulated that the following special conditions

be attached to a renewal of the license, in lieu of the previous non-renewal of license.

1. No pool activity is permitted before 9:00 a.m. or after 8:00 p.m.,

2. No use of inside or outside amplifiers shall be permitted which would disturb the neighbors;

3. No exterior lighting shall be directed at neighbors;

4. The Norwood Avenue doorway shall be used as an emergency exit only;

5. No "rock bands" or loud music shall be permitted inside the premises; and

6. Management shall not encourage the sale of packaged goods for off-premises consumption.

Prior to the development of the above stipulation, a number of residents attending the hearing were permitted to express their views and to voice their complaints. From the testimony, it appeared that the above special conditions would have an ameliorative effect toward erasing the disrupting conditions. The residents were assured that should the objectionable situation persist during this summer season, their objections could be voiced prior to the next renewal hearing.

At the conclusion of the hearing, the parties requested that the Director enter his Conclusions and Order as promptly as possible, and waived the receipt of any Hearer's Report.

Accordingly, it is, on this 14th day of November, 1978,

ORDERED that the action of the respondent Board of Commissioners of the Borough of Avon-by-the-Sea be and the same is hereby reversed; and it is further

ORDERED that the Board be and the same is hereby directed to renew the appellant's Seasonal Retail Consumption License No. 1305-34-001-001, for premises Norwood Avenue and Second Avenue, Avon-by-the-Sea, for the 1978 summer season, expressly subject to the follow-

ing special conditions:

1. No pool activity shall be permitted before 9:00 a.m. or after 8:00 p.m.,

2. No inside or outside amplifiers are permitted which would disturb the neighbors;

3. No exterior lighting shall be directed toward neighbor's residences;

4. The doorway leading to Norwood Avenue shall be used as an emergency exit only;

5. No "rock bands" or other loud music shall be permitted inside the premises; and

6. The sale of package goods for off-premises consumption shall not be encouraged by the management.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATIONS FILED.

Kimalco Corp.
823 Tonnele Avenue
Jersey City, New Jersey
Application filed December 22, 1978 for person-to-person and place-to-place transfer of State Beverage Distributor's License 3400-190-733-001 from Lincolt Distributors Inc., Newman Springs Road, Lincroft, New Jersey.

Trentecoste Bros. Inc.
100 Lakewood Avenue
Hainesport, New Jersey
Application filed January 3, 1979 for additional warehouse license for premises Foot of Lexington Avenue, Trenton, New Jersey, under Limited Wholesale License 3400-25-131-001.

Gonzales & Co., Inc.
800 S. Alta Street
Gonzales, California
Application filed January 2, 1979 for limited wholesale license.

Admiral Wine and Liquor Co.
603 South 21st Street
Irvington, New Jersey
Application filed January 4, 1979 for place-to-place transfer of Plenary Wholesale License 3400-23-001-001 from 590 Belleville Turnpike, Kearny, New Jersey.

Joseph H. Lerner
Director