

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 2393

March 18, 1981

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BULLETIN 2393

March 18, 1981

1. APPELLATE DECISIONS - GOLDBERG v. CAMDEN.

#4324

Stanley Goldberg,

Appellant,

vs.

Municipal Board of Alcoholic Beverage
Control of the City of Camden,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

Saiber, Schlessinger, Satz & Goldstein, Esqs., by David M. Satz, Esq.,
Attorneys for Appellant.
Matthew E. Segal, Esq., Attorney for Respondent.

Initial Decision Below

Hon. J. Roger Persichilli, Administrative Law Judge

DATED: February 21, 1980

RECEIVED: February 22, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the appellant,
pursuant to N.J.A.C. 13:2-17.14.

In his Exceptions, the appellant disputes the social and moral value judgments and statements of the Administrative Law Judge, which, it argues, permeates the Initial Decision and prejudices the decision. To a large extent the Initial Decision, in addressing issues such as the "transitional nature" of the area and prior adverse social incidents attendant to the operation of a liquor store at 306 S. Broadway, merely reflected the argument of the Municipal Board of Alcoholic Beverage Control of the City of Camden, and considerations it evaluated in reaching a determination to deny the place-to-place transfer.

While the Administrative Law Judge applies an analogy and certain adverse inferences to the operation of a liquor licensed facility on page 8, which views I neither subscribe to, nor adopt, the Initial Decision reflects, in balance, correct statements of the status of the neighborhood, the hopes for revitalization of the area, and the concerns of the citizens and residents directly interested in the welfare of the area. Thus, I reject this Exception as without merit.

In his next Exception, the appellant references the inaccurate classification of his license as a "consumption" license in

Finding No. 1. Given the proper designation of license type throughout the Initial Decision and in Finding No. 2, specifically, it is clear there was a typographical error or harmless oversight. I do not find this indicative of a misconception of the nature of the application. This Exception is dismissed except to adopt the proper license type classification.

The next three Exceptions of appellant contain objections to Findings No. 3, 6, and 7, which all relate to the nature of the testimony proffered in support and opposition to appellant's application and conclusions derived therefrom.

The evidence clearly manifests that the overwhelming local sentiment, as expressed by petition, and in testimony at the initial hearing, was opposed to the said transfer. As the Court stated in Fanwood v. Rocco, 33 NJ at page 415 (1960):
 Service of the public interest in licensing, in transferring, and in controlling this exceptional business requires an attentive and sympathetic attitude towards the sentiments of substantial numbers of persons in the locality, whether they be resident, commercial operators, or representatives of a nearby church, school or hospital.

In Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control v. Newark, 55 NJ at page 302 the Court stated:

Responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place or so as to cover enlarged premises is primarily committed to municipal authorities. N.J.S.A. 33:1-19,24. In allocating spheres of operation between the State Division and municipal authorities, the Legislature wisely recognized that ordinarily local officials are thoroughly familiar with their community's characteristics, the nature of a particular area and the dangers associated with the sale of alcoholic beverages. Consequently, it provided for acceptance of local sentiments in a number of fields of liquor control. Fanwood v. Rocco, supra, 33 NJ at page 412. Obviously, when the lawmakers delegated to local boards, the duty "to enforce primarily" the provisions of the act it invested them with a high responsibility, a wide discretion, and intended their principal guide to be the public interest. Lubliner v. Paterson, 33 NJ 428, 446 (1960).

Finally, the Court in Lyons Farms concludes (at page 307) "Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did, that ends the matter of review both by the Director and by the courts."

Since I find that there was an adequate and reasonable basis in the total record to warrant the decision of the respondent in denying appellant's application, I reject these Exceptions as

without basis in law or fact.

In his last Exception, the appellant argues that the benefits to be gained by the community weigh heavily in appellant's favor, and the comments, in the nature of disparagement of a retail liquor license, are not warranted. I have previously rejected the Administrative Law Judge's comments on page 8 of his Initial Decision, and the ultimate determination of benefit to the community was within the jurisdiction of the Board and properly decided by the Board. This Exception is disposed of accordingly.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the written summations of counsel, the Initial Decision below and the written Exceptions filed thereto by the appellant, I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein, except as hereinabove noted.

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

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Camden be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

STANLEY GOLDBERG,	:	<u>INITIAL DECISION</u>
	:	
APPELLANT,	:	
	:	DKT. NO. ABC 1555-79
V.	:	AGENCY DKT. NO. 4324
	:	
MUNICIPAL BOARD OF ALCOHOLIC	:	
BEVERAGE CONTROL, CAMDEN	:	
COUNTY,	:	
	:	
RESPONDENT.	:	

APPEARANCES:

David M. Satz, Esq., of Saiber, Schlessinger,
Satz & Goldstein, on behalf of the Appellant

Matthew E. Segal, Esq., Assistant City Attorney,
City of Camden, on behalf of the Respondent

WITNESSES:

Testifying on behalf of the Respondent were:

Samuel Lee
Lynn Brown
Malik Chaka
William Hankowsky
Kawan Bettis

David R. Kaloupek
Steven Hollis
Beatrice A. Miller

Testifying on behalf of the Appellant were:

Mary H. Groomes
Sarah E. Burch
Fred L. Snyderman
Alfred J. Woods
Gilbert Lawrence Wilson
Leon Soznov
Edward Katman
Stanley Goldberg

EXHIBITS:

Received on behalf of the Respondent were:

1. Twenty-one page Petition of Persons Objecting to the Proposed Transfer
2. A Resolution, dated February 15, 1979, by City Counsel denying the transfer.

Received on behalf of the Appellant were:

- A-1A Map of Area
- A-1B Index to Map
- A-2A Two Color Photographs
- A-2B of Site
- A-3 Architectural Drawing of Proposed Store
- A-4 A Three Page Petition of Persons in Favor of the Proposed Transfer

BEFORE THE HONORABLE J. ROGER PERSICHILLI, A.L.J.

The matter sub judice concerns the appeal of Stanley Goldberg from the denial of his application for a place-to-place transfer of Plenary Retail Distribution License No. 0408-44-019-003 by the Municipal Board of Alcoholic Beverage Control of the City of Camden by resolution adopted on February 15, 1979.

Notice of Appeal and a Petition of Appeal, dated March 30, 1979, were duly served and stamped received by the Division of Alcoholic Beverage Control, Department of Law and Public Safety, at 9:40 a.m. on March 30, 1979. An Affidavit of Service also attests to this fact. A timely Answer was filed on behalf of the Municipal Board of Alcoholic Beverage Control of the City of Camden and the matter was transmitted to the Office of Administrative Law for determination, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Hearings were conducted on August 23 and September 25, 1979. After several requests for extensions, post-hearing summations were received and the hearing record was closed on January 10, 1980.

The Municipal Board of Alcoholic Beverage Control of the City of Camden denied appellant's application for a place-to-place transfer from 306 S. Broadway to 401 S. Broadway, Camden, New Jersey. The pertinent portion of the resolution denying said transfer states that "it has been determined that the community which would be affected by this transfer is strongly opposed to it. Both in volume and in vehemence, the neighborhood has made known its feelings to the Board. The Board is bound to act in the best interest of the City of Camden, weighing all factors surrounding the granting of a liquor license..."

Appellant contends that the action of the respondent in denying its application was "an unreasonable and mistaken exercise of the discretion invested in it, improperly grounded, and contrary to the public good and convenience." Respondent's Answer sets forth the following affirmative defenses:

- "1. Appellant was given a full and fair opportunity to be heard before the Camden City Municipal Board of Alcoholic Beverage Control on November 27, 1978.
2. The decision of the Board was reasonably based on the evidence presented before the Board.
3. The Board's decision reflected the best interest of the City of Camden and its residents.
4. This decision was within the discretion of the Board, which is the 'issuing authority' pursuant to N.J.A.C. 13:2-2.3, and the decision was a reasonable exercise of this discretion."

The issue that is presented in this appeal is whether the Municipal Board abused its discretion in denying appellant's transfer application. It is well settled that the general grant or denial of such a license application rests in the sound discretion of the local licensing authority in the first instance. In order to prevail in this appeal, the appellant must show unreasonable action on the part of the local authority, constituting a clear abuse of its discretion. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Fanwood v. Rocco, 33 N.J. 404 (1960); and Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 55 N.J. 292 (1970). Thus, while the Alcoholic Beverage Control regulations provide that the burden of going forward rests with the respondent, the appellant is charged with the burden of persuasion.

The uncontroverted testimony reveals that the applicant, Stanley Goldberg, seeks to locate in the Bergen-Lanning Square section of Camden. This area of Camden has experienced a considerable socio-economic decline during the past decade. Presently, many homes and stores in this area are vacant, boarded-up and/or evidences the ravages of fire. Additionally, there are a number of vacant lots strewn with the debris of former buildings. As the area was experiencing its general decline, the testimony suggests that the number of "derelicts" increased in proportion to the number of vacant and boarded-up buildings. The

former liquor store, located at 306 S. Broadway, was purchased during this period by the Cooper Medical Center and deeded to the City of Camden. The City ultimately constructed a parking lot at this location. Currently, the area is said to be experiencing the very early stages of rehabilitation.

Appellant argues that the public good will be served by the approval of the subject application. It will provide a tax ratable and tax revenues for the City which presently do not exist; it will provide employment opportunities to local residents; it will act as an incentive for other local businesses to enter into an area which has not experienced the birth of new business enterprises for many years; and it will provide a conveniently located package goods store to area residents.

The testimony of William Hankowsky, Director of the Department of Community Development, indicates that the Bergen-Lanning area is a focal point in the redevelopment of the City of Camden. Cooper Medical Center has built additional facilities, and a Veteran's Hospital and a Medical School facility are planned. Additionally, there are proposals which would bring an estimated \$100,000,000 worth of development into this area. The Bergen-Lanning area is still in its transitional stages and Mr. Hankowsky was opposed to the introduction of a liquor store in this specific redevelopment section of Camden because it has yet to achieve a point of stability.

Other witnesses who testified in opposition to the application had a common thread - the sensitive balance of the area. There is little doubt that the fears and anxieties voiced by the objectors were precipitated by the environment created or occasioned by the liquor establishment located at 306 S. Broadway, Camden. There is no doubt, however, that the basic objections concern themselves with the presence of a liquor establishment in an environment that cannot be described as stable. Lynn Brown, the Assistant Director of the Planned Parenthood Center located within one block of the proposed liquor store, was strongly opposed to the application. She was not opposed to liquor stores or bars per se, but was fearful of the delicate social balance in this neighborhood. She was also concerned with the "negative atmosphere," particularly in view of the fact that the Planned Parenthood Center services six to seven thousand clients per year. The testimony of Malik Chaka echoed the very delicate balance of the Bergen-Lanning area, at present. Mr. Chaka works at 210 S. Broadway as the Community Outreach Administrator for the Camden Citizens Housing and Community Development Corporation.

Samuel Lee, Jr., resides, owns and operates an apothecary shop at 409 Broadway. He was concerned with the "undesirable conditions" that might arise if this liquor store were established. He recalled the days when the package store at 306 S. Broadway was in operation. Apparently some patrons purchased liquor and would stand outside the store consuming their recent purchases. Since 306 S. Broadway has closed, Mr. Lee testified that he is doing more business.

Kawana Bettis, the owner and operator of a gift shop at 405 Broadway, objected as a businessman in the area and also as a community-minded person. Mr. Bettis stated that the same crowd that congregated around 306 S. Broadway, presently congregates at "Fat Daddy's," a bar located at Washington and Fifth Streets.

Steven Hollis, a resident and businessman located at 411 Broadway, is a manufacturer of academic materials for handicapped children. Mr. Hollis would prefer to see an empty store rather than a liquor store.

Mrs. Beatrix Miller testified as an area resident and as a spokesperson of the Y.W.C.A. Mrs. Miller resides at 576 Benson Street, approximately one-half block from the applicant's site. She is a vice-president and member of the Board of the Y.W.C.A. She was primarily responsible for the circulation and collection of the Petition opposing the application. She indicated that three persons collected all but approximately twenty signatures on the lengthy Petition. In addition to the testimony voiced in opposition, Mrs. Miller also testified that a battered woman's shelter was about to be located in the immediate area. It was also established that there is an Hispanic Church located one street from the proposed site.

David R. Kaloupek, senior vice-president of Planning at Cooper Medical Center, testified that he was instrumental in closing down the 306 S. Broadway operation. Summarily stated, the existing liquor store was a problem from every point of view. There was some question whether Mr. Kaloupek was expressing his own opinion in his testimony or whether he was expressing the "official" viewpoint of the hospital. Regardless of how his appearance is labeled, his testimony reflects that Cooper Medical consists of approximately 500 beds, handles approximately 15,000 patients each year, and, attracts countless visitors. There is also a School of Nursing located at 300 Broadway. Said school also serves as a dormitory for some of its students.

Mary Grooms and Sarah E. Burch, area residents and school teachers, both testified on behalf of the appellant. Both favored the package store because it would create a tax ratable. Both witnesses would prefer to see a building put to use rather than remain vacant. Mrs. Grooms candidly admitted that she would support a grocery store over that of a package store (given that choice).

Fred L. Snyderman and Leon Sosnow, both liquor salesmen, each focused upon the importance of good management. In sum, 306 S. Broadway was poorly managed by the son of the former owner. Mr. Snyderman testified that Mr. Goldberg proposed a first class liquor store. Mr. Sosnow was born and raised in Camden and is an experienced liquor salesman of thirty-two years. The underlying import to his testimony was that any type of store located in this area would help bring back the City. He suggested that, with proper hours, proper goods and management, the package store would be successful without creating problems.

Mr. Alfred J. Woods, a bail bondsman, who resides at 422 Washington Street, testified that the local package stores do not carry his brand of scotch or wine and that he must therefore shop elsewhere. He would like to see a store carrying his brands within convenient walking distance.

Edward Katman, Esq., maintains an office on Stevens Street, approximately one block from the proposed site. Mr. Katman favored a reversal of the Municipal Board's determination in this matter.

The testimony of Officer Gilbert L. Wilson, Sr., inter alia, reiterated the importance of good management and tax ratables in this area.

Mr. Stanley Goldberg testified on his own behalf. He purchased the subject license at bankruptcy sale for \$7,000 in December 1977. Subsequently, he purchased the subject real estate at public auction for approximately \$4,800 and received a deed for same in October 1978. Mr. Goldberg has expended approximately \$1,500 on plans and proposes a modern, well-lit attractive store. He estimates that refurbishing this property will cost between thirty and thirty-five thousand dollars. Mr. Goldberg expressed great faith in the City of Camden and its future. He proposes to operate the package store on a full-time basis in a prudent, businesslike manner. His testimony is characterized by sincerity. In sum, Mr. Goldberg is investing (or attempting to invest) in Camden's future.

Based upon the testimony adduced at the hearing, the documents received in evidence, the written summations of counsel and upon my physical inspection of the area under review, I FIND:

1. The appellant, Stanley Goldberg, has made application for a place-to-place transfer of Plenary Retail Consumption License No. 0408-44-019-003 from 306 S. Broadway, Camden to 401 S. Broadway, Camden.
2. On February 15, 1979, the respondent, Municipal Board of Alcoholic Beverage Control of the City of Camden, denied the application for a place-to-place transfer of Plenary Retail Distribution License No. 0408-44-019-003.
3. Said denial was based upon the consideration of community sentiment strongly opposed to the subject transfer.
4. The proposed site is presently an abandoned building.
5. The area has undergone a substantial period of transition and deterioration, evidenced today by vacant lots, and abandoned residential and business structures.
6. The community, represented by residents and persons who maintain business interests therein, have voiced strenuous objections to the proposed package store as a negative influence which will adversely affect the health, safety, morals and general welfare of the community as a whole.

7. The Bergen-Lanning area is undergoing a stabilization period and is capable of backsliding instead of continuing its forward progress.

8. The proposed package store is located within the immediate area of the Y.W.C.A., a Hispanic Church, Cooper Medical Center, a Nursing School and dormitory and a Planned Parenthood Center.

9. A women's shelter will be located in the immediate area.

The burden of proof in establishing that the action of the governing body was erroneous rests entirely with the appellant. See Downie v. Sumerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). The decision of the governing body should not be reversed unless the Court finds, as a fact, that there was a clear abuse of discretion, unwarranted findings of fact, or mistake of law. Appellant has not met its burden. It sought to distinguish its application by highlighting the fact of good management through its various witnesses. The respondent's witnesses voiced objection primarily to the product sold and not the quality of management. Appellant also argues that the substantial dollar investments should be considered and that the equities, when considered in the context of the whole case, plainly outweigh the objections voiced. I do not concur. There is no question that the appellant has proposed a nice, clean operation. The proposed plans will unquestionably translate a dead use to a living use, a non-ratable to a ratable, and other related blessings that would normally accrue under the facts sub judice. These factors do not constitute the issue before the undersigned, albeit the undersigned is not insensitive to the time, effort, or money expended by Mr. Goldberg. His actions and his sincerity evidence a faith in Camden which is indeed commendable. Mr. Goldberg purchased the license without a site. He then purchased the site. He expended money for architectural plans. He diligently pursued mortgage funds and obtained an SBA commitment. He exercised business judgments to proceed at his own risk. These factors should not serve to alter the initial determination of the Municipal Board of Alcoholic Beverage Control in the City of Camden, which determination of denial was founded upon local community sentiment.

Appellant further argues that the "benefits would be found in increased tax revenues, improvement of neighborhood property and the elimination of a boarded-up 'eyesore,' the provision of an incentive for other private business to come into the area, and the fact that a well-lit, heavily trafficked store would provide a source of protection and security to the residents." Reducing this argument to its extreme, the same could be said for a bordello or a retail pornography outlet. Obviously, the applicant's suggested benefits would accrue to the area with any legitimate, well-run business enterprise. Mr. Goldberg has foresight and envisions the Bergen-Lanning area in blossom after redevelopment. It is unfortunate that the first seedling sought to be implanted in this raw garden is that of a Plenary Retail Distribution License.

The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance, within the sound discretion of the local issuing authority. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Thus, the Director's function on appeal is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion; and if so, to affirm irrespective of his personal view. Such is the function of the undersigned.

The law is clear, the appellant has failed to meet its burden. Its general allegations in this appeal are unsupported by specific factual instances or proofs of unreasonable or mistaken exercise of discretion by the Municipal Board of Alcoholic Beverage Control of Camden. Thus, I CONCLUDE that the decision of the issuing authority was based upon a preponderance of substantial and believable evidence. I find no credible evidence to support a contrary conclusion.

Accordingly, it is hereby ORDERED that the denial, by the Camden Municipal Board of Alcoholic Beverage Control, of the application for a place-to-place transfer of Plenary Retail Consumption License No. 0408-44-019-003 from 306 S. Broadway, Camden to 401 S. Broadway, Camden, be AFFIRMED.

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

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

- 2. DISCIPLINARY PROCEEDINGS (Clark) - SOLICITOR PLEADS NON VULT TO CHARGES OF AIDING AND ABETTING SALE OF ALCOHOL AS WELL AS TRANSPORTING SAME BETWEEN PLENARY RETAIL LICENSEES IN VIOLATION OF REGULATIONS - LICENSE SUSPENDED 32 DAYS - DIRECTOR PERMITTED THE PAYMENT OF A FINE IN LIEU OF SUSPENSION.

In the Matter of Disciplinary Proceedings against	:	CONCLUSIONS
	:	
Harvey Penn, Solicitor	:	AND
76 Sweetbriar Drive	:	
Clark, NJ 07066	:	ORDER
	:	
Holder of Solicitor's Permit No. 1297 issued by the Director of the Division of Alcoholic Beverage Control	:	S-12,338 X-55,427-A Affil. Files X-54,447-B X-39,647-M
-----	:	
Harvey Penn, <u>pro se</u>	:	

BY THE DIRECTOR:

Solicitor pleads non vult to charges alleging that in July 1978 and August 1978, he knowingly aided and abetted the sale of an order of alcoholic beverages by John & Sharon Culp, t/a John's Liquor Locker to H.I.W. Realty Company, Inc., t/a Bud's Hut, contrary to the terms of their licenses, viz., he obtained four cases of alcoholic beverages from John & Sharon Culp, t/a John's Liquor Locker for delivery to H.I.W. Realty Company, Inc., t/a Bud's Hut; in violation of N.J.S.A. 33:1-52, and N.J.A.C. 13:2-16.5.

In August 1978, he transported alcoholic beverages in a vehicle in which the driver did not have on his possession a bona-fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the true name and address of the purchaser, and the brand, size of container, and quantity of each item of the alcoholic beverages being delivered or transported; in violation of N.J.A.C. 13:2-20.2, N.J.A.C. 13:2-20.3, N.J.A.C. 13:2-16.12 and N.J.A.C. 13:2-39.6; and

In August 1978, he furnished, directly or indirectly, a gift or thing of value to a retailer; in violation of N.J.A.C. 13:2-37.3.

Absent prior record, the permit would normally be suspended for forty days on the charges herein, with remission of eight days for the plea entered, leaving a net suspension of thirty-two days.

However, the solicitor has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of N.J.S.A. 33:1-31.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the solicitor to pay a fine of \$960.00 in lieu of suspension of permit for thirty-two days.

Accordingly, it is, on this 2nd day of April, 1980

ORDERED that the payment of a \$960.00 fine by the solicitor is hereby accepted in lieu of a suspension of permit for thirty-two (32) days.

JOSEPH H. LERNER
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF A DISQUALIFIED PERSON - NON VULT PLEA - LICENSE SUSPENDED FOR BALANCE OF ITS TERM WITH LEAVE TO APPLY FOR ITS LIFTING UPON SHOWING CONDITION CORRECTED BUT IN NO EVENT SOONER THAN 25 DAYS.

In the Matter of Disciplinary Proceedings against

400 North Mass Corp.
t/a S & M Liquors
400 North Mass Avenue
Atlantic City, NJ 08401

Holder of Plenary Retail Distribution License No. 0102-44-086-001 issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS

AND

ORDER

S-12,125

X-52,605-F

Stephen B. Patrick, Esq., Attorney for Licensee.
Ann Tan, Esq., Deputy Attorney General appearing for Division.

Initial Decision Below

Hon. Joseph Rosa, Jr., Administrative Law Judge

Dated: March 17, 1980

Received: March 19, 1980

BY THE DIRECTOR:

Prior to the commencement of the hearing, in the Office of Administrative Law, the licensee herein changed its plea from "not guilty" to non vult to a charge alleging that, on or about October 3, 1978 it employed, or had connected with it in a business capacity, a person, viz., Carlton J. Olen who had been convicted of a crime involving moral turpitude, and whose statutory disqualification resulting from such conviction had not been removed by Order of the Director; in violation of N.J.A.C. 13:2-14.1.

The change of plea to non vult was made subject to a stipulation wherein the licensee agrees to accept a suspension for the balance of its term, with leave to apply to the Director for removal of the statutory disqualification pursuant to N.J.A.C. 13:2-14.15. Upon showing by verified petition that such disqualification has been removed, but in no event sooner than twenty-five (25) days from the effective date of the said suspension.

Having considered the entire record herein, I have determined to approve the said stipulation, and shall impose the suspension as aforesaid.

Accordingly, it is, on this 22nd day of April, 1980,

ORDERED that Plenary Retail Distribution License No. 0102-44-086-001 issued by the Board of Commissioners of the City of Atlantic City to 400 North Mass Corp., t/a S & M Liquors for premises 400 North Mass Avenue, Atlantic City be and the same is hereby suspended for the balance of its term, namely, midnight, June 30, 1980, effective 2:00 a.m. Wednesday, April 30, 1980 with leave to the licensee or any bona fide transferee of the license to file a verified petition establishing correction of the unlawful situation for lifting of the suspension of the license, but in no event, sooner than twenty-five (25) days from the effective commencement date of the said suspension.

JOSEPH H. LERNER
DIRECTOR

IN RE:

INITIAL DECISION

400 NORTH MASS CORPORATION
t/a S & M LIQUORS

OAL DKT. No. ABC 2821-79

APPEARANCES:

John J. Degnan, Esq., Attorney General, State of New Jersey
By: Anne Tan, Esq., Deputy General for the Petitioner, Division of Alcoholic Beverage Control

Stephen B. Patrick, Esq., for the Respondent, 400 North Mass Corporation

BEFORE THE HONORABLE JOSEPH ROSA, JR., A.L.J.:

Pursuant to N.J.S.A. 33:1-31, the Division of Alcoholic Beverage Control, (hereinafter Division), preferred charges against the 400 North Mass Corporation, a New Jersey Corporation, t/a, S & M Liquors, (hereinafter Respondent), having its licensed premises at 400 North Mass Avenue, Atlantic City, Atlantic County, New Jersey, by notice dated March 2, 1979. The charges were that:

On, or about October 3, 1978, you employed or had connected with you in a business capacity a person, viz., Carlton J. Olen, who had been convicted of a crime involving moral turpitude, and whose statutory disqualification resulting from such conviction had not been removed by order of the Director; in violation of N.J.A.C. 13:2-14.1.

By letter of Stephen B. Patrick, Esq., dated March 15, 1979, Respondent entered a plea of Not Guilty to the charge, and requested that the matter be set down for hearing. On August 9, 1979, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A.

OAL DKT. No. ABC 2821-79

52:14F-1 et seq. The hearing was scheduled to be heard on November 30, 1979, before Administrative Law Judge Joseph Rosa, Jr.

At the day of the hearing, Deputy Attorney General Anne Tan stated that an agreement had been reached between the Respondent and the Division. The charges were read in full to the Respondent. The Respondent withdrew the plea of Not Guilty and entered a plea of Non-Vult to the charge. In consequence of the Non-Vult plea, the Division agreed to suspend the Respondent's plenary retail consumption license for a period of thirty (30) days, less a five day remission resulting in a total suspension of twenty-five (25) days. The suspension was a twenty (20%) percent reduction in penalty, as is the past agency practice in return for the Respondent's plea. The Division further agreed that the license will remain suspended for the balance of the present license term with leave granted to the licensee, or any subsequent transferee, to remove the suspension upon a showing of good cause. It was further agreed that the Respondent would be allowed, if he so desired, to avail himself of the procedures set forth in N.J.A.C. 13:2-14.5, for the removal of the disqualification, he would also be allowed to divest himself of his interest in the subject corporation during the remainder of the present license term. The parties agreed to a Consent Order embodying the penalties heretofore mentioned.

Said Consent Order was submitted to the Office of Administrative Law, Honorable Joseph Rosa, Jr. on March 7, 1980.

After a careful review of the testimony and the record in this matter, I FIND:

1. Respondent is the holder of plenary retail consumption license No. 0102-44-086-001, heretofore issued by the Board of Commissioners of the City of Atlantic City, New Jersey.
2. On, or about October 3, 1978, Respondent employed or had connected with it in a business capacity a person, Carlton J. Olen, who had been convicted of a crime involving moral turpitude, and whose statutory disqualification resulting from such conviction had not been removed by order of the Director; in violation of N.J.A.C. 13:2-14.1.
3. As a result of the incident of October 3, 1978, the Division of Alcoholic Beverage Control brought charges against the Respondent.

OAL DKT. No. ABC 2821-79

4. Respondent, on March 15, 1979 entered a plea of Not Guilty to the charge filed by the Division of Alcoholic Beverage Control.
5. Respondent now wishes to withdraw his original plea of Not Guilty to the charge preferred against it by the Division of Alcoholic Beverage Control and wishes to enter a plea of Non-Vult to the charge.
6. The Respondent is aware of all the potential consequences and penalties which may be imposed by the Director of the Division of Alcoholic Beverage Control for the aforesaid violation.
7. That Respondent has approved a proposed Consent Order, a copy of which is attached hereto and made a part hereof, which provides for a suspension of his plenary retail alcoholic beverage consumption license No. 0102-44-086-001 issued by the Board of Commissioners of the City of Atlantic City, for a period of twenty-five (25) days.
8. That the Respondent will be allowed to apply to the Director of the Division of Alcoholic Beverage Control for removal of the statutory disqualification, pursuant to N.J.S.A. 13:2-14.5, however such application may not be made within the 25 day period of suspension.
9. That the Respondent's plenary retail consumption license will remain suspended for the balance of the present term, with Respondent being granted leave to apply for removal of the disqualification or being allowed to divest himself of his interest in the subject corporation during the remainder of the term.
10. That the Respondent is aware that this Order and agreement may be modified, affirmed, or disapproved by the Director of the Division of Alcoholic Beverage Control, and if such Order is modified or disapproved by the Director, the Respondent will be allowed to withdraw his plea of Non-Vult and reinstate his plea of Not Guilty.
11. That the aforesaid Respondent has entered into the Consent Order freely, knowingly, and without coercion.

I therefore CONCLUDE that the withdrawal of the plea of Not Guilty and the entry of the plea of Non-Vult has been entered into by the Respondent knowingly and voluntarily.

I further CONCLUDE that the Consent Order, attached hereto and made a part hereof, represents the agreement entered into by the parties hereto, and same is hereby APPROVED as if set forth fully herein.

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

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

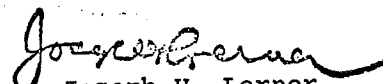
4. STATE LICENSES - NEW APPLICATIONS FILED.

William Weinberg
t/a Clinton Beverage
64 Old Route 22
Clinton, New Jersey

Application filed March 2, 1981
for person-to-person and place-
to-place transfer of a State
Beverage Distributor's License
from Minck Beveragetown Inc.,
300 Route 17, Paramus, New Jersey

Kramer Beverage Co. Inc.
Fire Road, South of Delilah Road
Egg Harbor Twp., New Jersey

Application filed March 16, 1981
for place-to-place transfer of
a state beverage distributor's
license from 110 No. Virginia Avenue,
Atlantic City, New Jersey.


Joseph H. Lerner
Director