

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

BULLETIN 2292

August 17, 1978

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - BLUE PIANO, INC. v. JERSEY CITY, ET AL - DIRECTOR AFFIRMED.
2. SPECIAL RULING - APPLICATION FOR TRANSFER - ORSATTI from WARWICK RESTAURANT CORP.
3. DISCIPLINARY PROCEEDINGS (Atlantic City) - LICENSE IMPROVIDENTLY ISSUED - LICENSEE DISQUALIFIED - SUSPENSION WAIVED UPON REMOVAL OF CRIMINAL DISQUALIFICATION.
4. APPELLATE DECISIONS - NICHOLSON'S BAR, INC., et al. v. ATLANTIC CITY, et al.
5. APPELLATE DECISIONS - KEVIN A. SCHMIDT, et als. v. BOGOTA.
6. APPELLATE DECISIONS - SUDLER CONSTRUCTION CO., INC. et al. v. NEWARK et al.

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

BULLETIN 2292

August 17, 1978

1. COURT DECISIONS - BLUE PIANO, INC. v. JERSEY CITY, ET AL - DIRECTOR
AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-102-76

BLUE PIANO, INC.,
t/a BLUE PIANO,

Plaintiff-Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF JERSEY CITY, and
FRANK BRIAMONTE,

Defendants-Respondents.

Submitted May 9, 1978 - Decided May 18, 1978.

Before Judges Matthews, Crane and Antell.

On appeal from the Division of Alcoholic Beverage Control.

Mr. William J. Caputo, attorney for appellant.

Mr. John J. Degnan, Attorney General, attorney for respondent
Division of Alcoholic Beverage Control (Mr. Stephen Skillman,
Assistant Attorney General, of counsel, and Mr. Mart Vaarsi,
Deputy Attorney General, on the brief).

Mr. Louis P. Caroselli, Corporation Counsel, attorney for
respondent Municipal Board of Alcoholic Beverage Control of
the City of Jersey City.

Mr. Peter E. Reilly, attorney for respondent Frank Briamonte.

PER CURIAM

(Appeal from the Director's decision in Re Blue Piano,
Inc. v. Jersey City et al., Bulletin 2238, Item 1.
Director affirmed. Opinion not approved for publication
by the Court Committee on Opinions).

2. SPECIAL RULING - APPLICATION FOR TRANSFER - ORSATTI from WARWICK RESTAURANT CORP.

IN THE MATTER OF THE APPLICATION FOR
TRANSFER OF LICENSE TO

ARNOLD AND AGNES ORSATTI

FROM

WARWICK RESTAURANT CORP.

HOLDER OF PLENARY RETAIL CONSUMPTION
LICENSE C-31 ISSUED BY THE BOARD OF
COMMISSIONERS OF ATLANTIC CITY.

SPECIAL RULING

Pursuant to the Emergency Rule regarding retail licenses within the City of Atlantic City, 9 N.J.R. 487(c), an investigation into the application for transfer of Retail Consumption License C-31 issued by the Board of Commissioners of the City of Atlantic City, from the present holder, Warwick Restaurant Corp., to Arnold and Agnes Orsatti has been concluded, and I have been furnished with a report of such investigation.

Having considered the report of the investigation, it is my finding that an approval of this application for transfer would be contrary to the public interest.

This is a preliminary finding based on the report of the investigation submitted to me. This preliminary finding is subject to the right of the applicant transferees to a hearing on their application for transfer. This hearing shall be afforded to the applicants, should they desire one, through an appeal to the Division from the municipal denial of their application for transfer. If no appeal is filed after action by the municipal body within the time provided by N.J.S.A. 33:1-22, this finding shall be considered final.

The investigative report on which this preliminary finding is based shall be provided to the applicant transferees, but its contents shall not otherwise be made public, except to the extent necessitated by a hearing requested by the applicants.

The Board of Commissioners of the City of Atlantic City shall be immediately informed of this finding, for its action in accordance with 9 N.J.R. 487(c).

JOSEPH H. LERNER
DIRECTOR

Dated: May 23, 1978

3. DISCIPLINARY PROCEEDINGS - LICENSE IMPROVIDENTLY ISSUED - LICENSEE DISQUALIFIED -
SUSPENSION WAIVED UPON REMOVAL OF CRIMINAL DISQUALIFICATION.

In the Matter of Disciplinary
Proceedings against

Elwena Clark
t/a Austin's Rose Garden
138 North Maryland Avenue
Atlantic City, N.J. 08401

Holder of Plenary Retail Consumption
License C-89 issued by the Board
of Commissioners of the City of
Atlantic City.

CONCLUSIONS
and
ORDER

L. Milton Freed, Esq., Attorney for Licensee.
Mart Vaarsi, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The Division served notice upon licensee, by Order to Show Cause dated August 16, 1977, why her Plenary Retail Consumption License C-89 for premises 138 North Maryland Avenue, Atlantic City, New Jersey issued by the Board of Commissioners of the City of Atlantic City, should not be suspended, revoked or cancelled, effective July 1, 1977, for the following reason:

Said license was improvidently issued in violation of R.S. 33:1-25 in that you were disqualified from obtaining such license by reason of the fact you had been convicted on or about January 25, 1971 in the Atlantic County Court of the crime of possession of lottery slips (N.J.S.A. 2A:121-3) being a crime involving moral turpitude.

From the testimony and documents presented at the Division hearing, the following undisputed facts emerge:

Elwena Clark is the widow of Austin Clark who died June 14, 1970. He was engaged in illegal lottery activities for some years prior to his death.

Austin and Elwena Clark resided in Apt. B-2, 813 Baltic Avenue, Atlantic City, for many years. Mr. Clark maintained his lottery "bank" in Apartment B-4 on the same floor. Apartment B-4 was leased in the name of Charlotte Paskins, his

(but not Elwena Clark's) daughter, who actually resided there. Another daughter, Elaine Williams, who resides in Washington, was visiting in Atlantic City and staying with her sister in Apartment B-4 on January 27, 1970. Mrs. Clark was present in Apartment B-4 at the time of the State Police raid that day, and was arrested along with the others, and, eventually, charged with the possession of lottery slips (N.J.S.A. 2A:121-3), a crime involving moral turpitude.

On December 10, 1970 she pleaded "guilty" to the charge and was sentenced on January 25, 1971 to three months in jail, and fined \$500.00. Thereafter, on each and every application for renewal of her liquor license, she set forth this fact.

At the time this disciplinary proceeding was instituted, the licensee was criminally disqualified from holding a liquor license. She had not filed her Petition for Removal of Disqualification with this Division until August 29, 1977.

Having pleaded guilty to the charge of possession of lottery paraphernalia (slips) in the Atlantic County Criminal Court, and having filed for disqualification removal with this Division, it is clear that she was guilty of a crime involving moral turpitude. The only matter requiring resolution is the appropriate penalty under the circumstances that exist herein.

No evidence was presented by the Division that the licensee was actively engaged in the lottery operation. She was physically present at the time of the raid, but states, without contradiction, that it was solely to visit her step-daughter, Elaine Williams, whose birthday was celebrated that day.

Mrs. Clark has had no further involvement with the police for lottery violations (or any other offense) since her husband's death in 1970, nor has her establishment been involved in any illegal activities since that date.

Reverend Charles E. Kiah of the Hampton Memorial Methodist Church of Atlantic City, and Charles Gooding, a Senior Ordainer in Saint Augustin's Episcopal Church of Atlantic City, testified as to Mrs. Clark's character and good reputation in the community.

The various renewal applications also disclose that the licensee revealed a prior conviction of a crime in 1957, which was pardoned by the Governor who signed an Order for Restoration for Right of Suffrage in 1965. Quite obviously, the applicant was adhering to the spirit of the law in fully revealing her background to the local issuing authority prior to their acting upon her applications for renewal.

Under the circumstances, I find that cancellation or revocation of the subject license is not warranted. However,

the licensee is still criminally disqualified from holding this license until the criminal disqualification is removed.

I, therefore, recommend that the license be suspended for the balance of its term, effective immediately, with leave granted to the licensee to move for the lifting of the suspension upon removal of the criminal disqualification by the Director or upon any bona fide transfer of the license. See In Re Frank J. Capone, Bulletin 2071, Item 4.

Conclusions and Order

No Exceptions to the Hearer's Report were filed pursuant to 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.

The recommended finding of the Hearer was a suspension of license pending either the removal of the criminal disqualification or a transfer of the license to a bona fide transferee. By my Order dated January 3, 1978, the statutory disqualification of Elwena Clark was removed, pursuant to N.J.S.A. 33:1-31.2. Therefore, I shall incorporate herein the effect of the removal of the statutory criminal disqualification, as requested by counsel for the licensee.

Accordingly, it is, on this 16th day of February 1978,

ORDERED that the licensee be and the same is hereby guilty of the charge set forth herein; and the effective suspension of license is hereby waived by the removal of criminal disqualification of the licensee; and it is further

ORDERED that my Order to Show Cause, dated August 16, 1977, why the subject license should not be suspended, revoked or cancelled, be and the same is hereby vacated.

Joseph H. Lerner
Director

4. APPELLATE DECISIONS - NICHOLSON'S BAR, INC., et al v. ATLANTIC CITY, et al.

Nicholson's Bar, Inc. and
James A. Green,

Appellants,

v.

Board of Commissioners of
the City of Atlantic City
and 730 Atlantic Avenue, Inc,

Respondents.

ON APPEAL

CONCLUSIONS
AND
ORDER

.....
Valore, McAllister, DeBrier, Aron & Westmoreland, Esqs., by
Robert N. McAllister, Esq., Attorneys for Appellant.
William Goddard Lashman, Esq., by John C. Matthews, Esq.,
Attorneys for Respondent Board of Commissioners of the City
of Atlantic City.
David R. Fitzsimons, Jr., Esq., Attorney for Respondent,
730 Atlantic Avenue, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent, Board of Commissioners of the City of Atlantic City (Board) which on September 1, 1977 adopted a resolution granting the application of respondent, 730 Atlantic Avenue, Inc. (730) for a place-to-place transfer of its plenary retail consumption license from 3027 Atlantic Avenue to premises 3124 Atlantic Avenue, Atlantic City.

Appellants, in their petition of appeal, alleged that the action of the Board was erroneous in that (1) it was violative of the City's distance ordinance and (2) the consent allegedly obtained from the Elk's Club, a nearby licensee, was not the duly adopted act of its governing body.

The respondents, in their respective answers, denied that the transfer was violative of the distance ordinance and affirmatively alleged that the consent adopted by the Elk's Club was its proper act.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

Additionally, the transcript of the proceedings held by the Board on September 1, 1977 was received in evidence, in accordance with Rule 8 of State Regulation No. 15. This was supplemented by oral testimony by appellant and the receipt into evidence, by stipulation, of several exhibits.

Among the exhibits accepted into evidence by stipulation were official certified copies of municipal Ordinances No. 8-1956 and No. 22-1967. The first restricts transfers of a plenary retail consumption license from place-to-place where the distance between a proposed location and an existing licensed premises is three hundred feet (reduced by Ordinance 22-1967 to 200 feet) with the exception that:

".....provided further, notwithstanding anything herein before contained that a license of either type may be transferred to any premises within three hundred feet of premises for which a license of the type to be transferred is outstanding if the holder or holders of all outstanding licenses of such type within 300 feet of the premises to which transfer is sought shall, prior to the transfer thereof, file with the Director of Revenue and Finance of the City of Atlantic City, a consent or consents in writing to the said transfer;....."

Further exhibits include a sketch diagram which reveals that the front doorway of the proposed location is 121 feet from the doorway of the nearby Elk's Lodge, holder of a Club license. Accompanying this sketch is the following written memorandum:

"The Atlantic Lodge No. 276 B.P.O. Elks, located at 3112 Atlantic Avenue, Atlantic City, New Jersey, has no objection and waives any objection that they might or could have regarding the transfer of the liquor license of the B & B Lounge from 3027 Atlantic Avenue to 3124 Atlantic Avenue, Atlantic City, New Jersey.

Atlantic Lodge No. 276, B.P.O.
Elks

By: (signed)

EDWARD I. FEINBERG

Chairman of the Board
of Trustees"

August 31, 1977

From the exhibits, the Petition of Appeal and the contentions advanced by appellant's counsel at the aforesaid

hearing, it became immediately clear that the single and dispositive issue in the matter was the validity of the consent to transfer obtained from the above Atlantic Lodge of Elks. At the outset of the hearing, counsel for appellant offered the following remarks:

"....My client is a member of the Elks and subsequently inquired as to the adoption of this waiver and resolutions, if any, that may have been adopted to authorize the issuance and delivery of this. It's signed by the Chairman of the Board of Trustees, who is Mr. Lashman's law partner. My client will testify, will ascertain that there wasn't any meeting of the Board of the Governing Body to adopt and permit delivery of this document, and that's the reason for my objection and I'd like to have that on the Record."

Appellant, James A. Green testified that he is a member of the Elks Lodge and that he believed that all of the members of the Lodge must approve the 'waiver' and that only Mr. Feinberg had done so. The source of his knowledge was a Mr. Jack Cohan, presumably a member of the Board of Trustees of the Lodge. The sum and substance of his critique of the action of the Chairman of the Board was contained in his testimony as follows:

" Yes I talked to Jack Cohan two days after the Atlantic City Commission meeting and that was Labor Day. In fact, it was Labor Day, and he said well, he just called me this morning, Mr. Feinberg called me this morning and said he signed a waiver."

On cross-examination Mr. Green admitted he was unaware if the Board of Trustees could give a waiver alone, nor did he have any discussion with the remaining members of the Board and he had no knowledge whether the other Board members contacted their Chairman with a direction to sign such waiver.

An examination of the transcript of the proceedings before the Board of Commissioners held on September 1, 1977 reveals that the Board had before it the subject waiver, upon which the date August 31 was indicated. It further reveals an extensive hearing in which counsel for appellant along with an attorney for another objector participated actively.

The burden of establishing that the action of the Board was erroneous and should be reversed rests entirely with appellant, in accordance with Rule 6 of State Regulation No. 15.

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. Hudson-Bergen County Retail Liquor Stores Ass'n v. North Bergen Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970).

It is apparent from an examination of the transcripts of both the proceedings before the Board as well as the hearing held in this Division, that appellant has offered nothing more than opinion. There was no proof whatever that the waiver signed by the Chairman of the Board of Trustees of the Elks Lodge was improperly signed or improperly filed. None of the Board members were interrogated by appellant except for Mr. Cohan whose statements as quoted by appellant hardly constitute an allegation of illegality.

I thus find that appellant has failed to meet the burden imposed upon it by Rule 6 of State Regulation No. 15 of establishing that the action of the Board was unreasonable, arbitrary or erroneous.

Accordingly, it is recommended that the action of the Board be affirmed and the appeal herein be dismissed.

Conclusions 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 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 28th day of February, 1978,

ORDERED that the action of the respondent Board of Commissioners of the City of Atlantic City be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

Joseph H. Lerner
Director

5. APPELLATE DECISIONS - KEVIN A. SCHMIDT, et als. v. BOGOTA.

Kevin A. Schmidt, t/a R.E.'s Plum,
Jacob Freid and Beatrice Freid,

Appellants,

v.

Mayor and Council of the Borough
of Bogota,

Respondents.

ON APPEAL

CONCLUSIONS
and
ORDER

E. Gerard McGovern, Esq., Attorney for Appellant, Schmidt.
Liebowitz, Krafte & Liebowitz, Esqs., by Jay Friedrich, Esq.
Attorneys for Appellants, Freid.
Robert A. Baron, Esq., Attorney for Respondents.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the Borough of Bogota (hereinafter Council) which, by Resolution dated May 23, 1977, revoked appellant Schmidt's Plenary Retail Consumption License, C-5, for premises at 20 East Fort Lee Road, Bogota, effective immediately, based upon numerous alleged violations of the Rules and Regulations of the Division of Alcoholic Beverage Control.

A Petition of Appeal which was initially received in this Division on September 14, 1977 was not in appropriate form for filing. An "Amended Notice of Appeal", together with the requisite fees required, was then received and filed in this Division on September 28, 1977.

The Petition of Appeal, reduced to its abstract, alleges that: (1) prior to May 23, 1977, appellant was charged with "excessive noise, loud music and disturbing residents in the area"; (2) following receipt of testimony before the Council on May 23, 1977, appellant's license was revoked and it was surrendered to the Borough Clerk on that date; and (3) the action of the Council was erroneous in that it was arbitrary, capricious, unreasonable and not based upon competent proof. Appellant requests that such action be reversed.

In its Answer, the Council denies any error and moves for the dismissal of the appeal for failure to comply with the provisions of N.J.S.A. 33:1-31, which require that appeals from

disciplinary actions of issuing authorities to the Director of the Division of Alcoholic Beverage Control be filed within thirty days of notice of such action.

A de novo 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.

At such hearing, the chronology of the proceedings leading through and subsequent to the Council's action was set forth. It conclusively appeared that the action of the Council in revoking appellant's license on May 23, 1977 was not properly appealed until the Amended Notice and Petition of Appeal was filed with this Division on September 28, 1977. The time interval between the Council's action and the filing of the appeal far exceeded the thirty days set forth in the statute, N.J.S.A. 33:1-31.

The decision of the Council, entered on May 23, 1977, was the result of a plenary hearing in the matter held over four separate dates. The licensee-appellant, Kevin Schmidt, was present and represented by counsel, and following the vote revoking the subject license, Schmidt surrendered said license to the Borough Clerk. Thus there was no inadequacy of notice.

From the lengthy explanation of counsel for appellants, Jacob and Beatrice Freid, it appears that, concurrent with the appellant Schmidt's involvement with the Council, which led to the eventual revocation of license, he was also behind in his rent due to Freid, his landlord. In consequence of these difficulties, Schmidt agreed to a transfer of his license to Freid and, to that end, notices were published indicating intention to apply for such transfer. Both publications of the Notice antedated the order of revocation of the subject license.

However, no hearing was listed respecting the transfer of license from Schmidt to Freid, as the license itself was revoked as indicated. Following the revocation, no steps whatever were taken which would constitute a proper appeal to the Director of this Division, until the subject appeal was filed as indicated.

In matters where appeals filed are patently out of time, the court has determined in Hess Oil & Chemical Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396 (App. Div. 1963) that:

Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature, and not with the agency or the courts,... Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction

to accept the appeal. (Citations
ommitted)

As the Director is without jurisdiction to entertain the subject appeal, it is recommended that the action of the Council be affirmed, and that the appeal herein be dismissed.

Conclusions 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 record herein, including the transcripts 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 22nd day of February, 1978,

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

Joseph H. Lerner
Director

6. APPELLATE DECISIONS - SUDLER CONSTRUCTION CO., INC. et al. v. NEWARK et al.

Sudler Construction Co., Inc.)	
and 32 Commerce Street Corp.,)	
Appellants,)	ON APPEAL
v.)	CONCLUSIONS
)	and
Municipal Board of Alcoholic)	ORDER
Beverage Control of the City of)	
Newark, and Lustig's Tavern, Inc.,)	
Respondents.)	

 Franzblau, Falkin & DiMarzio, Esqs., by Lawrence Friedman, Esq.,
 Attorneys for Appellants.
 Salvatore Perillo, Esq., by Frederick Mecili, Esq.,
 Attorneys for Respondent - Board.
 Herrmann & Blasi, Esqs., by Robert R. Blasi, Esq.,
 Attorneys for Respondent - Lustig's Tavern, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark (Board) which, by Resolution dated September 12, 1977, granted respondent's, Lustig's Tavern, Inc. (Lustig) application for a place-to-place transfer of its Plenary Retail Consumption License C-103 from 118 Mulberry Street to 56 Commerce Street, Newark.

The appellants contend in the Petition of Appeal and at the de novo hearing that the action of the Board was erroneous in that: a full hearing was not held in a proper manner; many objectors were precluded from attendance at the hearing because of a religious holiday; and the Board's refusal to adjourn the matter so as to permit those objectors to testify was an abuse of discretion.

The Board, in its Answer, denies these contentions and set forth an affirmative defense that the appeal was filed out of time. The Board adopted the subject resolution bearing a date of September 12, 1977, and the appeal was not filed until November 3, 1977, well beyond the thirty day limitation as provided by Rule 3 of State Regulation No. 15 and N.J.S.A. 33:1-26.

A de novo appeal was heard in this Division with full

opportunity afforded the parties to introduce evidence and to cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15. Additionally, in accordance with Rule 8 of State Regulation No. 15, a transcript of the proceedings before the Board was accepted into evidence.

The primary issue presented was that of timeliness of the appeal. In that connection, counsel for the appellants submitted his affidavit stating his repeated endeavors to obtain a copy of the adopted resolution of the Board. His efforts were unsuccessful until the subject appeal was filed.

The Board merely offered a copy of its Resolution which is set forth in full:

BE IT RESOLVED, that the following
PLACE TO PLACE TRANSFER be and the same
is hereby granted by reason of the fact
it has met the statutory requirements
for transfer and the approval of this
Board.

C-103 Held by: Lustig's Tavern Inc.
From: 116-118 Mulberry St.
To: 56 Commerce St.

\$60.00

Approved and Adopted: September 12, 1977
Endorsed and Effective.

(unsigned)

PAUL J. HOPKINS

(signed)

RALPH A. DEVINO

(signed)

JAMES H. SLAUGHTER

(signed)

JAMES H. SLAUGHTER
CHAIRMAN, BOARD OF
ALCOHOLIC BEVERAGE
CONTROL

I Certify this to be a true copy

S. O'Bannon (signed)
12-19-77 Aide to Secretary

A review of the transcript of the proceedings before the Board on September 12, 1977 reveals requests for an adjournment

or a further hearing at which objectors, precluded from then appearing due to their religious holiday, could voice their objections. No reference to these requests was made by any of the three Board members present. The Board's sole action on that evening was to adopt a motion to "reserve decision" on the application.

It is further noted that, at the hearing in this Division, numerous objectors were present who indicated through counsel, that they did not have the opportunity to appear at the hearing before the Board. The very number of objectors indicated that the Board did not have the benefit of hearing both sides in the proceeding to the degree that the apparent numbers would suggest.

No formalized decision by the Board, approving the application for transfer, occurred on September 12, 1977. Board Member Hopkins, present at the hearing, did not execute the Resolution, nor is his vote, affirmative or negative, reflected in the adopted Resolution. Hence, it is obvious that the Resolution was back-dated to the evening of the hearing. The Board's failure to provide a copy of the Resolution to anyone until the subject appeal was filed amply supports this conclusion.

While it has long been held that ministerial omissions or inaccurate inclusions will not, in themselves, vitiate the action of the Board, such omissions or inaccuracies must lend themselves to correction from other, or parallel, sources.

From the entire record herein, including the argument of counsel, it is patently clear that the Board was remiss in failing to provide a further opportunity, not in conflict with a religious holiday, for those who wished to voice their objections to the application. By that lack of opportunity, the Board was thus denied the benefit of having the entire panoply of objectors, as well as supporters of the subject application, testify.

The record is devoid of any competent basis to dis-positively ascertain whether the appeal was timely filed. The absence of any publication of the Board's decision, even to the applicant itself, until counsel for the objector investigated this matter personally on October 28, 1977 and filed its appeal thereafter, constrains me to determine that the appeal period had not expired prior to the filing of the subject appeal.

It is, therefore, recommended that, the Director re-mand the matter to the Board with direction that a plenary hearing with ample notice thereof be provided, and the Resolution granting the place-to-place transfer be set aside. It is further recommended that the Director retain jurisdiction of the matter.

ORDER FOR REMAND

No written Exceptions were filed to the Hearer's Report pursuant to 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 the recommendations of the Hearer, and adopt them as my conclusions herein.

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

ORDERED that the within matter be and the same is hereby remanded for a rehearing before the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, consistent with the procedure set forth in the Hearer's Report and incorporated herein.

JOSEPH H. LERNER
DIRECTOR