

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 2382

December 29, 1980

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December 29, 1980

1. APPELLATE DECISIONS - RAYMOND J. BODLEY, INC. v. BOUND BROOK.

#4370
Raymond J. Bodley, Inc.,
Appellant,
vs.
Borough Council of the Borough
of Bound Brook,
Respondent.

Thomas C. Brown, Esq., Attorney for Appellant.
Elia Barbati, Jr., Esq., Attorney for Respondent.

ON APPEAL
CONCLUSIONS
AND
ORDER

Initial Decision Below

Hon. Arnold Samuels, Administrative Law Judge

DATED: January 21, 1980

Received: January 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 its Exceptions, the appellant asserts that it initiated many of the sixty-five (65) calls for police assistance; that, on many occasions, the Special Police Officers retained through arrangements with the Borough Police Chief did not report when scheduled; and that certain disturbances should have been controlled by proper police patrolling. It also argues that the Administrative Law Judge erred in stating that the entertainment policy and operations of the licensed business changed substantially in the past several years.

The record is replete with testimony that, in the past several years, the appellant's operations have created a substantial increase in nuisance type incidents affecting neighboring residents, and resulting in a heavy burden on the local police. The appellant's own witness, Danny Gallo, Jr. testified that, since he became manager, in May 1978, the attendance has doubled or tripled. He attributes same to the younger age of patrons, good advertising and promotion and the selection of entertainment geared to the young crowd.

Clearly, the determination that appellant's operating procedures enhanced business in recent years is warranted. Concomitant with this change, the appellant's obligations and duties to control its patronage increased. Appellant cannot shift that responsibility to

others merely by calling police when incidents occur, or by expecting the Borough to supply Special Police Officers and additional foot patrol officers because of situations created by appellant for its own economic advantage. cf Nordco, Inc. v State, 43 NJ Super. 227, 228 (App. Div. 1957).

Given the overwhelming proofs of disruption caused by the operations of appellant's premises to the residents and police of the Borough, I have no hesitancy in affirming the action of the Borough and the implicit classification of the appellant's premises as a "trouble spot". Nordco, Inc. v State, supra. I reject the Exceptions as without basis in law or fact.

Having carefully reviewed and assessed the entire record herein, including the transcripts of testimony, the exhibits, the Initial Decision, and the written Exceptions filed thereto by appellant, I concur in the findings and conclusions of the Administrative Law Judge, as set forth in the said Initial Decision, and adopt them as my conclusions herein. I shall, therefore, enter an Order affirming the action of the respondent which denied renewal of the subject license for the 1979-80 license term.

Accordingly, it is, on this 20th day of February, 1980,

ORDERED that the action of the respondent Borough Council of the the Borough of Bound Brook be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order dated July 2, 1979, extending the said license for the 1979-80 license period pending the determination of the appeal, be and the same is hereby vacated.

Joseph H. Lerner
Director

Appendix - Initial Decision Below

RAYMOND J. BODLEY, INC., :
t/a THE ROCK MACHINE, :

INITIAL DECISION

v. :

O.A.L. DKT. NO. ABC 2862-79
AGENCY NO. 4370

BOROUGH COUNCIL OF THE :
BOROUGH OF BOUND BROOK :

APPEARANCES:

Bissell, Welch & Welaj, Esqs.
by Alan E. Welch, Esq.
attorney for Respondent,
Borough of Bound Brook

Thomas C. Brown, Esq.
attorney for Appellant,
Raymond J. Bodley, Inc., t/a The Rock Machine

WITNESSES:

For the Respondent:

George Plesa
Patricia Popkivich
Margaret Sheenan
Antoinette Burns
Joseph R. Kissaday
Elizabeth Plesa
Anthony M. Cimino
Thomas F. DiGiampaolo
Joseph Fasanella

For the Appellant:

Carl Maltese
Arthur H. Stock
Danny Gallo, Jr.
Raymond Bodley

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BEFORE THE HONORABLE ARNOLD SAMUELS, A.L.J.:

The appellant, Raymond J. Bodley, Inc., t/a The Rock Machine, is the holder of plenary retail consumption license number 1804-33-015-001, located at 208 West Main Street in the Borough of Bound Brook, New Jersey. On June 29, 1979, acting on the appellant's application for renewal, the respondent, Borough Council of the Borough of Bound Brook, voted unanimously to deny renewal of the license for the year beginning July 1, 1979. An appeal was filed by the licensee on July 2, 1979 and the Director of the Division of Alcoholic Beverage Control executed an order to show cause, temporarily extending the license pending a de novo hearing of this appeal.

The appeal contends that the Council's action was arbitrary, capricious, illegal, not founded in fact, unreasonable and an abuse of discretion. The licensee also claims that the municipal hearing was not conducted in accordance with the rules and regulations of the Division of Alcoholic Beverage Control and that the appellant was not notified of written complaints.

The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. Hearings were held on September 12, 1979, October 10, 1979 and November 14, 1979 at the Somerset County Administration Building in Somerville, New Jersey. Post-hearing briefs were filed by the parties and record was closed on December 17, 1979.

The following exhibits were marked in evidence:

- R-1 Copy of tax map
- R-2 Copy of zoning map
- R-3 Petition, May 12, 1979
- R-4 thru R-10 Seven photographs
- R-11 Police log, 46 pages, 7/27/78 to 6/30/79
- R-13 Letter June 15, 1979, Chief of Police to Mayor and Council
- R-14 Memo, Chief of Police to Police Commissioner

Prior to the taking of testimony from witnesses, counsel for the appellant argued that the municipal hearing and subsequent action should be set aside because of allegedly improper notice procedures. No testimony or evidence was presented in support

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of this contention, other than the argument of counsel. Information imparted by the attorneys indicates that notice of the Council meeting of June 29, 1979 was advertised and posted in advance as required by the Open Public Meetings Law; that the subject of the license renewal application was opened for public comment and discussion; that two citizens, the Chief of Police and Thomas C. Brown, Esq., attorney for the licensee, commented publicly on the application; that in addition to his attorney, Raymond J. Bodley, principal in the licensee-corporation, was present at the hearing; and that five Councilmen discussed the matter publicly before the vote was taken. The licensee argues that the time requirements of the Division of Alcoholic Beverage Control rules and regulations were not strictly adhered to.

Considering the above, the appellant's procedural argument is easily disposed of by the principles laid down in Nerdco, Inc. v. State, 43 N.J. Super 277 at 286 and 287 (App. Div. 1957). The appellant did receive advance notice of the municipal hearing. The President of the licensee-corporation attended with his attorney, who publicly stated his objection and position. There was no prejudice to the appellant in any technical shortcoming of the notice of hearing. Moreover, the de novo Office of Administrative Law hearing cures any infirmity allegedly arising by reason of any defect in the hearing before the Municipal Council. Nordco, Inc. v. State, *supra*, at p. 287.

The testimony and exhibits (R-1 and R-2) disclosed that the premises used by the licensee is situated in an industrial zone, but directly adjoins the rear yards of a row of one or two-family houses on West Main Street, in a residential district. The only access to the parking lot and building of the licensed premises is through a driveway leading from West Main Street, between two of the houses and out into the large lot behind the homes. The subject lot actually adjoins the rear yards of eight homes on West Main Street.

Nine witnesses testified for the respondent regarding problems during the year preceding July 1, 1979, that caused the Borough Council to deny renewal of the license:

George Plesa resides in one of the homes on West Main Street adjacent to the Rock Machine driveway. His house is approximately 200 feet from the licensed premises. Mr. Plesa testified that during the 1978/9 license year he has observed various acts of misconduct and problems caused by patrons on the street and in the exterior areas near his home, as well as in the parking lot of the Rock Machine. He itemized these problems as follows: loud and rude behavior, racing and speeding automobiles, consumption of alcoholic beverages on the street by patrons before

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entering the premises or after leaving, bottles and debris thrown on his property and on other residential property, noise and horn-blowing, foul and obscene language, excess crowds waiting to get into the premises who overflow into residential properties, noise late at night sufficient to awaken residents and prevent them from sleeping, damage to shrubbery.

Mr. Plesa indicated that these problems were continual, occurring in one way or another almost every night that the Rock Machine is open (four or five nights a week). On some evenings the noise and obscenity reached a point where he would not open his windows. Mr. Plesa acknowledged that some efforts had been made by the owners to cure some of the problems, such as the use of special police and paving of the driveway. However, in Mr. Plesa's opinion, these measures have only been sporadically effective. This witness also stated that a tavern or bar had operated in that location for all of the 29 years he has lived there. However, his complaints have been most vociferous during the past year or two.

Patricia Popkivich lives on Talmage Avenue, almost a mile away from the Rock Machine, but on the route taken by many patrons driving home from the premises late at night. She testified to observations she made on five separate nights between July, 1978 and June, 1979 when she walked home from work late at night. On each of these occasions she heard loud noises, abusive language and breaking bottles in the area of the Rock Machine parking lot. At other times after the establishment had closed, cars have sped by with their occupants shouting, horns blowing and tires screeching. She has seen a fist fight take place on her corner between persons she assumed had just come from the Rock Machine. Although she has not followed them, she is sure that the cars causing the disturbance have come out of that establishment. Miss Popkivich was a credible witness.

Margaret Sheenan is a senior citizen who has lived on West Main Street all her life. Her rear yard is one of those abutting the Rock Machine parking lot. Mrs. Sheenan testified that two or three times a week she is constantly awakened from her sleep by the terrible noise, fighting and carrying on caused by the patrons. Bottles are thrown into her yard and cars race up and down the street, often jumping the curb onto her property. Mrs. Sheenan has observed young people walking on the street drinking from bottles, screaming and using filthy language. She knows that a bar has operated in the same place for many years, but she insists the problems she described have only become critical and unbearable during the past year or two. She attributes much of the noise and rowdiness to the fact that the Rock Machine patrons are now predominantly young people. Mrs. Sheenan was genuinely angry and indignant over the frequent disruption in her life. Her attitude in testifying was straightforward and forthright.

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Antoinette Burns, another resident of West Main Street, also has been awakened by cars speeding up and down the street at night, persons yelling, fighting and throwing bottles. She testified to broken glass in her driveway and on the porch. When the Rock Machine parking lot is full, cars overflow onto the street, causing obvious problems. On one occasion, Mrs. Burns had to call the police because a car was parked on her sidewalk. She also indicated that problems arise when youngsters get out of their cars on the street, drinking and shouting before going into the Rock Machine. She emphasized that the problem primarily involves patrons coming and going, but not inside the licensed premises. Mrs. Burns has seen special police present on occasions, and she stated that they do alleviate matters somewhat. Her testimony was believable and unembellished.

Joseph R. Kissaday, Mrs. Sheehan's brother, also testified. He has lived on West Main Street for 67 years. Besides corroborating his sister's testimony, he added that he has seen young people urinating on his hedges and in the street. He, too, has been kept awake by people yelling and by traffic problems caused by 150 to 200 cars trying to park. Mr. Kissaday is tired of picking up bottles and other debris, and he often has trouble driving into his own home on some nights. Mr. Kissaday also indicated that the problem did not bother him much in past years, but it has become terrible in the last year or two. He claims it is due to the live rock groups and the young patrons. He said that the Rock Machine often has an overflow crowd that creates severe problems on the street because they cannot get into the parking lot. Mr. Kissaday was a credible and sincere witness.

Elizabeth Plesa, wife of the first witness, confirmed that, although the establishment has been there for years, the situation has gotten out of hand in 1978 and 1979, and she attributes it to the live rock bands. Mrs. Plesa stated that patrons' cars have intruded into their yard and hit a pole at the edge of the driveway. She also indicated that special police are not present every night that the Rock Machine is open.

The last witnesses for the respondent were police officials:

Anthony M. Cimino, a Detective Lieutenant in the Bound Brook Police Department, testified about calls to the Bound Brook Police between July, 1978 and June, 1979 that resulted in entries in the police log or blotter. Forty-six pages of the log were marked in evidence (R-11). There were 65 calls relating to problems at the Rock Machine during the year. The log showed a wide variety of complaints, including but not limited to fights, noise, traffic violations, personal injuries, assaults and batteries, possession of controlled dangerous substances, firecrackers, motor vehicle accidents, theft of purses, wallets, coats and keys and various instances of disturbances and disorderly conduct.

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Out of the 65 calls, 21 of them resulted in arrests and the filing of formal complaints. Most of these arrests were for possession or use of controlled dangerous substances, assault and battery, and disorderly conduct. There was one charge of carrying a concealed weapon and possession of firearms, and one theft.

The 21 arrests were based upon 15 or 16 incidents that gave rise to multiple charges, and a substantial number of the calls and arrests were initiated by the special officers on duty at the Rock Machine. Lt. Cimmino was a credible and candid witness.

The special officers are assigned to their duties at the Rock Machine by the Bound Brook Police Department, if and when they are available. They are paid by the Rock Machine. On many occasions such special officers are not available for assignment by the Police Department, and at such times, the Rock Machine does not independently engage security personnel, but does without such protection.

One of these special officers, Thomas F. DiGiampaolo, worked at the Rock Machine three to five nights a week (totalling 15 to 20 hours) during 1978-9. Often he was one of two such officers on duty in the parking lot or at the entrance to the driveway. His primary duty is to control traffic, but he occasionally handles other problems that may exist in or about the premises. Mr. DiGiampaolo testified that on a typical Wednesday, Friday or Saturday night, there would be up to 500 cars coming and going. On such nights there are severe traffic problems because the lot is full and overflowing, and many cars park in West Main Street. Regular police often have to be called to issue summonses for multiple violations caused by the overflow of automobiles.

Mr. DiGiampaolo indicated that he had seen the patrons of the Rock Machine involved in many problems such as fighting, loud and abusive language, drugs and other disorderly conduct. When such problems occur, he does not make arrests himself. If necessary, he calls the regular police. He estimated that when he is on duty there are an average of three incidents or disturbances a week. He has been a special officer at one other licensed establishment in Bound Brook, the Homestead. According to Mr. DiGiampaolo, there were practically no such incidents at the Homestead during comparable time periods.

Joseph Fasanella, Chief of Police of Bound Brook, testified to the substantial volume of police work required by the continued operation of the Rock Machine during the 1978-9 year. In addition to the Rock Machine, there are four other licensed establishments in Bound Brook featuring live entertainment: Jimmy Ryan's, the Roosevelt Cafe, the Rathskeller and the Homestead. Between July 1, 1978 and July 1, 1979, there were 65 incidents and 21 arrests at the Rock Machine; 9 incidents and 4 arrests

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at Jimmy Ryan's; no incidents and no arrests at the Roosevelt Cafe; 5 incidents and 1 arrest at the Rathskeller; and 5 incidents and no arrests at the Homestead.

According to Chief Fasanella, there are a total of 20 police officers in Bound Brook, 11 of them patrolmen. There is no surplus of manpower, and in order to get better coverage when the Rock Machine is open, the Police Department schedules overlapping shifts from 4:00 p.m. to 2:00 a.m. and from 10:00 p.m. to 8:00 a.m. This requires two extra hours per man on the two shifts involved, so that during those hours, two patrol cars are on duty with two officers in each car.

Chief Fasanella estimated that in 1978-9, 180 hours were spent by his officers in responding to or acting on the 65 incidents at the Rock Machine. On June 15, 1979, he summarized the police problem caused by the Rock Machine in a report to the Mayor and Council (R-13) and he recommended that the license should not be renewed.

Th Chief also said that he is beset with administrative problems because of the extra hours required of his personnel. He is always short of officers on duty due to the fact that his budget allows no overtime to be paid for extra duty. Compensatory time is the only method permitted for such reimbursement.

Chief Fasanella also testified about meetings held with the Rock Machine management in attempts to lessen the severity of the problems. Generally, no permanent improvements resulted. The Chief also agreed that there were relatively fewer problems with the Rock Machine in earlier years and that the 1978-9 year was very bad.

One of the Bound Brook Councilmen, Carl Maltese, testified on behalf of the appellant. He did not have much knowledge of the specific problems prior to July 1, 1979, when he became Police Commissioner, but he believes that the Rock Machine management has tried to alleviate some of the problems and to keep special policemen on the premises. However, Mr. Maltese did vote against renewal of the license, and he acknowledged that the Rock Machine is a worse problem for the Borough than other licensed premises. He also stated that the parking problems and physical location of the Rock Machine are factors that he considered in arriving at his conclusion to vote against renewal of the license.

Arthur H. Stock has owned the real property on which the Rock Machine is situated since 1965. He previously held and operated the liquor license, but he sold it to Mr. Bodley in 1971. Mr. Stock testified that he had live rock bands there between 1965 and 1971 and that the format was not much different.

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However, he said that few problems were experienced during those years. He has no knowledge of the problems after 1971 and he does not think that 65 disturbances or incidents per year involving the police is a high number. His primary concern and interest is financial. Mr. Stock stated that the property is only good for use as a tavern and night club, and if its operation as such was closed down, the business would fail and he would receive no rent.

Danny Gallo, Jr., manager of the Rock Machine since May, 1978, testified to the cooperation that he has tried to extend to the Borough in response to the complaints and problems communicated to him. He always called police when problems warranted their intervention, and he has not permitted overcrowding inside of the premises in violation of legal capacity limits. Mr. Gallo does employ one or two special officers in an attempt to handle parking, traffic and other exterior problems, but they are not always available when he requests their assignment by the Police Department. Mr. Gallo makes no attempts to supplement those specially assigned policemen with independently employed personnel of his own. According to Mr. Gallo, the Rock Machine has a capacity of 400 people, and since he became manager, this limit is often reached. On such occasions he then has to stop additional patrons from coming in and he turns them away at the door. However, he cannot stop them before they get to the door, and the traffic, parking and behavior problems caused by the overflow of disappointed patrons are obvious.

Commenting on previous testimony regarding the large number of complaints from the Rock Machine, as compared to other taverns in Bound Brook, Mr. Gallo indicated that the others are all smaller, with capacities of 50 to 100 persons, compared to 400 at the Rock Machine. He also stated that the others do not have rock bands. Mr. Gallo acknowledged that since he became manager, the average attendance at the Rock Machine has doubled or tripled. In other words, on many nights they now often attain their capacity limit of 400 (with more on the outside trying to get in), whereas previously they had less than 200 patrons and no resulting exterior problems. Mr. Gallo attributes this to the younger average age of the patrons, good advertising and promotion, and selection of live rock bands that appeal to the young crowd. As manager, he has succeeded since early 1978 in vastly increasing and improving the tavern's business; but at the same time, the problems and complaints have increased in severity far beyond those ever experienced by the Borough in previous years.

No evidence was introduced by either side to indicate that there were any health, fire, zoning or other rules and regulations that might have rendered the 400 person capacity of the premises excessive or illegal. It is, therefore, assumed that no such violations occurred inside of the premises when filled to capacity. The severe problems were caused primarily by the sheer numbers of people thrust into the physical setting of the premises.

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Raymond J. Bodley is the President and sole stockholder of the licensee corporation. He lives in Salt Lake City, Utah, and is an absentee owner. Mr. Bodley only speaks to the manager of the Rock Machine once or twice a week by telephone. He is pleased that Mr. Gallo has improved the business since he took over. According to Mr. Bodley, a good night now draws 400 patrons, whereas previously it might have been 300. Mr. Bodley does not think the format has changed much since he managed it himself in 1977.

Except for general reference made to four charges presently pending against the licensee in the Division of Alcoholic Beverage Control, which are not finally resolved and therefore irrelevant, no evidence of prior formal actions or lack thereof was introduced for consideration on the question of appropriateness of penalty.

Having heard and observed the witnesses, and after review of the exhibits and briefs on file, the Court makes the following findings of fact, all by a preponderance of the credible evidence:

1. The foregoing discussion is incorporated herein by reference.
2. The Borough Council of the Borough of Bound Brook voted not to renew the plenary retail consumption license held by the appellant for the license year beginning July 1, 1979 through June 30, 1980 for premises located at 208 West Main Street, Bound Brook, New Jersey.
3. The subject premises consists of a tavern building located on a large lot directly behind the rear yards of private residences on West Main Street in Bound Brook. Sole access to and from the premises is from West Main Street and down a driveway running between the houses. The portion of the licensee's lot that is not occupied by the tavern building is used for parking.
4. The appellant's premises have been continually used and occupied as a bar or tavern for more than 30 years. Until early or mid-1978, any problems that may have been caused by the operation of the premises had not been so severe as to cause the license to be suspended or removed.
5. The entire nature, size and complexion of the use and occupancy changed radically in 1978, in a manner that seriously and adversely affected the immediate neighborhood, the police department, and the entire Borough of Bound Brook.

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6. During the previous license year, from July 1, 1978 through June 30, 1979, the residents adjacent to the licensed premises were subjected to the following problems, all caused by patrons of the Rock Machine: loud and rude behavior outside the premises, racing and speeding automobiles, consumption of alcoholic beverages on the street after leaving or before entering, throwing of bottles and debris in the street and on private residential property, constant noise, foul and obscene language, excessive crowding by patrons unable to get into the licensed premises, damage to trees and shrubbery, disturbances late at night that prevented residents from sleeping, fights on the street by patrons, use of controlled dangerous substances, urinating in public and other disorderly conduct. The foregoing problems happened with frequency and continually on nights when the Rock Machine was open for business during the year. Most of the foregoing problems took place outside of the Rock Machine premises, but were caused by patrons connected with the tavern.
7. During the same year (July 1, 1978 through June 30, 1979) 65 incidents took place that required calls to and attention by the police. The general nature of the calls are outlined in the discussion above.
8. Twenty-one formal complaints and arrests resulted from the 65 incidents. These are also described in the discussion above.
9. The substantial need for constant police involvement at the Rock Machine placed an unusually heavy burden on the Police Department, requiring large additional expenditures of manhours (180 hours in one year). This time had to be repaid with compensatory time off; a situation that caused a shortage of police on duty at regular hours.
10. Compared to other licensed establishments in Bound Brook featuring live entertainment, the number of criminal or quasi-criminal complaints was unduly great, even considering the fact that the Rock Machine has a greater capacity for patrons.
11. Many of the foregoing problems were caused by a radical change in the Rock Machine's format of operation beginning in early 1978.

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12. Prior to that time and for many years, the licensee operated in a manner that attracted an older, more orderly and much smaller group of patrons. Although there was live music in past years, the number of customers present at any one time did not exceed 200 and there were no attendant traffic or parking problems. Police problems were infrequent.
13. The recent format and operation of the premises, beginning in 1978, features live rock bands that attract large crowds of younger people.
14. The format of operation beginning in early 1978 attracts 400 or more patrons per night, which is more than double the number in past years. Many more patrons are turned away. This number of patrons is not illegal, but the neighborhood and the municipality are unable to cope with the size and complexity of the resulting problems.
15. The appellant has been notified of the problems continually during the past license year and has been asked to remedy same on several occasions.
16. The licensee has made some good faith efforts to deal with the problems such as paving the driveway; but such efforts have been insufficient and ineffective. In fact, the appellant has continued to encourage the operational format that is mainly responsible for the uncontrollably large crowds and attendant problems.
17. The licensee has engaged one or two special policemen to help with the problems, but only if and when made available by the police department. On some occasions when at least two special policemen are present, exterior control is improved, but not satisfactorily when the large capacity crowds are present.
18. The licensee has made no attempt on its own to provide special policemen. Its attitude is that it will only use them when made available by the Borough.

The appellant has the burden of establishing that the action of the respondent issuing authority was erroneous and that it should be reversed. N.J.A.C. 13:2-17.6.

"Whether or not a license should be renewed rests in the sound discretion of the local issuing authorities and of the Division on appeal. Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946); N.J.S.A. 33:1-38. The Courts will interfere in the exercise of that discretion only in the case of manifest error, clearly

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unreasonable action or some more untoward impropriety. Rajah Liquors v. Division of Alcoholic Bev. Control, 33 N.J. Super 598, 600 (App. Div. 1955) We cannot say that the reliance put by the Division on the 59 calls, and on the fact that this tavern was a trouble spot, constitutes manifest error or an abuse of discretion." Nordco, Inc. v. State, 43 N.J. Super. 277, 282.

It is well established that a licensee is responsible for conditions both inside and outside the licensed premises. Galasso v. Bloomfield, Bulletin 1387, Item 1. Tyrone's Haven, Inc. v. Seuth River, Bulletin 2214, Item 1.

In the area of licensing, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962). This responsibility is wide and its guide is the public interest. Lubliner v. Paterson, 33 N.J. 428, 446 (1960).

It is well established that the reviewing forum should not substitute its judgment for that of the local issuing authority if reasonable support can be found in the record. Margate Civic Association v. Board of Commissioners, Margate, 132 N.J. Super 58, (App. Div. 1975). An appropriate test is whether the decision on the basis of the evidence presented. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 307 (1970). See also Hudson, Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E&A 1947), Fanwood v. Rocco, 59 N.J. Super 306 (App. Div.) affd. 33 N.J. 404 (1960).

The mandates contained in the above principles make it clear that a licensee has a responsibility to maintain its premises in an orderly fashion and to prevent conditions which render its operation something that constitutes a nuisance and is against the public interest. The licensee is responsible for conditions outside the licensed premises that are caused by its patrons. It is also clear that the licensing authority, such as the Borough Council, has a right to exercise its discretion and to view all of the facts and circumstances in arriving at a determination as to whether the continuing operation of the license would be a detriment to the Borough of Bound Brook.

It is, therefore, CONCLUDED that:

The appellant has not proven, under all of the facts and circumstances, that the discretion and judgment exercised by the Borough Council of Bound Brook in refusing to renew the license was unreasonable, arbitrary or manifestly erroneous. The exercise of discretion by the Borough Council should not be disturbed, since there has not been a finding of unreasonable, arbitrary or

erroneous action by the municipal authority. Furthermore, there is substantial credible evidence in the record and in the facts proven by the respondent to justify their action in refusing the renewal and the record does not reveal any abuse of discretion in such action. In addition, the mitigating attempts shown by the licensee do not rise to the level where they render the Borough's action unreasonable or manifestly erroneous. Although the license has been in operation on the subject premises for many years, the matter should be viewed in the light of current circumstances, where the completely renovated nature of the use and operation bears little or no resemblance to that of previous years.

It is, therefore, ORDERED that the refusal of the respondent to renew plenary retail consumption license Number 1804-33-015-001, held by the appellant, be AFFIRMED.

This recommended decision may be affirmed, modified or rejected by 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 Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, 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-1, et seq.

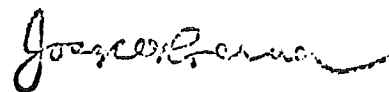
I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, my Initial Decision in this matter and the record in these proceedings,

2. STATE LICENSES - NEW APPLICATIONS FILED.

Dalt Wines, Inc.
1 Hollywood Avenue
HoHoKus, New Jersey
Application filed December 15, 1980
for person-to-person transfer of a
wine wholesale license from Dalt
International Inc.

Farber Distributing Corp.
990 Brighton Street
Union, New Jersey
Application filed December 18, 1980
for limited wholesale license.

Gourmet Beer International Inc.
t/a Merchant Du Vin Northeast Div.
Lenox, Massachusetts
Application filed December 26, 1980
for limited wholesale license.



Joseph H. Lerner
Director