

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 2387

February 6, 1981

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ITEM

1. APPELLATE DECISIONS - BROWN v. EGG HARBOR.

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1. APPELLATE DECISIONS - BROWN v. EGG HARBOR.

#4367

Charles Edwin Brown,
t/a Barbara Andrew Ltd.,

Appellant,

vs.

Township Committee of the Town-
ship of Egg Harbor,

Respondent.

CONCLUSIONS

AND

ORDER

H. Robert Boney, Jr., Esq., Attorney for Appellant.
Michael Jacobson, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Jeff S. Masin, Administrative Law Judge

DATED: January 23, 1980

RECEIVED: January 28, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the appellant and written Answers were submitted thereto by the respondent, pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, the appellant argues that the alleged factual basis relied upon by the respondent and the Administrative Law Judge to support a non-renewal finding was predominately hearsay evidence, to wit, unsworn testimony of Officer Burke, unverified police incident reports, a hearsay petition and hearsay statements by members of the Township Committee.

Respondent, in its Answer to the Exceptions, states that the evidence presented was competent and reasonably supported the action of the Township Committee.

Little testimony adduced by the respondent represented direct testimony of observations of nuisance type activities. Other than direct testimony concerning parking difficulties in the area and noise and debris conditions, the dominant support for the action below has been and must be predicated upon the police incident reports.

The weight to be given the reports must be assessed circumspectly because of the potential for their misapplication, the inability to cross-examine, and the ambiguity attendant to such reports. My analysis of the twenty-six incidents set forth in the "Burke Report" (R-65 E in evidence) illustrate the difficulties

attendant blanket reliance on such reports without direct testimony in addition thereto.

(a) Six (6) larceny incident reports - three involved thefts of motor vehicles from the street or parking lot where patrons left the keys in the car. Two involved alleged thefts of money left in vehicles, one of which is extremely difficult to ascribe credibility to the allegations (June 4, 1978 incident). The sixth involved the loss of a purse temporarily left by a patron at her seat. It is difficult to affix or impute culpability or responsibility to the appellant in these cases.

(b) Eleven (11) unwanted patron - disturbance type reports - while police responded, few of the incidents required their participation. The appellant's policy to bar from the licensed premises members of the Pagans Motorcycle Club or troublesome patrons cannot be criticized per se.

(c) Five (5) assault and battery incident reports - two involve alleged excessive force used by employees of the appellant. One involved an employee receiving injuries. In one there was no problem when the police arrived. In the last incident, a motor vehicle accident on the road near appellant's premises resulted in a fight between drivers.

(d) Four (4) miscellaneous incident reports - these include two motor vehicle accidents in the parking lot with minimal damage to another car and some musical equipment; and indecent act by a Pagan member refused admittance and an attempted breaking and entry by some third person at the appellant's premises.

Of these twenty-six incidents where the police responded, over sixty percent (60%) were the result of calls made by the appellant. In substantive analysis, most of the incidents are not such that appellant can be considered to have "allowed, permitted or suffered" same in the context of the determinations and regulations under the Alcoholic Beverage Law.

However, it has been the position of this Division, and sustained by Appellate Courts that excessive demands upon local authorities for assistance, coupled with other incidents of breaches of the peace or law, may properly warrant the classification of a licensed premises as a "trouble spot". Nordco, Inc. vs. State, supra; A.H.S., Inc. v. Wall Township, Bulletin 2308, Item 1; James V. Sylvester, Inc. vs. Kearny, Bulletin 2303, Item 4. From my review of the over 370 pages of testimony, the other police incident reports from Somers Point and Egg Harbor Township and the petitions of citizens, I find that the issuing authority herein properly recognized an operation involving more than the normal amount of problems.

While I do not believe reasonable competent support exists for the determination not to renew appellant's license, sub judice, alternative remedies exist to adequately protect the welfare of

the police and citizens of the communities involved.

However, I shall reverse the action below because of the inadequate proof of improper and unlawful operation directly attributable to the appellant, coupled with the testimony that appellant has made good faith efforts to operate the premises lawfully and control its patronage. Don Patten Corp. v. Union, Bulletin 2172, Item 1; To-Jon, Inc. v. Watchung, Bulletin 1946, Item 1.

I do so however, expressly subject to certain special conditions to be affixed to the appellant's license. N.J.S.A. 33:1-31. The imposition of the hereinafter designated special conditions constitutes a fair and reasonable opportunity to the appellant to endeavor to ameliorate the complained of situation. Wenzler v. Hillside, Bulletin 2182, Item 3. The failure of the appellant to seize this final opportunity to insure that the licensed premises will be conducted in a law-abiding manner, may well result in future disciplinary proceedings or subsequent denial of renewal. Faces, Inc. v. West Orange, Bulletin 2310, Item 2.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the written memorandum of the parties, the Initial Decision, the written Exception filed by the appellant and the written Answers submitted thereto by the respondent, I concur in the factual recitation set forth by the Administrative Law Judge and adopt same, except as heretofore noted, as my findings herein.

I reject the conclusions derived from these facts as it relates to sufficient adequate support in the record before me to warrant a non-renewal of appellant's license. I further specifically reject the finding that the Ishmal doctrine is applicable sub judice. Any "trouble spot" classification herein is not attributable to the location of appellant's premises. While any location near residences can encompass noise difficulties, and while inadequate parking facilities or narrow roads can result in traffic problems, the analogy to the Ishmal case is inappropriate. The nuisance type activities involve patrons within or adjacent to the licensed premises and are capable of control by the appellant. The different closing hours among neighboring communities is the most direct factor accounting for increased activity in the area after 2:00 a.m.

Accordingly, it is, on this 6th day of March, 1980,

ORDERED that the action of the Township Committee of the Township of Egg Harbor be and the same is hereby reversed; and it is further

ORDERED that the Township Committee be and the same is hereby directed to renew appellant's license for the 1979-80 license term in accordance with the application filed therefore expressly subject to the following special conditions:

1. Appellant shall employ during the period between Memorial Day through Labor Day sufficient personnel necessary to function as security officers with no less than (a) six (6) employees on Friday and Saturday from 10:00 p.m. until one-half hour after closing; and (b) four (4) employees on all other days of the week during the same hours;
2. At least two of the required personnel must be stationed outside the licensed premises in the parking lot, contiguous areas and the door, to prevent outside patron disturbances;
3. No package sales of alcoholic beverages for off-premises consumption shall be permitted after 10:00 p.m.
4. Appellant shall comply with the applicable noise ordinance and undertake structural modifications necessary to ameliorate any noise emanation.
5. After closing of the licensed premises, the appellant shall, within two hours thereof, undertake to remove all bar related litter or debris on its licensed premises, and up to and including the Brass River Bridge to the east and an equal distance to the west on Longport-Somers Point Boulevard.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

IN THE MATTER OF:)	<u>INITIAL DECISION</u>
CHARLES EDWIN BROWN, t/a)	OAL DKT. NO. ABC 2859-79
BARBARA ANDREW LTD. v)	AGENCY DKT. NO. APPEAL #4367
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF EGG HARBOR)	

APPEARANCES:

H. Robert Boney, Jr., Esq. for the Appellant

Michael Jacobson, Esq., for the Respondent, Township of Egg Harbor

BEFORE THE HONORABLE JEFF S. MASIN, A.L.J.:

On June 28, 1979, the Egg Harbor Township Committee voted unanimously not to renew the liquor license of the Appellant licensee, Charles Edwin Brown t/a Barbara Andrew LTD. At the committee meeting held on that date, the tape recording made reveals that the committee considered complaints received from citizens, a petition received from residents of the adjoining city of Somer Point, and information received from the local police in arriving at their decision. (Letter dated November 9, 1979, R66 in evidence).

Following the non-renewal, the licensee filed a petition of appeal with the State Division of Alcoholic Beverage Control. The petition asked for, among other forms of relief, a stay of the Township's action pending a consideration of the merits by the Director. Director Lerner granted the stay pending the hearing. The matter was then transferred to the Office of Administrative Law as a contested matter pursuant to N.J.S.A. 52:14F-1, et seq. Hearings were held in Atlantic City, New Jersey on October 11 and 30, 1979 before Administrative Law Judge Jeff S. Masin. Supplementary evidence and briefs have been filed pursuant to the agreement between the parties and the court.

By way of background, the testimony of various witnesses revealed that the licensee operates a bar known as Mothers, which is located on the Longport-Somers Point Boulevard in Egg Harbor Township, New Jersey. The location is within a short distance of the boundary with Somers Point. The location is on a road running from Somers Point on the mainland across the marsh and bay area to Longport on Absecon Island. The bar is set back from the two lane roadway about 30 feet. Parking on the premises is provided for about fifty or sixty cars. The highway in front of the premises proceeds into Somers Point over the nearby Bass River Bridge, a small structure located East of the licensed premises. While the area in the immediate vicinity is largely undeveloped, the area just over the Bass River Bridge contains residences, a marina and other structures. Directly across from the licensed premises are meadows and a clear view is afforded across open meadows, marshlands and waters to the Margate bridge located several miles to the North.

The bar contains approximately 60,000 square feet of space plus an additional 600 feet for restrooms and support facilities. The bar is located approximately five miles from the main bar strip area in Margate and is approximately 150 yards distant from the nearest residences in Somers Point. There are no residences located within the immediate vicinity within the boundaries of Egg Harbor Township.

Testimony also revealed that the bars in Somers Point close at between 2:30 and 3:00 a.m. and the Margate bars close at 4:00 a.m. with music stopping at 3:30. The bars in Egg Harbor Township, including Mothers, are permitted to stay open past the closing hours in Somers Point and Margate and generally close around 5:30 or 6:00 a.m.

Testimony also reflected that the "season" for the bars in the area from Margate to Somers Point is the summer. While many facilities are open for a period from sometime in the spring until sometime in the fall, or perhaps even all winter, the largest business is done from approximately Memorial Day to Labor Day.

THE TESTIMONY

At the de novo hearing, the Township Committee presented the testimony of the Mayor, Deputy Mayor, Police Chief, the detective assigned to monitor the local bars, and the Police Chief and a police lieutenant from the City of Somers Point. Their testimony is summarized below:

Chief Edgar Unsworth of the Egg Harbor Township Police Department and Lieutenant Orville Mathis of the Somers Point Police Department were each presented as witnesses in order to lay the necessary foundation for the admission into evidence of local police reports detailing incidents during which one, the other or

both of their respective departments responded to Mothers bar during the period from mid-June, 1978 until late June, 1979. These documents were offered by the Township as business records and were established as fitting within the definition of business records. However, they were admitted, over objection, subject to the understanding that while the documents themselves were prepared in the normal course of police business and fit within the definition of business records, they contained substantial hearsay statements and often detailed incidents not witnessed, either partially or fully, by the officers preparing the reports. As such, they were admitted for such weight as they may be found to have deserved. The Egg Harbor reports were marked in evidence as R-1 through R-37. The Somers Point reports were marked as R-50 through R-64,

Chief Unsworth stated that his department kept records on all liquor establishments in the Township and gave a yearly report to the governing body. This report listed the total number of incidents in the year for each bar. The Chief had not personally been in Mothers during the licensing year of 1978-79. He also had not spoken with the holder of the license, Mr. Charles Brown, during that year.

During the Chief's testimony, exhibits R38-R45 were introduced and admitted into evidence. These photographs, taken by the department's safety unit, show scenes on the Longport-Somers Point Boulevard in front and to the side of Mothers. The photos were taken on July 15, 1979, after the non-renewal decision. (See discussion on page 5).

On cross-examination, the Chief defined an incident report as being one prepared when a contact occurs by the police with a location or a person. This is to be distinguished from an investigation report or an arrest report.

The Chief testified that a temporary no parking ordinance had been enacted which prohibited parking on the Longport Boulevard between 10:00 p.m. and 6:00 a.m.

The Somers Point side of the Bass River bridge is zoned "residential-commercial". It contains a large motel and quite a few homes. There is also a marina. The local side streets are Launch and Trailer Avenues.

Chief Bader testified that he had personally received complaints from residents of Launch Avenue about noise emanating from the bar. The noise was keeping these people awake. Further complaints were received concerning trespassing on private property, profanity, and persons urinating in the street. The Chief had personally observed large crowds leaving the bar area and going to their cars and has heard profanity used, but has no personal knowledge of the alleged trespassing or other matters complained of. In an attempt to control problems, he stationed several special officers in the area of Launch Avenue around 3:00 to 5:00 or 6:00 in the morning.

The Chief detailed attempts to control parking problems in the residential area. An emergency ordinance was passed barring parking on the Bass River bridge in Somers Point to Bay Avenue. This caused cars to park at the Rock Box, a closed bar and restaurant one city block from Mothers. When towing zone signs were placed at the Rock Box, which is private property, cars moved to Harry's Inn, a restaurant inside Somers Point and out of the residential zone.

Because of the complaints and petitions received by Chief Bader, he and Mayor Smith of Somers Point met with officials of Egg Harbor to discuss the problems.

Lieutenant Orville Mathis of the Somers Point Police Department testified that in 1978 he may have been at Mothers one or two times. In 1979 his contact with the bar began Memorial Day weekend. His department was routinely asked to back up Egg Harbor units at the bar every Saturday night beginning around Memorial Day. He would go to the premises to act as a supervisor.

The Lientenant described his general observations in the area near the bar on these Saturday nights. Large crowds of young people were to be seen walking in the streets to and from Mothers. He saw people urinating, "making out" in cars and sitting on bulkheads. Beer bottles lay in the middle of the road. The officer stated that by the time he would arrive at the bar the incidents for which a back up unit had been requested were usually over. The calls were often for fights, hit and run accidents, or problems with members of the Pagans motorcycle gang.

On cross-examination, Lientenant Mathis admitted that he had never seen anyone urinate near the doorway or in the immediate area of Mothers nor had he seen beer bottles thrown out of Mothers.

The officer stated that from his review of police reports he believed his department had responded to Mothers more than to any other bar. The ratio of responses were estimated to be three or four to one.

Testimony was also received from Deputy Mayor Joel Jacovitz of Egg Harbor Township. Deputy Mayor Jacovitz noted that in 1978 the Township committee had determined to take a careful look at the policy of "rubber stamping" liquor license renewals, a practice that he contended existed for many years previously. With respect to Mothers bar, he said that in June of 1978 the committee did not feel it had enough "documentation" to support a decision not to renew. At the June, 1978 committee meeting, bars were notified of specific problems and the newspapers picked up this information and published it.

After June of 1978 Mr. Jacovitz received complaints from citizens of Somers Point and Egg Harbor Township regarding problems in the area near Mothers. He investigated these when possible. On several occasions he personally was in the bar area and observed the doors of the facility were open. Loud music emanated from within and he could hear it at least a block away.

Mr. Jacovitz was in charge of the police department during the 1978-79 period. The police complained to him about parking along the road in front of Mothers. Cars would line up on both sides of the Longport-Somers Point Boulevard. While Mr. Jacovitz stated that cars could proceed when this parking situation occurred, he also stated that problems arose as car doors were opened and people moved in and about the automobiles. In view of the problems which they were encountering, the police requested that the committee enact a parking ordinance to ban parking on the boulevard. This was accomplished. Mr. Jacovitz could not recall when the parking problem on Launch Avenue in Somers Point began.

On June 26, 1979 the Township Committee met in a work session. At this time the Committee called in the police officer assigned to monitor the bars, Detective John Burke. This officer gave a report referred to at the hearing as the "Burke" report which listed each bar and noted the number of incidents for which the local police had responded to the particular bar. The report also noted generally the type of incidents involved in these calls. The Committee did not review the individual police reports themselves. No specific information was sought as to whether any of the incidents involved the signing of complaints, arrests, convictions, etc. Detective Burke stated that the information provided did indicate that bar employees had been involved in some way in at least some of the incidents to which the police responded at Mothers, however, the written report does not reflect such information.

The Committee also considered a petition presented by citizens of Somers Point (R-48 in evidence), dated June 15, 1978; letters from citizens; and a report from Chief Unsworth of Somers Point.

The Committee finally voted against renewal of this license as well as those of several other bars at its regular meeting on June 28, 1979. The vote was unanimous with respect to Mothers. The Committee acted, in Mr. Jacovitz' view, in order to assure that businessmen live up to their responsibility to keep in line with municipal standards. Extraordinary action was sometimes required in order to ensure such compliance, protect the residents and municipal employees and uphold the local ordinances.

Deputy Mayor Jacovitz stated that his primary concern was not the number of incidents at Mothers but the type. He acknowledged that a bar owner certainly had the right to call police when there are problems.

During Mr. Jacovitz' testimony he referred to R-38 through 45 in evidence, the photographs taken of the Longport-Somers Point Boulevard. These photographs were taken in order to illustrate the parking problems existing near the bar but Mr. Jacovitz stated that they did not really show the full extent of the problem existing prior to June 28, 1979.

The Deputy Mayor testified that no testimony was taken at the June meeting. He could not recall if any of the signers of the petition were present. Mr. Brown, holder of the license, was not present. The existence of the petition was noted in the record. While Mr. Jacovitz stated that the "Burke" report information was made a part of the record at the public meeting, the taped minutes as noted in the letter submitted by the Township to the court on November 9, 1979 show no specific reference to this information.

Mayor John Heinz of Egg Harbor Township testified. He first became aware of problems concerning Mothers on May 5, 1978 when he received a letter from the President of the Somers Point City Council (R-47 in evidence). This letter requested the assistance of the Egg Harbor Township Committee in regards to reported problems of loud music, obscenity, vandalism, people jumping off the Bass River Bridge and boats in the nearby waters. During the 1978-79 period, Mayor Heinz also received a letter from the Mayor of Somers Point making a similar request. Finally, the petition (R-48 in evidence) was received by the Mayor through the Somers Point authorities and also through a copy sent to the Director of the Division of Alcoholic Beverage Control. A meeting of the mayors and chiefs of police of Somers Point and Egg Harbor Township was also held to discuss the problems with respect to Mothers. The Mayor explained that the licensing committee was then directed to conduct a "extensive investigation" of the situation and it reported back at the June 26th work session. Detective Burke presented his report as part of the data received at that work session. The incidents listed broke down as follows: 4 larcenies, 7 fighting, 3 malicious damage, 5 assault and batteries, 2 breaking and enterings, 3 atrocious assault and batteries, and 2 stolen motor vehicles. The "Burke" report contained no information as to the exact location where each of these incidents occurred. None of the reports were reviewed by the Mayor and he did not know whether the problem had been inside or outside of the bar. Although Burke said some of the action was in the parking lot, the Mayor did not know if any had occurred off of the premises. He understood that employees of the tavern had been involved in possibly excessive beatings of patrons.

The Mayor testified that the June 28, 1979 meeting was posted as required by the Sunshine Law. No decision on the renewal question was reached until the June 28th meeting.

The Mayor also noted that at the renewal meeting in June of 1978, public notice was given of the Committee's concern with the then existing problems in the vicinity of Mothers. At that meeting approval of the relicensing of Mothers and all other licensees was given contingent upon the removal of the problems noted.

On cross examination, Mayor Heinz stated that no testimony was taken at either the work session or the meeting of June 28. Mr. Brown was not specifically asked to appear. Detective Burke's report and the prior information regarding the bar was discussed. The Mayor reported on his contacts with the officials of Somers Point.

The Mayor acknowledged that he had no knowledge of the foundation of the complaints voiced in the petition. He accepted the word of his Chief of Police that employees had been involved in beatings of patrons; beatings which he had the impression amount to merciless attacks.

When the hearing resumed on October 30, 1979, Detective John Burke was placed on the stand. He advised that the "Burke" report was prepared following a review of the copies of all police reports relating to contacts with licensed premises during the 1978-79 licensing year. The report itself was placed in evidence as R-65. It shows the location of the incidents (by name of establishment, the police case number, the general type of incident, and the time and date of the contact). When Detective Burke presented the report to the Committee, he was asked if it was complete and had been put through proper police channels. He responded to the few questions asked but was not placed under oath. No questions were asked regarding the disposition of the incidents referred to in the reports and no detailed facts were sought concerning specific incidents.

Detective Burke admitted that incident reports could arise from contacts initiated by the licensee. They did not always necessarily reflect something bad having happened.

The information concerning Mothers Bar is contained on page E of the Burke Report. 26 entries are noted. Burke said he himself may have been present once or twice.

On cross-examination, Detective Burke agreed that when Charles Brown took over the bar he spoke with the police, including himself, with respect to his concern over police response time to calls for aid. Brown also sought information from the police as to means of controlling continuous trouble makers and avoiding problems in the lot and nearby areas.

Detective Burke was queried as to several of the police reports. He admitted that he knew nothing about the incidents except what the officer involved had put down on the report. He acknowledged that many of the incidents had initially been reported to the police by way of a phone call from either Charles Brown or his employees. Some of the incidents had involved problems with the Pagans, a large motorcycle club consisting of several hundred members. This group's members had been a problem for Mr. Brown and Mr. Brown had attempted

to keep them out of the bar as much as possible. Mr. Brown had given the names of Pagan members to the police and had asked for surveillance of Pagans at the premises. He had agreed with the police to have his employees exercise restraint in dealing with problems and call the police to handle trouble. Brown also discussed the parking problems and spoke of putting up dividers. Additionally, he spoke of putting up an addition to the front of the building to control noise.

Detective Burke acknowledged that the Committeemen did not query him as to the involvement of Pagans in the 26 incidents. He had never seen any massive number of Pagans near the bar.

The Appellant licensee presented two witnesses on its behalf. The main testimony came from Charles Brown, the holder of the license since his purchase of the bar on May 30, 1978. Brown had managed the bar since the early Spring of 1975. He is now the sole owner trading as Barbara Andrew, LTD.

Mr. Brown testified concerning his efforts to maintain security and avoid problems with his patrons. His testimony included information about the number of security personnel on duty and his location and duties during the work evenings. He was generally stationed near the entrance. Brown described his premises as having a capacity for 250-300 people. During the busy Summer months of 1978, the bar was generally filled from 2:30 to 5:30 a.m. with people coming in and going out regularly.

When Mr. Brown took over the bar he spoke with Detective Burke on several occasions and discussed with him the best means for security, including means of avoiding problems with the Pagans. He described the relationship between himself and the police as cooperative. In mid-June of 1978, after he had assumed control, he and his employees met with the police. The police apparently believed that the previous owners had covered up incidents at the bar and because of this the police suggested that they be called when problems arose. Mr. Brown was shocked when he learned in June of 1979 that the license had been denied because of the number of police calls.

Mr. Brown further explained that a side door of the bar had often been kept open for ventillating purposes. When the police told him of noise emanating from the door, he shut it; allowing its use only as a means for employees to go from the back of the building to the front.

The licensee stated that he had been asked to try to keep the Bass River Bridge clear. He rearranged the parking lot to help the flow of traffic. Curbing was put in. When the bar opened for the season in April of 1979, he placed a person in the parking lot ot help direct traffic. The entire parking situation was clouded because of questions regarding the legality of parking on the shoulders of the Boulevard.

Mr. Brown was queried about complaints concerning his operation. He did learn of a complaint from the owner of a nearby motel concerning cars parked there. This complaint had nothing to do with noise. However, Mr. Brown did admit that an employee, one Lee, had told him that his father, a resident of Launch Avenue, was upset about noise. Brown said he had heard "rumour" about a possible petition being circulated.

With respect to the problems he had with the Pagans, Mr. Brown testified

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that he had attempted to keep out known trouble makers. During the Summer of 1978 he had initially attempted to bar any known Pagans altogether but was told by Officer Ingemi of the Egg Harbor Township Police Department that such a blanket policy was probably illegal. Mr. Brown stated that he then tried to identify Pagans for the police and keep out trouble makers and that this policy continued during the latter part of December of 1978 and the Spring of 1979. He could not understand why the police could not protect the bars from the Pagans.

Mr. Brown stated that he had tried to limit problems outside the bar itself by refusing to sell package goods even though he was licensed to do so. Further, he did not allow drinks outside of the building and assigned a floor man and/or doorman to enforce this restriction.

Mr. Brown recalled that he had not seen any serious physical injuries occur with the exception of one time when an employee was hit in the head with a broken glass and another had his jaw broken.

Upon questioning by the court, Mr. Brown described his experience in obtaining his liquor and mercantile license in June of 1978. At that time he went to get his mercantile license from the Tax Collector and was advised by the Collector that there was some problem. The Tax Collector then read him a list of problems with the operation of the bar (this list was never produced by either side). Brown had already talked to the police, as noted above, and thought that the problems had been taken care of. He informed the Tax Collector of this and the Collector called Lieutenant Hudson and then, after hanging up, issued the license. Brown thought that all the problems had been cleared up or at least were in the process of being eliminated. Brown had not attended the June 27, 1978 Committee meeting at which the renewal was considered. The Tax Collector's reading of the list of problems and an article in the Mainland Journal the next day were his only notice of any "conditions" or problems connected with his 1978 renewal. No conditions were attached to the license itself nor was any formal written notice of conditions given to him.

In June of 1979, Mr. Brown heard that there was a petition being circulated but the petition itself was never shown to him before the meeting date. He received no indication of any problem with renewal before that session. He knew that the meeting of June 28 was going to take place but he had come home late and when he remembered the meeting it was 9:30. He thought it was too late to go. He got a telephone call at 10:00 p.m. from another bar owner advising him of the denial of renewal.

On cross-examination, Mr. Brown described the crowd at his bar as between 18 and the late 20's. His peak business hours corrolate with the closing times of the Margate and Somers Point bars. Mr. Brown stated that his calls to the police generally were for situations which had formerly been handled without police assistance. He believed that these could have continued to be processed this way but that the calls were made in view of the police request so as to avoid any charges of cover-ups.

During his cross-examination, Mr. Brown was asked if he recalled various incidents reported in the Egg Harbor Police Department reports. He did not recall all, but did agree that certain incidents could be considered of a major nature. Among these were car thefts, damage to equipment, larceny of pocketbooks, atrocious

assault and battery and threats. Other incidents he characterized as being of a minor nature, such as certain fights in the parking lot not involving either his employees or "innocent" patrons. These fights were the type of incident for which he might ordinarily not have called the police but did so after June of 1978. In some of the incidents, Brown was the complainant.

Lewis Steiner, a newspaper publisher, testified on behalf of Mr. Brown. Essentially he confirmed Brown's having discussed expansion of the parking lot during 1978 and 1979. He saw Brown had his employees trying to direct traffic to the parking lot of the nearby Rock Box and away from the street. Steiner publishes the Whoot newspaper, an entertainment guide for the shore area which contains advertising from various night spots, including Mothers.

The parties stipulated that Ed Keeler and Lawrence Levy, employees of the Appellant, would have corroborated Brown's testimony of affirmative actions taken to ease crowd and parking problems had they been available to testify at the hearing. The parties also stipulated that the individual police officers who had made out the police reports, had they been called as witnesses, would have corroborated the information contained in the police reports as being the accurate rendition of their knowledge of the incidents gained either from hearsay or personal observations.

STANDARD OF REVIEW

Both the initial grant of a liquor license and the renewal thereof is a privilege. The licensee has no vested right to a renewal. Zicherman v. Driscoll, 133 N.J.L. 586, 587,88 (Sup. Ct. 1946). The responsibility for determining applications for renewal rests with the licensing authority. Where a local licensing body acts, its determination is subject to review by the Director of Alcoholic Beverage Control. However, while the appeal is de novo and findings of fact and conclusions of law must be made, the Director's power to review is limited. Where the record reveals a reasonable basis of support for the local action, the Director will not substitute his judgment for that of the local board. Margate Civic Association v. Board of Commissioners, 132 N.J. Super 58, 63 (App. Div.1975); 279 Club v. Municipal Board of Alcoholic Beverage Control of Newark, 73 N.J. Super 15, 19-20 (App. Div. 1962). The burden of proof of establishing the unreasonable nature of local licensing agency action is upon the Appellant. Biscamp v. Township Council of the Township of Teaneck, 5 N.J. super 172 (App. Div. 1949); N.J.A.C. 13:2-17.6.

In this case the testimony and evidence presented at the de novo hearing indicate that in June of 1978 the Egg Harbor Township Committee renewed the liquor license of the Appellant but only after openly expressing a concern that the licensee comply with all township ordinances "pertinent to regulations for proper business atmosphere". The recorded minutes of the 1978 meeting revealed that Deputy Mayor Jacovitz openly warned licensees that failure to improve their operations might lead to "serious consideration for not issuing their license" (See R-66). While the Appellant licensee was not at this meeting, it is admitted that he both read of the problems in the Mainland Journal and received at least an informal notice thereof from the Tax Collector when he applied for his mercantile license. The recorded minutes reflected a litany of complaints from residents of

Somers Point and a report from the local chief of police of a series of incidents involving "atroucous (sic) assault, motor vehicle accident, careless driving."

During the period from June 1978 to June 1979, Mr. Brown, who had become the licensee in May of 1978, made attempts to work with the police, call when trouble arose, reduce traffic and parking problems and limit outside consumption of liquor. Mr. Brown appears to have done as asked when he instructed his employees to restrain themselves in the use of force to break up fights and deal with potential trouble makers and call for police assistance when incidents arose. However, a review of the "Burke" report reflects that the 26 incident reports noted therein cover a range of happenings running the gamut from larceny, trouble with patrons at the bar, indecent exposure, larceny of patrons' motor vehicles, malicious damage, thefts of pocketbooks, assault and battery, atrocious assault and battery, damage to vehicles and fights. The fact that the police did have some form of contact with the bar on each of the occasions listed in the "Burke" report was confirmed by the Egg Harbor Township Police Department police reports admitted into evidence. It is true that these reports contain hearsay and often reflect events alleged to have occurred and that in most instances no complaints were signed or arrests made. However, the Appellant has not established that the reported events did not occur. He recalled some of them; indeed he was the one who often summoned the police. On the basis of the reports it can certainly be concluded that the licensed premises and the surrounding area did, in the 1978-79 licensing year, produce substantial activity for the department.

What the police reports and the "Burke" report do not reflect is the continuing problem which the residents of the nearby streets seem to have experienced in the licensing period. The Petition of June 15, 1979, signed by a long list of Somers Point residents, called attention to a picture of disturbance, annoyance, noise, obscenity, immorality and destruction in the area. The Petition pinpoints the hours between 12 midnight and 6:00 a.m. as the trouble time. While it is certainly true that the problems complained of may not all have resulted from the operation of the licensee or the actions of his patrons and others drawn to the area by his operation; nevertheless, the location, the hours and common sense point to the licensed premises as being the primary focal point for the difficulties. What is most disturbing about the petition is its having been preceeded by the May 4, 1978 letter from the Mayor and Council of Somers Point which requested the aid of the City Fathers of Egg Harbor Township in eliminating similar problems in the area which occurred during an earlier period. While Mr. Brown did not own the bar at that time, the continuation of the problem and its affect on the residents appears to have been largely unaffected by his takeover and his efforts to alleviate the difficulties.

The net effect of the statistical review contained in the "Burke" report and the petition, coupled with the earlier appeals from the Somers Point citizens and governing body and supplemented by the limited personal observations of Deputy Mayor Jacovitz, Mayor Heinz and perhaps others, was to present the Committee with a situation very similar to that referred to in the June, 1978 minutes. Despite Mr. Brown's apparently sincere efforts to work to improve the situation, the basic problem seems to have remained. Faced with this picture, the Committee chose to act by denying a renewal, a decision which, given the circumstances, cannot be faulted as unreasonable.

In determining that non-renewal was appropriate, the Committee could reasonably have put weight upon the strongly asserted position of the citizens and

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governing body of the neighboring community of Somers Point. Given the location of the licensed premises, the most directly affected citizens were not the residents of Egg Harbor Township but those of Somers Point. Likewise, the police reports of the Somers Point Police Department reflect the continuing burden placed on those police to respond to the incidents at Mothers, albeit in a support role. If the Egg Harbor township Committeemen had ignored the prayers of those from across the city line, they would have been guilty of narrowness of vision and parochialism. Fortunately, they were not.

Of course, a mere reliance of the number of calls to the bar in and of itself might well be an unreasonable basis for supporting the action of the Township Committee. As noted by Judge Clapp in his decision in Nordco, Inc. v. State 43 N.J. Super. 277 (App. Div. 1957), a licensee "should be encouraged to summon the police when trouble appears in the offing." However, Judge Clapp also recognizes that the number of calls can indicate that a location has become a trouble spot. That characterization could reasonably have been applied to Mothers. However, in this case, the Committee's action does not rest solely upon the police calls, but also upon the petition and complaints.

The Appellant complains about a lack of notice of the June 28, 1979 meeting and the resultant lack of fundamental fairness. Of course, the testimony reveals that Mr. Brown was not altogether in the dark concerning the fact that his liquor license renewal was under consideration. He had filed for renewal during June. His license contained an expiration date in late June. He acknowledged that he knew about the meeting and intended to go but was involved in some other activity and did not attend. Finally, it is not disputed that the meeting date and agenda were posted. Given these facts the Appellant was hardly denied "any" opportunity by the Board to be present to hear their action and to respond. At the same time, it does seem that the Township did not follow the procedure set forth in N.J.A.C. 13:2-2.7 through 13:2-2.9. Since objections and negative comments had been received by the Committee, it should have forwarded specific notice to the licensee and the objectors of the time, date and place of the hearing. The posting of the "Sunshine" notice does not seem sufficient to meet this burden. However, despite this procedural error, the Appellant has not truly been prejudiced. The facts upon which the Board acted were never really disputed in the de novo hearing. Police contacts had occurred, complaints and petitions had been received in both 1978 and 1979, parking problems had existed, and concern had been expressed in 1978 by the Township Committee. While Mr. Brown should have been given proper notice and the right to oppose the denial before the Committee, he has had that right on this de novo proceeding. On the whole, the evidence and arguments presented on his behalf do not demonstrate that a denial of substantial justice has occurred because of the lack of complete procedural regularity. See the discussion by Judge Clapp in Nordco, Inc., v State, supra, at 283-287.

The Appellant has relied heavily upon Ishmal v. Division of Alcoholic Beverage Control 58 N.J. 347 (1971). He believes that the problems that he experienced were caused not by his conduct but by the physical location of the licensed premises. It is certainly true that the licensee did make serious efforts to control some of the problems. In this connection it should be noted that I was impressed with Mr. Brown, the sincerity of his testimony and presentation. The unchallenged testimony indicates that he attempted to call police when trouble arose, he instituted measures to limit the physical role of his employees, he did

not serve packaged goods, he tried to keep drinks inside, he tried to limit the opening of the side door, and he rearranged the parking lot to improve traffic flow. Many of the problems experienced by the residents of Launch Avenue and the surrounding area were caused by persons who had quite probably been in or were going to Mothers. These actions were probably beyond the reasonable control of the licensee. The parking problems on the Boulevard and in the Launch Avenue area were at least partially location related, as well as being caused by the limited on-sight facilities available and perhaps as irritated by the imposition of the parking ban. Finally, there is no evidence that the licensee has been the subject of any disciplinary proceedings by the Division of Alcoholic Beverage Control nor that he has received any summonses for ordinance violations. While I cannot fully agree with the Appellant's arguments that the Boulevard location in and of itself caused an influx of Pagan motorcyclists and the trouble they caused, on the whole I feel the problems were largely location related. As such, the Supreme Court's direction in Ishmal requiring the local board to permit the licensee the right to apply for a place-to-place transfer to a suitable location seems appropriate here.

FINDINGS AND CONCLUSIONS

I make the followings Findings of Fact:

1. The Appellant's liquor license was renewed on June 27, 1978. Although no formal notification of conditions on renewal was given to the licensee by way of either a letter or attachment to the license, he did learn of concerns from the Tax Collector and newspaper reports of the Township Committee meeting.
2. In the period from June, 1978 until June, 1979 the police were required to visit the licensed premises or the immediate vicinity at least 26 times as the result of reports of incidents of larceny, fights, unwanted patrons, malicious damage, thefts of pocketbooks, assault and atrocious assaults, and indecent exposure.
3. During the same period, residents of the Launch Avenue area located near the bar experienced a series of disturbances, noises and other disruptive behaviour sufficient enough to cause them to petition the governing body for relief. This picture was a continuation of the one which had existed prior to the June 1978 renewal and which had caused residents to complain at that time. In this connection it should be noted that this licensee did not hold the license until late May, 1978.
4. These incidents in the neighborhood were at least partially, if not entirely, the result of the location of the licensed premises in the area.
5. In June of 1979 the Township Committee reviewed the petition, complaints received from city officials of Somers Point, the "Burke" report summarizing the activities of the Egg Harbor Township Police Department in connection with the various local licensed premises, and the history of the difficulties in the area and voted on June 28, 1979 not to renew the license.

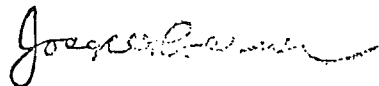
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6. Mr. Brown knew of the June 28, 1979 meeting and knew that license renewals would be considered at that time. He knew of "rumors" of a petition, but had not seen it and had no specific notice or knowledge of a possibility of non-renewal. He chose not to attend the meeting.
7. From the time of his becoming the owner of Mothers in late 1978 through the June, 1979 period, Mr. Brown cooperated with the police, sought their aid and assistance, attempted to control problems arising from the operation of his establishment and otherwise acted in a sincere effort to conduct what is obviously a difficult business in a proper manner. However, his efforts were not entirely successful. There was no indication that the failure of his efforts was in any significant way his fault.
8. The licensee was not charged with any violations by the Division of Alcoholic Beverage Control or Egg Harbor Township during the license year of 1978-79.
9. The problems experienced by the licensee were in the main related to its location and not its manner of operation.

I CONCLUDE that the decision of the Egg Harbor Township Committee not to renew a license for the conduct of business at the present site was reasonable in light of the evidence before it and must, therefore, be affirmed. However, I FURTHER CONCLUDE that the remedy suggested in the Ishmal decision is appropriate in connection with this licensee and that he should be permitted to apply for a place-to-place transfer to a suitable location.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director 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 Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, my Initial Decision in this matter and the record in these proceedings.



Joseph H. Lerner
Director