

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 2291

August 10, 1978

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1. COURT DECISIONS - GILLHAUS BEVERAGE COMPANY, INC., IRVING HEIR and JOHN J. GARRITY, et al. v. JOSEPH H. LERNER, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, et al.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4762-76
A-4719-76
A-4843-76

Gillhaus Beverage Company, Inc.,
t/a Favin Importers & James Sleigh, Ltd., et al.,

Plaintiff-s Appellants,

v.

Joseph H. Lerner, Division of Alcoholic
Beverage Control, et al.,

Defendants-Respondents.

Irving Heir, Individually and on behalf of a class,

Plaintiffs-Appellants,

v.

Joseph H. Lerner, Director, Division of Alcoholic
Beverage Control, et al.,

Defendants-Respondents.

John J. Garrity, et al.,

Plaintiffs-Appellants,

v.

Joseph H. Lerner, Director, Division of Alcoholic
Beverage Control, et al.,

Defendants-Respondents.

Argued September 27, 1977 - Decided November 22, 1977.

Before Judges Lora, Seidman and Milmed.

On appeal from Superior Court, Chancery Division, Bergen County.

Mr. Clyde A. Szuch argued the cause for appellants Gillhaus Beverage Company, Inc., etc., et al. (Messrs. Pitney, Hardin & Kipp, attorneys).

Mr. Harold H. Fisher argued the cause for appellant Irving Heir, individually, etc. (Messrs. Shanley & Fisher, attorneys; Mr. John Zen Jackson, on the brief).

Mr. Edward G. D'Alessandro argued the cause for appellants John J. Garrity, et al. (Messrs. Friedman & D'Alessandro, attorneys; Mr. Gary F. Troxell, on the brief).

Mr. Alan Dexter Bowman, Deputy Attorney General, and Mr. Carl A. Wyhopen, Deputy Attorney General, argued the cause for respondents (Mr. William F. Hyland, Attorney General of New Jersey, attorney).

PER CURIAM

This is the appellate determination of a prior judgment of the Superior Court, Chancery Division, and affirms the Director's power to require State licensed wholesalers and solicitors to respond to a questionnaire propounded by the Director concerning their knowledge of improper trade practices in the industry.

2. APPELLATE DECISIONS - BORDEN BAR, INC. v. BORDENTOWN.

Borden Bar, Inc.,
Appellant,

v.

Board of Commissioners of the
City of Bordentown,
Respondent.

ON APPEAL

#4163
Bordentown Equities, Inc.,
Appellant,

CONCLUSIONS
and
ORDER

v.

Board of Commissioners of the
City of Bordentown,
Respondent.

Milton Josephson, Esq., by Joseph F. Fidler, Esq.,
Attorney for Appellant - Borden Bar, Inc..
Laurence A. Hecker, Esq., Attorney for Appellant - Bordentown
Equities, Inc..
Kessler, Tutek and Gottlieb, Esqs., by Henry G. Tutek, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The subject appeals are inter-related, involve the same liquor license, and, thus, will be consolidated in a single Hearer's Report.

In case #4163, appellant, Bordentown Equities, Inc., prospective purchaser of Plenary Retail Consumption License C-3 issued by the Board of Commissioners of the City of Bordentown (Board) to Borden Bar, Inc., appeals from a denial of its application for a person-to-person and place-to-place transfer of said license.

Appellant alleges in its Petition of Appeal that, in essence, the action of the Board was arbitrary, unreasonable and capricious in denying the proposed transfer. The Board denies the substantive matters contained in the appellant's petition, and sets forth as separate defenses the basis for its action.

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

I shall now set forth a preliminary, chronological summary of events which is pertinent to an understanding and determination of the issues involved herein.

The appellant, Bordentown Equities, Inc., applied for a person-to-person transfer of the subject license, and, on July 11th, 1977, the following resolution was adopted denying the transfer:

WHEREAS, the application for renewal of Plenary Retail Consumption License No. C-3 of Borden Bar, Inc., a corporation of the State of New Jersey, for premises located at 317 Borden Street, in the City of Bordentown, County of Burlington and State of New Jersey was renewed expressly subject to the imposition of certain special and specific conditions set forth in Resolution No. 1977-12; and

WHEREAS, said Resolution further provided that said renewal license is not to be delivered (to) the licensee until certain building and health violations relating to said premises and set forth in said Resolution were completely eliminated or corrected, and that said renewed license shall not be the subject of either a person-to-person or place-to-place transfer unless and until said license is first released to the licensee; and

WHEREAS, said building and health violations have not been completely eliminated or corrected as of this date, and said licensed premises and the remaining building violations continue to be detrimental to the public health, safety and welfare of the residents of the City of Bordentown and the prospective invitees and patrons of said licensed premises; and

WHEREAS, the Board of City Commissioners have, and do hereby determined that fire department and electrical inspections of said premises are necessary and should be obtained for the protection of the public health, safety and welfare, and

WHEREAS, Bordentown Equities, Inc., a corporation of the State of New Jersey has applied for a person-to-person transfer of said license to it from Borden Bar, Inc.

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of the City of Bordentown that the application for the person-to-person transfer of Plenary Retail Consumption License, No. C-3, for premises at 317 Borden Street, Bordentown, New Jersey, be, and the same is hereby denied; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution be filed by the City Clerk with the Division of Alcoholic Beverage Control, of the Department of Law and Public Safety of the State of New Jersey, and furnished to the licensee and to Bordentown Equities, Inc., forthwith.

Although aware of its right to appeal this decision to this Division, the appellant determined to seek other quarters in which to relocate the license. It instructed it's attorney to reapply for a person-to-person and place-to-place transfer, without having a specific operable site available; a so-called "pocket" license.

Its attorney sought the advice of this Division's Deputy Director, in charge of Licensing, as to the proper procedure to follow to insure compliance with applicable Division regulations and policy; and prepared the application in accordance with the advice rendered to him.

The second application for transfer was denied on September 12, 1977. The Resolution of denial states in pertinent part:

NOW, THEREFORE, be it resolved by the Board of Commissioners of the City of Bordentown, County of Burlington, State of New Jersey, assembled in regular session this 12th day of September, 1977, at City Hall, Bordentown, New Jersey, that the application of Bordentown Equities, Inc., for a person-to-person and a place-to-place transfer of Plenary Retail Consumption License C-3, as set forth in its application filed September 2, 1977 be, and the same is hereby denied for the following reasons:

1. The Notice of Application to transfer

as published in the legal newspaper of the City, the Register-News, and the Application as filed with the City Clerk contain contradictory data as to the location of the premises to which the Applicant has requested a transfer of the subject license.

2. The location to be licensed as set forth in the Application to transfer is not within a zone within which a bar or tavern may be operated and would thereby be contrary to and in violation of the Zoning Ordinance of the City of Bordentown.

3. The present Application filed with the City Clerk does not bear the written consent of the Borden Bar, Inc., the present licensee of the subject license, as required by the Rules and Regulations of the Alcoholic Beverage Commission.

At the hearing in this Division, Paul G. Davis, owner of 33% of the shares of Bordentown Equities, Inc. and its Secretary, testified on its behalf.

Directing his testimony to the claimed inconsistency in addresses set forth in the transfer application (Milkus Alley) versus the absence of address in the published application, the following colloquy occurred:

Q. When you indicate there was no location designated, you did set forth an address, however, on the application, itself?

A. Yes. At the time that the application was prepared by me, from instructions from the Alcoholic Beverage Commission, we were told we needed a mailing address within the municipality. At that time, we did not have a mailing address, although our mailing address is Bordentown, for the corporation. It is actually in the Township of Bordentown and not in the City. So, we were told that a post office box number would be sufficient and that was typed in there without a number. It was later ascertained that because of a shortage of boxes at the post office, we weren't able to obtain one.

Q. So, you used the address of a resi-

dent in the City of Bordentown?

A. That was for notification purposes, only. This residence was owned by a member of the family of one of the stockholders of the corporation.

Q. And you had the permission to use that address?

A. Yes.

Davis also testified that, when certain alleged deficiencies were raised during each of the two hearings based upon the two applications filed, his attorney requested an adjournment each time in order to obtain necessary information requested or cure the alleged defects. The Board denied the request each time.

Davis indicated that he was told at the hearing that the Board "...were not familiar with this type transfer whereby a location was not presently available, even though I (Davis) had requested that it (license) be held in the Municipal Building and that we would have to appear before them to get an approval for suitable location when it was acquired."

Davis testified that he and his attorney stated to the Board in unequivocal terms that they had no intention of operating a licensed premises at the Milkus Alley address. That address was for mailing purposes only within the jurisdiction, and submitted pursuant to advice given by the Deputy Director, in charge of Licensing, of the Division of Alcoholic Beverage Control. The appellant's attorney further stated it was aware that zoning regulations prohibited the locating of a license at that location. The appellant requested that the license be held by the City Clerk pending either the location or erection of a suitable building, which would be submitted for review and approval by the Board prior to the physical delivery of the license to the appellant corporation.

Although not part of the Resolution of September 12, 1977, the City Attorney, at the de novo hearing, laid great stress upon the fact that the legal advertisement in this matter did not conform to the statute, i.e., the publication of notice preceded the filing of the application by one day, despite the explanation of appellant's attorney and the submission of a letter waiving strict compliance in this instance, dated September 9, 1977 from this Division. Davis testified that applicant's request to adjourn, to clarify this matter when raised by the Board, was refused by the Board.

Milton Josephson, an attorney, gave testimony on behalf of the Appellant. In sum, he testified that, as counsel for Borden Bar, Inc., he had prepared and submitted to the City Clerk the

necessary consent to transfer its license to appellant. He stated this for the record at the hearing when the matter was raised by the Board's Attorney. Further, he prepared a new consent and submitted it after the Board meeting.

Josephson stated that his consent was on file with the Board since the first (unsuccessful) application for person-to-person transfer; and it was never revoked. In addition, he stated that, since he was present at the hearing upon the second (current) application and spoke in favor of it, it could not possibly have been a genuine issue in any Board member's mind that evening.

Joseph R. Malone, III, Mayor of the City of Bordentown testified on behalf of the Board. He stated that, in an earlier resolution (1977-12) the City enjoined the licensee, Borden Bar, Inc. from transferring this license until certain stated building, fire and sanitary code violations were corrected; and this knowledge played a part in the denial of the application sub judice.

Malone testified that the Board was very concerned that no consent to the transfer application had been annexed by the appellant. Moreover, the Board seriously believed that this was a possible attempt to establish a licensed establishment at the Milkus Alley address, which is in a residential zone. He asserted that the Board felt that it was bound by Rule 14 of State Regulation No. 6, which indicates that in a joint application for license transfer, i.e., both as to person and place, the license shall not be transferred to the applicant unless the place-to-place transfer is also effected.

Malone admitted, on cross-examination, that the City Attorney came to the hearing with a resolution prepared denying the application, which was not seen by the Board members prior to the meeting, but presented to them at the conclusion, for their vote. No alternate resolution granting the application was submitted for the Board's consideration.

The factual findings contained within the resolution of denial, adopted that evening, were apparently made by the Board's Attorney, prior to the hearing of the matter.

The crucial issue to be determined is whether the Board acted reasonably in denying the appellant's application.

Preliminarily, I observe that it is a firmly established principle that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div.) aff'd

33 N.J. 404 (1960): "No person is entitled to [the transfer of a license] as a matter of law."

However, where the municipal action is unreasonable or improperly grounded, the Director may grant such relief or take such action as is appropriate. Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965).

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

The application of fairness has long been a hallmark in the administration of this Division.

As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation. The law must be applied rationally and with fair recognition of the fact that justice to the litigant is always the polestar.

Samuel Berelman, Inc. v. Camden, Bulletin 1940, Item 1. Cf. Barbire v. Wry, 75 N.J. Super. 327 (App. Div. 1962); Martindell v. Martindell, 21 N.J. 341, 349 (1956).

It is fundamental that no testimony need be believed in these cases, but rather, the Hearer must credit as much or as little as he finds reliable. 7 Wigmore Evidence, Sec. 2100 (1940); Greenleaf Evidence, Sec. 201 (16th Ed. 1899).

Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954); Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508, 511 (Sup. Ct. 1943).

Using the above principles as a guide, I am persuaded that the testimony of the Board's sole witness, Mayor Malone, was unworthy of belief. I question the genuineness of the motives he sets forth as the basis for its decision.

The record discloses an almost total lack of candor and

fairness towards the appellant, throughout.

Surely the testimony of Milton Josephson that the consent was prepared by him and presumably submitted to the City Clerk along with the other documents and fee should have been sufficient to satisfy the Board, if its concern was genuine.

There should have been no confusion in a reasonable person's mind as to the address of the license, after reviewing the application and the explanation submitted by the appellant's attorney.

If the Board were still concerned that the appellant was attempting to physically locate its license at the Milkus Alley address, despite the Rider and explanation, its fears should have been put to rest by the appellant's statement that it would agree to a restriction or special condition attached to the granting of the transfer prohibiting the establishment of a license at that location.

I feel the reasons set forth in the resolution denying the application were without basis in fact and law.

Perhaps, as was stated by Davis, no one on the Board, or its Attorney, was familiar with the procedure being followed by the appellant. The appellant's request for an adjournment to allow it to procure information to submit to the Board as to this procedure was reasonable. No one would have been prejudiced by the adjournment, and in fairness, it should have been granted.

I am influenced too by the admission that the resolution, later adopted, and which contained findings of fact, was prepared before any testimony was presented or explanation given. It was brought to the meeting by the Board Attorney and was the only one submitted by him for consideration.

It would appear that anything which would resolve the claimed fears and/or suspicions of the Board was not considered, nor was an opportunity given to submit further evidence at a later date that would be either informative or curative.

For reasons stated, I find that the appellant has met the burden imposed by Rule 14 of State Regulation No. 15. It has established that the action of the Board was erroneous and should be reversed.

II

In Case Number 4141, Borden Bar, Inc. appeals the imposition of certain special conditions attached to its plenary retail consumption license when it was renewed by the Board for the 1977-78 licensing year.

Having determined that the Board acted improperly in denying the application of Bordentown Equities, Inc. for a person-to-person and place-to-place transfer, in the companion matter as set forth hereinabove, the appeal of Borden Bar, Inc. has been rendered moot.

III

It is recommended that the action of the Board in denying Bordentown Equities, Inc.'s application for person-to-person and place-to-place transfer of the subject license be reversed, and an Order be entered directing the Board to grant the transfers in accordance with the application filed therein. This shall be made expressly subject to the special condition that said license shall be held by the City Clerk until the appellant obtains a site for the license which meets with the approval of the local issuing authority.

It is further recommended that an Order be entered dismissing the appeal of Borden Bar, Inc., as the decision in Bordentown Equities, Inc. vs. Board of Commissioners of the City of Bordentown renders same moot.

Conclusions and Order

No written 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 23rd day of February, 1978,

ORDERED that the action of the Board of Commissioners of the City of Bordentown whereby it denied the application of Bordentown Equities, Inc. for a person-to-person and place-to-place transfer of the subject license be and the same is hereby reversed; and it is further

ORDERED that the Board be and is hereby directed to grant appellant Bordentown Equities, Inc.'s application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-3, in accordance with the application filed therefor; and it is further

ORDERED that the appeal of Borden Bar, Inc. from the action of the Board attaching special conditions to the granting of its application for renewal of its 1977-78 license, having been rendered moot by the aforesaid transfer of license, be and the same is hereby dismissed.

3. APPELLATE DECISIONS - LOYAL ORDER OF THE MOOSE PLEASANTVILLE LODGE NO.
1139 v. GALLOWAY.

Loyal Order of the Moose,)	
Pleasantville Lodge No. 1139,)	
Appellant,	}	ON APPEAL
v.)	
Township Committee of the)	CONCLUSIONS
Township of Galloway,	}	and
Respondent.)	ORDER

Don Shur, Esq., Attorney for Appellant.
Vasser, Rimm, Bloom & Spitalnick, by Ronald I. Bloom, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Township Committee of the Township of Galloway (Committee) which, on January 17, 1977, denied appellant's application for the issuance of a new club license for premises to be located at 1340 White Horse Pike, Absecon.

In its Petition of Appeal, appellant contends that the action of the Committee in denying the subject application was erroneous in that no reasons therefor were stated in its resolution.

In its Answer, the Committee denies appellant's contention and asserts that appellant's application had been the subject of continuous discussion at Committee meetings by the members of the Committee who expressed their reasoning at the conclusion of such meetings. Further, in its separate defenses, the Committee avers that, (1) the appeal of appellant was not timely filed, and (2) contemporaneously with the filing of the appeal, the Committee had adopted an Ordinance reducing the number of allowable club licenses, which negated the Committee's power to issue a new license and effectively renders the appeal moot.

A de novo hearing was scheduled in this Division pursuant to Rule 6 of State Regulation No. 15, at which the parties would be permitted to present evidence and to cross-examine witnesses. However, the parties hereto agreed to submit the minutes of the hearing held by the Committee in evidence and further agreed that such minutes and memoranda of law to be supplied

would constitute the basis for decision herein; in accordance with Rule 8 of State Regulation No. 15.

From the respective statements of facts as supplied by counsel, it appears uncontroverted that a second application for a club license was filed by appellant with the Committee on December 27, 1976. There had been a prior application for a club license by this appellant, which was denied, but which is not a subject of this appeal. Following the second filing, the Committee denied appellant's application at its regular meeting on January 17, 1977. Notice of denial was sent to appellant by certified mail on February 16, 1977.

I

The contention of the Committee in its Answer that appellant's appeal was not time filed is without merit. The appeal was perfected on March 10, 1977, which is within thirty days of the date of mailing the notice of denial. The date of mailing the notice, not the date of determination, is dispositive. N.J.S.A. 33:1-22.

II

Appellant's substantive contention that the Committee did not set forth its reasons for denial is not, in itself, sufficient grounds for reversal on appeal. As stated in Downie v. Somerdale, 44 N.J. Super. 84, 87 (App. Div. 1957):

Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort.

Appellant correctly cites Rule 8 of State Regulation No. 2, which does require that "In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor." The admitted failure of the Committee to cite its reasons for rejection is cured by the de novo appeal herein and its Answer and memorandum filed with this appeal.

The very nature of a de novo appeal is to eliminate, where possible, procedural defects below and afford a reconsideration to ascertain whether the evidence before the Committee was sufficient to justify its denial of appellant's application. Cino v. Driscoll, 130 N.J.L. 535 (E. & A. 1943); Nordco, Inc. v. Division of Alcoholic Beverage Control, 43 N.J. Super. 277 (App. Div. 1957); Twin Manor, Inc. v. Asbury Park, Bulletin 2087, Item 2;

Liquor Giant v. Fairfield, Bulletin 2109, Item 2.

The decisive issue for determination on appeal has been set forth in Hudson Bergen, &c. Assn. v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947), and provides that, in order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts.

Failure of the Committee to state reasons for its determination is not, per se, action "clearly against the logic and effect of the presented facts." Rather, the issue on appeal is a substantive determination whether or not a reasonable basis exists to support the finding that the issuance of a new club license to appellant would not be in the best interest of the community. Fanwood v. Rocco, 33 N.J. 404 (1960).

A review of the documentation submitted by the parties for consideration on appeal indicate that, the Committee had been initially approached by appellant for the purposes of effectuating a change in the local ordinance so as to permit a third club license in the community.

The members of the Committee apparently believed that such an additional club license for appellant would eliminate the need for the appellant to secure special permits to sell alcoholic beverages at its occasional social functions. In consequence, it adopted an Ordinance on August 16, 1976 increasing the number of club licenses to three, whereupon appellant made an application therefor.

Following a denial of the appellant's initial application on September 20, 1976 for a club license, it reapplied on December 27, 1976. However, the discussions between the appellant's representatives and the members of the Committee, as recorded in the said minutes, continued to reveal a growing reluctance by the Committee to grant approval to appellant's application.

In short, there appeared to be a consensus among the Committee members that an additional club license would not be to the benefit of the Township. There were too many licensed premises in the community already, and any further club licenses would increase competition with tax paying licensed premises. Nor was any substantial basis for issuing the license shown to exist.

In arriving at a determination herein, I am guided by the landmark case of Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970), where the court set forth the standard of review on appeal:

The conclusion is inescapable that if the legislative purpose is to be effectuated

the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record.

Thus, were the matter to be resolved on the basis of the factual record, I would recommend that the action of the Committee be affirmed. The appellant has failed to sustain its burden of showing that the action of the Committee was a clear abuse of discretion, or an arbitrary or unreasonable exercise of their power.

However, it is clear that the appellant's appeal must be adjudicated on the basis of the law now existing, and therefore, as hereinbelow discussed, cannot prevail.

III

The adoption on February 7, 1977 by the Committee of an Ordinance reducing the number of club licenses to two, raised the issue of mootness of the appeal.

Once the committee limited the number of permissible club licenses to those already in existence, there remained no available license for appellant.

It is well-settled that when local legislation affecting a cause is altered during litigation, the disposition of the case is determined by the law existing at the time of the hearing. See Hynes v. Mayor and Council Borough of Oradell, 66 N.J. 376, 379 (1975); In re Petition of South Lakewood Water Co., 61 N.J. 230, 248 (1972); Re Leste Holding Corp., Bulletin 2267, Item 4.

Therefore, since there is presently no available license for which appellant may apply due to the adoption of the Ordinance on February 7, 1977, the issues herein are moot.

IV

Consequently, applying the precedential authorities to the facts appertaining, it is recommended that the action of the Committee be affirmed, and the appeal herein be dismissed.

Conclusions and Order

No written 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 exhibits, memoranda of law submitted by the parties 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 15th day of February, 1978,

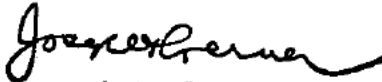
ORDERED that the action of the Township Committee of the Township of Galloway be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

4. STATE LICENSES - NEW APPLICATIONS FILED.

Otto C. Kern Inc.
303-309 Manchester Avenue
North Haledon, New Jersey
Application filed August 7, 1978
for person-to-person transfer of
a limited wholesale license from
Otto C. Kern.

7Up Bottling Company of Camden, Inc.
549 South Broadway
Gloucester, New Jersey
Application filed August 8, 1978
for plenary winery license. This
license was issued for the 1977-78
fiscal year but applicant failed to
file application for "renewal" by
July 30, 1978.


Joseph H. Lerner
Director