Deputy Director Stockburger

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1745 August 17, 1967

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ITEM

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1. APPELLATE DECISIONS - KAPLAN and BUZAK v. ENGLEWOOD.

Frieda Kaplan, Stella Buzak, Frank Buzak, t/a West Side Bar & Grill,	)	
Appellants,	)	
v.	)	On Appeal
Common Council of the City of Englewood,	)	CONCLUSIONS and ORDER
Respondent.	)	

Jacob Schneider, Esq., and Myron Rosner, Esq., Attorneys for Appellants.
William V. Breslin, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal addresses itself to the action of respondent Common Council of the City of Englewood (hereinafter Council) wherein, by unanimous resolution dated June 22, 1966, it denied the application of appellants (hereinafter West Side) for renewal of their plenary retail consumption license for premises 91 West Palisade Avenue, Englewood. The text of the resolution follows:

> "WHEREAS, written objections have been filed with the City Clerk protesting the granting of a renewal of Plenary Retail Consumption Liquor License C-11 in the name of Frieda Kaplan, Stella Buzak, Frank Buzak, t/a West Side Bar & Grill for premises known as 91 W. Palisade Ave., Englewood, N.J. and
>
> "WHEREAS, due notice was given to the holder of said Plenary Retail Consumption Liquor License and publication made as required by law, and
>
> "Whereas, public hearing was duly conducted on this 21st day of June 1966, at which time all parties in interest were heard,
>
> "Now, therefore, be it RESOLVED by the Common Council of the City of Englewood that renewal of Plenary Retail Consumption Liquor License C-11 issued to Frieda Kaplan, Stella Buzak, Frank Buzak, t/a West Side Bar & Grill for premises known as 91 W. Palisade Ave., Englewood, N.J. be and is hereby denied for the following reasons: The evidence adduced before the Common Council, all as more specifically set forth in the recorded proceedings hereof, clearly established that the licensee has, for a period of more than one (1) year, in various records, as disclosed by the testimony, allowed, permitted and suffered in and upon the licensed premises filthy language, obscene

language and conduct; brawls, acts of violence, disturbances and unnecessary noise and, in addition thereto, the testimony discloses that the licensee has allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance.

"That for the same period of time the licensee did sell, serve, permit or suffer the sale, service or delivery of alcoholic beverages to persons actually or apparently intoxicated in violation of Rule 1 of State Regulation No. 20.

"Be It Further Resolved that the licensed premises located at 91 W. Palisade Ave., Englewood, N.J. be and the same is declared ineligible to become the subject of any further license of any kind or class under the Alcoholic Beverage Law during the period from July 1, 1966 at 12:01 a.m., the effective date of said revocation, to June 30, 1968 at 12:00 midnight."

In the petition of appeal, West Side alleges that the Council's action was erroneous for reasons which may be summarized as follows:

(1) Appellants were not afforded a fair hearing before the Council because (a) they received inadequate notice, (b) the attorney for the Council "advised the Council as its attorney; and personally decided points of law, evidence and fact," (c) the Council withheld the fact that objections had been made and also withheld "the nature and substance of charges made against the appellants at the hearing," (d) their request for adjournment of the hearing was denied, and (e) Council prejudged its decision to deny the renewal.

(2) Englewood ordinances relating to renewal of licenses "do not set forth a standard by which a determination is to be made." Thus, denial of appellants' application is void under the State and Federal Constitutions.

The answer of Council admits the jurisdictional allegations of the petition and denies each of the substantive allegations. It specially answers as follows:

(a) West Side's premises was conducted as a nuisance and "will be a hazard and a detriment to the health, safety, welfare and morals of the community."

(b) Records of the Englewood Police Department established that numerous "assaults, fights, disorderly conduct, drunken brawls, disturbances of the peace, etc. had taken place in or about 'West Side'."

(c) Council acted within the purview of its police powers and the applicable regulations in refusing to renew the said license.

Upon the filing of this appeal, the Director entered an order on June 27, 1966, extending the term of the license then held by West Side, pending the determination of this appeal and the entry of a further order herein. R.S. 33:1-22.

This is an appeal de novo, with full opportunity afforded counsel to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15.

I

I shall first consider several matters raised with reference to the hearing before the Council.

West Side alleges that it did not receive a fair hearing, as required by State Regulation No. 2, and argues that "due process requires that a Licensee be given notice of the charges which he is called upon to face."

The short answer to this is that at a hearing for renewal of a license, a municipal issuing authority is not required to prepare charges against a licensee because this is not a disciplinary proceeding where specific charges have been preferred against a licensee. Under Rule 8 of State Regulation No. 2, a licensee is not even entitled to a hearing on the application for renewal unless objections are filed (as in this case) to the renewal of the said license.

It is my view that a more satisfactory procedure for a local issuing authority to follow would be to initiate disciplinary proceedings upon specific complaints and base its refusal to renew a license upon an adjudicated record. However, it is understandable that local issuing authorities at times withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the licensed business. This would appear the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint, and consider that the failure of the issuing authority to take specific action on complaints as license for continued profligacy. As the court said in Downie v. Somerdale, 44 N.J. Super. 84, 87:

> "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. Mr. Downie perhaps thinks that on a hearing before the borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing the burden of proof falls on the applicant for the renewal of the license. Nordco, Inc. v. State, 43 N.J. Super. 277,287 (App. Div. 1957)."

In any event, the Council set forth the reasons upon which it based its determination to deny renewal.

The petition of appeal also alleges that West Side was denied a request for an adjournment of the hearing before the Council and was thus prejudiced in the preparation of its case.

My examination of the record fails to disclose such prejudice. The Council appeared to provide an adequate hearing at which abundant evidence was adduced and upon which it rendered its decision. The proofs show that the Council ruled on the evidence and made its own determination based upon the testimony.

Councilman Carman Hintz had knowledge of police reports concerning various incidents at West Side, but insists that his decision was based on the testimony adduced before the Council.

Councilmen Savage Frieze, Jr., Peter Abel and Vincent K. Tibbs emphasized that they did not prejudge this matter before the hearing but, similarly, based their decision solely upon the proofs presented at that hearing. Frieze added that after receiving many complaints about the operation and activities at West Side, he conferred with the Chief of Police to determine whether conditions at West Side could be improved. He added that conditions apparently did not improve because the Council continued to receive complaints - - more complaints, in fact, about these premises than of any other licensed premises in the city.

The clear fact, gleaned from the totality of the proceedings before the Council, is that it did afford West Side's attorney a sufficient opportunity for argument and thus complied with the general concept of due process.

We are, of course, primarily concerned with the substantive issues in this case. As Mr. Justice Jackson so well phrased it in Market Street R. Co. v. Railroad Com. of Cal., 324 U.S. 548, 89 L. Ed. 1171:

> "...due process deals with matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties."

West Side has been afforded full rights at this de novo hearing to produce testimony and cross-examine all witnesses. This cures any infirmity allegedly arising by reason of the denial of a fair, impartial and unprejudiced hearing before the Council. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943).

II

West Side alleges on this appeal that "Ordinances of the City of Englewood dealing with the renewal of Plenary Retail Consumption Licenses do not set forth a standard by which a determination is to be made by the Mayor and Council for the...denial of same" and thus are in violation of the State and Federal Constitutions.

The contention that the pertinent ordinances are invalid and should be so declared by the Director is contrary to the established principles respecting the authority of the Director in these proceedings. The general authorities treating this subject are manifold that the validity or legality of such ordinances can be determined only by a civil court of competent jurisdiction, since municipal ordinances are presumed to be valid on their face. Cf. Klein and Tucker v. Fair Lawn and Schweder, Bulletin 1175, Item 3; Matthews et al. v. Orange and Lagravenis, Bulletin 936, Item 9; Blanck v. Magnolia, 73 N.J. Super. 306.

The matter of "standards" to be applied by a local issuing authority was considered in Tumulty v. Dunellen et al. (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1. In that case, upon an appeal from a refusal to renew their license, appellants argued that since a 75-day suspension was imposed by the Director, such suspension was adequate punishment and, therefore, the refusal to renew the license altogether was "harsh and oppressive, inequitable and not warranted upon the facts and the law." The Court disagreed and stated:

"That does not follow. The problem before the Director was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed." (Emphasis supplied)

Finally, the grant or denial of an alcoholic beverage license is a discretionary matter and, in order to prevail, West Side must show unreasonable action on the part of the Council, constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598; Blanck v. Magnolia, 38 N.J. 484. Thus, if the Council acted reasonably, this contention is insubstantial and must be rejected.

III

The crucial issue in this appeal is whether the evidence herein justifies the action of Council in refusing to renew appellants' license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. In analyzing the testimony, it would be helpful to state the applicable legal principles pertinent to a determination hereof. The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, supra; Nordco, Inc. v. State, 43 N.J. Super. 277. As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the

general public should be the guide post in the issuing and renewing of licenses."

See Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

There was introduced into evidence written objections filed with the Council by five residents, including the Galilee Methodist Church.

Frieda Kaplan, one of the partners of West Side, gave the following account. She and her two partners acquired this license in June 1964. She was in charge of the bookkeeping. When they first purchased the premises, they had "many, many problems. It was a pretty dirty place. Some of the people who were there were pretty bad. We heard rumors of considerable trouble with the police." During the present operation, West Side sought to weed out some of the undesirables and, in fact, barred at least fifty persons.

She further stated that West Side has tried to improve the conduct of the business and "If I had any idea it was so bad, I can assure you I would never have gone into it." She insisted that her records disclose only five calls by the police between January 1 and July 29, 1966, most of which concerned "minor, little problems." In checking with the police, she found there were many more calls during the years 1964 and 1965 but that the general conditions have been improved. She admitted there was a considerable amount of loitering outside the premises and that a "No Loitering" sign had been placed to discourage that condition.

In order to improve conditions, West Side employed a guard or special police officer for eight months but found that this guard was a "detriment" and that they had less trouble without him.

On cross examination, the witness admitted that in October 1964, West Side pleaded guilty to a charge alleging sale of alcoholic beverages before the opening hour. She was shown the police record reflecting a large number of police calls between July 1, 1965 and June 30, 1966, but denied any personal knowledge about these incidents because "I come down about once a week, perhaps." She asserted that she made at least two written complaints and other oral complaints as a result of incidents. It was established that, in fact, she had made one written complaint. Finally, she denied any knowledge of littering of empty bottles and cans in and about the premises but did hear "in a roundabout way" that the merchants were objecting to loitering in the area.

Chief of Police Elbert Earley, called on behalf of West Side, testified that the partners of West Side never requested his advice regarding problems which might develop with patrons or with respect to control of persons outside the bar. He stated that he had received numerous complaints from neighbors and businessmen about the operation of these premises, particularly with respect to alleged sales after hours, and discussed these matters with West Side. He had received complaints about loitering on the outside of the tavern, as well as numerous calls with respect to incidents inside the said premises. He was then asked the following:

"THE HEARER: Chief, let me ask you this: From your experience as a chief and as a police officer

in this community for a number of years, would you consider this as a trouble spot?

"THE WITNESS: Yes.

"THE HEARER: Why?

"THE WITNESS: Due to the large groups that loiter in the area from the place, a potential trouble spot of blocking the sidewalk for the pedestrians who pass the establishment, and the attitude of the individuals that do loiter."

Martin Saidel, a neighboring businessman whose business is located about 300 feet from West Side's premises, stated that although he saw police cars at the premises on three or four occasions, he never saw any fights, heard any loud or profane language, nor did he consider these premises a nuisance.

Joseph Rizzo, another businessman, testified that he did not even see police come to the bar, nor indeed did he see anything unusual at the premises.

William Paschal, a part time bartender at West Side, felt that he kept control of bad language being used in the bar. He would explain to patrons that if they could not keep it quiet, they should take their argument outside. He remembered only one occasion on which the police were called, "but the people had already gone out."

He was asked on cross examination whether there were any intoxicated or apparently intoxicated persons on the premises. His answer, "Well, they were feeling pretty good I'd say, like I say, like feeling no pain."

Three patrons of West Side testified that they never saw any police come to the bar or heard any profanity, except that one of them admitted using profanity himself and he was told by the bartender to "keep it down."

Frank Buzak, one of the partners of West Side, testified that after the security officer who had been employed for eight months was discharged, he tried to keep control of the premises by threatening to call the police. "Quite a few" intoxicated persons patronized his bar but he instructed his bartender not to serve them.

On cross examination, he was asked why the security officer was discharged and replied that West Side did not feel the need for one after that time. He admitted that some of his patrons brought in bottles labeled "Twisters", got drunk on it and then left the tavern.

An impressive array of witnesses was produced on behalf of the Council to describe the conditions that existed during the period from July 1, 1965 through June 30, 1966. Their testimony may be briefly summarized as follows:

Harry Hunter, chairman of the Englewood West Civic League, testified that on the two or three occasions that he visited West Side, he noted that its patrons were boisterous and under the influence of liquor, and that persons leaving the bar would drive away at a high speed, in violation of the local laws.

Samuel Goldstein, chairman of the Cleanup Committee of Englewood and owner of a hardware store immediately adjacent to West Side, described the conditions in front of the tavern. He noted that there frequently was residue of vomiting and urination in front of his store, quantities of beer cans in back of his store, and double parking. He added that he had to close his door early each evening because of the large crowd in front of the licensed premises and that the conditions during the last three or four years were worse than he had encountered in forty years in business on this street.

Wilbert Taville, a resident, testified that he saw dancing in front of the bar on one occasion, observed unruly individuals both in and outside the bar, double parking and speeding by patrons of the bar; and on one occasion, he saw a patron urinating in the doorway of West Side.

Sol Kaplan, a nearby storekeeper, complained that intoxicated patrons of West Side congregated in front of the premises, double-parked motor vehicles frequently containing children. He also was annoyed by drunkards, and on five to eight occasions had to call the police to have them removed from his store, which they entered after emerging from West Side.

William Luciano, a local police officer, testified that he was called to disperse a crowd in front of the licensed premises on July 25, 1965 and September 4, 1965; that on May 6, 1966, he responded to a call to break up a fight and make arrests.

Ellis Sommer, who operates a drug store a few doors from West Side, frequently observed patrons coming from West Side in a drunken condition. He also complained of continual double parking by West Side's patrons.

Laura N. Thompson, a retired nurse who resides in the neighborhood, said she is frequently required to pass the premises and observed that the sidewalks were cluttered with patrons so that "you can't pass." She noted that they were frequently drunk and that patrons would pick up young girls on the outside of the premises and drive away with them. She also told of patrons openly urinating at and near the premises, and using "vile language."

Patricia E. Stuart testified that she was bumped and cursed by a patron and observed large crowds and double parking in front of the premises. She too was particularly annoyed at the presence of teenage girls, between the ages of 13 and 16, who fraternized with patrons of West Side; and she felt that West Side contributed to the serious teenage problem in Englewood.

Josephine Hill, another neighbor, observed numerous drunkards coming out of West Side and on one occasion falling over the stroller in which she was wheeling her baby. She also heard frequent cursing and obscenity directed to passers-by by the patrons.

James J. Smith, superintendent of the Englewood Department of Public Works, pictured the condition of the outside of the premises where he noted numerous empty bottles and beer cans on the street in front of and in the general area of West Side.

Phillip Keane, a local police officer, testified to certain incidents when he responded to police calls. On

October 21, 1965, when he answered a call to help stop a fight among patrons at West Side, one of the patrons wielded a tire iron and was thereupon arrested. On May 6, 1966, he also responded because of a fight at these premises. He added that he was called to these premises on numerous occasions, particularly on weekends.

Another local police officer testified that on March 20, 1966, he was told by the owner that an unruly patron was in the washroom and found that the patron was armed with a knife.

A local detective testified to an incident on October 21, 1965, involving a fight in which one of the patrons was hit on the head with a beer bottle. This incident was corroborated by another police officer, who also testified to an incident on November 19, 1965, when one of the patrons was assaulted in the men's room at these premises.

I have had the opportunity to observe the demeanor of the witnesses as they testified at this hearing, and am persuaded that the version given by the Council's witnesses is a forthright and credible one. It is clear, nor has it been suggested that any of these witnesses has been improperly motivated; they testified with sincerity and conviction, with a sense of public responsibility.

On the other hand, it seems highly incredible that several of West Side's witnesses saw nothing unusual, in view of the large number of incidents and the constancy of the conditions complained of. Yet it is significant that several of West Side's witnesses, in effect, corroborated the testimony of those appearing for the Council. Thus, with respect to the frequency of drunkenness in and about these premises, Paschal, the bartender, admitted that the patrons were "feeling pretty good...like feeling no pain." Nor was I impressed with the credibility of Linton Marsh, a patron, who quibbled with counsel about the definition of "drunk".

Buzak, one of the partners of West Side, admitted that quite a few intoxicated persons patronized the bar. He added that he instructed his bartenders not to serve them, but it is difficult to believe that this state of intoxication was not the result of service to these very patrons by employees of West Side.

What is particularly inexplicable is the action of West Side in discharging the special officer assigned to keep some semblance of order at these premises, eight months after they commenced operations. If this person was unsatisfactory, as they reason, why was he not replaced by another special officer. Mrs. Kaplan admitted that conditions at the premises were unsatisfactory; that indeed, she would never have purchased this business if she were aware of the problems. Yet neither she nor her partners made any reasonable efforts to have the premises properly patrolled and supervised.

From my evaluation of the entire record, it is abundantly clear and supported by the congeries of Council's proofs that the manner in which West Side was operated constituted a trouble spot which was detrimental and inimical to the best interests of the community. Appellants argue that they should not be held responsible for conditions which occurred outside the premises. However, as early as in Conte v. Princeton, Bulletin 139, Item 8, the well-established principle was cited to the effect

that a licensee is responsible for conditions both in and outside his licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1, where the Director cites Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947), as follows:

> "Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; Atl. Rep. (2d) 140."

I am persuaded and find as a fact that West Side did not understand its full responsibility in the operation of these premises and conducted the premises as a nuisance. As noted hereinabove, the same reasoning and ultimate conclusion were reached by the members of the Council when they decided to deny renewal of appellants' license.

Further, as noted hereinabove, upon an application to renew a license, as distinguished from disciplinary proceedings against a licensee, the issuing authority must take into consideration the worthiness of the applicant to continue the operation in the future. Tumulty v. Dunellen et al., supra. Thus, it must not only take into account the conduct of the licensee in the past but also conditions not attributable to a licensee's conduct which rendered a continuance of a license in a particular location against the public interest. Nordco, Inc. v. State, supra. Where, as here, the police have been summoned to appellant's premises on numerous occasions during the licensing year for trouble which occurred both within and without the premises and where licensed premises are conducted in such manner as to cause annoyance and disturbance to the residents of the area so that, in the words of the chief of police, this was clearly a trouble spot, the conclusion must unmistakably be reached that West Side conducted its premises as a nuisance and that its continued operation would be a detriment to the safety, welfare and morals of the community.

There is no persuasive evidence to indicate any improper motivation on the part of the Council in its action and there appears to be evidence to support its determination herein. 279 Club, Inc. v. Newark, Bulletin 1405, Item 2; Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Tumulty v. Dunellen, Bulletin 1487, Item 4. Or, to put it in another way, where reasonable men, acting reasonably, determine that the license should not be renewed, the Director should affirm such determination in the absence of a finding that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

My careful consideration of all of the evidence presented, the exhibits, and the briefs submitted by counsel in summation lead me to the inescapable conclusion that the Council exercised its discretion circumspectly, reasonably and in the best interests of the community in refusing to renew appellants' license for the current licensing year.

It is, therefore, recommended that respondent's action in denying appellants' application be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's report and argument in support thereof were filed by the attorneys for the appellants.

In his exceptions the attorney for the appellants argues that neither the objectors nor the Chief of Police, nor any city official, "advised the Licensees that their conduct was in question", nor did they file a complaint with the city. The short answer to this is that the objectors had no duty or obligation to advise the appellants or to make any complaints to the city, the municipal court or any other agency. What they did, and properly so, was to make their objections known to the Council at the time of the appellants' application and they appeared as witnesses at this plenary de novo hearing on appeal.

The appellants further take exception to the Hearer's comment with respect to the Chief of Police. The impression which appellants' attorney seeks to create is that the only conversation with the Chief of Police had to do with the request for a "no loitering" sign outside the premises. The fact is that the Chief of Police did visit these premises to warn the appellants of complaints of "sales off hours, off-hour sales, and to advise them to discontinue it if it was true." Subsequently he saw them on two other occasions. On one occasion they appeared in the office "to ask me why are we giving them a hard time, to that effect." This would obviously indicate that the appellants were aware of proscribed activities at their tavern, and had complained about the number of times that the police had been called to the premises. Chief Earley testified that the conversation eventually came around to the question of loitering and he then agreed to have the sign put up. The Chief further stated that he received numerous complaints from residents with reference to the conditions both in and outside of the licensed premises and, pursuant to the Mayor's request, a report of police activities with reference to the said premises, which was admitted into evidence, was prepared and submitted to the Mayor.

It seems very clear to me that a "no loitering" sign is never an adequate substitute for proper controlling and supervision of premises. The Hearer found it "particularly inexplicable" that the appellants discharged a special officer assigned to keep some semblance of order at these premises only eight months after they commenced operation. Since it is quite apparent that the conditions both in and outside of the premises had not improved, it is hard to understand how the substitution of a "no loitering" sign in the place of a special officer would have had any salutary effect. I concur in the Hearer's conclusion that, on the basis of the proofs, these premises were inadequately supervised and, as operated, constituted a "trouble spot."

Appellant's attorney takes further exception to the fact that the Hearer did not include or take count of all of the testimony of all of the witnesses. The function of the Hearer and of the Hearer's report is to make a concise, factual report of the testimony. It is obvious that, where the testimony is as voluminous as in this case (413 pages of transcript), the

Hearer was required to set forth only those facts which he considered credible and substantial in arriving at his conclusion and recommendations. I am satisfied that the Hearer did take all pertinent matters into consideration and that his conclusions were based upon a fair, exhaustive and objective evaluation of the entire record.

The exceptions further note that the Hearer did not comment on the testimony of one Miguel Martinez who stated that he resided in a house immediately in the rear of this tavern and was totally unaware of the police activity with respect to these premises. His testimony was so unbelievable that the Hearer rejected the same. The choice of accepting or rejecting testimony of witnesses rests with the Hearer and ultimately with the Director. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

Another exception charges that the "Hearer's Report conveys an unfair inference that many disturbances occurred inside the premises. A. The Police testified as to only three incidences that occurred inside the Tavern, which incidences did not result in an arrest, except on 1 occasion when a complaint was made by the Licensees." The police reports and the testimony of the witnesses refute this contention. There is much testimony as pointed out in the Hearer's report, to the effect that the patrons inside the premises were boisterous and under the influence of liquor. There is also testimony from both residents and police officers concerning numerous incidents occurring both inside and immediately outside the premises. Detective Robinson testified that he was summoned to the premises frequently for "various things: disorderly crowds, fights."

Another exception asserts that "A merchant complained that his premises was littered with soda and liquor bottles and cans, including a brand known as 'Twisters' ...." However, as the Hearer noted, the testimony of Frank Buzak (one of the partners) clearly shows that some of the patrons brought in labeled bottles of "Twisters", consumed the contents of those bottles, got drunk and then left the tavern.

Another exception challenges the Hearer's citation of Cino v. Driscoll, 130 N.J.L. 535, for the principle that the plenary appeal de novo "cures any infirmity allegedly arising by reason of the denial of a fair, impartial and unprejudiced hearing" before the respondent. Firstly, I agree with the Hearer that the appellants received a fair hearing before the respondent. Secondly, Cino stands for the proposition as set forth by the Hearer and is cited with approval in Nordco, Inc. v. State, 43 N.J. Super. 277, at p. 287, that on appeals the Director is obliged to conduct a hearing on testimony de novo. Lakewood v. Brandt, 38 N.J. Super. 462; see Rule 6 of State Regulation No. 15. (Reversal in Cino was ordered because ex parte affidavits of minors were improperly considered at the appeal hearing without giving the appellants a "reasonable opportunity of cross-examination.")

The appellants further argue in their exceptions that the facts in the instant matter can be equated with those presented in the case of "Bayonne v. B & L Tavern, Inc. and the Alcoholic Beverage Commission" (App. Div. 1963), not officially reported, reprinted in Bulletin 1509, Item 1. In that matter the Appellate Division (by a two to one decision) affirmed the order of the Director in reversing Bayonne's denial of an application for renewal of a local tavern license. It was found in that case that most of the incidents complained of occurred outside the premises and, as the Director stated:

"...the major objections made by these witnesses appeared general in nature and did not specifically accuse the operators of the appellant's establishment of any wrongdoing. Only in one or two instances did these witnesses attempt to connect appellant's premises with the alleged unsatisfactory conditions about which they complained."

There was also favorable testimony on behalf of the appellants give by a Captain of Police, a detective working out of the local A.B.C., and a retired Assistant Superintendent of the Bureau of Criminal Identification. This is contrasted with the testimony in this case, particularly that of the Chief of Police who clearly characterized these premises as a trouble spot. Furthermore, the reports document numerous incidents inside as well as outside the premises. The language of Judge Conford, in his dissenting opinion in Bayonne, is particularly applicable to and persuasive in the factual complex sub judice. He states:

"...in the area of licensing, as distinguished from disciplinary violation proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. In the matter of licensing the responsibility of a local authority is 'high', its discretion 'wide', and its guide 'the public interest.' Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). 'Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority.***The common interest of the general public should be the guide post in the issuing and renewal of licenses,' Zicherman v. Driscoll, supra (133 N.J.L., at p. 588). And while, assuredly, the nature of the application is one for renewal rather than original issuance is a proper factor for consideration, yet in principle, 'A renewal license is in the same category as an original license,' id., at p.587.

"Thus, here, entirely apart from considerations as to the licensee's culpability for the deleterious conditions which surrounded this establishment, the broad question necessarily posed before the local board on the application was whether, in the light of all the surrounding circumstances and conditions, it was good for Bayonne and the neighborhood involved that a tavern continue to exist at this particular location at all. There were eleven or twelve other taverns within a radius of a few blocks (150 in the city as a whole). The evidence makes it clear that this is a fairly crowded area of mixed residential and commercial character, of a probably moderate or low income level. There could hardly be any quarrel with an objective judgment that one less tavern, even if well conducted, would probably serve the public interest of the community at large and the immediate neighborhood. That observation is a fortiori in the light of the peculiar magnetism of this establishment for drunkards, as reflected by this record, and the concomitant disorder and disturbance of public morality consequent thereupon. The conclusion of the local body that there flourished here a nuisance was, as noted, concurred in by the Director."

And further:

> "The licensee objects to being connected with disorder and immorality on the sidewalks, across the street, in the car-wash next to its back yard, etc. However, aside from the conceded responsibility for conditions on the premises themselves, inside and outside the tavern, the issue of the public interest is not, as already indicated, necessarily related to personal fault of the licensee. The determinative question is: was it in the public interest to deny the renewal for any sound reason, including the co-existence of a liquor operation and the many offensive concomitants in the immediate surrounding area?"

He finally concludes:

> "The action of the Director in overruling the local board was unreasonable and illegally grounded in the notion that the holder of a license who has tolerated if not maintained a reprehensible condition over a period of time must be given a warning and an opportunity to operate properly before the local body may deny a renewal notwithstanding a reasonably supportable factual judgment by it that the continuance of the license will entail a nuisance and is not in the interests of the city. That notion is not good law, and it is patently contrary to the salutary objectives of statutory liquor control in this State."

Finally, the attorney for the appellants urges (although it is not set forth in the petition of appeal) that the license be renewed "at least conditionally to permit the Licensees to either sell the license or to transfer it physically to another location in the City." In furtherance of this plea the attorney for the appellants states:

> "The Licensees do not insist that they be permitted to continue their operation at its present location, but only ask that they be permitted to salvage part of their life savings by a sale or transfer of the license to a new location."

This argument was disposed of in Nordco, Inc, v, State, supra (43 N.J. Super. 277, at p. 289) where the court said:

> "... we are not going to hold, as a general matter, that the Division and the local board abuse their discretion in not allowing a licensee such an opportunity when his application to renew his license is about to be rejected." See Downie v. Somerdale, 44 N.J. Super. 84.

Accordingly, this request must be denied.

I have examined the other exceptions advanced by the appellants and find them to be without merit.

After careful consideration of the entire record herein, including the transcript of the testimony, the exhibits, the memoranda of counsel in summation, the Hearer's report, the appellants' exceptions and arguments thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of June 1967,

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

ORDERED that my order entered on June 27, 1966, extending the term of appellants' license pending determination of the appeal herein, be and the same is hereby vacated.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FAILURE TO DISCLOSE PRIOR SUSPENSION IN APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against CLEFFI'S CAFE, INC. t/a CLEFFI'S Perry Street and Highway 46 Dover, New Jersey Holder of Plenary Retail Consumption License C-20 issued by the Board of Aldermen of the Town of Dover	)	CONCLUSIONS and ORDER

George Korpita, Jr., Esq., Attorney for Licensee.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on March 13, 1967, it possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20, and (2) in its current application for license, failed to disclose its prior suspension of license, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for five days effective November 8, 1965 for possession of alcoholic beverages not truly labeled (Re Cleffi's Cafe, Inc., Bulletin 1650, Item 11), non-disclosure of which being the subject of the second charge.

The license will be suspended on the first charge for twenty days (Re Hackensack Golf Club, Bulletin 1726, Item 7) and on the second charge for ten days (Re Babe's Bar, Inc., Bulletin 1733, Item 3), to which will be added ten days by reason of the prior record of suspension of license for similar violation within the past five years (cf. Re Hittner & Hodes, Bulletin 1420, Item 6), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 9th day of June, 1967,

ORDERED that Plenary Retail Consumption License C-20, issued by the Board of Aldermen of the Town of Dover to Cleffi's Cafe, Inc. t/a Cleffi's, for premises Perry Street and Highway 46, Dover, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, commencing at 1:00 a.m. Tuesday, June 13, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 1:00 a.m. Tuesday, July 18, 1967.

Joseph P. Lordi
Director