

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 2368

October 6, 1980

TABLE OF CONTENTS

ITEM

1. FEES FOR SPECIAL PERMITS TO BECOME EFFECTIVE OCTOBER 1, 1980.
2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF NORMICK, INC.
3. APPELLATE DECISIONS - TOMARK CORPORATION v. PASSAIC.

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 2368

October 6, 1980

1. FEES FOR SPECIAL PERMITS TO BECOME EFFECTIVE OCTOBER 1, 1980

<u>SYMBOL</u>	<u>TYPE</u>	<u>FISCAL YEAR</u> (ANNUAL PERMITS ONLY)	<u>FEE</u>
AE	Administrator or Executor		\$25.00
AI	Ad Interim		\$20.00 plus 2½ times prorated license fee for each day permit is in effect.
AL	Possess and sell alcohol (Retailer)	4/1 to 3/31	\$20.00 (NJAC 13:2-34.3)
C	Caddy	4/1 to 3/31	\$100.00
D	Transfer title in stocks of alcoholic bev- arages (sale of business)		\$50.00 *
EMP	Employment	4/1 to 3/31	\$5.00 (N.J.A.C. 13:2-14.3)
ET	Emergency Transportation		\$15.00 for vehicle for which current transit insignia is in effect. \$25.00 for vehicles bearing no current transit insignia.
I	Personal Importation		\$5.00 (R.S. 33:1-2)
P	Pinboys	9/1 to 8/31	\$100.00
S	Social		\$75.00 per day for (R.S. 33:1-74) all organizations in general. \$50.00 per day for Civic, Religious and Educational Organization.

SOL	Solicitor	6/1 to 5/31	\$15.00 Malt Beverages (R.S. 33:1-57) \$25.00 all types of Alcoholic beverages (separate permit for each employer)
SP	Public or Private Sale		\$50.00 *
SW	Store Wine Made without permit	10/1 to 9/30	\$25.00 *
TI	Transit Insignia	9/1 to 8/31	\$25.00 (R.S. 33:1-29)
TL	Limited Transportation	5/1 to 4/30	\$200.00 for permit * \$20.00 for each certificate.
VE	Validate		\$50.00 for first * violation, plus \$5.00 for each additional employee. \$75.00 for second violation, plus \$5.00 for each additional employee. \$100.00 for third violation, plus \$5.00 for each additional employee.
WN	Special Wine Permit (Manufacture for personal consumption)	10/1 to 9/30	\$3.00 (R.S. 33:1-75)
SM	Carloading and Distribution	7/1 to 6/30	\$100.00
	Catering (sale by C licensee off licensed premises).		\$50.00 per day.
SM	Concessionaire Nat'l. Guard Armories	7/1 to 6/30	\$100.00 per fiscal year for malt alcoholic beverages. \$150.00 for all types of alcoholic beverages.
	Demonstration Purpose	7/1 to 6/30	\$50.00 *
	Display of full bottles by wholesaler		\$25.00 for permit * \$2.00 for each certified copy
	Donation by wholesaler to retail associations	1/1 to 12/31	\$100.00 *
	Experimental Purpose	7/1 to 6/30	\$25.00

Extension of licensed premises not covered by license		\$50.00 per day *
Food and Pharmaceutical Products (does not include ethyl alcohol)	7/1 to 6/30	\$15.00 minimum to 1,000 gallons. \$20.00 from 1001 to 2,500 gallons. \$25.00 from 2,501 to 5,000 gallons. \$30.00 from 5,001 to 10,000 gallons. \$35.00 from 10,001 to 20,000 gallons.
SK Gratuitous service by licensees (whole- salers)		\$50.00 per day *
Gratuitous Service by Non-License (Fashion Show)		\$25.00 *
Illegal Transportation		\$25.00 if insignia has * been issued and not affixed to vehicle. \$100.00 for transportation without an insignia having been issued.
Import for resale		5% of import value. * Minimum \$100.00
Merchandising Show Wholesaler Displays Wares		\$50.00 *
Moving wine made under WK or SK permit to new address		\$5.00
Sacramental Wines (sales by whosalers)	7/1 to 6/30	\$25.00
Sale (retailer to or from retailer)		\$50.00 *
Sampling by Wholesaler		\$25.00 for permit. * \$2.00 for each certified copy.
State Park	7/1 to 6/30	\$500.00 (prorated)
Station to Station and Door to Door Delivery	7/1 to 6/30	\$10.00 for each vehicle * used with minimum fee of \$50.00 plus \$2.00 for each add'l copy of permit.
Storage by M Licensees	7/1 to 6/30	\$25.00 *

Temporary Storage (retailer)	\$50.00 *
Miscellaneous Co-op	Fees fixed by Director \$10.00 per member
Equipment Lending Permit	\$25.00 *

* THESE FEES INCREASED AS OF 10/1/80 ALL OTHERS WERE PREVIOUSLY IN EFFECT

2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF NORMICK, INC.

In the Matter of the Petition of

Normick, Inc.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License No. 0108-33-024-001 issued by the Township Committee of Egg Harbor Township.

Harold I. Garber, Esq., Attorney for Petitioner.

Initial Decision Below

Hon. Sybil Moses, Administrative Law Judge

Dated: December 4, 1979 - Received: December 6, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision herein were filed pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein including the transcript of the testimony and the Initial Decision of the Administrative Law Judge, I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of January, 1980,

ORDERED that the Township Committee of the Township of Egg Harbor be and the same is hereby authorized to consider the application for renewal of the subject license term and grant or deny the said application in the reasonable exercise of its discretion. If granted, the renewal of the license shall be made expressly subject to the special condition that the license must become operational during the 1979-80 license term; no further extensions will be authorized.

JOSEPH H. LERNER
DIRECTOR

In the Matter of:)

APPLICATION OF NORMICK, INC.)

(Egg Harbor Township))

INITIAL DECISION

OAL DKT. NO. ABC 4264-79

License No. 0108-33-024-001

Appearances:

Harold I. Garber, Esq., for Appellant, Normick, Inc.

BEFORE THE HONORABLE SYBIL R. MOSES, A.L.J.:

This is an application by Normick, Inc., (hereinafter Normick) for authorization of an application for renewal of its Class C Plenary Retail Consumption License, notwithstanding the fact the such license has not be actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the licensed period for which the renewal application is filed.

Said petition for authorization to apply for renewal of a Class C license was filed on June 12, 1979. The Township of Egg Harbor, the location of the licensed premises to which the above mentioned license had been attached, renewed said license on July 1, 1978. The license is presently being held by the Clerk of the Township of Egg Harbor pending determination of the hearing requested by the application.

A de novo hearing was held on November 14, 1979 in the Freeholder's Assembly Room of the Guarantee Trust Building in Atlantic City, New Jersey. The applicant, Normick, presented documentary evidence and oral argument to establish that good cause existed for the requested authorization to be granted for a further application for renewal of the license. Harold I. Garber, Esq. appeared on behalf of Normick. The Division of Alcoholic Beverage Control did not appear at the hearing and indicated by letter, dated October 19, 1979, that it would rely upon the record established by the Petitioner for a determination of whether or not good cause exists for the renewal of the license. There was no one present at the hearing from Egg Harbor Township. Evidence presented on behalf of the licensee was as follows.

- P-1 Notice to all parties of the date of the hearing
- P-2 Letter of Mart Vaarsi, Deputy Attorney General
- P-3 The moving papers attached to the petition, including the affidavit of Peter Bruni, the President and sole stockholder of Normick, Inc.
- P-4 Letter from J & R Real Estate

- P-5 Letter from Philip Guber Real Estate
- P-6 Letter from Tannenbaum & Milask Realtors
- P-7 The current corporate registration
- P-8 The reinstatement of incorporation of Normick, Inc.

The above captioned materials indicate that fire totally destroyed the premises of Normick, Inc., in September of 1975. Egg Harbor Township has renewed the license every year since that time, up through and including the year 1978. All fees and taxes have been paid on the license and the property. In June 1979 the property was sold for a restaurant. However the new owners of the property did not purchase the above mentioned license. There was been an intensive effort on the part of the licensee to sell the license through various real estate agents, as indicated by P-4, P-5 and P-6. As of November 14, 1979, J & R Realty, Philip Guber Realty and Tannenbaum & Milask Realtors were all still attempting to sell the license of Normick, Inc. In addition advertisements have been placed in the Atlantic City Press, the local newspaper of record, to sell the license of Normick, Inc. Difficulties have been encountered because of restrictive footage requirements for place-to-place transfers within Egg Harbor Township. Even if the license is sold at its current market value, the owner, Peter Bruni, will still lose approximately \$60,000 as a result of the fire and forced sale of the premises.

After having reviewed the items marked into evidence and listened to the oral argument of counsel representing Normick, Inc., and taking into consideration that entire record, including the letter submitted by the Division of Alcoholic Beverage Control, I make the following findings of fact:

1. Normick, Inc. is the holder of Plenary Retail Consumption License No. 0108 33 024 001, issued by the Township of Egg Harbor, New Jersey.
2. Fire totally destroyed the premises of Normick, Inc. in September of 1975.
3. The Township of Egg Harbor has renewed the license of Normick every year up through 1978. All taxes and fees have been paid on the license and the property.
4. In June of 1979 the property was sold for use as a restaurant. The new owners did not purchase the license.
5. There has been an intensive effort to sell the license, through various real estate agents, as well as through advertisements in the local newspapers.
6. There have been difficulties in selling because of restrictive footage requirements in the Township of Egg Harbor.

7. Even if the license will be sold at its current market value the owner will still incur a loss of approximately \$60,000.

8. In 1979 Normick applied for authorization to renew its license notwithstanding the fact that the license had not been used prior to the petition for authorization in June of that year.

9. The Division of Alcoholic Beverage Control did not appear at the hearing and, in fact, indicated it would rely upon the record established by Petitioner and would not actively oppose said application.

10. There has been no opposition to the application for said license from the Township of Egg Harbor.

The controlling statute governing a further application for renewal when a license has not been used within a period of two years is N.J.S.A. 33:1-12.39, which says, in pertinent part:

"No class C license... shall be renewed if the same has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is filed unless the Director, for good cause and after a hearing, authorizes a further application for renewal;..."

The Petitioner has the burden of proof, by a preponderance of the evidence, to show that good cause exists for authorization by the Director of the Division of Alcoholic Beverage Control for a further application for renewal to the governing board of Egg Harbor Township, New Jersey. The interpretation of the phrase, "good cause", depends upon the circumstances of the particular case as judged by the court hearing the issue. It should be substantial or legal cause as distinguished from an assumed or an imaginary pretense. See Appeal of Ohio Sportservice, Inc., 378 N.E.2d 498 (Ohio 1976). The circumstances of this case clearly show that Normick, Inc. has made intensive efforts to sell its license in connection with the premises, and separately from the premises which were destroyed by fire. The second part of N.J.S.A. 33:1-12.39 deals with deprivation of use of the licensed premises by fire. However, that automatic extension for an additional period of two years can be put into effect only if the licensee is attempting to resume active use of the license in connection with the operation of a licensed premises, which is not the case here. The Municipality of Egg Harbor Township does not seem to oppose the authorization for application to renew said license because it has, since the fire in September of 1975, annually renewed the license of Normick, Inc. The last renewal was as of July 1, 1978. The license is currently being held by the Clerk of the Township pending determination by the Administrative Law Judge of authorization to apply for renewal for the year 1979.

I THEREFORE CONCLUDE that the Petitioner has established, by a preponderance of the evidence, that good cause exists for authorization to be granted for Normick, Inc. to apply to renew its Class C Plenary Retail Consumption License for a period of one year, said license to expire June 30, 1980.

Accordingly, IT IS HEREBY ORDERED that authorization be granted for Normick, Inc. to make a further application to renew its license even though it has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is being filed.

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 of the Division of Alcoholic Beverage Control does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1 et seq.

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

3. APPELLATE DECISIONS - TOMARK CORPORATION v. PASSAIC.

#4379	}	
Tomark Corporation, t/a Ambassador Bar,		
	}	Appellant,
v.		
Municipal Board of Alcoholic Beverage Control of the City of Passaic,	}	Respondent.

CONCLUSIONS
AND
ORDER

 Dominick Giordano, Esq., Attorney for Appellant.
 Randolph Newman, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Joseph Rosa, Administrative Law Judge

Dated: November 29, 1979 - Received: December 4, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of the testimony, the Exhibits and the Initial Decision Below, I concur in the factual findings of the Administrative Law Judge and adopt same as my conclusions herein.

I reject, however, the Administrative Law Judge's application of law to these facts. The within appeal does not concern a revocation proceeding as referenced on Pages 6 and 7 of the Initial Decision. This is an appeal from the denial of renewal of appellant's license for the 1979-80 license term.

The proven substantive criminal violations, in conjunction with the failure of the owner of the licensed premises to personally or properly attend to the operation of this licensed business, clearly supports a conclusion that the appellant's application to continue licensure would not be in the public interest. Furthermore, the ap-

pellant has failed to demonstrate that the licensed business has been, and is likely to be conducted in a reputable manner. Zicherman v. Driscoll 133 N.J.L. 586 (Sup. Ct. 1946); In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App. Div. 1953).

The appellant had the burden, at the time of the renewal hearing, as in an application for a new license, to establish its fitness for licensure. Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App. Div. 1957). The absentee ownership and entrustment of the operations to an individual, demonstrated on two separate occasions to be unfit, is the antithesis of a proper recognition that the liquor license is a privilege to be entrusted to only those who are worthy of same. A.H.S., Inc., t/a Royal Manor v. Township of Wall, Bulletin 2308, Item 1. See Blanck v. Magnolia, 38 N.J. 484 (1962).

Tangentially, I note that any inference of a double penalty for the same narcotics violation in this matter is without basis in law. Downie v. Somerdale, 44 N.J. Super. 84, 88 (App. Div. 1957).

I am satisfied that the Board reasonably exercised its discretion in this matter based upon the record before it. Rajah Liquors v. Division of Alcoholic Beverage Control, supra. I shall affirm the Board's action and reject the disposition of the case set forth by the Administrative Law Judge, which disposition is without authority in the Alcoholic Beverage Law.

A license can only be suspended in consequence of a finding of guilt to specified charges resulting out of a duly instituted and conducted disciplinary proceeding in accordance with N.J.S.A. 33:1-31. The Administrative Law Judge's attempt to convert a renewal proceeding and appeal therefrom, pursuant to N.J.A.C. 13:2-2.1 et seq. and N.J.S.A. 33:1-22, into a disciplinary proceeding encompassed within N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.1 et seq. is clearly without basis in law, is erroneous, and is rejected.

Accordingly, it is, on this 14th day of January, 1980,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic be and the same is hereby affirmed, and the appeal be and is hereby dismissed; and it is further

ORDERED that my Order of July 12, 1979, extending the appellant's license for the 1979-80 license term pending determination of this appeal, be and the same is hereby vacated, effective immediately.

JOSEPH H. LERNER
DIRECTOR

IN RE:

INITIAL DECISION

TOMARK CORP., t/a AMBASSADOR
 BAR v. PASSAIC MUNICIPAL BOARD
 OF ALCOHOLIC BEVERAGE CONTROL

OAL DKT. No. ABC 2860-79
 APPEAL No. 4379

APPEARANCES:

Dominick Giordano, Esq., attorney for Appellant,
 Tomark Corp., t/a Ambassador Bar

Randolph Newman, Esq., attorney for Respondent,
 Municipal Board of Alcoholic Beverage Control,
 City of Passaic

BEFORE THE HONORABLE JOSEPH ROSA, JR., A.L.J.:

This is an appeal from an action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic which by resolution dated July 10, 1979, denied the renewal application of the Appellant for plenary retail consumption license No. 1607-33-136-001, for the year 1979-1980. The reasons for said denial were as follows:

Past record of violence and/or lack of ability of licensee to carry on operation within the Community on a normal, peaceful and proper manner as regards to good and welfare of the community specifically referring to (1) alleged owner is never on the premises; (2) serious doubt as to who actually owns the premises; (3) numerous incidents of criminal conduct.

A copy of the resolution is attached hereto.

Appellant contends that the action of the Respondent was erroneous in that the determination was against the weight of the evidence, was contrary to the decisions of the Division of Alcoholic Beverage Control, was contrary to law, constituted an abuse of the discretionary power of the Respondent Board, and was arbitrary, capricious and unreasonable.

Upon the filing of the Appeal, the Director, by Order to Show Cause, dated July 12, 1979, extended the Appellant's license pending the disposition of the Appeal. The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A hearing de novo, pursuant to N.J.A.C. 13:2-17.6, was held on October 29, 1979. Pursuant to N.J.A.C. 13:2-19.6, all parties were given the opportunity to be heard and to cross-examine witnesses.

Respondent contends that there is more than sufficient and competent evidence in the record to support its Resolution, and asks that the license revocation be affirmed.

Relevant testimony was as follows:

Testifying on behalf of the Respondent initially was Richard Wolak, a member of the Police Department of the City of Passaic for eight years, the last three of which he has been a member of the Detective-Vice Division. He has attended various narcotics seminars as part of his police training. Detective Wolak testified that on September 23, 1977, at approximately 9:30 p.m. he, with another detective and a uniformed officer in possession of a search warrant, entered the Ambassador Bar located at 145 Passaic Street, in the City of Passaic and searched both the bartender, a J. Pereze Rosas, and a service closet behind the bar. On Mr. Rosas' possession was found a packet of a substance suspected to be cocaine, and in the service closet behind the bar were found additional packets also suspected of being cocaine. The packets were eventually submitted to the New Jersey State Police North Regional Laboratory for analysis. The State Police Laboratory, by report dated November 2, 1977, identified the substances as cocaine and sugar. A copy of the two State Police Analysis Reports, one for the substance found on Mr. Rosas' possession, and one for the substance found in the service closet, were admitted into evidence as R-1 and R-2. After finding the suspected substance on Mr. Rosas' possession, Rosas was arrested for violation of the New Jersey Control Dangerous Substances Act.

Detective Wolak further testified that on March 2, 1979, he had in his possession an arrest warrant in the Passaic County Probation Department for violation of probation for the arrest of Mr. Rosas. Detective Wolak executed the warrant upon Mr. Rosas while Rosas was bartending at the Ambassador Bar for violation of probation. At this time he was again searched and again found to be in possession of a substance suspected to be cocaine. This substance was again transmitted to the Northern Regional Laboratory of the New Jersey State Police where by report dated April 25, 1979, the specimen was identified as cocaine. (A copy of said report was introduced as R-2 in evidence.) Detective Wolak further testified that he has made, for various reasons, approximately 50 trips to the Ambassador Bar. The last five times he entered the bar were in 1979. On cross-examination, he testified that a number of these times when he entered the bar were routine tavern checks. He also testified that he was aware that Mr. Rosas also had a prior criminal record, that is, an arrest for atrocious assault and battery. When asked his opinion as to the type of operation conducted at the ambassador Bar, the detective stated that he felt that the Ambassador Bar was a detriment to the City of Passaic, particularly in light of the fact that the alleged owner was never on the premises and that the entire operation appears to have been under the control of Mr. Rosas.

The next witness for the Respondent was Anthony Zampino, a member of the Passaic Police Department for eleven years, the last seven of which have been as a member of the Detective-Vice Squad. Detective Zampino testified that on September 23, 1977, at approximately 9:30 P.M., he was present with Detective Wolak at the time the search warrant was effectuated for the Ambassador Bar. He said at the time of the search Mr. Rosas was behind the bar. He further stated that he was present when the alleged cocaine was found on the presence of Mr. Rosas and in the liquor storage cabinet.

He additionally testified that on March 2, 1979, at approximately 8:30 P.M., he, along with Detectives Garner and Wolak, effectuated an arrest warrant on Mr. Rosas for violation of probation. He was present also when the second pack of alleged cocaine was found in Mr. Rosas' jacket. Detective Zampino stated that he had made approximately 50 to 75 visits to the bar and during this period of time has never seen the owner, Ramon Cancell, present but at all times when he had visited the bar, Mr. Rosas was in charge of the bar. He also felt that the bar's existence was a detriment to the Community. Under cross-examination, Detective Zampino admitted that his opinion as to the detrimental nature of the tavern was based solely on police reports but not any conversations he had with any of the neighbors in the vicinity of the bar. He further acknowledged on cross-examination that approximately one half of his visits to the bar were merely routine tavern checks while the others were either in response to a specific call or for the purpose of various investigations.

The Respondent then called to the stand Officer Joseph Liptak, a member of the Passaic Police Department for the past eight years. Officer Liptak testified that in February, 1974, he responded to the Ambassador Bar in response to a call of Tito Rivera who claimed that he had been threatened by a patron in the bar wielding a gun.

The Appellant did not testify in his own behalf, but attorney for the Appellant offered into evidence various correspondence from the Board of Alcoholic Beverage Control of the City of Passaic to the Tomark Corp. which indicated that the Board was considering action against the tavern as a result of various charges. (A-3, A-4 and A-5 in evidence) Although there was no direct testimony regarding same, it appears from document A-4 in evidence that prior disciplinary action had been taken against the Appellant. By resolution of the Municipal Board of Alcoholic Beverage Control, dated March 9, 1979, the license of the Appellant was suspended for forty-five (45) days with 15 days suspended for a plea of non vulo, for a total effective suspension of thirty (30) days. This suspension appears to have arisen from the September 23, 1977 incident, wherein the alleged cocaine was found on Mr. Rosas and in the storage cabinet of the Ambassador Bar and a failure to comply with the provisions of N.J.A.C. Subchapter 23, 13:2-13.13(a)3.

After having observed the demeanor of all the witnesses, having considered the entire record, including the testimony and exhibits submitted in evidence, and together with the arguments of counsel, I FIND:

1. Appellant is the holder of plenary retail consumption license 1607-33-136-001 for premises known as the Ambassador Bar located at 145 Passaic Street, in the City of Passaic, Passaic County, New Jersey.

2. The principal shareholder and president of Tomark Corp. is a Ramon Cancell.

3. On or about March 9, 1979, the license of the Appellant was suspended for a period of thirty (30) days, by the Municipal Board of Alcoholic Beverage Control of the City of Passaic, for violation of N.J.A.C. subchapter 23, Section 13:2-23.5(b) and Section 13:2-13.13(a)3, both violations having occurred on September 23, 1977.

4. On July 10, 1979, it was Ordered by the Municipal Board of Alcoholic Beverage Control, City of Passaic, that the license of the Appellant would not be renewed for the following reasons:

- (a) Past record of violence and/or lack of ability of licensee to carry on operation within the Community on a normal, peaceful, and/or proper manner as regards to good and welfare of the community specifically referring to (1), alleged owner is never on the premises; (2), serious doubt as to who actually owns the premises; (3), numerous incidents of criminal conduct.

5. The license of the Appellant was temporarily restored by Order to Show Cause of Director of Division of Alcoholic Beverage by Order dated July 12, 1979.

6. Ramon Cancell is very rarely, if ever, present at the premises known as the Ambassador Bar, but the day-to-day operation and management of the premises is under the operation and control of a J. Pereze Rosas. Mr. Rosas has a past criminal record including but not limited to possession and use of cocaine, and alleged atrocious assault and battery.

7. On September 23, 1977, members of the Police Department of the City of Passaic acting pursuant to a search warrant discovered the drug cocaine on both the person of Mr. Rosas who was acting in a bartending capacity at the time and in a liquor storage cabinet in the Ambassador Bar.

8. There have been various other incidents at the Ambassador Bar, including but not limited to, cases of weapons being brandished in the premises.

9. Appellant was advised by letter of March 12, 1979 of a possible disciplinary problem at his licensed premises.

Based on the foregoing, I CONCLUDE that there is little, if any, controversy respecting the factual basis for the charges. None of the allegations was specifically denied by the Appellant. The thrust of the Appellant's contentions is that the actions of the local issuing authority based on these contentions were arbitrary, capricious and unreasonable.

The grant or denial of an alcoholic beverage license rests in the sound discretion of the issuing authority. Appellant must show unreasonable action on part of the issuing authority which constitutes a clear abuse of such discretion. The local is-

suings authorities are vested with a high responsibility and wide discretion and are to have as their principal guide the public interest. N.J.S.A. 33:1-19,24. See also Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super, 598 (App. Div. 1955) and Blank v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962).

The burden of proof in establishing that the action of the issuing authority was erroneous rests with the Appellant, N.J.A.C. 13:2-17.6, and the decision of the local issuing authority will stand so long as its exercise or judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. 404 (1960). The local issuing authority's exercise of discretion ought to be accepted absent a clear abuse or unreasonable or arbitrary exercise in discretion. Lyons Farms Tavern v. Municipal Board of Alcoholic Beverages of the City of Newark, 55 N.J. 292 (1970). Nordco Inc., v. State, 43 N.J. Super 277 (App. Div. 1957).

It is clear that a licensing authority has the right to exercise discretion to determine what, in light of all the surrounding circumstances and conditions, is in the public interest of the local municipality. In the present matter, the Alcoholic Beverage Control Board has had the opportunity to observe the demeanor of the witnesses produced before it, and was persuaded by the totality of the testimony before it that certain criminal acts did occur within the Appellant's establishment. I CONCLUDE, after also observing the demeanor of the witnesses, and the evidence, that the principal licensee, Ramon Cancell, has apparently abdicated his responsibility as a licensee in favor of a bartender-manager who apparently was totally unable to control the type of patronage in the licensed premises. He encouraged, and in fact was part of, criminal activity occurring on the premises.

I, THEREFORE, CONCLUDE that the Appellant has not met his burden of establishing that the action of the issuing authority was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6.

I FURTHER CONCLUDE that the action of the Board was reasonable. However, the issue remains as to the extent of the punishment or penalty to be meted by the Board. The denial of a right to continue the operation of a licensed premises, that is, the revocation of a license, represents the most severe penalty that may be imposed upon a licensee. A liquor license is a privilege. Mazza v. Cavicchia, 50 N.J. 498 (1954). The control of that privilege is vested in the issuing authority and the penalties to be imposed in disciplinary proceedings rests entirely within their sound discretion and should only be modified where the penalty imposed is manifestly unreasonable and clearly excessive. Feldman v. Irvington, Bulletin 2143, Item 2; and Benedti v. Trenton, 35 N.J. Super 30 (App. Div. 1955).

It should be noted that the entire actions of the local board in this matter are based on two incidents: One which involved the possession of cocaine by the bartender and cocaine also being present on the licensed premises, and the arrest of the same bartender for an entirely unrelated violation of probation charge.

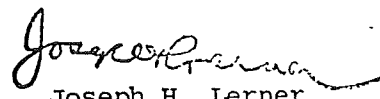
The opinions of the police officers that the license should not be renewed, and that the establishment was a detriment to the City of Passaic were based entirely on police reports and not by a general neighborhood feeling.

The primary purpose of a suspension being imposed against a licensee is to serve as a warning that if the conditions are repeated, the license will be in jeopardy. Bayonne v. Bayonne B & L Tavern, 42 N.J. 131 (1964). The local Board suspended the Appellant's license for a period of thirty (30) days (March 23, 1979-April 22, 1979). This suspension was as a result of the incidents which occurred on September 23, 1977. This same incident was also used as the basis for the non-renewal of the license for the 1979-80 license year. It appears that there were no further violations between the time of the license restoration (April 22, 1979) and the renewal application (June, 1979). It might be noted that the action was taken some 18 months after the incident due to the Passaic Board's policy of not prosecuting licenses on disciplinary proceedings, which are subject to criminal prosecution, until such matters have been determined in the Superior Courts.

The Appellant in this matter does not have a record of any other disciplinary proceedings, and apart from the incident of September 22, 1977, the charges brought against him were essentially a first infraction, with concomitant penalties to be imposed. Because of this, I CONCLUDE that the Appellant should be given an opportunity to prove his worthiness to remain in the alcoholic beverage industry. Accordingly, I CONCLUDE that the penalty imposed of non-renewal be modified to a penalty of 180 days suspension, beginning from the date of final decision by the Director of the Division of Alcoholic Beverage Control.

Then this action cannot be effected prior to the effective date of this Order, which is forty-five (45) days from date of agency receipt of this Order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period N.J.S.A. 52:14B-10.

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


Joseph H. Lerner
Director