

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2171

January 22, 1975

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1. APPELLATE DECISIONS - A. N. BUTLER, INC. v. BUTLER.

A. N. Butler, Inc.,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
Mayor and Council of the)	and
Borough of Butler,)	ORDER
Respondent.)	
-----)	

Shevick, Ravich, Koster, Baumgarten and Tobin, Esqs., by Michael N.
Tobin, Esq., Attorneys for Appellant
Young and Sears, Esqs., by Harry L. Sears, 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 Mayor and Council of the Borough of Butler (hereinafter Council) which, on June 3, 1974, denied appellant's application for a person-to-person and place-to-place transfer of plenary retail consumption license C-1 from the Estate of Nettie McCormick to A. N. Butler, Inc. and from premises 234 Main Street (Park Hotel Building) to 1227 Route #23, Butler.

In its petition of appeal, appellant contends that the action of the Council was an abuse of discretion in that there was no objection to appellant's application; that it was motivated by an apparent reluctance to permit removal of the license from its present situs because of extraneous circumstances. The Council, in its answer, denied this contention, and defended that its action was sound and consistent with the best interests of the municipality.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. In addition, copies of resolutions in issue and petitions of objectors to the transfer were received in evidence.

The Resolution adopted by the Council denying appellant's application, reads as follows:

WHEREAS, an application on behalf of A. N. Butler, Inc. has been received for the transfer of liquor license known as License No. C-1 from the premises known as 234 Main Street, Butler, to the premises known as 1277 Route #23, Butler, and

WHEREAS, hearings have been held on said application and the Mayor and Council desire to making their findings with regard to same.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Butler, as follows:

1. The premises to which the existing license are attached are known as the Park Hotel, located at 234 Main Street, in the Borough of Butler.

2. The title to said premises was acquired by the Borough of Butler by virtue of tax foreclosure proceedings, final judgment entered June, 1971, and outstanding liens and other charges against the property amount to approximately \$33,000.00 at the present time.

3. Notwithstanding the fact that the license had no physical premises to which it attached by virtue of the tax sale foreclosure, during the years 1972 and 1973 said license was renewed based upon the express representations of the present holder, the Estate of Nettie McCormick, that it was seeking a buyer for the property and/or new premises to which to transfer the license and that some method would be devised by which all outstanding debts and charges would be satisfied.

4. At the time that the Park Hotel Property was first offered for public sale early in 1972, the Estate of Nettie McCormick undertook court action to block such a sale. The matter was subsequently held in abeyance and the property again advertised in May, 1973. The only bid received amounted to approximately \$20,000.00, which is substantially less than the outstanding liens and other expenses. To date none of the outstanding liens or charges have been received by the Borough.

5. The Mayor and Council have recently located a purchaser for the property and the terms of the transaction will include the license remaining at its present location at the Park Hotel, which is a basic consideration to the Mayor and Council.

6. Main Street, Borough of Butler, is the heart of the business district of the Borough of Butler. There are presently three consumption licenses existing on this street, and there will be only two such licenses remaining in the event that this transfer application is granted.

7. Within the past five years three such licenses have been transferred from the Main Street area to the Route #23 Highway Business District, the same area to which License C-1 is sought to be transferred.

8. Four such licenses already exist in the highway area to which the license is proposed to be transferred, within a distance of one and one-half miles along Route 23.

9. The public interest and the economic viability of the Main Street business area will not be best served by permitting License C-1 to be transferred to another highway location at this time.

10. With the number of existing consumption licenses already in the highway area as set forth in Paragraph 7, there is no public necessity for another establishment with a consumption license to be located in the area of the Borough.

For the foregoing reasons, the application to transfer License C-1 be and the same is hereby denied.

In addition to the foregoing resolution, the minutes of Council's meeting of April 1, 1974 were introduced into evidence and these contained a motion adopted by it, the pertinent part of which, is as follows:

"Motion by Councilman F. W. Ricker and seconded by Councilman J. Vander Bas to transfer the license of Nettie W. McCormick Estate known as C-1, from the Park Hotel to Al Neuman's Open Hearth, 1297 Route 23, Butler, subject to legal agreement made with Dr. Tuzzio whereby we transfer the rights of that building from Butler to Him, and that the Estate of Nettie W. McCormick pay \$7,000.00 towards the back taxes owed on the Park Hotel and provided we are unable to find anyone to purchase both the hotel and the license."

Testimony, adduced at this appeal de novo hearing, of Allen Neuman, president of the corporate appellant, Mayor Roger Struble and Claude Post, Jr., a local businessman delineated the factual complex which motivated the action of the Council in its denial of appellant's application.

The Park Hotel is an historical landmark in Butler. It is the situs of the subject plenary retail consumption license. Taxes became overdue on the hotel property and the municipality obtained title to it by foreclosure. Hence, the municipality is the owner of the premises in which the license is located, but the license is presently inoperative.

Prior to April 1, 1974, negotiations had been underway for the disposition of the realty by the municipality, and the prospective transfer of the license by the licensee. The Mayor outlined the plans and aspirations of the municipality to develop the center business area, of which the Park Hotel is pivotal. Proposals had been outlined which would eventuate in approval of appellant's application for place-to-place transfer, subject to several special conditions.

However, after further revitalization plans for the area

were conceived, the Council ultimately determined, on June 2, 1974 that the appellant's application for transfer would not serve the best interests of the municipality.

Mayor Struble testified that the Council's cooperation with respect to the efforts of the Main Street Businessmen's Association in rebuilding the area were manifested, as follows:

"...We're in the process now of spending \$60,000 for the purchase of the railroad station. We hope sometime in the very near future to introduce an ordinance to relocate the railroad tracks to provide additional parking for the downtown business area. Our building inspector and plumbing inspector and public agencies have been working closely with the Business Association to help in that general area whatever way we can; some of our local banks, I understand, are working very closely with the people as far as low-interest loans and that type of thing to try and encourage the renovation of our business district."

Further pertinent to Council's determination, the following responses of the Mayor are illuminating:

- "Q. Now the Borough foreclosed on the Park Hotel several years ago for approximately \$33,000.00 in back taxes?
- A. That's correct.
- Q. And since that time you've been attempting to "get out from under"?
- A. I would say we've been attempting to find a prospective buyer to renovate the Park Hotel in the best interests of the community.
- Q. And if that buyer needed the liquor license then the Council is going to do everything possible to make sure it goes with the hotel?
- A. That's correct.
- Q. And if you found a buyer who didn't need a license then you had no objection to the transfer of the license; is that correct?
- A. I would have to assume that would be correct."

Claude Post, Jr., a lifelong resident of the Borough of Butler, president of the Businessmen's Association consisting of

approximately 54 members, and the operator of a business establishment in the Main Street business area, testified that the organization supported the efforts being made to rehabilitate Main Street which contains the only business area in the Borough.

A petition prepared in the office of the attorney for the Council, which contains in excess of 40 signatures of Main Street businessmen and which was circulated by this witness was received in evidence. The petition cited the fear that if the transfer were to be approved, it would lead to the further deterioration of Main Street; whereas, on the other hand, the continuation of the license on Main Street would have a beneficial effect in the Main Street area.

It was uncontroverted that, if the subject license were to be transferred, it would leave only two such licenses in the Main Street business district, that, within the past five years, three such licenses have been transferred from the said business district to Route 23 which now has four such licenses along a distance of one and one-half miles of the highway.

From the foregoing, it is apparent that the availability of a license is an integral part of prospective use of the hotel which, in turn, is pivotal in the schematic development of the area. Hence, if the area can be redeveloped without the need for the license, a transfer would be approved. Thus, the principle applied by the Mayor and Council is, whether the transfer of the license would be in the best interests of the municipality.

This principle, as applied herein, is challenged by appellant as being indicative of partiality; that the desire of the Council to obtain a greater financial interest to itself destroys its objectivity. Citing Paitakis v. New Brunswick 126 N.J. Super. 233 (App. Div. 1974), appellant contends that the unusual interest of the Council, albeit not for the personal interest of its members, leads to a conclusion not consistent with its quasi-judicial function, in short, the legal propriety of the right to act herein was attacked.

Preliminarily, I observe that the Director is enjoined by the Legislature "to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive" enforcement of the Alcoholic Beverage Law N.J.S.A. 33:1-23. In order to grant appropriate relief herein, I shall, for the purpose of deciding the central issue of this appeal on its merits, mold the appeal as if it were a direct application by the appellant to the Director in the nature of an original application for a person-to-person and place-to-place transfer rather than an appellate one calling for the review of the exercise of discretionary power by a municipal issuing authority. See Paitakis v. New Brunswick, *supra*, on remand Bulletin , Item . (1974); Blanck v. Magnolia 38 N.J. 484 (1962). I am taking this course of action in order to remove any suspicion or appearance that the Council was improperly motivated or not acting objectively due to the Borough's proprietary interest in the building from which appellant sought to transfer the subject license.

In recent times, the rehabilitation of center cities has been a source of great concern to local, state and federal authorities. The exodus of businesses to the highways has led not only to the extreme congestion thereof with its concomitant hazards but, also, to the deterioration of the center cities to the detriment of those who remain therein and desire to enjoy the conveniences of center city shopping where transportation poses no major problem. Many millions of dollars have been spent in attempting to prevent or reverse the deterioration of center cities. Unquestionably, this has generally been recognized as being laudable and in the public interest.

Applying that thinking to the matter of the subject transfer, I am of the opinion that the plans for the redevelopment of the center business area would serve the convenience of the residents generally, are proper and in the best interest of the community and of its citizens. In reaching at this determination, I have also observed that there exists no undue concentration of liquor licenses in the center area.

Therefore, I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument have been filed by the appellant pursuant to Rule 14 of State Regulation No. 15. No answers to the said exceptions was filed by the respondent.

Initially, it should be noted that I agree with the conclusion reached by the Hearer, including his recommendation, but I disagree with the rationale and thesis by which he arrived at his conclusion. The Hearer has correctly stated that "for the purpose of deciding the central issue of this appeal on its merits, (I shall) mold the appeal as if it were a direct application by the appellant to the Director in the nature of an original application for a person-to-person and place-to-place transfer rather than an appellate one calling for the review of the exercise of discretionary power by a municipal issuing authority...I am taking this course of action to remove any suspicion or appearance that the Council was improperly motivated or not acting objectively due to the Borough's proprietary interest in the building from which appellant sought to transfer the subject license."

Clearly the Council had a proprietary interest in this matter because the Borough of Butler now owns the building which is the situs of this license. Thus, its interest was not indirect but, in fact, quite direct. It is well established that action by a local issuing authority on an application for a transfer of a license is quasi judicial in nature. Dufford v. Nolan, 46 N.J.L. 87. Thus the duty of the Council is to discover objective truth. If the Council acting as a judge has a proprietary interest

which may color its decision, its action becomes distorted. Cf. Cardozo, Nature of the Judicial Process, 173. See also 63 C.J.S., Municipal Corporations, Sec. 990, 991; 43 Am. Jur., Public Officers, Sec. 266 (1942); Note "The Doctrine of Conflicting Interests Applied to Municipal Officials in New Jersey" 12 Rutg. L. Rev. 582 (1958).

As the court stated in Aldom v. Borough of Roseland, 42 N.J. Super. 495, 502:

"The interest which disqualifies is not necessarily a direct pecuniary one, nor is the amount of such an interest of paramount importance. It may be indirect; it is such an interest as is covered by the moral rule; no man can serve two masters whose interests conflict... the duty of an officer to render a righteous judgment is that of doing it in such a manner as will beget no suspicion of the pureness and integrity of his action."

Cf. McNamara v. Saddle River Borough, 64 N.J. Super. 426; B & L Associates v. Washington Township et al., 61 N.J. Super. 312.

It should be emphasized that the validity of the Council's action does not rest upon proof of fraud or dishonesty, or whether its action was desirable or undesirable from a public standpoint. 63 C.J.S. Supra, Sec. 990; Aldom v. Roseland, Supra, at p.503.

While I have not found any case directly on point involving the action by the Council which has a proprietary interest in the subject matter, the same principles are clearly applicable.

Therefore, since this appeal has been properly molded as if it were a direct application by the appellant to the Director by a broad application of N.J.S.A. 33:1-20, the primary emphasis should be to determine whether the transfer to the proposed site on Route 23, would serve the best interests of the public. The common interests of the general public should be the guidepost in the issuance and transfer of licenses. Blanck v. Magnolia, 38 N.J. 484, 491 (1963); Paul v. Gloucester City, 50 N.J.L. 585; Zicherman v. Driscoll, 133 N.J.L. 586.

The record herein discloses that there are four plenary retail consumption licenses and one plenary retail distribution license on Route 23, which, according to the testimony of Mayor Roger Struble, are all located within a three-quarter mile radius. It was his opinion reflected in the unanimous adoption by the Council of the subject resolution and set forth therein, there is no public need or necessity for the transfer of the said license to Route 23.

The fact is very influential in the consideration of this application. The sentiments of the members of the Council and

that of local business men who have objected to the transfer should not be lightly disregarded. See Lyons Farms Tavern v. Newark, 55 N.J. 292, 306, 307 (1970). See also Fanwood v. Rocco, 59 N.J. Super. 306, aff'd 33 N.J. 404, to the effect that where a municipality has several taverns and package liquor stores in an area and wants no more, the Director has no right to grant a place-to-place transfer to that area.

I am persuaded from my examination of the record and from the sentiment vigorously expressed by the local officials, that the denial of the said application would be in the public interest. I am convinced that the area of the proposed transfer site is adequately serviced and that there is no public necessity or convenience to be served by the grant of the said application. Cf. Ward v. Scott, 16 N.J. 16 (1954).

Although the primary consideration influencing my determination is the fact that the transfer to the proposed site would be contrary to the public interest, I am, nevertheless, also mindful of the fact that if the license should remain at its present site, under appropriate circumstances, it may well serve the best interests of the community. As Mayor Struble pointed out, considerable sums of money have been spent by the municipality in upgrading the downtown business area. It is the conviction of the Council and local residents, including the President of the Business Association who represented local merchants who comprise this Association, that a transfer of this license would disserve the public interest and that the continuation of the license in the business area would have a beneficial effect.

In one of the exceptions, the appellant argues that the petition signed by forty local businessmen who objected to the proposed transfer was "hearsay and a completely self-servicing statement on behalf of the Borough."

In administrative proceedings, petitions, both in favor and opposed to the proposed action, may be received and considered along with other competent evidence, and will be, of course, circumspectly weighed in the determination of the action. See Henderson v. Teaneck et al., Bulletin 1588, Item 1; In re Dunster, Bulletin 99, Item 1.

I have fully reviewed and evaluated the exceptions filed by the appellant and find that they have either been considered and correctly resolved in the Hearer's report, or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation, the Hearer's report and the written exceptions to the Hearer's report on behalf of the appellant, I concur in the conclusion and recommendation of the Hearer. I shall, therefore, deny the application and will affirm the action of the Council.

Accordingly, it is, on this 18th day of October 1974,

ORDERED that the action of the respondent Mayor and Council of the Borough of Butler be and the same is hereby affirmed and that the application of the said appellant, molded as if it were a direct application to the Director for a transfer of the subject license be and the same is hereby denied; and it is further

ORDERED that the appeal herein be and the same is hereby dismissed.

LEONARD D. RONCO
DIRECTOR

2. APPELLATE DECISIONS - RIPA v. ORANGE.

Louis R. Ripa,)
t/a Ripa's,)
Appellant,)
v.)
Municipal Board of)
Alcoholic Beverage)
Control of the City)
of Orange,)
Respondent)

On Appeal

CONCLUSIONS
and
ORDER

Michael A. Querques, Esq., by Larry Bronson, Esq., Attorney for
Appellant
Beninati & La Morte, Esqs., by Frank A. La Morte, 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 Municipal Board of Alcoholic Beverage Control of the City of Orange (hereinafter Board) which, on June 25, 1974 denied appellant's application for renewal of his plenary retail consumption license for the licensing year 1974-75, covering premises 350 Henry Street, Orange.

Appellant contends that the action of the Board was erroneous in that there was insufficient ground upon which its determination was grounded. The Board denied this contention and averred that the denial of renewal was predicated upon a non-use of the subject license for a period of nine months prior to his application for renewal, furthermore, previously thereto, there occurred a shooting in the premises which constituted a nuisance; hence it would not be in the public interest to renew the license.

An appeal de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. Additionally, a transcript of the proceedings held before the Board on June 25, 1974 was submitted pursuant to Rule 8 of State Regulation No. 15.

At the outset of the hearing, a proffer of proof was made by each of the respective counsel. The proofs offered by each were in substantial agreement and were capsulated as follows:

Appellant, together with his late father before him, has had continuous ownership of the licensed premises for the past forty years. For almost fifteen years preceding the current application, there have been no disciplinary proceedings against the license. However, a few years ago, there occurred a shooting during a robbery, which was followed by another shooting almost a year ago when another alleged hold-up occurred, which resulted in the tragic blinding of the licensee. Following his blindness, the premises were not opened for operation.

Upon receipt of the current application and in consequence of the hearing held thereon, the Board was satisfied that the appellant was physically unable to operate his tavern, thus, if the license were renewed and he attempted to do so, further tragic results were foreseeable. In consequence of that determination, the application for renewal was denied.

The appellant now concedes that he could not operate the licensed premises himself but was anxious to effectuate a prospective sale of the business, which he could not do unless the license was renewed.

Accordingly, it is recommended that the action of the Board be reversed and it be directed to renew the license subject to the special condition that the appellant consummate a person-to-person transfer of the license within three months from the effective date of the Director's order to a suitable person who, in the discretion of the Council, will properly manage the licensed premises; and that, in the event such transfer is not so effected within the time aforesaid or such further time as may be extended by the Board, the license shall be cancelled. Cf. J & K Bar, Inc., v. Wallington, Bulletin 2146, Item 3.

Conclusions and Order

No 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 8th day of November 1974,

ORDERED that the action of the respondent be and the same is hereby reversed, expressly subject to the special condition that appellant consummate a transfer of his license to a bona fide transferee as may be approved by the respondent Board within three months from the effective date of this order or within such further time as the Board may extend; and it is further

ORDERED that respondent Board is directed to grant appellant's application for renewal of its plenary retail consumption license for the license year 1974-75 subject to the condition aforesaid with further condition that the Board withhold delivering the said license unless and until the conditions as aforesaid have been met; and it is further

ORDERED that in the event such transfer is not effected within the time limited herein or within any extension of said period as may be granted by respondent, then and in that event, the said license shall be cancelled.

Leonard D. Ronco
Director

3. APPELLATE DECISIONS - ONE FOUR AND TWO BAR, INC. v. NEWARK.

One Four and Two Bar, Inc.,)

Appellant)

v.)

On Appeal

Municipal Board of Alcoholic
Beverage Control of the City)
of Newark,)CONCLUSIONS
and
ORDER

----- Respondent -----)

Samuel Raffaelo, Esq., Attorney for Appellant
 Donald E. King, Esq., by John C. Pidgeon, Esq. Attorney for
 Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 142 Broadway, Newark, appeals from the action of respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which on March 18, 1974 found appellant guilty of permitting and suffering possession and sale of gambling paraphernalia on the licensed premises on July 9, 1971, in violation of Rules 6 and 7 of State Regulation No. 20, in consequence of which finding, appellant's license was suspended for thirty-five days, effective April 15, 1974.

Upon filing of appeal an order was entered by the Director on April 11, 1974 staying the Board's action pending determination of this appeal.

In its petition of appeal, appellant alleges that the Board's action was erroneous as a matter of law, was against the weight of the evidence, and that the Board was guilty of estoppel in pais or laches. It was further contended that the suspension imposed was excessive.

In its answer, the Board denied the substantive allegations of the petition and defended that its action was based upon "sufficient evidence to sustain the burden of proof of the alleged charges". The appeal de novo was based upon the transcript of proceedings before the Board, supplemented by exhibits presented to the Division in lieu of testimony of witnesses or other evidence, in accordance with Rules 6 and 8 of State Regulation No. 15.

The transcript of testimony taken at the hearing before the Board included the testimony of Newark Police Officers Joseph Policastro and Robert Purcell. Detective Policastro related

that he observed numerous persons coming and going in and out of appellant's premises on July 9, 1971, remaining inside for such a short time as to arouse his suspicions.

He entered the premises in the company of five other officers who engaged in a search of the premises. In an enclosed rear yard he discovered betting slips representing horse-racing bets of \$118.00, and lottery bets of \$48.50. In the interior, one of the officers discovered a cigarette package on which were written lottery numbers.

The then owner of the premises, retreated to the rear office where he unsuccessfully attempted to rip certain pages from a ledger book, but these pages were retrieved by the officer; they contained approximately thirty names and amounts of money bet.

Sergeant Purcell corroborated in part the testimony of Detective Policastro, adding that, as a qualified lottery expert, he could definitely state that the inscriptions on the slips and the numbers written on the cigarette package found in the premises were, in fact, lottery numbers.

Neither detective saw any bets made while the "raid" was in progress. The then owner, acting as bartender was present during the police activity.

The evidence offered to the Board was uncontroverted and although it did not represent the best evidence as the slips, cigarette package and ledger sheets were not produced, it was sufficient to establish a prima facie case. Failure of the appellant to provide any rebuttal testimony lead the Board to the inescapable conclusion that the charges were proved.

Appellant contends that, as there had been a person-to-person transfer of the license between the time of the alleged violation and the date of the charge, the passage of time which was then embraced worked as an estoppel in pais against the Board. This contention is without merit. Such doctrine of estoppel must be predicated upon a concealment of facts by one who makes a representation contrary to such concealed facts to another, who places reliance thereon. Lawes v. Lynch 7 N.J. Super. 548,593 (App. Div. 1950)

The testimony of the principal stockholder of appellant corporation reveals that he knew of the violation at the time of sale but "assumed due to the time the violation occurred, that it would not be prosecuted" and made no contact with anyone from the Board to determine the status of the charges. Thus, from the testimony, the defense of estoppel in pais is inapplicable, and is rejected.

Appellant further contends that the Board was guilty of laches in failing to prosecute the prior licensee before the transfer and/or allowing an inordinate amount of time to elapse between the date of the charge and the hearing thereon. The Board responded that it awaited the conclusion of the criminal charges relating to the same incident, and upon notice of the termination of those proceedings, proceeded promptly to list the

matter for hearing. Appellant's attention is particularly called to Rule 2 of State Regulation No. 16 which provides:

Paragraph 2 "Any license or permit may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to transfer or extension of the license, or during the term of a prior license held by the licensee or his predecessor in interest or during the term of a prior permit held by the permittee."

Lastly, appellant maintains that the imposition of a thirty-five day suspension was unusually severe. The present penalty schedule as revised by the Director of this Division on October 3, 1974, which serves as a guide to its Enforcement Section reflects a minimum suspension of license for forty-five days for commercialized gambling activity.

"The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion in the final instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable or clearly excessive. Benedetti v. Bd. of Com'rs of Trenton 35 N.J. Super. 30 (App. Div. 1955).

"The burden of establishing that the action of the Board was erroneous and should be reversed rests with the appellant (Rule 6 State Regulation No. 15). To sustain that burden, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. Hudson-Bergen Co. Retail Liquor Stores Assoc. v. Hoboken 135 N.J. L. 502 (1947).

I, therefore, find that the penalty imposed by the Board was not excessive or severe. Upon review of the entire record herein, the transcript of the proceedings before the Board, I find that the Board has acted circumspectly in arriving at its finding and in the imposition of the penalty. Accordingly, it is recommended that the action of the Board be affirmed, the appeal be dismissed, the order staying the suspension during the pendency of this appeal be vacated, and the penalty of thirty-five days suspension of license reimposed.

Conclusions and Order

No 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 18th day of November 1974,

ORDERED that the action of the respondent in finding the appellant guilty of the charges herein be and the same is hereby affirmed; and it is further

ORDERED that my order dated April 11, 1974, staying the effective date of the suspension imposed by the respondent be and the same is hereby vacated; and it is further

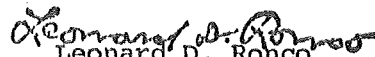
ORDERED that Plenary Retail Consumption License issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to appellant, One Four and Two Bar, Inc., for premises 142 Broadway, Newark, be and the same is hereby suspended for thirty-five (35) days commencing 2:00 a.m. on Monday, November 25, 1974 and terminating 2:00 a.m. on Monday, December 30, 1974.

Leonard D. Ronco
Director

4. STATE LICENSES - NEW APPLICATIONS FILED.

High Grade Beverage
422 Jersey Avenue
New Brunswick, New Jersey
Application filed January 14, 1975
for additional warehouse license
for premises 28 Van Dyke Avenue,
New Brunswick, New Jersey, in
connection with State Beverage
Distributor's License SBD-187.

Dante Wines, Inc.
28 Van Dyke Ave.
New Brunswick, New Jersey
Application filed January 14, 1975
for place-to-place transfer of
Wine Wholesale License WW-24 from
Old Georges Road, off Route 130,
Deans Section, South Brunswick,
New Jersey.


Leonard D. Ronco
Director