

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

BULLETIN 2146

May 15, 1974

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - HOST SERVICES OF NEW YORK, INC. v. NEWARK ET AL.
2. APPELLATE DECISIONS - CITY OF ELIZABETH v. NEWARK ET AL.
3. APPELLATE DECISIONS - J & K BAR, INC. v. WALLINGTON.
4. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY
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May 15, 1974

1. APPELLATE DECISIONS - HOST SERVICES OF NEW YORK, INC. v. NEWARK ET AL.

Host Services of New York, Inc.,)
Appellant,)
v.) On Appeal
Municipal Board of Alcoholic Beverage) CONCLUSIONS
Control of the City of Newark, and) and
Louvenia Moses,) ORDER
Respondents.)

Pitney, Hardin & Kipp, Esqs., by William H. Hyatt, Jr., Esq.,
Attorneys for Appellant
Donald E. King, Esq., by John C. Pidgeon, Esq., Attorney for
Municipal Board
Samuel Sirota, Esq., Attorney for Respondent Moses

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board), which by resolution adopted August 6, 1973, approved appellant's (Host) application for a person-to-person and place-to-place transfer of a plenary retail consumption license held by Louvenia Moses and from premises 506 Hunterdon Street, Newark, to premises Newark International Airport, Terminal Building "A".

The resolution, after approving the application, added:

"BE IT ALSO RESOLVED by the Board of Alcoholic Beverage Control of Newark, that in this particular case building 'A' should maintain a separate license from buildings 'B' and 'C', and

The Board of Alcoholic Beverage Control will grant exception to the 1,000 ft. rule with regard to buildings 'B' and 'C'."

In its petition of appeal filed on September 6, 1973, thirty-one days after the action appealed from, Host alleges

that in its original application for the said transfer it designated its premises to be licensed as Newark International Airport Terminal. On July 30, 1973, the Board conducted a public hearing and reserved decision on its application. Subsequently, appellant alleges that it was advised by the Board that the application would not be approved unless the premises to be licensed were to be redefined and re-designated as "Newark International Airport Terminal, Building "A", since the Board felt that Terminal Building "A" should have a separate license from Buildings "B" and "C".

Accordingly, by letter dated August 6, 1973, Host amended the application "under protest" to redefine and re-designate the premises sought to be licensed as Newark International Airport Terminal.

The petition further alleges that the said Newark International Airport Terminal will ultimately consist of three (3) Terminal Buildings known as "A", "B" and "C", and that Host is now currently authorized to operate in Terminal Buildings "A" and "B". It, therefore, contends that Terminal Buildings "A" and "B" constitute a similar specific place of business, as required by N.J.S.A. 33:1-26, and both buildings should have been treated as a single licensed premises. It alleges that the Board erred in requiring a separate license for these buildings and requests that the said resolution be "modified" to define the licensed premises as "Newark International Airport Terminal, Terminal Building "A".

In its answer, the Board denies that the Board reserved the decision on the place-to-place transfer and that the appellant was advised to amend its application. It further submits that its decision was proper and within its discretion on the basis of the "testimony, documents and investigations available to it."

Louvenia Moses was joined as a party respondent. However, it is well established that the transferor of the license is neither a necessary nor proper party to this appeal. Barasso v. Irvington, Bulletin 1319, Item 2. It is, therefore, recommended that the appeal with respect to Louvenia Moses be dismissed.

At the commencement of this de novo hearing on appeal the attorney for the Board made a motion to dismiss the appeal on the grounds that the appeal was not timely filed. Since it is conceded that the appeal was filed thirty-one days after the action complained of, the hearing was limited solely to the jurisdictional issue.

Johnny Peterson, the Chairman of respondent Board, testified that he had a conversation with the attorney for Host between July 30, 1973 and August 6, 1973, the date of the adoption of the subject resolution, wherein he advised Host's attorney that the proposed place-to-place transfer would not be approved unless the

application was amended to define the proposed transfer site as Terminal Building "A".

Rule 3 of State Regulation No. 15 states as follows:

"Appeals from the issuance of a license and from the granting of an application for the extension or transfer of a license must be taken within thirty (30) days from the action appealed from; all other appeals must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from."

See N.J.S.A. 33:1-26, upon which this rule was based. This statute provides, in its relevant section:

"If the other issuing authority shall refuse to grant a transfer the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application, and such applicant may, within 30 days after the date of service or mailing of such notice, appeal to the director from the action of the issuing authority. If the other issuing authority shall grant a transfer any taxpayer or other aggrieved person opposing the grant of the transfer may, within 30 days after the grant of such transfer, appeal to the director from the action of the issuing authority."

Since it is apparent that this was an appeal from the grant of an application for a place-to-place transfer and the appeal was filed thirty-one (31) days after the action, that is, on September 6, 1973, such appeal was clearly out of time.

In Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393 (App. Div. 1963) pet. for cert. denied 41 N.J. 308, the court held that:

"Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature, Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956), affirming 36 N.J. Super. 485 (App. Div. 1955), and not with the agency or the courts, Scrudato v. Mascot S.& L. Assn., 50 N.J. Super. 264, 270 (App. Div. 1958)."

Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction to accept the appeal."

The court stated finally (on p.397):

"We have no authority to order the Division to hear an appeal from a local board where the Division is without statutory jurisdiction, no matter what the nature of the complaint by the objectors."

In Scrudato v. Mascot S. & L. Assn., supra, (at p.271) the court stated:

"The fact that Scrudato's application was only two days out of time does not mitigate the invalidity of the action under review. Even a minor deviation from the statutory limit in a particular case is fatal. See for example Kaske v. State 34 N.J. Super. 222 (App. Div. 1955) (one day). This is not a mere technicality, but fundamental to the proper and necessary restraint of the exercise of judicial and administrative discretion. The remedy for results that either tribunal may deem unjust or unwise lies not in disregard of the statutory limitation, but in corrective legislation." Cf. Lamastra v. Montgomery Ward & Co., Inc., 25 N.J. Super. 14 (App. Div. 1953); Kolonkiewicz v. W. Ames & Co., 23 N.J. Super. 265 (Cty. Ct. 1952).

In its brief in Opposition to the Motion to Dismiss, the appellant argues that N.J.S.A. 33:1-26 contains two sentences which read as follows:

"Sentence One deals with appeals by 'the applicant' from refusals to grant requested transfers. Sentence Two, by contrast, deals with appeals by 'any taxpayer or other aggrieved person opposing the grant of the transfer' from the approval of a requested transfer."

It maintains that Host is an aggrieved person, not by the transfer granted by the Board but by the refusal of the Board to approve the transfer originally sought in the application.

It, therefore, asserts that it is entitled to appeal within thirty days after the date of service or the mailing of the notice. It further asserts that since it did not actually receive the notice either served personally upon it or by registered mail until September 17, 1973 that the appeal was filed within time. I find neither of these arguments to have merit.

The action of the appellant in amending its application was consensual; Host acted voluntarily and it knew exactly what

it was doing. The mere fact that it stated in its August 6, 1973 letter that it was amending its application "under protest" does not invalidate the signed and fully executed amended application. It was on the application that the Board acted, and it fully approved the said application.

Query, Is the appellant a proper party to appeal such action, where its application was approved as submitted?

In any event, appellant could, of course, have refused to amend its application and then taken an appeal from denial of the said application as originally submitted. It may have had its reasons, whether economic or other, for amending its application. The appellant could also have applied for a place-to-place transfer, after the grant of this application, for enlargement of its premises to include Terminal Building "B". However, it is clear and I so find, that the action appealed from here was from the grant of the application, and the appellant is limited by the time as set forth hereinabove.

I might state that even if it could be argued that Sentence One is applicable, I find that the appellant had received adequate legal notice. Such actual notice is consonant with the real meaning of the said provision as intended by the Legislature. See Black's Law Dictionary, Revised Fourth Edition 1968. The appellant had personal notice of the resolution of the Board through its designated attorney on August 6, 1973, the date of the adoption of the resolution, as evidenced by appellant's letter of August 6, 1973.

It is, accordingly, recommended that the motion of the respondent Board to dismiss the appeal as being filed without time be granted; that the action of the respondent Board be affirmed, and the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by appellant, pursuant to Rule 14 of State Regulation No. 15. A written answer to the said exceptions was filed on behalf of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark.

I have fully examined and evaluated the said exceptions, and find that they have either been considered and satisfactorily resolved in the Hearer's report or are lacking in merit.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions filed with respect thereto, and the answer to the said exceptions, I concur in the findings and conclusions

set forth in the Hearer's report, and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of March 1974,

ORDERED that the motion made by respondent Municipal Board of Alcoholic Beverage Control of the City of Newark to dismiss the appeal herein as being filed without time is hereby granted; and it is further

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed.

JOSEPH H. LERNER
ACTING DIRECTOR

2. APPELLATE DECISIONS - CITY OF ELIZABETH V. NEWARK ET AL.

City of Elizabeth,)	
Appellant,)	On Appeal
v.)	
Municipal Board of Alcoholic Beverage Control of the City of Newark, and Host Services of New York, Inc.,)	CONCLUSIONS and ORDER
Respondents.)	
-----)		
Frank P. Trocino, Esq., by Daniel J. O'Hara, Esq., Attorney for Appellant		
Donald E. King, Esq., by John C. Pidgeon, Esq., Attorney for respondent Municipal Board		
Pitney, Hardin & Kipp, Esqs., by William H. Hyatt, Jr., Esq., Attorneys for Respondent Host Services of New York, Inc.		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which, by resolution dated August 6, 1973, approved the application for a person-to-person and place-to-place transfer of a plenary retail consumption license held by Louvenia Moses to respondent Host Services of New York, Inc., (Host) and from premises 506 Hunterdon Street, Newark, to the Newark International Airport, Terminal Building "A". The notice and petition of appeal referred to the "issuance" of the said license. (The substance of the appeal, in fact, reflects a challenge to the said transfer.)

In its petition of appeal the appellant contends that the action of the Board was erroneous because:

- (1) The premises to which the license is sought to be transferred is located within the City of Elizabeth;
- (2) That the premises from which the license is sought to be transferred was "not an existing licensed premises from which a transfer could be made" since the licensed premises were not in existence at the time of transfer.

The Board filed an answer wherein it denied the substantive allegations of the complaint and sets forth that:

- (a) The appeal was not filed within the time limited by State Regulation No. 15;
- (b) That there was no compliance with Rule 3 of State Regulation No. 15; and
- (c) That the appellant is out of time to "raise any question as to the propriety of the renewal at this time" and that appellant "did not object or appeal from the renewal of license to Louvenia Moses", the original owner of the said license.

An answer was also filed by Host wherein it alleges:

- (a) That the said transfer was limited to Newark International Airport Terminal, Terminal Building "A" in the City of Newark; and
- (b) That the said transfer was entirely lawful and proper.

Since the jurisdictional issue was raised both in the answer of the Board and on the motion to dismiss at the time of the de novo hearing on appeal, this report shall be limited solely to the jurisdictional issue, which I consider to be dispositive, for reasons as hereinbelow set forth.

The appeal was filed on September 6, 1973 or thirty-one days after the date of the action appealed from. Rule 3 of State Regulation No. 15 states in pertinent part:

"Appeals from the issuance of a license and from the granting of an application for the extension or transfer of a license must be taken within thirty (30) days from the date of the action appealed from.
..."

See to the same effect N.J.S.A. 33:1-26, upon which the said rule is based.

It is factually conceded that the appeal was actually filed on September 6, 1973. In Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393 (App. Div. 1963), pet. for cert. denied (41 N.J. 308), the court held that the Division had no jurisdiction to entertain an appeal filed out of time.

"Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction to accept the appeal. (cited cases omitted.)"

Said the court:

"Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature, Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956), affirming 36 N.J. Super. 485 (App. Div. 1955), and not with the agency or the courts, Scrudato v. Mascot S. & L. Assn., 50 N.J. Super. 264, 270 (App. Div. 1958)."

Finally, the court added:

"We have no authority to order the Division to hear an appeal from a local board where the Division is without statutory jurisdiction, no matter what the nature of the complaint of the objectors." (at p.397)

In Scrudato v. Mascot B. & L. Assn., supra (at p.271) the court stated:

"The fact that Scrudato's application was only two days out of time does not mitigate the invalidity of the action under review. Even a minor deviation from the statutory limit in a particular case is fatal. See for example Kaske v. State (34 N.J. Super. 222 (App. Div. 1955) (one day)). This is not a mere technicality, but fundamental to the proper and necessary restraint of the exercise of judicial and administrative discretion. The remedy for results that either tribunal may deem unjust or unwise lies not in disregard of the statutory limitation, but in corrective legislation." Cf. Lamastra v. Montgomery Ward & Co., Inc., 25 N.J. Super. 14 (App. Div. 1953); Kolonkiewicz v. Ames & Co., 23 N.J. Super. 265 (Cty. Ct., 1952).

Furthermore, the Board contends that there was no valid compliance with Rule 2 of State Regulation No. 15, which reads as follows:

"The appellant shall first serve a copy of the notice and petition of appeal upon the respondent issuing authority and where the action appealed from is the granting or transfer or

extension of license...a copy shall also be served upon the licensee who shall also be joined as a respondent. The notice and petition of appeal together with an acknowledgment or affidavit of service, shall be filed with the Director forthwith." See N.J.S.A. 33:1-38.

Jeno V. Agardy, a policeman attached to the City of Elizabeth Police Department, testified on behalf of the appellant as follows: On September 6, 1973, shortly after 5:30 p.m. he went to the Newark Police Department for the purpose of serving the notice and petition of appeal. He asked for the highest ranking officer then on duty, and was directed to a person who introduced himself as Inspector Charles Mills. He handed him the said notice and petition of appeal and instructed him to write his name on "a piece of scrap paper." He said he tried to interpret the signature and the name of "Mills" was the best that he could so interpret it.

After he wrote his report with respect to the said service, he discarded the slip of paper and, therefore, the same was not available at the time of the hearing.

Salvatore Perillo, who was the assistant corporation counsel in charge of this matter on behalf of the Board on September 6, 1973, testified that, at a meeting held with Host and a representative of this Division on September 6, 1973, he was asked whether the Board could extend the time in which to file the appeal and whether he could agree to the extension. He notified appellant's representative at that time that the Board would not agree to any extension since it would be contrary to the aforementioned statute and the regulations of this Division.

On September 19, 1973 he first received by certified mail a copy of the notice of appeal and petition of appeal in this matter which were dated September 6, 1973. This was prompted by his inquiry of this Division when he received the Notice of Hearing in this matter which was sent upon the filing of the appeal.

He then inquired of Mrs. Dorothy Karp, who is in charge of personnel records at the Newark Police Department, with respect to the alleged service of these papers and was informed that the police department had no knowledge of any such service; that, in fact, no person by the name of Charles Mills was employed in any capacity by the City of Newark, on or about September 6, 1973. An affidavit of Mrs. Karp to the said effect, was introduced into evidence.

Perillo then inquired of the clerk of the Board and was informed that no such notice and petition of appeal had been

received by the clerk of the Board or any of its employees.

Thus, it is clear from the evidence presented on the jurisdictional issue that there was a fatal statutory failure to appeal within time. Thus, the alleged service of the appellant's notice and petition of appeal was improper and not in compliance with State Regulation No. 15, since the police department was not authorized to accept such service. In fact, the actual service was made on the Board fourteen days after the time limited for such service.

I, therefore, conclude that, absent timely filing of the appeal, the Director had no jurisdiction to entertain the same. It is, accordingly, recommended that the motion of the respondents to dismiss as being without time be granted; that the action of the Board be affirmed, and the appeal be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the appellant pursuant to Rule 14 of State Regulation No. 15.

The exceptions do not seriously challenge the findings and conclusions of the Hearer, but assert that the substantive issue has not been determined. It states that the appellant has sought to enlist the aid of this Division in order to "resolve the jurisdictional question regarding 'Terminal A' of the Newark International Airport," which it insists is geographically located within the City of Elizabeth and, therefore, within its jurisdiction. This is a matter for further investigation by this Division.

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 conclusions contained in the Hearer's report, and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of March 1974,

ORDERED that the motion made by the respondent Board to dismiss the appeal herein as being filed without time is hereby granted; and it is further

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner
Acting Director

3. APPELLATE DECISIONS - J & K BAR, INC. v. WALLINGTON.

J & K Bar, Inc.,)
Appellant,) On Appeal
v.)
Mayor and Council of the) CONCLUSIONS and ORDER
Borough of Wallington,)
Respondent.)

Joseph M. Keegan, Esq., Attorney for Appellant
Gruen, Sorkow & Sorkow, Esqs., by Donald R. Sorkow, Esq.,
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Mayor and Council of the Borough of Wallington (hereinafter Council) which on August 29, 1973 denied appellant's application for renewal of its plenary retail consumption license for premises 74 Mercer Street, Wallington.

In its petition of appeal appellant contends that the action of the Council was erroneous in that its determination was against the weight of evidence and constituted an abuse of discretion.

The Council by way of answer to the petition submitted a copy of the resolution adopted in the matter, the essence of which charged that appellant's licensed premises were being conducted in such manner as to constitute a nuisance and wherein loud and boisterous conduct resulted from appellant's inability "to control the patrons" of the licensed premises.

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 cross-examine witnesses.

Counsel stipulated the admission into evidence of the resolution of the Council previously forwarded to the Division in lieu of an answer. It was further stipulated that appellant's premises came under the management of Peter Voloshin, the sole stockholder, on December 15, 1972.

The subject resolution sets forth in detail the factual

elements upon which its conclusion was based as follows:

"1. The sole stockholder, director and officer of the applicant corporation is one Peter Voloshin;

"2. The applicant had its license suspended for twenty-five (25) days by the Alcoholic Beverage Commission shortly after the stock of the applicant corporation was acquired by the said Peter Voloshin on December 15, 1972;

"3. As a result of twelve (12) complaints against the applicant filed in the Municipal Court, the applicant was found guilty of seven (7) charges of permitting loud and boisterous conduct and maintaining a nuisance at the tavern premises on June 18, June 25, and June 29, 1973;

"4. The bartender on the premises, the wife of Peter Voloshin, was unable to control the patrons of the tavern resulting in loud and boisterous conduct on the night of June 25, 1973;

"5. The records of the Wallington Police Department have been placed in evidence by stipulation of the parties and such records disclose numerous incidents of drunkenness, excessive noise disturbing the neighbors and boisterous conduct in and about the tavern premises from December 15, 1972 to the present date;

"6. Edward Hryczyk, a resident of the neighborhood of the tavern testified to noisy, drunk and boisterous conduct of the patrons of the applicant tavern, including conduct of serving patrons while intoxicated, on approximately eleven (11) different evenings from April 29 to June 26, 1973, which testimony was not disputed or contradicted;

"7. The applicant, through its President, Peter Voloshin, acknowledged the persistence of loud and boisterous customers who created a nuisance on numerous occasions;

"8. Numerous neighbors were present to object to the granting of the license, but it was stipulated by counsel that such testimony would be cumulative and repetitious regarding the existence of such a nuisance at the tavern premises."

Members of the Wallington Police Department testified and pertinent records of that department were introduced into evidence with respect to appellant's premises. Those reports reflected the following:

Jan. 1, 1973 - tavern told to close at 5:15 a.m.;
Mar. 16 - patron drunk in street;
Mar. 29 - tavern broken into;
Apr. 15 - noise complaint;
Apr. 24 - patrons drinking outside premises;

Apr. 29 - patron passed out in tavern, taken to hospital;
May 2 - noisy group outside premises;
May 12 - beer-drinking in front of tavern at 3:45 a.m. ;
May 20 - noise from tavern, 2:15 a.m.
May 22 - noisy group;
May 27 - drinking outside premises;
May 30 - numerous complaints of noise at 2:20 p.m. ;
May 30 - complaint of noise at 1 a.m. ;
June 3 - intermittent complaints of noise ;
June 16 - fireworks in yard;
June 16 - noisy tenant;
June 18 - noise and drinking outside 11:55 p.m. ;
June 25 - intermittent complaints of noise.

Additionally, the reports disclosed that on April 24, 1973, the principal holder of the corporate stock of the licensed premises was warned to correct the complained of conditions.

Lieutenant Anthony Barnes testified that on June 19, 1973, having received continual complaints from neighbors, he warned Peter Voloshin, appellant's principal stockholder and officer, that the quantity of complaints, the noise and the unruly patrons would no longer be tolerated.

Patrolman Joseph Rys testified that on June 25, 1973 he was twice summoned to appellant's premises as the result of several complaints concerning noise and boisterous conduct occurring there. He described a noisy disturbance by patrons.

Mrs. Voloshin, wife of Peter Voloshin and the only employee in the premises, admitted that she could not control the patronage.

Detective Stanley Remiszewski testified that on June 27, 1973 he had been assigned to maintain a surveillance of these premises from eight o'clock in the evening until closing hour. He described the conduct of the said premises as loud and boisterous, culminating in an explosion of a firecracker at 1:15 a.m. Banging of doors, shouts, obscene language were a part of what he observed and heard. One of the offenders was permitted to remain in the premises until closing hour.

A neighbor (Edward Hryczyk, residing directly across the street from appellant's tavern) testified that he had not only called the police on numerous occasions but kept a record of the calls and noted the reasons for said calls. His diary-form account, introduced into evidence, revealed fourteen separate calls beginning April 22, 1973, culminating with a visit to the police and a conference with the Mayor. He observed patrons drinking on the exterior of the premises, heard cat-calls to passersby, noise emanating from the interior of the premises, obscene remarks and disruptive noises which continued until the early hours of the morning.

Ten other neighbors were prepared to testify. It was stipulated that their testimony would in general be corroborative of that presented by Hryczyk.

Testifying on behalf of appellant, Peter Voloshin stated that, while he did take some steps to eliminate the problems faced, he did not expel the troublemakers as was recommended by the police lieutenant.

Theresa Voloshin, wife of Peter, testified that she could not recall seeing police officers in the premises prior to June 25, 1973, and that on that date she could not control the patrons.

The crucial issue on this appeal is whether the record substantiated and justified the Council's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where the renewal of a license is sought, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277 (1957). Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority.

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support." In re 17 Club, Inc., 26 N.J. Super. 43,52 (1953).

It is proper for municipal issuing authorities in passing upon applications for renewal of liquor licenses to take into account not only the conduct of licensees but also conditions not attributable to its conduct which render a continuance of a tavern in particular location against public interest. Nordco, Inc. v. State, *supra*.

The courts will interfere in the exercise of discretion by the municipal issuing authority only in the case of manifest error, clearly unreasonable action or some more untoward impropriety. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955); cf. Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292 (1970).

Appellant not only failed to sustain the burden imposed upon it under Rule 6 of State Regulation No. 15 requiring that the local issuing authority exercised its discretionary power erroneously but, on the other hand, the proofs preponderated greatly in favor of the Council.

Since appellant is patently unable to manage the licensed premises properly and, by that inability, has subjected the license to termination, it is recommended that the Council

be directed to extend the term of the license for a reasonable time in order to permit appellant to apply for a person-to-person transfer of its license to a suitable person able to manage the premises properly and to correct the present social evils attendant upon it.

Accordingly, it is recommended that the action of the Council be reversed and it be directed to renew the license in order to permit appellant to perfect an application for a person-to-person transfer of the license within three months from the effective date of the Director's order to such 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, the license shall be cancelled.

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 transcript of the testimony, exhibits, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

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

ORDERED that respondent is directed to grant appellant's application for renewal of its plenary retail consumption license for the license year 1973-74 subject to the condition aforesaid; 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.

JOSEPH H. LERNER
ACTING DIRECTOR

4. STATE LICENSES - NEW APPLICATION FILED.

Sunflower Beverage Inc.
346 21st Avenue
Paterson, New Jersey

Application filed May 14, 1974 for
person-to-person and place-to-place
transfer of State Beverage Distributor's
License SBD-105 from Hammonton Distributing
Co., Inc., 96 S. White Horse Pike, Hammonton, New Jersey.

Joseph H. Lerner
Joseph H. Lerner
Acting Director