

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

BULLETIN 2242

January 19, 1977

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January 19, 1977

1. COURT DECISIONS - FOUR WINDS LIQUOR SHOP, INC. ET AL. v. TEANECK ET ALS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-306-75

FOUR WINDS LIQUOR SHOP, INC., and
HUDSON-BERGEN PACKAGE STORES ASSOCIATION,

Appellants,

v.

TOWNSHIP COUNCIL OF THE TOWNSHIP OF TEANECK,
J & J DRUG & MEDICAL SERVICE, TOSCAN, INC.,
and DIVISION OF ALCOHOLIC BEVERAGE CONTROL
OF THE DEPARTMENT OF LAW AND PUBLIC SAFETY
OF THE STATE OF NEW JERSEY,

Respondents.

Submitted September 21, 1976 - Decided September 30, 1976.

Before Judges Matthews, Seidman and Horn.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Samuel J. Davidson, attorney; for appellants.

Messrs. Schneider, Schneider & Behr, attorneys for respondent
Township Council of the Township of Teaneck (Mr. John William
Lyttle, Jr., on the brief).

Messrs. Hein, Smith & Berezin, attorneys for respondent J & J
Drug & Medical Service.

Mr. Norman S. Costanza, attorney for respondent Toscan, Inc.

Mr. William F. Hyland, Attorney General, attorney for respondent
Division of Alcoholic Beverage Control (Mr. David S. Piltzer,
Deputy Attorney General, filed a statement in lieu of brief).

PER CURIAM

(Appeal from the Director's decision in Re: Four Winds Liquor Shop, Inc. et al. v. Teaneck, et als., Bulletin 2205, Item 1. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

2. COURT DECISIONS - TYRONE'S HAVEN, INC. v. SOUTH RIVER.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-881-75

TYRONE'S HAVEN, INC.,

Appellant,

v.

BOROUGH COUNCIL OF THE BOROUGH
OF SOUTH RIVER,

Respondent.

Argued September 27, 1976 - Decided October 22, 1976.

Before Judges Fritz, Crahay and Ard.

On appeal from the Division of Alcoholic Beverage Control.

Mr. George J. Shamy argued the cause for the appellant.

Mr. Frederick A. Simon argued the cause for the respondent
(Messrs. Rosenberg, Krieger & Simon, attorneys).

PER CURIAM

(Appeal from the Director's decision in Re Tyrone's Haven, Inc.,
v. South River, Bulletin 2214, Item 1. Director affirmed.
Opinion not approved for publication by Court Committee on
Opinions).

3. APPELLATE DECISIONS - WOODBRIDGE MANOR ENTERPRISES, INC. v. WOODBRIDGE.

Woodbridge Manor Enterprises,)
Inc.,)

Appellant,)

On Appeal

v.)

CONCLUSIONS
AND
ORDER

Mayor and Council of the)
Township of Woodbridge,)

Respondent.)

Palmisano & Goodman, Esqs., by Robert G. Goodman, Esq., Attorneys
for Appellant

Dato, Kracht & Silverman, Esqs., by Richard W. Kracht, Esq.,
Attorneys for Respondent

Figarotta & Russo, Esqs., by Robert P. Figarotta, Esq., Attorneys
for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent, Mayor and Council of the Township of Woodbridge (hereinafter Council) which, on April 20, 1976, denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-70, from Michael Rader to appellant, and from premises 281 Florida Grove Road to 800 Rahway Avenue, Woodbridge.

The resolution denying the application for transfer indicated that the Council considered the area of the proposed transfer was already saturated with liquor licenses. Additionally, it determined that Rahway Avenue, to which it was proposed to transfer the license, is a heavily trafficked artery through the community, hence appellant's proposed premises would aggravate the situation.

In its petition of appeal, appellant contends that the action of the Council was erroneous and unreasonable, in that there would be no greater concentration of licenses in the area than at present, because of the unique nature of appellant's business.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

From the testimony offered by appellant, by Irwin Pashkin, by the transferor Michael Rader and by the sole stockholder of the corporate appellant, Hy Pinilis, the following factual picture emerged: In 1969, the plenary retail consumption license held by Rader was required to be removed from its situs due to the taking of his property by the State. After many abortive attempts to acquire a new situs, all denied by the Council (Cf. Rader v. Woodbridge, Bulletin 2112, Item 2), a contract for sale of the license was entered into with Pinilis. The proposed situs for the license is presently used by Pinilis as a catering establishment, housed in a low, sprawling one-story building formerly occupied by the Public Library of Woodbridge.

A librarian, Irwin Pashkin, testified with respect to its library use from 1970 to 1973, when 65,170 users enjoyed that facility. Thereafter, the library moved to another location.

Pinilis uses the building which has a large parking lot adjacent to it, solely for social gatherings, averaging two hundred persons, which are held principally on weekends. It is located on Rahway Avenue across the street from which there is located a car wash, a frankfurter stand, a gas station and, two blocks further down the street, a pizza parlor. There are no plenary consumption licensed premises located less than nearly a mile from his establishment, within that municipality; however, there is a nearby license located in the adjacent municipality.

The plot size on which his rambling building is located consists of a parcel of almost two acres with present provision for one-hundred and fifty cars and with expansion room for an additional fifty additional cars. Although he has applied for a person-to-person transfer of the subject plenary retail consumption license, he would not object if the license was conditioned for use solely in conjunction with his catering business. Pinilis related that, in an endeavor to secure such limited license, he had visited the offices of this Division where it was suggested to him that he endeavor to acquire a regular plenary retail consumption license and use it solely for the functions he caters.

The Council produced no evidence at the hearing, relying upon the oral argument of counsel. The objectors, however, introduced the testimony of Dorothea Lockie, owner of licensed premises about a mile distant from the subject location, on the same

avenue. With the exception of one licensed premises, seven such premises on Rahway Avenue are in excess of a mile from appellant's establishment. She candidly acknowledged that her objection to the transfer to appellant was due to her fear of potential business loss, and, that if appellant is permitted to operate a bar business, it would have a negative effect upon her, because there are too many bars in the area.

Initially, it is observed that there is no inherent or automatic right to transfer of an alcoholic beverage license. The issuance of a retail liquor license, in the first instance, rests within the sound discretion of the local issuing authority; and, in an absence of abuse of such discretion, the action of the authority should not be disturbed by the Director of this Division. Hudson-Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502 (1947). The action of Council may not be reversed in the absence of manifest mistake or other abuse of discretion. Florence Methodist Church v. Florence, 38 N.J. Super. 85 (App. Div. 1955).

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

Where a municipal issuing authority determines to reject a site of a transfer because such transfer will result in an over-concentration of liquor licenses in an area or rejects such application for transfer to an area which the municipality wishes to be free from liquor establishments, its determination will not be altered on appeal by the Director, following his settled practice not to substitute his opinion for that of the municipal board. Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern, Inc. v. Newark, 68 N.J. 44 (1975).

Applying the foregoing principles, the rejection of a transfer to appellant's premises which results in a new retail consumption licenses being added to that area, is an exercise of the Council's judgment which the Director, in his settled practice, does not lightly reverse.

From a review of the testimony, evidence, oral argument of counsel and memoranda supplied, it is patently clear that the Council's action was founded on the belief that the proposed location of appellant's premises would be economically injurious to the other licensed businesses in the area. Considering the present use of the proposed subject premises, the allegation of increased traffic stemming from the addition of a liquor

license privilege extended to appellant's catering business is unrealistic and lacks factual foundation.

Further, it is clear that the Council was either unaware of the authority it possesses to condition the license for the appellant's specific use, nor was such suggestion advanced at the hearing before it. In arriving at a determination herein, I am also mindful that it has been held that "An owner of a license or privilege acquires, through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer". Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955).

The present transferor, Rader, lost his license situs by action of the State in 1969 following which repeated applications for its transfer were rejected by the Council. At least one such rejection was followed by an appeal to this Division where the Director affirmed the action of the Council, which he found to have been properly attentive to neighborhood sentiment in denying the transfer. Rader v. Woodbridge, Bulletin 2112, Item 2.

In the present case, there was no expression of neighborhood sentiment opposed to the proposed transfer. There are no contiguous residents in any number. The objector is a competitor licensee who is concerned with her own economic welfare.

Rader is deserving of a measure of consideration. For the first time he has an opportunity to transfer his license to a location at which there would be no resumption of the apparently objected to and rejected bar business, if the license were to be specially conditioned for its use in conjunction with appellant's catering business. For the Council to have rejected Rader's transfer and similarly reject appellant from offering to its patronage an opportunity to have alcoholic beverages with their catered meals is, in my opinion, unreasonable.

As above indicated, perhaps the Council was not made aware of its authority to issue or transfer a license subject to special conditions. Too, had appellant indicated at or prior to the hearing, that it intended to use the license privilege merely to supplement the meals it was presently providing in its establishment, there likely would not have been the challenged denial. Certainly, there was no evidence presented upon which such denial could have been fairly based.

Hence, I find that appellant has successfully sustained its burden of establishing that the Council has acted unreasonably, pursuant to Rule 6 of State Regulation No. 15 in the sole and single aspect of failing to approve the subject license transfer subject to a special condition limiting its use to permit

the service of alcoholic beverage to such persons with groups as are being provided for dinners in conjunction with appellant's catering business.

The right of the Director to impose special conditions upon a license has long been recognized, most recently in Moon Star, Inc. v. Jersey City, Bulletin 2130, Item 3, aff'd by Appellate Division, Superior Court in unreported opinion, cited in Bulletin 2192, Item 1.

It is, thus, recommended that the Director exercise that broad power and reverse the action of the Council and direct that the subject license be transferred pursuant to appellant's application made therefor, expressly subject to the following specific conditions: (a) that no bar, other than a service bar, be permitted; (b) that alcoholic beverages be served only at social affairs catered to by appellant; (c) that consumption of alcoholic beverages be limited to sponsors and guests of such social gatherings.

Conclusions and Order

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

In its Exceptions, appellant advances the contention that by accepting the license with the special conditions, as recommended, the license would not possess the intrinsic value that it otherwise would if no conditions were imposed. This Exception is unpersuasive in view of appellant's principal witness to the question "...What objection, if any, would you have should the municipality agree to give you the license with the condition attached that there would be no public bar? Would it make any difference to you?..." To which appellant replied "...Actually it wouldn't make any difference to me, but it is--right now I am purchasing a license and what I would like to do with it is continue my business at the present time. But suppose something happens to me in the near future or I want to sell the place in eight or ten years. Why should the license be restricted?" adding "...I would not open a public bar, definitely."

Appellant suggests that the subject license with the recommended special conditions imposed is worth far less than the \$60,000. value claimed to be the cost of a license in that Township. Hence, it is apparent that the Exceptions do not relate to the issue of the license for the public good but rather the value of the license with restricted use.

It is a well established principle that "economic hardship" respecting the use of a license is not a valid ground for challenge. H.M.B.L. Inc. v. Randolph, Bulletin 2197, Item 2; Paulison Liquors, Inc. v. Clifton, Bulletin 2162, Item 3.

Furthermore, in any conflict between a licensee's financial concern and the public interest, the latter must prevail. Smith v. Bosco, 66 N.J. Super 165 (App.Div. 1961) Marilyn Corp. v. Paterson, Bulletin 2126, Item 2.

Hence, I find appellant's Exceptions to be without merit.

Therefore, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report, and the Exceptions filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of October 1976,

ORDERED that the action of the Mayor and Council of the Township of Woodbridge denying appellant's application for a person-to-person and place-to-place transfer be and the same is hereby reversed; and it is further

ORDERED that the said Council be and the same is hereby directed to approve the aforesaid transfer expressly subject, however, to the following special conditions on the said license:

- A. No bar, other than a service bar shall be permitted;
- B. Alcoholic beverages may be served only at social affairs catered by appellant; and
- C. Consumption of alcoholic beverages shall be, and are hereby limited to sponsors and guests of such sponsors at social functions catered by the appellant in the said premises.

JOSEPH H. LERNER
DIRECTOR

4. APPELLATE DECISIONS - VAN'S RESTAURANT, INC. v. CLIFTON.

Van's Restaurant, Inc. t/a)	
The Cottage,)	
)	
Appellant,)	ON APPEAL
)	
v.)	CONCLUSIONS
)	and
Municipal Board of Alcoholic Beverage)	ORDER
Control of the City of Clifton,)	
)	
Respondent.)	

Fogelson and Brew, Esqs., by Dennis M. Brew, Esq., Attorneys
for Appellant
Arthur J. Sullivan, Jr., Esq. by Francis J. Calise, Esq.,
Attorneys for Respondent
William R. Brogan, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On May 14, 1975, appellant filed an application with respondent Alcoholic Beverage Board of the City of Clifton (Board) for a person-to-person and place-to place transfer of Plenary Retail Consumption License C-73, from Joseph Filipone to appellant, and from premises 259 Randolph Avenue to 747 Broad Street corner of Van Houten Avenue, Clifton.

The following is a summary of the factual background giving rise to the within controversy:

Pursuant to a validly published application for a transfer of the subject license, a hearing was conducted by the Board on June 11, 1975 to consider the said application. No one opposed the transfer, and the Board adopted a resolution approving the person-to-person and place-to-place transfer subject to the following conditions:

"this license shall not be endorsed unless and until an approved police report has been received from the Chief of Police and a set of plans for the interior of the building has been submitted".

A police report, dated July 17, 1975 submitted to the Board noted that two of the three stockholders of the corporate appellant were found not to be criminally disqualified and the investigation of the third stockholder had not been completed as yet. The Board then sought additional information of the police with reference to traffic conditions.

In the interim, appellant made timely application for the renewal of the subject license which the Board had conditionally transferred to premises 747 Broad Street as hereinabove noted. The Board notified appellant that it would meet on July 23, 1975 for the purpose of considering its application for renewal; and thereafter, it notified

appellant that it would consider appellant's applications for transfer and renewal of license.

At the hearing before the Board on July 23, 1975 it heard testimony of objectors to the transfer after overruling appellant's objections to the said testimony on the ground that the Board had granted the transfer of the license immediately following the hearing of June 11, 1975 at which time no objectors appeared.

At the close of the hearing held on July 23, 1975, the Board requested additional information and plans of appellant, and continued the consideration of the matter to September 11, 1975. This appeal followed.

Appellant, in its petition of appeal, alleges that the action of the Board was erroneous in that:

- "(a) it has refused to issue license, despite the fact conditions imposed have been met;
- (b) it permitted untimely testimony in opposition to transfer; and
- (c) it has refused to renew license, or even take testimony concerning same."

In its answer, the Board denied these allegations and affirmatively alleged that its action was proper because (a) the transfer was not unconditionally granted; (b) the filing of the petition was premature for the reason that the Board had not heard all of the evidence, and, therefore, had not arrived at its final determination and (c) it did not consider the renewal of the license because it was a "pocket license" and inactive at the time.

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. A transcript of the proceedings held by the Board on July 23, 1975 was admitted in evidence, in accordance with Rule 8 of State Regulation No. 15. Additionally, various exhibits were received in evidence.

In behalf of appellant, Patrick Quagliano, an attorney-at-law of New Jersey who represented appellant in connection with proceedings before the Board for both the proposed transfer and the renewal of the license, testified that, in his opinion, the Board granted the transfer pursuant to appellant's application therefor. Pursuant to the Board's request, appellant furnished the Board with a plan of the interior and, thereafter, with a certified interior plan.

While Thomas Milano, former Assistant Deputy Director in the Licensing section of the Division was on the witness stand, several exhibits were received in evidence. Among the exhibits was a license certification report sent to the Division by the Board pertaining to the liquor licenses in effect for the 1975-76 licensing period. Listed therein appeared "Van's Restaurant, Inc., t/a the Cottage, 747 Broad Street (Application received renewal tabled) C-73, no effective date." Further, the Division received a letter under date of July 10, 1975 from the City's legal assistant in response to Milano's letter addressed to the Board requesting an explanation of the conditions under which the renewal of the subject license was tabled. The City's letter explained the Board wanted a police

report which included a statement as to the impact the transfer would have on the traffic situation and satisfactory fingerprint report. Additionally, the Board wanted certified plans and not the uncertified plans which it had received. The letter further contained the following:

"On the basis of the foregoing, the transfer was approved subject to the above special conditions. No renewal of said license could be effectuated since the resolution specifically provided that the license should not be endorsed until the above conditions have been satisfied by the applicant."

Harry Quagliano, president of the corporate appellant, testified that he was present at the meeting of the Board held on June 11, 1975 and heard the reading and adoption of the resolution relative to the transfer of the license. He was assured by the Board that appellant could proceed with the implementation of the transfer.

Joseph A. Nee, Chief of Police of Clifton, testified that more traffic is normally generated at the intersection of Broad Street and Van Houten Avenue (the proposed transfer location) during the daytime hours than during the nighttime hours. The licensed premises would have to be operating before he could make any determination as to whether a traffic hazard has been created.

Harold Porter, a member of the Board at the time that the Board considered the subject transfer, testified that it considered the transferor held a "pocket license". It was his belief that appellant sought the transfer in order to activate the license.

He asserted that the Board adopted the resolution approving the transfer subject to certain conditions which included the receipt of an approved police report indicating that the corporate stockholders were not criminally disqualified. He was also of the impression that the police would furnish a traffic report. He felt that the activation of the liquor license at the proposed location would be determinative of the contents of a traffic report. A certified plot plan was also requested of appellant.

Porter conceded receiving a certified plan of the interior of the proposed premises on July 16, 1975 pursuant to the resolution adopted on June 11, 1975. However, it was his judgement that the police report was not complete because the Board had only received clearance of two of the three corporate stockholders.

Irene Olivo, secretary of the Board for the past thirteen years, testified that the Board did not, at anytime, direct her to endorse the license mentioned in the resolution granting the subject transfer, which was adopted on June 11, 1975.

It appears that the proposed transfer situs will be contained in a building approximately 26 feet by 50 feet with parking spaces for sixteen vehicles. Presently, a luncheonette business is conducted in the premises with seating for 62 patrons. Appellant proposes to reduce the capacity to 48 patrons-twenty at the bar, and 28 in booths.

The Board conducted a hearing on July 23, 1975 (43 days after it adopted the aforementioned resolution of June 11, 1975) in order to permit residents to set forth their objections to the transfer and to the renewal of the license.

Appellant argued that the objections were not timely made for the reason that the resolution adopted by the Board on June 11, 1975 was a complete and final act, and effectuated a grant of the transfer.

I reject appellant's argument. The conditions recited in the resolution adopted by the Board on June 11, 1975 approving the transfer of the license are in the nature of conditions precedent to the act of endorsement of transfer. The performance of, or the compliance with the conditions is prerequisite to the effectuation of transfer.

In view of my determination aforesaid, I have decided to review and report the objections voiced by residents of the community at the hearing held by the Board on July 23, 1975.

Andrew Ericson, who resides in the immediate area of the proposed premises and who apparently was the organizer of the objectors group that appeared at the hearing, asserted that he opposed the grant of a transfer unless the Board was in receipt (1) of a favorable traffic report; (2) of certified plans; (3) Health Department approval and (4) a favorable recommendation from the Board of Adjustment extending the premises' present nonconforming use.

Joseph Entiwistle grounded his objection to the proposed transfer on the fact that the lack of curbs on the Broad Street side of the premises created a dangerous parking situation.

Edward O'Connor asserted that he has witnessed improper parking at the premises which has reduced the parking facilities.

Reverend Robert Towsher maintained that the transfer would aggravate traffic conditions at the intersection; that a saloon would "increase life's dangers"; and that it was in the best interests of the community to continue the operation of a restaurant business at the proposed premises.

Allan Holowach was opposed to the proposed transfer because he feared that intoxicated drivers might hinder the movement of fire trucks and rescue squad vehicles parked in a fire house located across the street from the proposed transfer situs.

Emily Kopley feared that a tavern at the proposed location would have a harmful effect upon school children; and that some students under eighteen years of age would be served alcoholic beverages.

Walter Kwizcola expressed concern that the introduction of a tavern at the subject intersection would create a serious traffic hazard.

Sherman Szwiebel opined that the off-street and on-street parking was inadequate to support the proposed liquor establishment.

William Gilsenan objected to the proposed transfer because there were sufficient liquor outlets in the area.

William Sahaydak asserted that the parking facilities in front of the proposed establishment posed a danger to pedestrians; and backing out of the parking area into Broad Street was dangerous.

At the conclusion of the hearing the Board voted to reserve its decision pending a further study.

The subject appeal followed.

Several months after the appeal was heard, this Division was notified by letter of respondent's attorney that police clearance was received of the third stockholder of corporate appellant and that the license would not be endorsed pending receipt of the Division's decision herein.

This Division was also in receipt of a resolution adopted by the Board on June 30, 1976 renewing appellant's license for said premises 747 Broad Street, Clifton, for the 1976-77 licensing period, "solely for the purpose of renewal, pending the outcome of the appeal to the State Division of Alcoholic Beverage Control".

Preliminarily, I observe that the transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary and unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Bomwell v Newark, Bulletin 1639, Item 1. The instant case is comparable to and governed by the case of Bivona v. Hock et al., 5 N.J. Super. 118 (App. Div. 1949). As the court pointed out in that case:

"...the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S.33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based." Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup.Ct.1940).

In arriving at a determination herein, I have considered the objections of area residents of residential side streets. In Pistilli v. Bernardsville, Bulletin 1030, Item 2, it was held that objections to the transfer of a license to a business street, filed by residents of side streets which may be residential in character, are not, in themselves sufficient reason for denying a transfer.

Concern was also expressed because of the fact that there are other liquor outlets in the general area and school children pass in front of the proposed situs. It is understandable that residents of an area voice their concern for its welfare. However, as hereinabove noted, appellant was not found to be unfit nor disqualified from engaging in the liquor industry. Moreover, general objections or expressions of concern are not in themselves sufficient reason for denying a transfer. Picciarelli v Lyndhurst, Bulletin 1578, Item 3; Pistilli v. Bernardsville, Bulletin 1030, Item 2.

At best, all of the fears expressed concerning the effect that the transfer would have, if granted, are conjectural. In any event, it must be assumed that appellant is well aware of the fact that an application for the renewal of the license must be made annually. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject its license to suspension or revocation. Fran-Mort, Inc. v. Saddle Brook, Bulletin 2218, Item 1; Tagliaferro v. Newark, Bulletin 1710, Item 1;

Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown et al., Bulletin 1572, Item 1.

From my analysis of the testimony, I find that the possible lack of sufficient parking facilities was of critical importance to the objectors. Therefore, a limitation by way of special condition should be imposed to limit the occupancy of patrons permitted in the premises at any time.

In reviewing the record herein, including the exhibits, the testimony and the argument of counsel, I find no factual or legal foundation to support the Board's action.

For the reason's stated, I conclude that the appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15. It is, accordingly, recommended that an order be entered reversing the action of the Board, and directing it to grant the person-to-person and place-to-place transfer of appellant's license.

It is also recommended that an order be entered directing the Board to approve the application for the said license for the 1975-76 and 1976-77 licensing period nunc pro tunc.

However, it is recommended that the grant of the subject license be expressly subject, to the special condition that occupancy of the said premises be limited to 48 persons and that the aforesaid condition be imposed upon any future renewals for as long as the Board may, in the exercise of its best judgement, deem necessary.

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, the argument of counsel in summation, 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 21st day of October 1976

ORDERED that the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Clifton be and the same is hereby reversed; and it is further:

ORDERED that respondent be and is hereby directed to grant the said transfer in accordance with the application filed therefor, expressly subject to the special condition that appellant shall limit occupancy of its premises to forty-eight (48) persons; and it is further

ORDERED that the Municipal Board of Alcoholic Beverage Control of the City of Clifton approve the applications for the said license for the 1975-76 and 1976-77 licensing periods nunc pro tunc; and it is further.

ORDERED that the said special condition shall be a continuing condition which respondent may reimpose upon any renewals of the said license which may be granted.

JOSEPH H. LERNER
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - CONCEALING AND RECEIVING NARCOTIC DRUGS - PETITION FOR REMOVAL OF DISQUALIFICATION DENIED.

In the Matter of an Application)	
to Remove Disqualification be-)	
cause of a Conviction, Pursuant)	CONCLUSIONS
to R.S. 33:1-31.2.)	and
)	ORDER
Case No. 2921)	

 Joseph Greaney, Esq., Attorney for Petitioner.
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Petitioner's criminal record discloses that, in 1969, he was convicted of the crime of concealing and receiving heroin, in the U.S. District Court of New Jersey, and was sentenced to five years in prison. He was released June 2, 1972.

Since the crime of which petitioner was convicted involves the element of moral turpitude (Re Case No. 1997, Bulletin 1681, Item 6) he was, thereby, rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner, age 34, testified that he is married; that, for the past three years he has lived in Secaucus, New Jersey.

Petitioner seeks the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State, and avers that, ever since his conviction in 1969, he has not been convicted of any crime.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against petitioner.

Petitioner produced three character witnesses (an East Rutherford Police Officer and two Carlstadt Police Officers) who testified that they have known petitioner for more than five years last past, and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

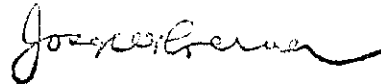
Although more than five years have elapsed since petitioner's conviction of crime, only a little less than three years have elapsed since his release from prison. In view of the nature of the crime, of which he was convicted, I am not satisfied that his association with the alcoholic beverage industry would not be contrary to the public interest. I shall, therefore, in the exercise of my discretion, deny the petition for removal of his disqualification filed herein. Re Case No. 1858, Bulletin 1596, Item 7.

Petitioner, however, may reapply to remove his disqualification on or after June 2, 1977 (five years from June 2, 1972, the date of his release from prison) provided, however, that he has been law-abiding during said five years and has established his fitness to be engaged in the alcoholic beverage industry in this State.

Accordingly, it is, on this 23rd day of June, 1975

ORDERED that the petition herein be and the same is hereby denied.

LEONARD D. RONCO
DIRECTOR



Joseph H. Lerner
Director