

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound), Newark, N. J. 07114

BULLETIN 2314

March 6, 1979

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - GEORGE'S BAR & GRILL, INC. v. LAKEWOOD.
2. APPELLATE DECISIONS - ORSATTI v. ATLANTIC CITY.
3. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound), Newark, N. J. 07114

BULLETIN 2314

March 6, 1979

1. APPELLATE DECISIONS - GEORGE'S BAR & GRILL, INC. v. LAKEWOOD.

George's Bar & Grill, Inc.	}	ON APPEAL
Appellant,		
v.	}	CONCLUSIONS
Township Committee of the Township of Lakewood,		
Respondent.	}	AND ORDER

-----)
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant.
Sharkey & Sacks, Esqs., by Richard K. Sacks, Esq., co-counsel for Appellant.
John F. Briscoe, Esq., Attorney for Respondent.
Reussielle, Cornwell, Mausner & Carotenuto, Esqs., by Anthony T. Bruno, Esq., Attorneys for Objector-Leisure Village Assn.
Campbell & Sachs, Esqs., by Donald F. Campbell, Esq., Attorney for Objector, Joseph & Helen Sieber.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellant applied for a place-to-place transfer of its Plenary Retail Consumption License, C-10, from its location at Clifton Avenue, Lakewood to a site designated as Lot 41, Block 1180, which is a parcel of vacant land fronting on Route 70 in Lakewood. The Township Committee of the Township of Lakewood (hereafter Committee), after hearing on the application, denied the transfer in a resolution adopted December 22, 1977, setting forth its reasons therefor. This appeal followed.

In its Petition of Appeal, appellant contends that the action of the Committee was arbitrary and capricious, resulting from bias and prejudice. The Petition contains extensive allegations recounting the experiences of the license at its present location and the apparent need to relocate. Reference was made to a companion application made by objectors, Seibers, for a place-to-place transfer of a license held by them from a premises near appellant's, to a site in the same general area as the proposed site. The Committee's failure to act favorably on appellant's application was construed by appellant as an implied benefit

to objector, Seiber.

In its Answer, the Committee avers that its action was in the best interests of the public, and that there was no public need for an alcoholic beverage license at the proposed location. Further, the Committee denies its action was arbitrary or intended to benefit the objector, Seiber, in that appellant's application was heard prior to that of Sieber.

This appeal de novo was heard in this Division, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15). Additionally a transcript of the proceedings held before the Committee was submitted, in accordance with N.J.A.C. 13:2-17.8 (formerly Rule 8 of State Regulation No.15).

At the outset of the hearing, numerous exhibits were accepted into evidence, consisting of maps of the area, site and floor plans of the proposed building, resolution of Planning Board, letters, petition and photographs of the area.

In behalf of the appellant, New Jersey State Police Detective George Siebert testified that he met Doris George, whom he characterized as owner of appellant's establishment, in connection with an investigation in which the FBI played a part. He described her efforts on behalf of the law enforcement agencies and indicated her assistance resulted in perfecting investigations in several criminal matters. He characterized her as a person with a "high degree of honesty and integrity".

The Director of Industrial Development of Lakewood, Robert A. Young, next testified pursuant to subpoena that the appellant's proposed site borders the Lakewood Industrial Park in which forty-four separate corporations are engaged in business with 3235 employees presently, and another 600 proposed to be employed by new firms. It is projected that, in the next fifteen years there may be ten thousand jobs generated in the area.

Lakewood Township Committeeman Robert D. Bono testified on behalf of appellant that he was one of three members of the Committee who voted on appellant's application; he voted in favor of granting the place-to-place transfer. He voted affirmatively because, in his opinion, there was "no valid reason to deny the transfer". He believed in consequence of his vote, were he to be a candidate again (and he indicated as an aside that he would not be seeking re-election), he would be "in big trouble politically". He believed that stated objections to the proposed establishment causing a traffic hazard was "just a smoke screen"; and the further objection that the proposed business would have an adverse impact on residential values was totally without foundation.

Bono also identified himself as the general manager of one of the corporations located in the Industrial Park. He and his associates believed another restaurant would benefit the area. It was his opinion that the sole reason for the rejection of appellant's application by his colleagues was the fear of political reprisal that would come from the five thousand voters of the adjacent Leisure Villages.

Jack Krupnick, a realtor in Lakewood and an officer of the Chamber of Commerce, testified in support of the appellant that the central business area of Lakewood has steadily diminished in viability, and the reduction of the number of licensed premises there would reduce some of the social problems in the area. Likewise, there is a growth position in the area sought to be licensed, and since the present licensed premises are up to capacity, as time passes without additional licensed premises, there will be a problem. It was his professional opinion that by the establishment of appellant's proposed premises, the area would be better served than at present.

Three residents of Leisure Village, Esther Rubin, Madeline Schuster and Rae Worthman, each testified in behalf of the appellants that they had been misinformed about appellant's premises, and having talked to Doris George, appellant's principal officer, realized that the proposed restaurant would be a benefit to the neighborhood. They recanted their signatures on a petition circulated prior to the hearing before the Committee in opposition to the transfer.

Although subpoenaed to testify on behalf of appellant, Robert H. Pike, a trustee of Leisure Village Association, affirmed that his association arranged for a bus to bring interested residents to the hearing at this Division for the purpose of putting a "stop to the transfer" effort. He admitted that the general membership of 3800 members of Leisure Village Association did not vote on the issue, but the Board of Trustees did vote in opposition, and that vote reflected the general opinion of the residents.

The principal owner of the corporate stock of appellant corporation, Doris George, testified in support of the appellant. She has operated the present licensed business for the past thirteen years, during which the neighborhood has deteriorated. Anti-social behavior outside her premises resulted in the conditioning of her license a few years ago, which was the subject of an appeal in this Division. She purchased the proposed site on Route 70 and intends to erect a "fashionable" restaurant, which will represent an investment of a half million dollars. Her relations with the Police Department of Lakewood are excellent, and, in all of her years of operation, she has not been charged with any interior violations of the alcoholic beverage law or its regulations.

She augmented her testimony before the Committee by indicating that there would be room for parties in the new building, that a dietary lunch would be available, and that a dress code would be enforced. It was her belief that the tumult against her, upon her appearance before the Committee, was the indirect result of the then Mayor being the owner of a licensed premises located near her proposed site.

Testifying on behalf of the respondent, Committeeman H. George Buckwald, identified himself as Mayor when appellant's application was heard. He disqualified himself from the hearing, because he is a liquor licensee, as well as a member and past president of New Jersey Licensed Beverage Association. In addition to his then position as Mayor, he was the Chairman of the Ocean County Planning Board, Lakewood Planning Board and the Lakewood Board of Health.

Buckwald denied that he had ever discussed this application or any other applications by alcoholic beverage licensees with other members of the Committee. He had reviewed appellant's application for site approval as a member of the County and Township Planning Boards and, to his best recollection, had either approved or offered no objection to same. He admitted he had been in the audience when the matter was heard by the Committee, but added that he is usually in the audience when such matters are heard, so that he can resume his chair when such matters are concluded and other municipal business begins.

Mayor John J. Franklin testified for the respondent, and confirmed that two members of the Committee disqualified themselves at the hearing, then Mayor Buckwald and Committeeman Thompson. At this hearing there were more than one hundred and seventy-five people present and, from their running expressions during the hearing, the great majority of them were opposed to the transfer. The sentiments of the residents of the neighboring Leisure Village were a factor considered in making the determination adverse to appellant, but there were other reasons.

The Mayor believes that the license better serves the people at its present location, as compared to the proposed situs. Public drinking can be better controlled at the present site than at an area, which is wide open. The members of the Committee who voted in opposition to the transfer considered that such rejection was in the best interests of all the residents of the municipality. Additionally, not all the reasons for the rejection were articulated within the subject resolution.

Edwin Bennett, an executive of a company bearing his name located in the Industrial Park, testified in objection to the proposed transfer. He believed that the Industrial Park was intended to resemble a "campus" with a "park-like" design. Appellant's restaurant would not comport with that intended design. Additionally,

he felt that a liquor facility should not be within walking distance of most of the plants and offices because it would make alcoholic beverage consumption too easily accessible. He implied that over-zealous drinkers would become difficult if they came from the working force within the Park.

Spokesman for the Board of Trustees of Leisure Village Association, Vice-President Arthur M. See, testified that the Board was in opposition to the transfer. Their reasons included fear of additional noise from drinking patrons, reduction in property values and sufficiency of nearby licensed premises to service the area. He admitted that, although additional traffic was a factor, it was not a major one. It is the close proximity of a source of alcoholic beverages that distresses the Board. The restaurant without service of alcoholic beverages would not be objectionable, nor is there any objection being raised to the construction of a branch bank at the site adjacent to the proposed location.

Co-counsel for appellant, Richard K. Sacks, testified as a rebuttal witness. He had interviewed officials of many factories in the Industrial Park and, with two exceptions, found no one who objected to a restaurant and bar at the proposed location.

The basic issue in this matter is whether the Committee acted reasonably and in the best interests of the community.

It is a firmly established principle that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the Court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div.), aff'd 33 N.J. 404 (1960): "No person is entitled to (the transfer of a license) as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics, are immaterial".

In the Fanwood case, supra the court further articulated the principle that the Legislature has entrusted to municipal issuing authorities the initial authority and duty to approve or disapprove place-to-place transfers. The action of the Committee in either approving or denying an application for such transfer may not be reversed by the Director unless he finds "the act of the Board was clearly against the logic and effect of the presented facts". See also Hudson-Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502, 511 (E & A 1947).

In another landmark case, Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970):

The conclusion is inescapable that if the leg-

islative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgement for that of the local board or reverse the ruling if reasonable support for it can be found in the record.

As the testimony of Arthur M. See, Vice-President of Leisure Village revealed, the Board of Trustees determined that the proposed transfer would be inimical to the interests of the hundreds of elderly residents in the Village. The Board believed that there were an ample number of places where liquor was served in the community and in the adjacent municipality bordering the area.

In matters involving transfers of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide the "public interest". Lubliner v. Board Of Alcoholic Beverage Control., Paterson, 33 N.J. 428, 446 (1960). The Director in these matters is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Woodbine Inn, Inc. v. Cherry Hill, Bulletin 2089, Item 1.

Appellant asserted that its attempt to transfer was motivated entirely by sociological factors in play at the present location of the licensed premises. A move from that area to any other would be advantageous both to the business itself and to the community. Appellant asserted an apparent need for another liquor facility at the proposed location.

The Committee determined that there was no need for a liquor vending establishment near Leisure Village and, from their viewpoint and that of the officials of the Board of Trustees of Leisure Village, a bar, tavern or restaurant serving liquor at the proposed site is unnecessary, and not in the public interest.

The Committee has understood its full responsibility and has acted circumspectly and in the reasonable exercise of its discretion in denying the transfer. No evidence whatever was offered by appellant to bolster its implication of some improper motivation by the Committee because the Mayor at the time of hearing owned a restaurant and package store in the same area.

Upon consideration of all of the credible evidence herein, I conclude that appellant has failed to sustain the burden of establishing that the action of the Committee was erroneous and should be reversed, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation 15).

Hence, I recommend that an order be entered affirming the action of the Committee and dismissing the appeal. South Jersey Package Stores Assn. v. Cherry Hill, Bulletin 1952, Item 1.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by appellant and a written Answer thereto was filed by respondent, pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, the appellant recites its previous liquor license proceedings concerning the subject license at its present situs, in support of its policy determination to relocate that license to the proposed situs on Route 70. Irrespective of the rationale appellant applies to indicate the justification or purpose of its proposed transfer, nothing was done by the Committee of the Township of Lakewood in law or fact to act as an estoppel or waiver of its right to independently determine the transfer application sub judice.

The appellant further recites, in its Exceptions, the import of the testimony it adduced in an effort to rebut the basis for the Committee's action, which is predicated upon its finding of lack of need for another retail on-premises license in the area, and community sentiment in opposition to the proposed transfer situs. These issues, as well as an allegation of improper influence, have been adequately considered and correctly resolved by the Hearer in his report. I find these Exceptions to be without merit.

Subsequent to the publication of the Hearer's Report, I received several letters and two petitions containing a total of approximately fifty signatures of persons allegedly residing in Leisure Village who were not opposed to the transfer. Thereafter, a petition was submitted by an attorney, not original counsel for appellant, requesting reconsideration of the appeal or, in the alternative, oral argument, predicated upon the aforesaid letters and petitions, as well as a signed statement of another individual.

Nothing contained in the Petition or supporting documents contain that quantum of evidence of probative value which would

warrant further reconsideration. Therefore, I deny the request.

I am satisfied that reasonable support existed for the action of the Committee, and, therefore, my function on an appeal is to affirm. Lyons Farm Tavern, Inc. v. Newark, supra; Fanwood v. Rocco, supra. See also, Woodbine Inn, Inc. v. Cherry Hill, Bulletin 2089, Item 1, cited by the Hearer and which presented several issues similar to the appeal herein.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's Report, and the written Exceptions filed by appellant and the written Answers submitted thereto by respondent, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of December, 1978,

ORDERED that the action of the Township Committee of the Township of Lakewood be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - ORSATTI v. ATLANTIC CITY.

Arnold R. Orsatti &
Agnes M. Orsatti,

}

ON APPEAL

Appellants,

CONCLUSIONS

vs.

}

AND

Board of Commissioners of
the City of Atlantic City, et al.,

ORDER

Respondents.

}

Stern, Herbert & Weinroth, Esqs., by Michael J. Herbert, Esq.,
Attorneys for Appellants.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for the
Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City (Board) which, on June 22, 1978, denied appellants' application for a person-to-person transfer of Plenary Retail Consumption License 0102-33-242-001, from Warwick Restaurant Corp., to themselves, for premises 101 South Raleigh Avenue, Atlantic City.

The appeal differs from the usual one heard in this Division in that, the Director, pursuant to N.J.A.C. 13:2-3.10, certified to the local issuing authority in Atlantic City that he made a preliminary finding that the granting of the subject application would not be in the public interest, based upon an investigation conducted by the Special Atlantic City Task Force.

The Board did not conduct its own investigation or refer to any local considerations; but rather, denied the application solely upon the Director's Special Ruling of May 23, 1978.

Appellants, in their Petition of Appeal, contend that the action taken was erroneous in that: (a) the findings of the Director are not supported by the record; (b) the granting of the application would not be contrary to the public interest;

(c) the appellants are not associated with "organized crime" or had they ever been convicted of a crime involving moral turpitude; and (d) the proceedings deprived appellants of equal protection and due process of law.

In its Answer, the Board denies any procedural defect or substantive error. It avers that it properly followed the Special Ruling of the Director.

A de novo hearing was held in this Division, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

- I -

The Deputy Attorney General representing the Division offered one witness, ABC Agent G., currently Tactical Supervisor of the Atlantic City Task Force. He conducted the investigation and prepared the report which became the basis of the Director's preliminary finding, i.e., that the granting of the application herein would not be in the best interests of the public.

Agent G.'s negative recommendation was based upon three factors:

(1) the claimed false answer in the application; namely Question Number 35.

(2) the history of the conduct of appellants in the operation of a liquor license in the Philadelphia, Pa. area, which ultimately resulted in its revocation; and

(3) the continued violation of N.J.S.A. 33:1-25, in that the Orsattis exercised a beneficial interest in the license in the conduct of the Warwick restaurant under a concessionaire agreement for at least twelve years.

Agent G. admits that his recommendation was made despite no finding of "organized crime" involvement, any prior convictions of crimes involving moral turpitude, or complaints of any kind resulting from the Orsattis' operation of subject license for over twelve years.

Arnold Orsatti testified in support of the appeal that the alcoholic beverage license issued to Orsatti's of Pennsylvania

was revoked in May, 1966. Thereafter, no business was transacted as the license was held by Pennsylvania liquor authorities in "safe keeping" pending the outcome of the various appeals. The Pennsylvania Supreme Court declined to hear his final appeal in 1971, thus terminating the appeal process.

Since the 1966 revocation, Orsatti operated a restaurant at the Warwick Hotel in Atlantic City under the trade name, "Orsatti's Warwick Restaurant." The transfer application was completed by Orsatti with the assistance of his counsel. He states that he questioned his attorney as to how to respond to Question No. 35 in light of the revocation in 1966 and the final action of the Pennsylvania Supreme Court in 1971. Question No. 35 provides in relevant part that the applicant must disclose any license revocations in any State within the past ten years. The advice given was respond "No" as the revocation was over ten years ago.

With regard to the alleged violation of N.J.S.A. 33:1-25 and 33:1-52, i.e., the farm out of the license by the concessionarie agreement, Orsatti testified that all documents were prepared by the hotel's attorney who was, in addition, the city's solicitor for many years. He presumed that any legal document prepared by this lawyer would be proper in all respects. He further explained that this was a common practice employed by hotels in Atlantic City and other Jersey Shore resorts. He stated the reason this practice was so commonly used is based upon numerous unhappy consequences many hotels experienced when a licensee either failed or operated the establishment in a manner unacceptable to the hotel. Thereafter, the hotel often found itself without a license on the premises for long periods of time, to its detriment. The described practice obviated this problem, albeit in violation of New Jersey Alcoholic Beverage Law.

Orsatti stated that no attempt was ever made to hide the fact that his family ran this establishment. They were not disqualified from holding a license in their own names and did not resort to this procedure as a subterfuge.

Orsatti's response to the third aspect upon which the preliminary determination was based, i.e., the conduct or management of the family's restaurant in Philadelphia, which ultimately resulted in a revocation of license, was lengthy, detailed, and buttressed by several years' editions of *Il Popolo Italiano*, the Philadelphia Newspaper serving the local Italo-American community. To some extent it was self-serving, inasmuch as Orsatti is owner and Editor of the paper.

No useful purpose would be served by repeating the situation here, but it involves a non-liquor related scandal which

he revealed in his paper. Soon thereafter, a series of occurrences transpired adversely affecting his newspaper and his liquor license, Philadelphia Restaurant Enterprises, which he attributes to the said expose. It culminated in a protracted series of inspections resulting in a number of charges filed against the restaurant by the local liquor authorities, all of which were of a technical or procedural nature. Under Pennsylvania law, revocation is automatic after five violations.

Arnold Orsatti serves on the Executive Board of a world-wide organization of Italian language newspapers. He has been decorated twice by the Italian Government in recognition of his various civic and professional accomplishments.

In his capacity as President of the Jersey Chapter of Temple University Alumni for the past ten years, he has helped raise hundreds of thousands of dollars. He has been similarly cited by the University for his various achievements.

As an Atlantic City civic leader, he chaired the Finance Committee that raised one and one half million dollars towards the costs of the campaign that ultimately succeeded in establishing casino gambling in that City. He is active in raising money for various national charities.

Edwin J. Roth, a Commissioner of the City of Atlantic City, testified as a character witness on behalf of Orsatti. He averred that the Orsatti's operate one of the best restaurants in the area, and he often brings his family, including a small grandchild, there to dine. He voiced admiration and praise for Orsatti as a civic leader. In his official capacity, he has heard of nothing negative relative to the manner in which the establishment is managed.

Herman H. Kreckstein, a retired Philadelphia lawyer and officer of the Warwick Hotel and its Restaurant Corporation, testified that, "Orsatti runs a first class restaurant frequented by first class patrons." The Hotel management is delighted that he operates the establishment in its building. Kreckstein never suspected that the documents prepared by the corporation's attorney were deficient or improper in any respect. He stated, "we thought we were operating legally. We had no thought otherwise. There was no purpose of operating otherwise."

He was then asked, "Of what benefit was it to the Warwick to have Mr. Orsatti actually conduct the business, but but yet have the license in the Warwick Restaurant (Corp.) name?" Kreckstein responded, "We owned the equipment, and if we owned the license also, if he was not successful in his

business and moved out, we would have a complete setup to lease to another restaurant operator. We had the equipment, and we would have the license, and that was the purpose."

George A. Wilson, a Reporter employed by the Trentonian (Newspaper) testified on behalf of the appellants relative to an investigation he had conducted and a feature article he wrote based upon that investigation, which was published in the Pennsylvania Guardian of Philadelphia.

It would serve no useful purpose to relate the content of this article. However, it gave independent support and corroboration to certain aspects of Orsatti's narrative relative to the strong, and at times, vicious, retaliation meted out to him by unprincipled persons as a result of the expose he printed in his newspaper.

- II -

The appellants allege in their Petition of Appeal, that the findings are not supported by the record. Since the factual findings are not disputed, it is in essence, the conclusions drawn from these facts that are in dispute.

The first of the three bases, i.e., appellants' claimed untruthful response to Question Number 35 has been satisfactorily met, in my opinion. He has, by credible testimony, rebutted any presumptions that could reasonably be drawn from improperly responding to this question, without determining in this instance, under these specific facts, whether or not the answer was incorrect.

I find, as a fact, that though "Yes" with explanation might possibly have been a more accurate response, under these circumstances, no malice or improper motivation can be imputed to the applicants, as the critical element of scienter is lacking.

Corporate licensee's stockholder, Kreckstein, and Orsatti both testified to the facts leading to the execution of the lease agreement which was prepared by the hotel's New Jersey counsel. He was, for many years, Atlantic City Solicitor, and known to this Division as a capable practitioner. Both gentlemen testified convincingly that they assumed that the document prepared by so knowledgeable and experienced an attorney would be legal in all respects. It is unreasonable to expect Orsatti to have been suspicious when his own counsel were not. Similarly,

no improper motivation should be imputed to the applicants under circumstances where none are criminally disqualified or have unsavory reputations or associations.

I do not wish to give the impression that the parties to this agreement, which violates our regulations, are excused or their actions condoned because they had no knowledge of its illegality. I feel, however, that these mitigating factors already discussed are relevant in evaluating the preliminary action taken here.

The licensee corporation was charged with having violated N.J.S.A. 1-25 and 33:1-52; it has pleaded non vult and the matter is now awaiting the Director's disposition. The consequences of the "lease out" of the license is properly to be disposed of in the disciplinary proceeding.

Of a more serious nature is the allegation relative to the course of conduct which resulted in the eventual revocation of Orsatti's Pennsylvania liquor license, albeit, by operation of law.

Over forty years experience has taught that the liquor and liquor related industry is fraught with unusual enforcement problems and myriad opportunities for abuse for illegal gain by those so inclined. Passaic County Retail Liquor Dealers Assn. v. Paterson, 37 N.J. Super 187 (App. Div. 1955).

The cases are legion holding that inquiry into aspects of an applicant's background and character is proper and, in fact, mandated, in order to properly evaluate his/their qualifications. See Forster v. Passaic, Bulletin 2134, Item 1, and cases cited therein.

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnett, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

In arriving at the determination herein, I find convincing the testimony of appellant Orsatti and his witness regarding the facts and circumstances testified to leading to the revocation of the Pennsylvania license.

The fact that an applicant's license was revoked in

another jurisdiction may, under certain circumstances, give rise to a rebuttable presumption that he was incapable or unwilling to operate in the manner and fashion required and imposed upon all licensees.

From the record, it is indisputable that appellant has rebutted this presumption.

It must be remembered that the various offenses, of which Orsatti was found guilty in Pennsylvania, were of the malum prohibitum and not malum in se variety. His record in Atlantic City should allay the fears of the most timid that he is capable of, and did in fact, run a commendable law-abiding licensed establishment in our state.

- III -

I conclude that the appellants have successfully sustained their burden of establishing that the action of the Board of Commissioners of the City of Atlantic City, which was solely predicated upon the preliminary finding of the Director as contained in his Special Ruling of May 23, 1978, was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6.

It is, therefore, recommended that the action of the Board of Commissioners of the City of Atlantic City be reversed, and an order be entered directing the granting of appellants' application for a person-to-person transfer of license, subject to the outcome of the pending disciplinary proceedings arising out of the "lease out" of license charges.

CONCLUSIONS AND ORDER

Counsel have advised that they will not file written Exceptions to the Hearer's Report pursuant to N.J.A.C. 13:2-17.6.

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 14th day of December, 1978,
ORDERED that my Special Ruling of May 23, 1978, wherein

I preliminarily found that the grant of the appellants' transfer application would be contrary to the public interest, be and the same is hereby vacated; and it is further

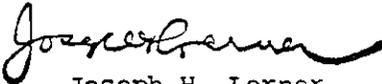
ORDERED that the action of the Board of Commissioners of the City of Atlantic City in denying the transfer application, predicated solely upon the Special Ruling of May 23, 1978, be and the same is hereby reversed, and the Board is hereby directed to grant the transfer in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

3. STATE LICENSES - NEW APPLICATIONS FILED.

Monarch Wine Company, Inc.
4500 Second Avenue
Brooklyn, New York
Application filed March 2, 1979
for limited wholesale license.

South Jersey Distributors Inc.
430 No. Pennsylvania Avenue
Atlantic City, New Jersey
Application filed March 6, 1979
for place-to-place transfer of
additional warehouse license
3400-24-648-001 from 300-318 No.
Tennessee Ave., Atlantic City,
New Jersey, to 2001-19 Baltic
Avenue, Atlantic City, New Jersey.


Joseph H. Lerner
Director