

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 2336

JANUARY 8, 1980

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BULLETIN 2336

JANUARY 8, 1980

1. APPELLATE DECISIONS - DOVER INN, INC. v. DOVER.

#4304

Dover Inn, Inc.,
t/a Dover Inn,

)

Appellant,

ON APPEAL

v.

)

CONCLUSIONS

Board of Alderman of
the Town of Dover,

AND

ORDER

Respondent.)

Albert F. Dalena, Esq., Attorney for Appellant.
Young, Dorsey & Fischer, by James H. MacDonald, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Board of Alderman of the Town of Dover (hereafter Board) which, on October 24, 1978, denied appellant's application for a place-to-place transfer of Plenary Retail Consumption License No. 1409-32-010-001 from premises 11 South Morris Street to 265 East Blackwell Street, in the Town of Dover.

In its Petition of Appeal, appellant contends that the action of the Board is erroneous because it was arbitrary and contrary to the weight of the evidence adduced at the hearing before the Board. This contention is denied by the Board in its Answer.

A de novo appeal was heard in this Division pursuant to N.J.A.C. 13:2-17.6, with full opportunity provided the parties to introduce evidence and to cross-examine witnesses. Additionally, a transcript of the proceedings before the Board was furnished this Division, in accordance with N.J.A.C. 13:2-17.8.

Testifying on behalf of the appellant, Judith Lovas, one of the members of the Board, stated that she had served on the local Redevelopment Agency prior to her becoming an Alderman two years ago. She had voted affirm-

atively on appellant's application because she believed appellant had a right to move to the proposed location. Part of appellant's cost of removal would be borne by the Redevelopment Agency which is presently managing the rooming facilities owned by appellant. In her opinion, there is no other more practical location for appellant's premises than the location sought.

The owner of appellant corporation, Joseph L. Speer, testified that the Dover Inn, which he had operated as a rooming house with a tavern and package goods store on the first floor, is an historic landmark of the county. However, the area has been the target of a redevelopment plan which will result in the destruction of this landmark along with many other buildings adjacent thereto.

Although he had not received municipal approval for a transfer to the proposed location, he nonetheless purchased the building on that site and repaired it so that it could be used to house some of his former roomers as well as for his tavern and package goods operation. There are no other alcoholic beverage facilities on the street where the new facility is located, with the exception of a package store some distance away. The present and proposed locations are about five blocks apart from one another.

He admitted that there is no off-street parking facilities at the new location, but insisted that none are needed because there are only limited business establishments nearby. He had paid \$67,500.00 for the new premises and has been offered \$63,000.00 by the Agency for the present Dover Inn.

Photographs and elevation sketches of the proposed interior were admitted into evidence.

The Board produced the testimony of one of its members, Rudyard D. Titus. He explained that the action of the Board, which is the subject of this appeal, is the second denial of an application by appellant. The Board, thru its majority, determined that the proposed location is in an area that is mainly residential, although the area is zoned commercial. A senior citizen housing apartment is a very short distance away.

Titus estimated the number of objectors to the transfer as exceeding two hundred persons. After hearing

a number of them voice objections, the Board determined that the new location for an alcoholic beverage facility would not be in the best interests of the community. He opined that the Board did not want any further taverns in the Fourth Ward. It is the smallest ward, and is already saturated with twenty existing licensed premises.

The Board cited its Resolution denying appellant's application. That Resolution provides, in relevant part, as follows:

WHEREAS, the Dover Inn, Inc. has made application to transfer its plenary consumption license to a new location, commonly referred to as #265 East Blackwell Street, Dover, New Jersey; and

WHEREAS, a public hearing was held on this application at the request of numerous objectors on October 10, 1978, and the Mayor and Board of Alderman of the Town of Dover made the following factual findings:

1. That the proposed location to which the Dover Inn, Inc. seeks to relocate its license, specifically #265 East Blackwell Street, Dover, New Jersey, is located within approximately 300 feet of an existing tavern, commonly referred to as Griff's Inn, and a second tavern within a distance of approximately 1,200 feet, commonly referred to as Fred's Tavern, which taverns presently serve the area;

2. That the area in which it is proposed to transfer the license to is one which on Blackwell Street contains both commercial and residential uses, but the area to the rear of 265 East Blackwell Street is substantially a residential neighborhood;

3. That the proposed new location is situated a short distance from the Dover Senior Citizen Housing Complex;

4. That testimony given by the objectors indicates that the patrons of the Dover Inn, Inc. at its prior location have been of such a nature that they would tend to interfere with and intimidate senior citizens and not be in keeping with the residential area which adjoins the proposed new location;

5. That the applicant has not proposed in any way to provide adequate parking to facilitate his proposed relocation of his license.

WHEREFORE, the Mayor and Board of Aldermen of the Town of Dover conclude that the area into which the Dover Inn, Inc. seeks to relocate its license is adequately served at the present time by existing plenary licenses; there is no need for an additional plenary license to be located in the area in question; and, the relocation of said license to be utilized by the Dover Inn, Inc. at #265 East Blackwell Street, Dover, New Jersey, would not be in the best interests of the community;

The burden of establishing that the Board acted erroneously and should be reversed rests entirely upon the appellant, pursuant to N.J.A.C. 13:2-17.6. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Hudson-Bergen Package Stores Ass'n. v. North Bergen, Bulletin 1981, Item 1.

Each municipal issuing authority has wide discretion in the transfer of a liquor license. Michida Corp. v. Jackson, Bulletin 2250, Item 4. Action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Magnolia, 38 N.J. 383 (1962); Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Newark

55 N.J. 292, 303 (1970) (in which the court said, "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the court must place much reliance upon local action").

It is apparent that the Board made its determination not to approve the transfer because it did not consider that the proposed location served the public interest. It listed several reasons to buttress its action, including necessity, traffic and potential citizen inconveniences.

The principal basis for its action was clear. It did not consider the proposed location favorable and in the best interests of the community. Said location would be in an area, although designated commercial, which is essentially residential in character. The Board has determined not to approve any further invasion by taverns and liquor stores.

Absent improper motives, which are not alleged here, such conclusion should not be disturbed. The controlling principle herein is that the Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority. Further, if an issuing authority wishes to keep licensed premises from a given area, it may do so generally. Fanwood v. Rocco, supra; Brick Church Pub v. East Orange, Bulletin 2232, Item 4.

Although I conclude that the appellant has failed to sustain the burden imposed upon it under N.J.A.C. 13:2-17.6 of establishing that the action of the Board was erroneous and should be reversed, I further find that the appellant faces a difficult position of transferring its license within the community. There are twenty licenses extant within the municipality which has a 1975 population of slightly under fifteen thousand.

Alderman Titus has explained that there are some areas to which a license might be moved, one of which is on the State highway transversing the Town, and the other is in a former shopping center which has several empty stores. During the hearing before the Board, there was conjecture that the Town might consider a purchase of the license, but such consideration was not advanced as a serious solution to appellant's problem.

Hence, it is suggested that the Board cooperate with the appellant, where possible, in whatever further

attempts that are made to move the present license by appellant or its successor.

It is, therefore, recommended that an Order be entered affirming the action of the Board and dismissing the appeal.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the 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 6th day of June, 1979,

ORDERED that the action of the Board of Alderman of the Town of Dover be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - CRAIG HOLLINGSWORTH AND CLEVIN, INC. v. RAHWAY, ET ALS.

APPELLATE DECISIONS - CRAIG HOLLINGSWORTH AND THE FIRST UNITED METHODIST CHURCH OF RAHWAY v. RAHWAY, ET ALS.

#4297

Craig Hollingsworth and Clewin, Inc., }
Appellants,

vs.

Board of Alcoholic Beverage Control of }
the City of Rahway, Rahway Liquors, Inc.
and Pathway Liquors, Inc.,

Respondents. }

ON APPEAL
CONCLUSIONS

#4298

Craig Hollingsworth and the First United }
Methodist Church of Rahway,

Appellants,

vs.

Board of Alcoholic Beverage Control of }
the City of Rahway, Gempat Caterers, Inc.
and 398 West Grand Avenue Co., Inc.,

Respondents. }

AND
ORDER

Francis C. Foley, Esq., Attorney for Objectors.
Palmisano & Goodman, Esqs., by Robert Goodman, Esq., Attorneys
for 398 West Grand Avenue Co., Inc.
Wilentz, Goldman & Spitzer, Esqs., by Francis X. Journick, Esq.,
Attorneys for Pathway Liquors, Inc.
Alan J. Karcher, Esq., Director of Law for the City of Rahway,
by Joseph W. Baker, Esq., Attorney for the City of Rahway.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

These appeals are related and interdependent. They were heard jointly by the local issuing authority and the Division of Alcoholic Beverage Control and will, therefore, be the subject of a consolidated Hearer's Report.

Pathway Liquors, Inc. (Pathway) made application to the Board of Alcoholic Beverage Control of the City of Rahway (Board) for a person-to-person and place-to-place transfer of

Plenary Retail Distribution License No. 2013-44-027-001, issued to Rahway Liquors, Inc. (Rahway Liquors) for premises 398 West Grand Avenue, Rahway, to itself for premises to be constructed within the so-called Pathmark Shopping Center at St. Georges Avenue, Rahway, New Jersey.

Simultaneously, 398 West Grand Avenue Co., Inc. (398 West) applied for a place-to-place and person-to-person transfer of Plenary Retail Consumption License No. 2013-33-012-001 issued to Gempat Caterers, Inc. (Gempat) for premises located at 1737 Paterson Street, Rahway, to itself for premises 398 West Grand Avenue.

Objections were filed by the various appellants, and after a joint hearing, the Board granted both applications by Resolution dated October 18, 1978.

The objectors allege in identical Petitions of Appeal that:

The action of the Board of Alcoholic Beverage Control was capricious, arbitrary, contrary to the law and facts for the reason that, inter alia applicant proposed licensee was ineligible; and there was a violation of the Laws of New Jersey and the Ordinances of the City of Rahway and that no proper investigation had been made of the applicants; the premises cannot legally be used for the intended purposes; the applicant is not the true party in interest; and for such other reasons as may be demonstrated at the hearing in the above matter(s).

The various respondents deny the substantive allegations contained in the Petitions of Appeal.

Although hearings in this Division are de novo in nature, the parties opted to rely upon the transcripts of the local hearings, documents and argument. Additionally, Sheldon Mufson, stockholder of Pathway and 398 West, made himself available to answer, under oath, questions relative to his actual or contingent ownership of any interest in any alcoholic beverage license in New Jersey or any other jurisdiction, as well as details pertaining to his agreements to purchase interests in the subject plenary retail licenses.

The transcripts are silent as to the nature of the

Methodist Church's objection, save a brief reference by objector's attorney that the intended site is within three hundred (300) feet of the Church. No one appeared at either of the two local hearings or the Division hearing to voice the Church's objection.

The transcripts reveal that objectors raise, as an issue, the charge that the investigation was not complete, nor could it be deemed complete until the results of the fingerprinting were made known to the local issuing authority by State and Federal law enforcement agencies. The Board's attorney responded that any false statement which may be disclosed subsequently would result in appropriate administrative action; and that, past experience has shown that responses from the Federal Bureau of Investigation have taken upwards of six months in some instances, and the refusal to act for so long a period of time is inexcusable.

The objectors also raised a zoning issue at the local hearings. Pathway argues that the local issuing authority is without jurisdiction to entertain such issue, and that, in any case, the licensee would have to comply with any zoning restrictions before it could obtain its certificate of occupancy from the appropriate city bureau.

The objectors allege throughout, that the building may not even be within the jurisdictional boundaries of Rahway as it is not completed, and the plans indicate that 85% of the building is to be within Rahway and 15% within Woodbridge, a contiguous municipality.

At the de novo hearing they argue that:

The preliminary investigation that we have made is that there is a very, very strong indication that when this premises is completed if and when it is, that the premises that are marked on there, Mufson, will be in the Township of Woodbridge.

No maps, reports, expert witnesses, etc. were introduced in support of this naked allegation.

Pathway defends that the Board had express authority in N.J.A.C. 13:2-7.2(b) to entertain an application to transfer a license to a building not yet constructed on condition

that plans showing design, appearance, building materials, etc., accompany it. Additionally, N.J.S.A. 33:1-16 authorizes either jurisdiction to transfer a license to a building that straddles Township lines.

The burden of establishing that the Council acted erroneously and should be reversed rests entirely upon the appellant, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15). The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Hudson-Bergen Package Stores Ass'n v. North Bergen, Bulletin 1981, Item 1.

In the absence of abuse of discretion in acting upon a license issuance or transfer, 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 (E. & A. 1947); Florence Methodist Church v. Florence Twp., 38 N.J. Super. 85 (App. Div. 1965); Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Mun. Bd. of Alcoholic Beverage Control, Newark, 55 N.J. 292, 303 (1970). "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action."

I find as a fact, that there is no substance to the various issues raised by the objectors and, with the exception of the zoning question, see no need to comment upon them individually.

The zoning aspect raises a seemingly valid issue at least facially, requiring specific resolution.

The grant of a transfer application is always conditioned on conformity to all applicable local and State ordinances whether specifically stated in the resolution granting transfer or not. To that extent, the approval of any place-to-place transfer is not a final definitive determination. It does constitute a final disposition of all factors referable to the Alcoholic Beverage Law, however. The ultimate ability of the respondent to actively operate at the location is dependent upon others to determine that the intended use is proper at the transfer situs.

The appellants have not established that the action of

the Board was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6. Accordingly, I recommend that the action of the Board in approving the subject transfers be affirmed, and that the appeals be dismissed.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the appellants, pursuant to N.J.A.C. 13:2-17.14.

In their Exceptions the appellants assert that the determination in this matter should be deferred until the actual construction of the proposed licensed premises, and resolution of a Superior Court-Law Division suit involving zoning issues relevant thereto. It is axiomatic that any grant of license transfer approval must be consistent with other local ordinances, provisions of the Alcoholic Beverage Law and zoning requirements. Petrangeli v. Barrett, supra.

To the extent that ultimate location of the licensed premises or judgment in the law suit make the transfers herein unlawful or illegal, the respondent would have to move to rescind or vacate its approvals. However, there is nothing in the record to demonstrate that the approvals at this time violate any ordinance or other provisions of law. See Holiday Inn of Paramus-Parkway v. Borough of Paramus, et al., Bulletin 2315, Item 3. Thus, I dismiss these Exceptions as without merit.

The appellants also attribute error to the Hearer's alleged failure to give weight to the objection of the Methodist Church. The record is devoid of any direct competent testimony of an asserted objection by the Church. Clearly, no weight should be given to an alleged objection not supported by direct proofs. This Exception has no basis, in fact, and is rejected.

Lastly, the appellants allege a license limitation issue concerning multiple ownership which has no supportive basis in law or fact. This Exception is rejected as lacking in substance.

Having carefully considered the entire record herein, including the transcripts 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.

For record purposes I note the following: Appeal Nos. 4235

and 4237, between the same parties, represents the appellants' initial appeal from the grant of transfer approvals. The determination in the subject appeals disposes of the issues raised in the first filed appeals. Thus, Appeals Nos. 4235 and 4237 shall be dismissed.

Accordingly, it is, on this 21st day of June, 1979,

ORDERED that the action of the Board of Alcoholic Beverage Control of the City of Rahway be and the same is hereby affirmed, and the appeals herein be and are hereby dismissed; and it is further

ORDERED that Appeals Nos. 4235 and 4237 have been rendered moot by the within Order, and they are hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - CONTESTS CONDUCTED WITH CASH PRIZES and/or GIFTS AND PREMIUMS - PROHIBITION OF ACTIVITY CHARGED NOT CLEARLY DEFINED IN CITED REGULATION - NOLLE PROSSED.

In the Matter of Disciplinary
 Proceedings against

}

Paul's Shore Liquors, Inc.
 t/a Odyssey Lounge
 427 Cookman Avenue
 Asbury Park, New Jersey

}

S-11,698
 X-39,727-Q

Holder of Plenary Retail Consumption
 License No. 1303-32-040-001 issued by
 the City Council of the City of Asbury
 Park.

}
 }
 }

CONCLUSIONS
 AND
 ORDER

 Charles Frankel, Esq., Attorney for Licensee.

BY THE DIRECTOR:

Licensee pleads "not guilty" to charges alleging that, on or about September 29, 1977 and October 16, 1977, in connection with certain contests conducted on its licensed premises, it offered or furnished cash prizes and/or similar gifts and premiums, in violation of Rule 20 of State Regulation No. 20 (now N.J.A.C. 13:2-23.16).

Having reviewed the entire file in the subject matter and a memorandum submitted by the Deputy Attorney General assigned to this Division, I am satisfied that the prohibition of the activity charged is not clearly defined in that portion of the Division regulation cited herein.

Said practice is inconsistent, however, with latter provisions of the rule prohibiting practices "unduly designed to increase the consumption of alcoholic beverages." From the nature of the said offense, I have determined to enter an Order dismissing the charges preferred by the Division against the licensee on this first offense for this particular activity. Subsequent similar activity will result in the institution of disciplinary proceedings.

Accordingly, it is, on this 27th day of June, 1979,

ORDERED that the charge herein be and the same is hereby nolle prossed.

JOSEPH H. LERNER
 DIRECTOR

4. APPELLATE DECISIONS - J.A.N.B. CORPORATION v. PHILLIPSBURG.

#4303

J.A.N.B. Corporation. }
t/a Guy's Bar & Grill, }

Appellant,

vs. }

Town Council of the Town of
Phillipsburg,

Respondent. }

CONCLUSIONS

AND

ORDER

Morrow & Benbrook, Esqs., by Donald W. Morrow, Esq., Attorneys
for Appellant.

Swick & Swick, Esqs., by James R. Swick, Esq., Attorneys for
Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the Town Council of the Town of Phillipsburg which, by Resolution dated October 11, 1978, imposed special conditions on appellant's license, in lieu of license suspension, for nuisance incidents, in violation of N.J.A.C. 13:2-23.6.

In its Petition of Appeal appellant alleges in part, that the respondent lacks legal authority to impose special conditions and a probationary period.

In its Answer, the respondent denies the allegations and submits that the record supports its action.

Upon the filing of the within appeal, the Director entered an Order dated November 21, 1978, staying the special conditions pending the appeal.

Prior to the hearing in this Division, it was stipulated that the action of the respondent would be modified, and the finding of guilt to the charges reversed. The issues in the appeal have now been rendered moot, and the application to dismiss the appeal will be granted.

For record purposes, and as future guidance to all issuing authorities, I note that, in disciplinary proceedings, the only available sanctions a local issuing authority is authorized to impose is either suspension or revocation of license.

N.J.S.A. 33:1-31. The imposition of special conditions to a license, pursuant to N.J.S.A. 33:1-32, can only be affixed to a license at the time of renewal of a license, transfer of a license, either place-to-place, person-to-person or both, or upon issuance of a new license. See, Faces, Inc. v. Board of Alc. Bev. Control, West Orange, Bulletin 2260, Item 2.

Accordingly, it is, on this 27th day of June, 1979,

ORDERED that the within appeal having been rendered moot by action subsequent to its filing, the appeal be and the same is hereby dismissed.

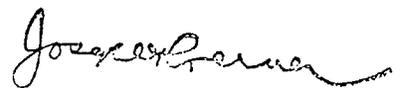
JOSEPH H. LERNER
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

Modern Beverages Inc.
1808 Brielle Avenue
Ocean, New Jersey
Application filed December 20, 1979
for place-to-place transfer of State
Beverage Distributor's License
3400-19-265-001 from 1701 Valley Road,
Ocean, New Jersey.

Newgate Importers Incorporated
800 Edgar Road
Linden, New Jersey
Application filed December 31, 1979
for plenary wholesale license.

Crown Beer Distributors, Inc.
2301 Atlantic Avenue
Wall, New Jersey
Application filed January 8, 1980 for
place-to-place transfer of State
Beverage Distributor's License from
1740 State Highway 34, Wall, New Jersey.


JOSEPH H. LERNER
DIRECTOR