

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 2350

May 7, 1980

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STATE OF NEW JERSEY
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BULLETIN 2350

May 7, 1980

1. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

In the Matter of the Petition of

:

The Great Atlantic & Pacific
Tea Company of Hackensack

:

CONCLUSIONS

:

AND

Holder of Plenary Retail Distribution :
License No. 0223-44-024-001 issued by :
the Common Council of the City of :
Hackensack. :
-----:

ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorney for Petitioner
David S. Griffiths, Esq., Deputy Attorney General, Appearing for Division

Initial Decision Below

Hon. Gerald T. Foley, Administrative Law Judge

Dated: November 13, 1979

-

Received: November 16, 1979

BY THE DIRECTOR:

No Exceptions were filed to the Initial Decision of the Administrative Law Judge, pursuant to N.J.S.A. 33:1-12.39.

I have carefully considered the entire record herein including the transcript of the testimony and the Initial Decision. I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of December, 1979

ORDERED that the Common Council of the City of Hackensack be and is hereby authorized to consider the application for renewal of the subject license No. 0223-44-024-001 of the Great Atlantic and Pacific Tea Company for the 1979-80 license term, and to thereupon grant or deny said application in the reasonable exercise of its discretion. If the application is approved, the renewal thereof shall be made subject to the special condition that the license must become operational during the 1979-80 license term.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

IN RE: PETITION OF THE GREAT) OAL DKT. NO. ABC 2444-79
ATLANTIC AND PACIFIC TEA COMPANY,)
INC., PURSUANT TO N.J.S.A. 33:1-12.39) INITIAL DECISION
(HACKENSACK, NEW JERSEY))

Appearances:

Saul A. Wolfe, Esq., Skoloff and Wolfe, Esqs., for Petitioner, the Great Atlantic and Pacific Tea Company, Inc.

David S. Griffiths, Esq., Deputy Attorney General, for the Division of Alcoholic Beverage Control.

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On September 18, 1979, a hearing was held and concluded on the petition of The Great Atlantic and Pacific Tea Company, Inc., (A&P) seeking authorization, pursuant to N.J.S.A. 33:1-12.39, from the Director of the Division of Alcoholic Beverage Control (Director) for it to apply to the Common Council of the City of Hackensack for renewal of its plenary retail distribution license for the 1979-80 license term.

It is suggested that this decision be read in conjunction with that in A&P, Linden, New Jersey, ABC 2445-79, the "lead" case in a series of ten of which the instant petition was the final one heard.

The record in this matter closed on October 25, 1979.

At the hearing the following exhibits were marked into evidence: 1.P-1, copy of affidavit of service of a copy of the verified petition for renewal authorization on the Municipal Clerk of Hackensack. 2.P-2, certified true copy of the Code of the City of Hackensack, specifically section 49-8B dealing with 1500 feet restriction in location of plenary retail distribution licenses.

3.R-1, Special Ruling of the Director, dated July 5, 1978, finding that the A&P had established good cause to warrant a further application for renewal of its license number D-15 for the 1978-79 license term.

Thomas P. Quinn, in testifying as to the efforts of the A&P to place its license back in operation after the failure of its store, stated that in April, 1978, he and Mr. Rubenstein from the A&P's real estate office visited Hackensack and drove around so that Mr. Quinn could familiarize himself with the city. About a week later Mr. Rubenstein contacted Mr. Hekemian and Mr. Kerbeykian to have them look over the possibility of locating A&P to a 6,000 square feet building for a retail liquor operation. About two weeks later, A&P learned that Two Guys was planning to expand in a minor way and remodel its store in Hackensack. There existed the possibility that A&P could relocate its license inside

the Two Guys grocery store or adjacent thereto where there was a minor expansion plan.

Negotiations dragged on for a few months. However, about mid-1978, a suitable deal for A&P in the witness' opinion, could not be worked out.

Mr. Kerbeykian continued to attempt to find other locations for A&P in Hackensack.

The witness said that the zoning law posed somewhat of a handicap to A&P in attempting to put in a store. Specifically, P-2, which was to be admitted into evidence later, stated that no plenary retail distribution license shall be issued or transferred to any premises within 1500 feet of any other premises for which a plenary retail distribution license is outstanding.

In February, 1979, the witness looked at a couple of possibilities which were found to be really not suited for a retail package operation.

Mr. Quinn stated that about the end of May or first part of June, 1979, Mr. Kerbeykian found what A&P regarded as a suitable location on Main Street in Hackensack in the form of a Chinese grocery store. An agreement was negotiated with the landlord of that location contingent upon obtaining a place to place transfer of the license to the premises on Main Street.

On June 7, 1979, A&P attempted to file an application for place to place transfer of the license with the Municipal Clerk. However, the Clerk, Ms. Doris L. Dukes, stated that she could not accept the application for filing.

At this point Mr. Wolfe represented that Ms. Dukes indicated to him that she had erroneously assumed that the A&P was filing a person to person transfer. Such a transfer is not acted upon until the authorities in Hackensack receive from the State the police investigation of the transfer. It was apparent that there was no way the Hackensack authorities would have the results of the investigation prior to the expiration of the license term.

On June 18 or 20, 1979, Ms. Dukes learned that the application was for a place to place transfer. The Division of Alcoholic Beverage Control advised Ms. Dukes that it would be a futile act to file the application at that late date.

Mr. Quinn stated, as of September 18, 1979, that the contemplated premises on Main Street were no longer available. The A&P could not give the landlord a definite answer in signing a lease because of the delay with Ms. Dukes and the instant hearing and the deal fell through.

The witness said, had the application that Ms. Dukes would not file on June 7, 1979, been acted upon favorably by the municipality in June, 1979, A&P would have been opened and operating in the location on Main Street that housed the Chinese grocery store, probably September 1, 1979.

A&P's present intention was to operate a party shop concept in Hackensack, to operate its license.

Mr. Quinn said, should the instant petition be granted, A&P will continue to use both inside and outside real estate personnel to find a location to operate the license which he opined had a value somewhere between \$40,000 and \$50,000.

There was no cross-examination. There was a stipulation that Mr. Kerbeykian's testimony would corroborate that of Mr. Quinn.

Mr. Wolfe offered the Hackensack ordinance previously referred to into evidence as P-2. Mr. Griffiths offered a special ruling of the Director dated July 5, 1978 as R-1.

Under N.J.S.A. 33:1-12.39, the applicable statute, the A&P has the burden of establishing to the satisfaction of the Director good cause for him to authorize a further application for renewal of its license.

Good cause means a substantial reason, one that affords a legal excuse. Whether substantial reasons exist is for the court to determine under the facts and circumstances, Pines v. District Court in and for Woodbury County, 10 N.W. 2d, 574, 583, 233 Iowa 1284 (Sup. Ct. 1943).

In bulletin 2289, July 27, 1978, dated April 14, 1978, the Director indicated that he will determine whether good cause has been established on a case by case basis. He will apply recognized judicial concepts associated with the term. He will also apply, insofar as they are applicable, prior decisions of the Division on the subject.

In the instant matter I have reviewed the record, have detailed the testimony extensively and have concluded that A&P has established the requisite good cause. Had Ms. Dukes filed the application for place to place transfer on June 7, 1979 and had the application been favorably acted upon by the municipality, the A&P would have been operating under its license at the Main Street location probably by September 1, 1979. A&P's intention is to operate its license in a party shop concept in Hackensack and it will continue to use all the real estate personnel at its disposal to find a location, should the Director grant its petition.

I therefore recommend to the Director of the Division of Alcoholic Beverage Control that he grant the petition and authorize the A&P to apply to the Common Council of the City of Hackensack for renewal of its plenary retail distribution license number D-15 for the 1979-80 license term.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10(c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph Lerner, my Initial Decision in this matter and the record in these proceedings.

DATE

GERALD T. FOLEY, JR., A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

FOR OFFICE OF ADMINISTRATIVE LAW

2. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

In the Matter of the Petition of)

The Great Atlantic and Pacific)
Tea Company, Inc.)

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distribution)
License No. 2009-43-032-001 issued by the)
Municipal Board of Alcoholic Beverage)
Control of the City of Linden.)

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Petitioner
David S. Griffiths, Esq., Deputy Attorney General, for Division

INITIAL DECISION BELOW

Hon. Gerald T. Foley, Administrative Law Judge

Dated: November 2, 1979 - Received November 7, 1979

BY THE DIRECTOR:

No Exceptions were filed to the Initial Decision herein pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein including the transcript of the testimony and the Initial Decision of the Administrative Law Judge, I concur in the findings and recommendations thereof and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of December, 1979,

ORDERED that the Municipal Board of Alcoholic Beverage Control of the City of Lindenbe and is hereby authorized to consider the application for renewal of Limited Retail Distribution License No. 2009-43-032-001 held by The Great Atlantic & Pacific Tea Company, Inc. for the 1979-80 license term, and, in the

reasonable exercise of its discretion, may grant or deny the said application. If the said application is approved, and the license is renewed, such action shall be made expressly subject to the special condition that the license must become operational during the 1979-80 license term; no further extensions will be authorized.

Joseph H. Lerner
Director

IN RE:) INITIAL DECISION
PETITION OF THE GREAT ATLANTIC)
AND PACIFIC TEA COMPANY, INC.,) O.A.L. DKT. NO. ABC 2445-79
PURSUANT TO N.J.S.A. 33:1-12.39)
(LINDEN, NEW JERSEY))

APPEARANCES:

Saul A. Wolfe, Esq., Skoloff & Wolfe, Esqs.
for the Petitioner

David S. Griffiths, Esq., Deputy Attorney
General, for the Division of Alcoholic
Beverage Control

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

This case is one of ten involving petitions of the Great Atlantic and Pacific Tea Company, Inc. (hereinafter A&P) pursuant to N.J.S.A. 33:1-12.39. These petitions were heard on three days, September 13, 14 and 18, 1979. On September 13, 1979, the petitions involving Linden, Red Bank and Ridgewood, ABC 2445-79, were heard. On September 14, 1979, the petitions involving Asbury Park, Bloomfield and Dover, ABC 2445-79, and Englewood, Union City and Tenafly, ABC 2442-79, were heard. On September 18, 1979, the petition involving Hackensack, ABC 2444-79, was heard. The Dover petition is already the subject of an initial decision.

The Linden matter will be regarded as the lead case in that prior to hearing the specific facts concerning the Linden petition, Thomas P. Quinn, the National Director of Alcoholic Beverages for A&P testified and provided counsel and myself certain historical background concerning the A&P. It was agreed, rather than have Mr. Quinn give this discourse at the commencement of the other nine hearings, that his presentation in the Linden matter would be incorporated by reference into the other nine cases.

O.A.L. DKT. NO. ABC 2445-79

Prior to the openings in Linden, counsel for the petitioner expressed his concern about Deputy Attorney General Griffiths participating in the proceedings. Counsel submitted that the matters were not contested cases. Mr. Griffiths indicated he was present to represent the interest of the ABC and to urge certain considerations that would go to a determination of good cause under N.J.S.A. 33:1-12.39.

I ruled that Mr. Griffiths could participate in the proceedings by questioning with respect to good cause and by presenting legal arguments.

Joint exhibits marked into evidence were an affidavit from a secretary in Mr. Wolfe's office that she served a copy of the verified petition for renewal on the Municipal Clerk of Linden by mail, J-1, and J-2, a special ruling of the Director dated June 28, 1978, in which he found that the A&P had established good cause to warrant a further application for renewal of its Limited Retail Distribution License No. DL-1 for the 1978-79 license term.

At the conclusion of the final hearing, Hackensack, on September 18, 1979, counsel were given two weeks to serve and file posthearing briefs. Two follow up requests were sent to counsel for petitioner for his brief and when it did not arrive by October 25, 1979, I closed the record as of that date.

Mr. Quinn testified that he was employed by the A&P as its National Director of Alcoholic Beverages. He is in charge of about 900 A&P stores that have some type of alcoholic beverage license. He is involved in license purchases, sales and acquisitions. In this respect, he works with the top executives of the A&P and its real estate department.

Mr. Quinn stated that his ability to make economic projections, return on investment projections involving ten to twenty years, was affected on or about January 5, 1979, when the Attorney General of New Jersey issued a statement regarding the Fair Trade or minimum mark-up situation in New Jersey. A&P did not know exactly what the Attorney General planned to do. He was concerned because of the inactive licenses that A&P held.

On April 1, 1979, A&P received certain regulations which affected all A&P licenses. New Jersey might be going from a Fair Trade or minimum retail pricing state to an open market state. This would involve a shift from what he termed a "Ma and Pa type operation" to a larger, higher volume turnover situation. He said in an open market, you are looking at five to ten thousand square feet with a minimum of three thousand if that is all you

O.A.L. DKT. NO. ABC 2445-79

can find. Additionally, he stated that in the purchasing of the product, in cash flow return on investment numbers, he did not know how he was going to buy goods. He stated in a fair trade market, it is simple to do a cash flow return on investments because you know how much you make on various alcoholic beverages.

Mr. Quinn said that it was his understanding that this matter of changing the regulations to abolish minimum pricing was unresolved but was pending in the courts of New Jersey.

The witness said that the litigation has affected his ability to obtain corporate policy decisions concerning inactive licenses.

Mr. Quinn turned to a second consideration, the change in the ownership of A&P. He stated that about twenty years ago the retail food industry started shifting from small, downtown stores to larger supermarkets, some in excess of 25,000 square feet, located on the highways and major arteries. Twenty years ago A&P stores averaged about 8,000 square feet in area. The witness said that A&P did not get on the bandwagon, began to lose money and many stores became obsolete. The problem came to a head about 1974 and it was decided to close many A&P stores. Stores went from 3468 in 1975 to approximately 750 at present. Monetary losses were great except for 1977.

At the start of 1978, there were not many company profits and thus no dividends. The concern was dividends. Top management therefore sought a partner who would purchase shares of stock and who would also believe in the long term growth of the company.

An agreement was consummated in approximately June, 1978 with the Tengelmann Company of West Germany, totally owned by one Evian Haub whereby Tengelmann would become the majority stockholder although it would own less than 50% of the stock. Tengelmann began to participate in December, 1978.

Tengelmann operated over 2,000 stores in West Germany and Austria including a small but very profitable chain known as plus stores.

It was Mr. Haub's feeling that A&P should look at the so-called box store business or what is thought of as the "no-frills" type store, the plus operation which Tengelmann had in West Germany.

Mr. Quinn stated that between June, 1978 and December, 1978, decisions about various things were not made. In January

O.A.L. DKT. NO. ABC 2445-79

or February, 1979, a decision was made that A&P would be going into the plus store, economy, no-frills operation. However, this was strictly an internal decision. Mr. Quinn's ability to make decisions concerning licenses was subordinated to the decisions involving the opening of plus stores. He indicated that there are three locations, possibly a fourth, where a plus store would be opening. The A&P liquor operation would attach to the plus store but that the liquor decision was predicated on the plus decision. This affects the time period available to activate the licenses.

The plus concept was made known to the public approximately August 1, 1979.

Mr. Quinn said that he became aware of N.J.S.A. 33:1-12.39 in January, 1978. He said that A&P in January, 1976, sold an inactive license in Wyckoff, New Jersey. Additionally, also prior to the effective date of N.J.S.A. 33:1-12.39, A&P sold an inactive license in Livingston, New Jersey. Subsequent to his hearing of the statute, inactive licenses were sold in Paterson and Deal or Ocean Township.

The witness said, in attempting to formulate policy to comply with the New Jersey statutes, in mid-December, 1978, they advertised in the major New Jersey newspapers that certain licenses were for sale without mentioning A&P.

With respect to the warm beer license A&P held in Linden, the company felt if an agreement could be had for an A&P supermarket in Linden, that the company would move in its warm beer license.

Mr. Quinn said that subsequent to June 28, 1978, the date of the Director's special ruling, the company felt it would be able to come up with a suitable location in Linden. However, in approximately mid-November, 1978, a decision was made not to open a supermarket in Linden but rather to sell the license. The license was advertised for sale but no qualified purchaser was found. The witness said until as recently as probably six weeks, he made a couple of trips to Linden and that he had a Mr. Tedesco, who was in charge of the Metro-Region, knocking on doors in Linden, convenience stores, delis and supermarkets to locate someone who might want to purchase a warm beer license.

Mr. Quinn stated that as recently as the past week, a deposit was received on behalf of a prospective purchaser of the license, subject to execution of a contract of sale. The selling price is \$1,500. It was Mr. Quinn's belief that any warm beer license is worth probably \$5,000. A&P is willing to sell the license for \$1,500 to keep it available to the public in Linden.

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On cross-examination, Mr. Wolfe, in response to a question to the witness, stated that the contract is unexecuted and that he was holding a \$150 deposit in his trust account. A&P has not signed the contract, but the prospective purchaser, Anna Patiro, has signed it. Mr. Wolfe stated he received Ms. Patiro's deposit earlier that week.

It was Mr. Griffiths' position, in considering whether to renew a license, that one has to look to the intentions of the prospective purchaser and to the efforts that purchaser has made to see that the license is actively employed after the purchaser gets it.

After lengthy argument I ruled that, as I read N.J.S.A. 33:1-12.39, the issue for my determination was very narrow and limited, namely, the conduct of A&P subsequent to June 28, 1978, the date of the Director's special ruling, as it bears upon its burden of establishing to my satisfaction good cause for the Director to authorize a further application for renewal of its license.

Mr. Griffiths indicated that he had no questions for Mr. Quinn if he could not ask him about the prospective purchaser.

Mr. Quinn was excused.

The Linden matter was closed subject only to Mr. Wolfe offering into evidence the following day, September 14, 1979, a five page, undated agreement between the Great Atlantic and Pacific Tea Company, seller, and Anna Patiro, purchaser, the subject of which was the Limited Retail Distribution License. The purchase price was \$1,500 and the deposit was \$150. The agreement was signed only by Anna Patiro. It was marked P-1 in evidence.

The applicable statute, N.J.S.A. 33:1-12.39, reads, in pertinent part, that:

"No Class C license as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with the operation of a licensee's premises within a period of two years prior to the commencement date of the license period for which the renewal application is filed unless the director, for good cause and after a hearing, authorizes a further application for renewal."

In Bulletin 2289, July 27, 1978, dated April 14, 1978, the Director indicated that he will determine whether good cause has been established on a case by case basis. He will apply

O.A.L. DKT. NO. ABC 2445-79

recognized judicial concepts associated with the term. He will also apply, insofar as they are applicable, prior decisions of the Division on the subject.

The court in Pines v. District Court in and for Woodbury County, 10 N.W. 2nd 574, 583, 233 Iowa 1284 (Sup. Ct. 1943), stated that good cause means a substantial reason, one that affords a legal excuse. It said whether substantial reasons exist is for the court to determine under the facts and circumstances.

So, too, in Wilson v. Morris, 369 S.W. 2d 402, 407 (Mo. 1963), it was said that good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed.

Lastly, in Wray v. Folsom, 166 F. Supp. 390, 394 (U.S.D.C., W.D. Arkansas, 1958) good cause was conceived to be a relative and highly abstract term. Its meaning must be determined not only by the verbal context of the statute in which the term is employed, but also by the context of the action and procedures involved and the type of case presented.

In the instant matter, the Director found that good cause existed as of June 28, 1978. From my review of the record, my observations of Mr. Quinn as he testified and my applying the law to the facts which I have set forth in detail herein, I conclude that the A&P, by its conduct and actions subsequent to June 28, 1978, has established good cause to warrant a further application for renewal of its Limited Retail Distribution License. A&P's numerous efforts to locate a purchaser of its license have finally borne fruit. It has found a prospective purchaser in Ms. Patiro and it is willing to sell the license to her for \$1,500. I, therefore, recommend to the Director of the Division of Alcoholic Beverage Control that he authorize A&P to apply to the Municipal Board of Alcoholic Beverage Control of the City of Linden for renewal of the subject license for the 1979-80 license term.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period. N.J.S.A.52:14B-10(c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

11/2/79

DATE

Gerald T. Foley, Jr., A.L.J.

3. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE
PETITION OF THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

In the Matter of the Petition of :
The Great Atlantic & Pacific : CONCLUSIONS
Tea Company, Inc. :
Holder of Limited Retail Distribution : AND
License No. 0702-43-024-001 issued : ORDER
by the Town Council of the Town :
of Bloomfield. :
-----:
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq.
Attorney for Petitioner.
David Griffiths, Esq., Deputy Attorney General,
Appearing for Division

Initial Decision Below

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: November 9, 1979 - Received: November 15, 1979

BY THE DIRECTOR:

No Exceptions to the Initial Decision herein were filed,
pursuant to N.J.S.A. 33:1-12.39.

Having carefully considered the entire record herein,
including the Initial Decision, I concur in the findings
and recommendations of the Administrative Law Judge, and
adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of December, 1979,

ORDERED that the Town Council of the Town of Bloomfield
be and the same is hereby authorized to consider the ap-
plication of the Great Atlantic & Pacific Tea Company, Inc.
for renewal of its subject Limited Retail Distribution
License for the 1979-80 license term and to grant or deny
the said application in the reasonable exercise of its
discretion. If granted, such renewal shall be made
expressly subject to the special condition that the said
license must become operational during the 1979-80 license
term; no further extension will be authorized.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

IN RE: PETITION OF THE GREAT
ATLANTIC AND PACIFIC TEA COMPANY, INC.
PURSUANT TO N.J.S.A. 33:1-12.39
(BLOOMFIELD, NEW JERSEY)

INITIAL DECISION
OAL DKT. NO. ABC 2445-79
AGENCY DKT. NO. -

APPEARANCES:

Saul A. Wolfe, Esq., Skoloff and Wolfe, Esqs.,
for Petitioner

David S. Griffiths, Esq., Deputy Attorney General,
for the Division of Alcoholic Beverage Control

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On September 14, 1979 a hearing was held on the verified petition of the Great Atlantic and Pacific Tea Company, Inc. (A&P) seeking authorization from the Director of the Division of Alcoholic Beverage Control (Director) to apply for renewal of its Bloomfield, New Jersey limited retail distribution license for the 1979-80 license term.

It is suggested that this decision be read in conjunction with that which has been written and filed in the "lead" Linden, New Jersey case. The record in this matter closed on October 25, 1979.

At the hearing the following exhibits were marked into evidence:

P-1, Affidavit of Service of copy of verified petition for renewal authorization on the Municipal Clerk of Bloomfield.

P-2, Letter of Saul A. Wolfe, Esq., dated September 8, 1979, to the Clerk of Bloomfield advising that the hearing in this matter had been rescheduled from September 12, 1979 to September 14, 1979.

In this matter, although Thomas P. Quinn was called to the witness stand, the A&P's case was presented by way of a statement from Mr. Wolfe.

Mr. Wolfe advised that, through the efforts of A&P, an oral agreement exists between A&P and A&M Food Corporation, trading as Met Foods, for the latter to purchase A&P's warm beer license for \$3,000.

On June 7, 1979, A&M Food Corporation applied for a place to place transfer of the license. Subsequent to the expiration of the licensing period, the application was denied because A&M was virtually contiguous to a retail distribution outlet, which is a long established business in Bloomfield.

Mr. Wolfe stated that the governing body of Bloomfield, without A&P's knowledge and not at its urging, has renewed A&P's license. He conceded that the renewal has no binding effect until the Director authorizes a further application for renewal. He indicated, however, that the local action was an indication that there was no objection to the instant proceeding.

Counsel for the A&P said that he had been advised by the prospective purchaser that a decision was pending whether to appeal to the Director from the denial of the application for place-to-place transfer. He stated that if there is no appeal, A&P does not intend to operate its license but rather it intends to immediately make the license available to whatever other purchasers there may be.

Mr. Griffiths accepted Mr. Wolfe's statement and stipulated to it.

Under questioning from Mr. Griffiths, Mr. Quinn stated that there are no prospective purchasers other than A&M Food Corporation. He thought that probably there were other prospective purchasers.

He said that A&P did not look for another buyer because it felt that Mr. Fulop of A&M Food Corporation knew and understood the grocery business with a warm beer license. He thought that A&P had to wait to see what Mr. Fulop planned to do. A&P would attempt to locate another purchaser should A&M Food Corporation not appeal or fail in its appeal.

The hearing was closed.

Under N.J.S.A. 33:1-12.39, the applicable statute, A&P has the burden of establishing to the satisfaction of the Director good cause for him to authorize a further application for renewal of its warm beer license for the 1979-80 license term.

Good cause means a substantial reason, one that affords a legal excuse. Whether substantial reasons exist is for the court to determine under the facts and circumstances, Pines v. District Court in and for Woodbury County, 10 N.W. 2d 574, 583, 233 Iowa 1284 (Sup. Ct. 1943).

Additionally, the Director has indicated that he will determine whether good cause has been established on a case by case basis. He will apply recognized judicial concepts associated with the term. He will also apply, in so far as they are applicable, prior decisions of the Division on the subject. Bulletin 2289, July 27, 1978, dated April 14, 1978.

In my judgment, A&P has established good cause in this case. It found a purchaser and entered an oral contract to sell its warm beer license for \$3,000. Although, admittedly ineffectual, the action of the Bloomfield governing body in renewing A&P's license is a strong indication that no opposition to renewal exists at the local level. The prospective purchaser, however, did not fare as well, its application for a place-to-place transfer being denied. At the time of the hearing it was not certain whether A&M would appeal. The Division's records should indicate what, if any, action has been taken. Assuming no appeal, it is A&P's intention to immediately attempt to locate another purchaser. It was Mr. Quinn's opinion that there are probably other prospective purchasers.

I therefore recommend to the Director that he authorize the A&P to apply for renewal of its warm beer license in Bloomfield, New Jersey for the 1979-80 license term.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10(c).

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

DATEGERALD T. FOLEY, JR. A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

Joseph H. Lerner
Director