

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 2369

October 7, 1980

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1. APPELLATE DECISIONS - A.H.S., INC. v. WALL.

#4397

A.H.S., Inc.
t/a Royal Manor,

Appellant,

vs.

Township Committee of the
Township of Wall,

Respondent.

CONCLUSIONS

AND

ORDER

Wilentz, Goldman, & Spitzer, by Warren W. Wilentz, Esq.,
Attorney for Appellant.
Mangini, Gilroy, & Cramer, by John J. Mangini, Esq.,
Attorney for Respondent.

Initial Decision Below

Hon. Ken R. Springer, Administrative Law Judge

Dated: December 19, 1979

Received: December 19, 1979

BY THE DIRECTOR:

This matter is an appeal from the imposition of several special conditions by Resolution of the Township Committee of Wall Township on the renewal for the 1979-80 license term upon the Plenary Retail Consumption License No. 1352-33-001-001 held by A.H.S., Inc., t/a Royal Manor.

This determination has been accelerated pursuant to an Order of Remand of December 4, 1979 by the Appellate Division of the Superior Court in A.H.S., Inc., t/a Royal Manor vs. Township Committee of the Township of Wall and the Division of Alcoholic Beverage Control (A-147-79) (M-1398-79). The procedural history is adequately presented in the Initial Decision of the Administrative Law Judge. Timely Exceptions were filed pursuant to N.J.A.C. 13:2-17.14 by both the appellant and respondent.

The renewal of a retail alcoholic beverage license rests within the sound discretion of the local issuing authority. Zicherman v Driscoll 133 N.J.L. 586,588 (Sup. Ct. 1946); Nordco, Inc. v State 43 NJ Super 277,282 (App. Div. 1957). Similarly, the imposition of special conditions at the time of renewal is a matter over which the local Governmental body has principal jurisdiction and primary authority.

N.J.S.A. 33:1-32. N.J.A.C. 13:2-2.13, In allocating spheres of operation between this Division and the Municipal Authorities, the Legislature wisely recognized that ordinarily local officials are thoroughly familiar with their community's characteristics, the nature of a particular area, and the dangers associated with the sale of alcoholic beverages. Lyons Farms Tavern v Mun. Bd. Alc. Bev., Newark 55 N.J. 292,302 (1970). Consequently, in reviewing a denial of renewal or the imposition of special conditions, whether by resolution or ordinance, the Director will interfere with the exercise of local discretion only if it is an abuse of discretion, that is; because of a manifest mistake, clearly unreasonable action, or some untoward impropriety. Rajah Liquors v Div. of Alcoholic Bev. Control, 33 NJ Super 598, 600 (App. Div. 1955). Within the context of review, special conditions must have been found to be necessary and proper to accomplish the objects of Title 33 and secure compliance with the provisions thereof. N.J.S.A. 33:1-32. The burden of proof to establish that such an abuse of discretion has occurred rests with the aggrieved licensee on appeal. Dal Roth v Div. of Alcoholic Bev. Control 28 NJ Super 246, 254 (App. Div. 1953). The rule is well established that the Director will 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. Margate Civic Assoc. v Bd. of Comm'rs, Margate 132 NJ Super 58,63 (App. Div. 1975) cert. den. 68 NJ 139 (1975).

Initially, I will address the appellant's Exceptions with respect to the admissibility of evidence. It is urged that transcripts and exhibits relating to previous disciplinary proceedings against the licensee, and a specific computer printout summary not be considered; I disagree. As an administrative agency, the Division is not bound by technical rules of evidence. Mazza v Cavicchia 28 NJ Super 280, 284-5 (App. Div. 1953) rev'd on other grnds. 15 NJ 498, 509-10 (1954) See, also, N.J.S.A. 52:14B-10(a). This is not an appeal from the denial of a license renewal, where arguments have been made and rejected, that such a denial, predicated primarily on a record of prior contested disciplinary matters, resulted in the imposition of an additional or double penalty. Here the Committee seeks to show that it affirmatively responded to what may be characterized as a "troublespot". The transcripts of previous proceedings are extremely germane. Within the perimeters of the Committee Resolution of June 27, 1979 and the facts the transcripts disclose, there is ample precedent to support their admissibility. See, Downie v Somerdale 44 NJ Super 84,88 (App. Div. 1957) Nordco, Inc., supra 43 NJ Super at pp. 281-2, 279 Club v Mun. Bd. of Alcoh. Bev. Cont. of Newark. 73 NJ Super 15,21 (App Div. 1962). While I have ruled August to October 1978 "printout" admissible (Ex. R-6), I am constrained to observe that its weight and probity are limited. It is one thing to submit a printout identifying dates, frequencies, and times of police

responses relating to a licensed premises together with backup "incident" reports; it is another concept altogether to offer as proof of "police incidents" a summary printout. To the extent that it shows police responses to the general vicinity of the licensed premises, it has been considered. Evid. Rule 63 (13). Finally, I consider the record in this matter to include those exhibits marked at the original disciplinary proceedings, but not timely provided to the Administrative Law Judge, as indicated in a footnote on page two (2) of the Initial Decision. They are deemed admissible for the same reasons I have expressed as to the transcripts above. See, also, N.J.A.C. 13:2-17.15.

The Royal Manor is located on the corner of Route 35 and Wall Church Road, within the Township of Wall, in an area in which business uses are permitted. Within the immediate vicinity are a diner and restaurant; both non-licensees. Adjacent to the licensed premises is a motel. The total business complex of the licensee is 7.5 acres, 5.8 acres of which across Wall Church Road are used exclusively as a parking lot. The licensed premises is approximately twelve (12) to fifteen (15) thousand square feet, with four (4) entrances. The main entrance faces Wall Church Road.

According to the principal officer of the licensee, the public area within the licensed premises is divided into three rooms: (1) The "Speakeasy" or "Rock" room, in which live "rock and roll" musical entertainment is provided, contains six bars. (2) The "Playpen" or "Game" room, in which go-go dancers perform and pinball and other amusement games are made available, contains one bar, and, (3) The "Disco" room, in which a lighted dance floor is provided, contains two bars. Based on experience and common knowledge, I infer that amplified music, probably recorded, is provided to the latter two rooms to promote dancing, go-go or otherwise.

The licensee acquired the business approximately seven years ago. Prior to that time, the business was a night club and catering hall, with a full kitchen. Subsequently, the kitchen was removed. On occasion since then, steamed hot dogs and other snacks have been the only food available to patrons.

The licensee attributes business success to the "atmosphere" of the establishment. One of the "secrets" of the same has been the floor layout of the interior premises, i.e., "... where you can roam and walk around and look at the clientele. .." "...strictly a place to find a date..." Clearly, the record establishes that the three special conditions here on appeal direct themselves to the heart of the licensee's business; that is, the nature of its "atmosphere".

The three special conditions in issue are:

No. 2 That alcoholic beverages be sold on the licensed premises only in connection with the operation of a restaurant on the premises.

No. 3 That the sale and service of alcoholic beverages pursuant to the aforesaid license be limited to patrons seated at tables in dining areas.

No. 10 That no rock music shall be played on the premises.

Although the licensee could have been conducting business since October 28, 1979, during the pendency of this appeal, the license remains inoperative. A quotation from the Initial Decision places the relevant history in proper context:

"For approximately six or seven years of operation prior to 1978, the only disciplinary action against Royal Manor was a single charge brought by the Division of allowing females to participate in a wet T-shirt contest. In the middle of July 1978, however, immediately after reissuance of its liquor license for the 1978-79 term, a serious incident occurred on the premises involving the death by beating of a young man. Two Royal Manor's employees were convicted of atrocious assault and battery in connection with this death and another employee was convicted of simple assault and battery. Related disciplinary action taken by the Township resulted in a 312-day suspension running consecutively to a 50-day suspension imposed for the wet T-shirt offense, so that the liquor license of Royal Manor has been under suspension for a total of 362 days ending on October 27, 1979." at pg. 3

The record in this matter reveals that between May 1977 and May 1978 the number of incidents reported to the police regarding problems at or in the vicinity of the Royal Manor (232) were four times greater than any other of the 13 licensees within the Township, the next largest number being 62. While it may be observed that some of the police responses were generated by the management or alarm system of the Royal Manor, and that some of the Township's other licensed premises may be smaller or were open only on a summer seasonal basis, the corroborative testimony of officers and backup "incident", accident and arrest reports establish a substantial record of complaints, primarily involving actual or potential patrons of the licensee. The record reveals numerous allegations of theft of female patrons purses, Controlled Dangerous Substance and assault arrests, parking violations and motor vehicle accidents, in, on, or about the licensed premises, its parking lot or the immediate vicinity.

These incidents occurred where one might reasonably conclude that the parties thereto were, or intended to be patrons of the Royal Manor or were somehow associating with its patrons. Additionally, residential neighbors complained about incidents of public sexual activity and lewdness, littering, trespassing, property damage and traffic congestion. Finally, subsequent to June 1978, the licensee was convicted of violations involving the Township's "maximum capacity" Ordinance (also in violation of a previous 1978-79 special condition), and the tragic, fatal beating of a patron occurred on the licensed premises for which two employees were ultimately convicted.

As I have already heretofore determined, when the Township Committee met to review the 1979-80 renewal application in June 1979, it properly considered the total record of recent history of the licensee's conduct. If the Committee had refused to renew the license on that record, it would have properly exercised its authority. Nordco, Inc., Downie, 279 Club, supra. However, it determined that the non-renewal was too "extreme" an action and concluded that the "license should not be renewed except upon certain such conditions".

It is quite obvious that the compulsory change in this business from an entertainment night club which did not serve food to a facility which would primarily be a restaurant as defined in N.J.S.A. 33:1-1(t), would alter the "atmosphere" and draw a different, more mature, patronage. The latter goal is justified and consistent with Title 33 on this record. N.J.S.A. 33:1-32. While I question the "expert" characterization of the appellant's proofs on the economic considerations, I agree that its impact will not be di minimus. (In fact, there is a paucity of competent testimony from any witness possessing the background and experience in the sales and installation of restaurant fixtures in this geographical area that could be considered qualified as an expert.) I observe that the Committee's determination to suffer the appellant's continued licensure as a restaurant only, as opposed to non-renewal, was an equitable exercise of discretion. Restrictive liquor regulations may, and of times do, result in individual hardships. However, where larger social interests justify a restrictive policy, private interests must give way. Dal Roth, supra 28 NJ Super at p. 255, See, Nordco, Inc., supra 43 NJ Super at p. 289.

I reject the basic conclusion of the Administrative Law Judge, that is, that the condition is unreasonable because the licensee and a potential restaurant competitor believe that a restaurant cannot be a business success at this location. A license is a privilege to conduct business in a strictly regulated industry. As initially issued, it may or may not be the subject of restrictions or special conditions. If a licensee engages in a business activity contrary to the alcoholic beverage policy of this State or places in jeopardy the public safety or becomes the situs of a community nuisance, it may be disciplined and be the subject of denial of renewal. The privileges attendant to any license issued under Title 33, with or without restrictions or special conditions, do not include a guarantee of business success

or profit. The decision of the Township Committee represents a reasonable exercise of discretion based on the evidence presented. Lyons Farms Tavern, supra 55 NJ at p. 307. Thus, I reject the recommendation of the Administrative Law Judge and affirm special condition No. 2.

Consistent with the foregoing determination, I also affirm special condition No. 3 as modified. The phrase "in dining areas" is stricken as inconsistent with the definition of restaurant, N.J.S.A. 33:1-1(t), and special condition No. 2.

Finally, I agree with the recommendation of the Administrative Law Judge to reject the prohibition that "rock music" not be "played". If I could determine from the record or the face of the special condition itself whether it is the intention of the Committee to prohibit all musical entertainment, recorded music, live music, amplified music or even what "rock music" is, my decision might be otherwise. Since the licensee could face disciplinary action for a violation of the special condition, N.J.S.A. 33:1-32, "due process" considerations mandate that I reject as vague and unreasonable said special condition No. 10.

Upon review of the filed Exceptions not incorporated within the discussion and conclusion above, I find that within the context of this final determination, they do not warrant specific attention and are without merit.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Initial Decision, the written Exceptions and responses thereto, I reject the recommendation of the Administrative Law Judge with respect to special condition No. 2 and affirm the Township Committee and adopt the recommendations of the Administrative Law Judge in affirming and modifying special condition No. 3 and in affirming special condition No. 10.

Accordingly, it is, on this 11th day of January, 1980,

ORDERED that the action of the Township Committee in imposing special condition No. 2 be, and is hereby affirmed, and it is

FURTHER ORDERED that the action of the Township Committee in imposing special condition No. 3 be, and is hereby affirmed as modified to strike "in dining areas", and it is

FURTHER ORDERED that the action of the Township Committee in imposing special condition No. 10 be, and is hereby rejected, and, it is

FURTHER ORDERED that a copy of this Conclusion and Order be immediately forwarded to the Appellate Division of the Superior Court, which has retained jurisdiction.

JOSEPH H. LERNER
DIRECTOR

INITIAL DECISION BELOW

A.H.S., INC. t/a ROYAL MANOR,)	
Appellant)	<u>INITIAL DECISION</u>
v.)	OAL Dkt. No. ABC 5179-79
TOWNSHIP COMMITTEE OF THE)	AGENCY Dkt. No. 4397
TOWNSHIP OF WALL,)	
Respondent)	

APPEARANCES:

Warren W. Wilentz for appellant A.H.S., Inc., t/a Royal Manor (Wilentz, Goldman & Spitzer, attorneys)

John Jay Mangini for respondent Township Committee of the Township of Wall (Mangini, Gilroy and Cramer, attorneys)

BEFORE THE HONORABLE KEN R. SPRINGER, A.L.J.:

This matter concerns an appeal to the Division of Alcoholic Beverage Control ("Division") by A.H.S., Inc., t/a Royal Manor ("Royal Manor") from the effect of certain conditions imposed by the Township of Wall ("Township") upon renewal of its liquor license for the 1979-80 term and approved by the Director of the Division ("Director") pursuant to N.J.S.A. 33:1-32.

Procedurally, the case arose as follows: By Resolution adopted June 27, 1979, the Township Committee of Wall Township renewed the plenary retail consumption license of Royal Manor subject to ten special conditions, three of which are involved in this proceeding. On July 19, 1979 and again on August 7, 1979, counsel for Royal Manor wrote to the Director stating his objections to all conditions and asking that they be disapproved. Subsequently, on August 8, 1979 the Director issued an ex parte determination rejecting two of the conditions and approving the remaining eight including the three presently in dispute. On or about August 17, 1979 Royal Manor instituted the instant appeal by filing a notice of appeal and supporting petition with the Division. Shortly thereafter, on or about August 29, 1979 Royal Manor also filed an appeal to the Superior Court of New Jersey, Appellate Division, from the Director's ex parte determination, thereby divesting the state administrative agency of jurisdiction to hear the pending appeal. R. 2:9-1(a). In connection with its Appellate Division appeal, on November 8, 1979 Royal Manor made

application to the Director for a stay of his ex parte determination, which application was denied on procedural grounds. Thereupon, on December 3, 1979 Royal Manor applied directly to the Appellate Division for a stay of the agency determination during either an accelerated appeal or, alternatively, during a remand to the agency for further consideration. While retaining jurisdiction of this matter, the Appellate Division denied the stay and remanded the case to the Division for the development of a factual record. Specifically, the Order entered by the Presiding Judge of the Appellate Division on December 4, 1979 directed that the matter be remanded,

"...for the purpose of holding a hearing, making factual findings and rendering a determination with respect to the validity of special conditions 2, 3 and 10 within twenty (20) days of the date of this Order."

Meanwhile, the matter had been transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. In accordance with the Appellate Division's instructions, a hearing was held on December 14, 1979. All parties were given an opportunity to be heard and to cross-examine witnesses.

During the course of the hearing, the following documents were received in evidence:*

- | | |
|-------------|---|
| Exhibit J-1 | A copy of various documents attached as exhibits to the Statement of Proceedings in Lieu of Transcript constituting the procedural history. |
| Exhibit R-1 | Transcript of proceedings before the Township Committee of the Township of Wall on August 17, 1978. |
| Exhibit R-2 | Transcript of Proceedings before the Township Committee of the Township of Wall on August 22, 1978. |
| Exhibit R-3 | Transcript of Proceedings before the Division of Alcoholic Beverage Control on September 6, 1978. |

*

Several exhibits entered into evidence at the proceedings before the Township Committee on August 17, 1978 (see Exhibit R-1 at page 2B) and the Division on September 6, 1978 (see Exhibit R-3 at page 1) were offered into evidence by the Township, despite the fact that the actual documents were not in possession of the offering party. At the hearing, it was ruled that such exhibits would be received if they were made available before the end of the day. None of these exhibits having been delivered to the Office of Administrative Law within that deadline, they were not considered in making this determination.

- Exhibit R-4 Transcript of Proceedings before the Division of Alcoholic Beverage Control on September 7, 1978.
- Exhibit R-5 A copy of a Resolution of the Township Committee of the Township of Wall adopted June 27, 1979.
- Exhibit R-6 A copy of a certified computer printout of Incident Reports from the Police Department of Wall Township covering the period August 9, 1978 through October 13, 1978.
- Exhibit P-1 A diagram of the licensed premises prepared by Arthur H. Stock at the administrative hearing on December 14, 1979.

As set forth in the Resolution adopted by the Township Committee of Wall Township on June 27, 1979, marked Exhibit R-5, the three relevant conditions are:

- No. 2. That alcoholic beverages be sold on the licensed premises only in connection with the operation of a restaurant on the premises.
- No. 3. That the sale and service of alcoholic beverages pursuant to the aforesaid license be limited to patrons seated at tables in dining areas.
- No. 10. That no rock music shall be played on the premises.

Under the rules of the Division, N.J.A.C. 13:2-17.6, a presumption of regularity attaches to the action of the licensing authority and "...the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with the appellant."

To put this matter in its proper context, some background information is helpful. For approximately six or seven years of operation prior to 1978, the only disciplinary action against Royal Manor was a single charge brought by the Division of allowing females to participate in a wet T-shirt contest. In the middle of July 1978, however, immediately after reissuance of its liquor license for the 1978-79 term, a serious incident occurred on the premises involving the death by beating of a young man. Two of Royal Manor's employees were convicted of atrocious assault and battery in connection with this death and another employee was convicted of simple assault and batter. Related disciplinary action taken by the Township resulted in a 312-day suspension running consecutively to a 50-day suspension imposed for the wet T-shirt offense, so that the liquor license of Royal Manor has been under suspension for a total of 362 days ending on October 27, 1979.

In support of the reasonableness of the conditions, the Township called Joseph N. Ehret ("Ehret") who has served as Administrator of Wall Township since March 1973. His duties in that capacity include attendance at all work sessions and meetings of the Township Committee, drafting the agenda for executive meetings and preparation of background material for members of the Committee. He personally attended the public meetings of the Township Committee leading to its decision to impose conditions on the renewal of Royal Manor's license and is thoroughly familiar with the concerns expressed by the governing body.

According to Ehret, the Township Committee was disturbed about the large number of complaints made in the past against Royal Manor. When the Township had renewed Royal Manor's prior license for the 1978-79 term, it already imposed various conditions such as a provision against overcrowding and a requirement that a fire sprinkler system be installed. Nevertheless, Ehret indicated, Royal Manor had not adhered to these earlier conditions. When imposing new conditions with respect to the 1979-80 term, the Township's purpose was to control the overcrowding problem, minimize the danger from fire, maintain the orderly operation of the premises, eliminate excessive noise and protect the health and safety of the public. Although the Township Committee had discussed permanent revocation of the liquor license, ultimately it decided to take the less drastic approach of renewing the license with stringent conditions.

Ehret further testified that numerous incidents have occurred, demonstrating that the owner of Royal Manor has been lax in enforcing applicable regulations. Even during the pendency of disciplinary charges instituted in July 1978, many instances of overcrowding, fights in the parking lot and other disorderly behavior continued to occur. Reference was made by Ehret to the computer printout of police records marked Exhibit J-6 showing frequent visits by police between August and October 1978 to investigate complaints of larceny, assault and battery, vandalism and other offenses occurring at or near the licensed premises. It should be noted that this exhibit does not reveal the eventual disposition made of any of the complaint. Nor does it disclose whether the complaints were made against the management or employees of Royal Manor or against some other person.

On cross-examination, Ehret conceded that the municipality did not bring additional disciplinary charges against Royal Manor arising out of any of the incidents mentioned in the computer printout. The last time he had personally visited Royal Manor was approximately two years ago. He described the business conducted on the premises at that time as a "disco-type operation." So far as he knew, the Township Committee never consulted with the owner of Royal Manor or with any expert regarding whether it was feasible to operate a restaurant rather than a discotheque at this location. Other discotheques in town also had experienced incidents of overcrowding and were subjected to various conditions regarding their business, but not the particular conditions here involved.

