

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 2373

October 27, 1980

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - THE BAN-SHEE v. SAYREVILLE.
2. APPELLATE DECISIONS - COBOSKO ENTERPRISES, INC. v. PAULSBORO.

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 2373

October 27, 1980

1. APPELLATE DECISIONS - THE BAN-SHEE v. SAYREVILLE.

#4325

The Ban-Shee :
t/a King's Harem, :
Appellant, :
vs. :
The Borough of Sayreville, :
Respondent. :
-----:
CONCLUSIONS
AND
ORDER

Dean Anglin, Esq., Attorney for Appellant.
Robert A. Blanda, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: December 12, 1979 - Received: December 17, 1979

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the respondent pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, the respondent argues that there was sufficient credible evidence in the record before the Mayor and Council to support its findings predicated upon the observation of its witnesses.

At the outset, it must be emphasized that the procedure herein is an appeal directed to the action of the local issuing authority in a disciplinary matter it commenced in accordance with N.J.S.A. 33:1-31. The Mayor and Council's standard for disposition was whether the violations were established by a preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 NJ 373 (1956). If the facts were not established, no amount of discretion would have mattered. Except for the penalty imposed, they had no discretion in determination of the charges. Fanwood v. Rocco, 57 NJ Super. 306, 315-319 (App. Div.), aff'd 33 NJ 404 (1960).

On appeal to this Division, the ultimate test is whether the issuing authority, acting as reasonable persons in a reasonable manner could have arrived at their determination upon the evidence presented? The determination should not be disturbed unless the action of the issuing authority was not reasonable,

was predicated upon unwarranted findings of fact, or was based upon a mistake of law. Hudson Bergen, etc., Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 NJ Super. 277 (App. Div. 1957).

In the application of these fundamental principles to the matter, sub judice, I am satisfied that the proofs adduced and the inferences reasonably derived therefrom are insufficient to support the conclusion that the appellant was guilty of these violations by a preponderance of the credible evidence.

Clearly, there was evidence of activity that could constitute a violation in certain situations. However, there was also rebuttal evidence produced by the appellant which is not incredible, and, in conjunction with the respondent's failure to establish the necessary elements in certain of the charges, i.e., (a) the existence of a duly imposed, Division approved, Special Condition re security guards; (b) that the licensee allowed, permitted or suffered the nuisance activity of its patrons, to wit, that the fight was not a spontaneous, immediate flareup promptly quelled by appellant or (c) that the patron's activity in the parking lot could have been reasonably anticipated or avoided by the exercise of due diligence, I concur with the Administrative Law Judge's determination that the Mayor and Council's findings of fact are unwarranted. Therefore, I reject the Exceptions of respondent as without basis in fact.

Having carefully considered the entire record herein, including the transcript of the testimony, the Exhibits, the written Summations of the parties, the Initial Decision Below and the written Exceptions filed thereto by the respondent, I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein, as supplemented.

Accordingly, it is, on this 28th day of January, 1980,

ORDERED that the action of the Mayor and Council of the Borough of Sayreville be and the same is hereby reversed, and the appellant be and is hereby found "not guilty" of the charges preferred therein.

Joseph H. Lerner
DIRECTOR

Appendix - Initial Decision Below

In the Matter of:

BAN-SHEE, t/a
KING'S HAREM

vs.

MAYOR AND COUNCIL
OF THE BOROUGH OF
SAYREVILLE

INITIAL DECISION

OAL DKT. NO. ABC 1551-79
AGENCY DKT. NO. 4325 7332

APPEARANCES:

A. Kenneth Weiner, Esq.
by: Dean Anglin, Esq.,
attorney for Petitioner

Robert A. Blanda, Esq.
attorney for Mayor and Council

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is an appeal from an action of the Mayor and Council of the Borough of Sayreville, which by Resolution and Order dated March 21, 1979, suspended Appellant's Plenary Retail Consumption License No. 0219 33 005 001 for premises located at Route 35, Sayreville, New Jersey. Said suspension was to become effective April 9, 1979 and continue until April 19, 1979 for a total suspension period of 10 days.

Upon the filing on March 29, 1979 of a Petition of Appeal, the director of the Division of Alcoholic Beverage Control granted a stay on April 4, 1979 of the Order of Suspension pending determination of this appeal. The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on October 12, 1979 and the final letter memoranda were received on October 25, 1979.

The issues of the hearing are whether or not the action of the Council was arbitrary, capricious and not consistent with the evidence adduced. The Council's answers indicate that they heard sufficient credible testimony from officers and a neighbor living in the immediate vicinity as to conduct which constituted a nuisance and in violation of a prior resolution of the Mayor and Council. They also contend that the pro-

OAL DKT. NO. ABC 1551-79

posed suspension for a period of 10 days was not excessive in view of the serious nature of the complaints.

The Borough presented six witnesses. Officer Robert Nita, Sergeant Edward Rappleyea, Patrolman Benjamin Bardes, Patrolman Edward Szkodny, Officer Philip McCutcheon, and Steven Lizik who testified.

Officer Nita testified he was on duty on January 23, 1979 and received a call to respond to the property owned by Mr. Lizik, which is located next to the Ban-Shee. Upon arrival there he observed that approximately 15 windows had been broken in Mr. Lizik's greenhouses sometime during the evening by rocks. He described the rocks as being triangular type in nature and that they were the same that could be found in the area as well as in the parking lot for the Ban-Shee.

Under cross examination he described the rocks as being pointed at the ends and darkish in color. He stated that there are three greenhouses located on the Lizik's property which is situated between the Ban-Shee, t/a King's Harem and the Club 35. The damage he observed was on the top, sides and on the gable ends of the greenhouses. When questioned with regard to the distance between the greenhouse and the parking lot at King's Harem, he stated that it was approximately 50 to 75 feet. On further examination he stated that a portion of the Club 35 building is only a matter of 10 or 15 feet from one of the greenhouses and also contains the type of rocks as previously described.

Under redirect examination it was brought out that the greenhouse bearing the damage described was located closer to the Ban-Shee property than that of the Club 35.

Under recross examination, he admitted that all the damage was not done to just one of the greenhouses but to two of them and that said greenhouses run parallel to Route 35. Additionally, he described the Lizik property as having an open area between Route 35 and the greenhouses and that an access road, which also bears small angular rocks also runs on said property.

Sergeant Rappleyea testified that he was on duty on January 27, 1979 and was assigned the duty of checking out the parking lot area of Ban-Shee, t/a King's Harem. He made his first check at 8:46 p.m. and the second check at 9:31 p.m. He stated he was on the property just a matter of seconds or the

OAL DKT. NO. ABC 1551-79

amount of time that it took for him to ride around the building and check if there was a parking lot attendant outside. He did not, on the two occasions that he made his checks, detect the presence of a parking lot attendant and so noted it on his report. During his observations, he noted that there were vehicles parked in the parking lot but did not see any persons in the vehicles or outside the building at all.

At approximately 11:15 p.m., he made another check of the premises at which time he observed a Larry Coppolla, who identified himself as the parking lot attendant. He, in conversing with Mr. Coppolla, was able to determine that he had not been there on the previous occasions that he made his checks of the parking lot.

Under cross examination, he again admitted that his first two passes only took a matter of seconds to go through the lot and that on the third pass he was confronted by Larry Coppolla as he entered the lot. He also admitted that he only asked Mr. Coppolla where he was before that time and Mr. Coppolla's response was that he was not there.

When questioned with regard to the nature of the weather on the date in question, he stated that it was cold. When asked how many automobiles were in the lot he stated approximately 15 or 20 and again that no one was in any of the vehicles. When specifically asked about Mr. Sak's van, he stated that the van was there but that he didn't particularly check in the van. At this time, he recanted his previous testimony and stated that he exited his vehicle on the two earlier occasions and looked around and saw no one.

Patrolman Bardes testified that he was on duty on January 25, 1979 at approximately 4:55 p.m. and during that time he had occasion to go to King's Harem's parking area. He stated that he went to the parking lot at 5:35 p.m., 6:57 p.m., 8:06 p.m., 8:55 p.m., 10:18 p.m. and 11:14 p.m. and that on the first four occasions, he did not observe a parking lot attendant outside. His testimony was that he spent approximately three to five minutes on each occasion counting the number of vehicles, checking to see if anybody was in the vehicles and to look for the parking lot attendant around the building and did not observe any. At 10:18 p.m. as he was pulling into the lot, he was stopped by Larry Coppolla, who identified himself as being the parking lot attendant.

OAL DKT. NO. ABC 1551-79

Under cross examination he admitted that this was the first occasion that he had been to the lot to check the parking attendant and that he was not familiar with Mr. Coppolla or anyone else prior to that date. He admitted that on the past occasions he was at the premises he did not exit his vehicle but merely made his observations from inside same. He was unable to identify the owner's van or remember whether any vans were in the lot at the time in question. He admitted that all the vehicles parked in the lot are either in the front or the side and that he vaguely recalled one vehicle being parked by the dumpster all the way in the back of the property.

Patrolman Szkodny testified that he was on duty on January 26, 1979 at approximately 12:45 a.m. and while on duty had occasion to make several checks of the parking lot of King's Harem. His first check was made at 7:00 p.m. and he observed approximately 20 vehicles parked in the parking lot and that no parking lot attendant was present. At 8:55 p.m., there were approximately 30 vehicles in the parking lot and again no parking attendant was observed. Finally, at 10:20 p.m., there were approximately 45 vehicles in the parking lot and again he did not observe any attendant being present. During these times that he made these observations, he also noted that persons were in the parking lot coming to and from their vehicles and entering the tavern. He stated that he did not see Mr. Coppolla at all on said various occasions, that he was present and that he only remained on the premises approximately two minutes.

Under cross examination he testified that he knew Mr. Coppolla but that he did not know any of the other parking lot attendants by name and by sight he only knew one other fellow that used to work there but he could not identify him. He admitted that the weather at the time was cold. When questioned with regard to Mr. Sack's van being in the lot on the evening in question he stated he did not recall whether or not it was.

Officer McCutcheon testified that on January 28, 1979 he had occasion to be on duty. While on duty at approximately 1:30 a.m. he observed King's Harem and did not note an attendant in sight. He made several passes around the building but did not see anyone in the area. At 1:56 a.m., he was again in the area of King's Harem, more particularly across the street on Fairview Avenue and he observed the attendant, Larry Coppolla, to exit the front of the building and remain outside for a few minutes and go back in. At 2:00 a.m., he observed an individual, later identified as Rients Wartena of New Brunswick, to exit the front of the building, go to the rear of same of the parking area and to urinate

OAL DKT. NO. ABC 1551-79

on the ground. At that time he was issued a complaint for said offense. He stated that when he was issuing the complaint, Mr. Coppolla was not present nor did he observe him at that particular time. At 2:40 a.m., he observed the outside lights turned on in the front and that patrons started to exit the establishment. At 3:00 a.m., he observed two white males having a fight in the front of the premises and that several people, including the attendants, were standing by. He went to the area approximately a minute later and the fight had stopped but he could not identify any of the parties involved.

Under cross examination, he stated that at 2:40 a.m. he was across Route 35, approximately 150 feet from King's Harem. He, after observing the fight at 3:00 a.m., did not recognize any of the individuals involved in same. He approached the individuals outside and questioned them with regard to the altercation but was unable to receive any information with regard to same. He was able to identify two of the employees that were present at the time of the altercation, one Mr. Calogrides and Mr. Coppolla but again was unable to identify the individuals who were actually involved in the altercation.

Under direct examination by the Court, he admitted that he had been ordered to surveil the Ban-Shee on the night in question by his superior officer. He also admitted that there are other liquor establishments in the Borough of Sayreville that they check but only when complaints are received.

Under redirect examination the officer was asked whether or not he was aware of any resolution made by the Mayor and Council of the Borough of Sayreville with regard to this licensee and the officer responded that he was and had seen a copy of said resolution. He stated one of the conditions on the license was that a parking attendant was to be on duty to help control the flow of patrons.

Mr. Lizik testified that he owns the property adjacent to the Ban-Shee on Route #35. He stated that on January 25, he called the Sayreville Police Department and advised them that his greenhouses, which are located on his property, had sustained damage from vandals. More particularly, several of the windows had been broken. He described the areas that had been broken as being the roof and vents as well as in the gable end of the greenhouse. The greenhouse in question is located approximately 50 to 60 feet from King's Harem. Inside the greenhouse he found beer bottles and blue stones. He stated that King's Harem's parking lot contains the same type of blue stone as found in his premises.

OAL DKT. NO. ABC 1551-79

He again called the police on January 27th and complained about more broken windows and again observed bottles and stones within his greenhouse. He admitted that he never observed the windows being broken and stated that there were no stones like the ones located on the Ban-Shee property within 150 feet or more of his premises. When questioned whether any of his other greenhouses had broken windows, he stated yes, in the front.

Under cross examination, he stated that the closest corner to Route 35 Lounge is approximately 100 feet. When asked to draw the diagram he stated he could not. He then admitted that the corner of Route 35 Lounge is located approximately 15 feet from one of his greenhouses.

Under examination by the Court he stated that one of the greenhouses, the one closest to Route 35, is not in use, it is boarded up and that it was the other two greenhouses which sustained the damage. The two greenhouses that sustained the damage, are between the King's Harem and the Route 35 Lounge.

The state then rested its case.

The Petitioner, Ban-Shee t/a King's Harem, called Larry Coppolla as its first witness.

Mr. Coppolla testified that he was employed at King's Harem as a parking lot attendant and has been so employed for over one year. In addition to himself, there is one other employee responsible for the parking area, that being Jimmy Tiernan, who was his back-up attendant. He was then questioned with regard to January 26 through 29 as to whether or not he was on duty on those dates in question and he stated that he worked part-time on the 27th and all the other times he was present. On the 27th of January he reported to work at 11:00 p.m. relieving Jimmy Tiernan. The weather on the dates in question was described as being extremely cold. His duties as a parking lot attendant are to put up barricades next door at the tuxedo shop prior to attending to his other duties on the premises, and that he did so on all the dates but the 27th. He testified that he made all his observations of the parking lot either from the front door by cracking it partly or from the side or rear doors. He, in addition was reluctant to come outside on the dates in question because it was extremely cold. He described his activities on the dates in question as constantly rotating the doorways at which he stood during the various hours of the evening.

OAL DKT. NO. ABC 1551-79

He also stated that on occasion, he sat in the employer's van and made his observations because the windows are dark tinted and you can only see out and not in.

He was then questioned with regard to the date of January 28, 1979 when Officer McCutcheon had witnesses what he thought was a fight in front of the bar at 3:00 a.m. He stated that he was on duty and the two persons involved in the horsing around were sheriffs officers. He stated that they are frequent customers of the establishment and that they always horse around in the manner observed on the night in question.

Under cross examination he was asked if he recalled testifying before the Borough Council in March of 1979 about his coming in part-time on one day and he said he did not recall. He was then asked if he knew the police officers who testified in court and he said that he knew them all and that they would enter the lot and ride around in their patrol vehicles and exit it. He said he once and a while would come out and talk to the officers but that he could not keep going in and out of the building since it was cold outside and he had to keep moving to his various locations in the building. He described the parking lot of Ban-Shee as being horseshoe shaped with only one space on the right side of the building for a vehicle and the remainder of the parking spaces in the rear and to the left side. He admitted that most of the parking was done on the Lizik side of the property.

Gary Grant, the manager of King's Harem, who has been so employed for the past year, said that he was the night manager on the dates in question. He recalled the horseplay between the two officers and clarified the record by stating that they were Monmouth County Correction Officers. He was questioned about why the lights were turned on and off on the premises and he stated that the lights are turned off at 2:00 a.m. to discourage any new patrons from entering the establishment and they are turned back on at 2:40 a.m. to permit the patrons to exit the premises by 2:45 a.m. He was asked whether he recalled Mr. Sacks, the owner of the premises, bringing his dog inside on the night in question, and he stated yes, that is the normal procedure at the establishment since the dog is used for guard purposes at night.

He was questioned with regard to the parking lot attendants and stated that he has more than one parking lot attendant but his primary one is Larry Coppolla, who when he is not on, is relieved by Jimmy Tiernan. He said the property on which King's Harem is situated is north of Mr. Lizik's but faces Route 35 highway. He also said the parking area for King's Harem is on

OAL DKT. NO. ABC 1551-79

the south side and in back and that the greenhouses of Mr. Lizik are along the back and on one side.

The Route 35 Lounge he stated was closer to the Lizik property, as far as the buildings were concerned and their parking lot, which was in the front of the old greenhouse, was approximately 50, 55 or 60 feet from the closest other greenhouses. He was asked about the damages that Mr. Lizik sustained as to whether or not he viewed the premises, but he stated he had not. He stated they do not sell any beverages for off the premises consumption and serve no beer in bottles since all their beer is draught. He then testified with regard to the dates of January 26, 27, 28 and 29 and stated that Mr. Coppolla was on duty on all but the 27th and that Mr. Tiernan worked in his place until Mr. Coppolla arrived at approximately 11:00 p.m. He said on cold days surveillances are made by the parking lot attendants from the many entrances and exits within the premises. This is done so that the parking lot attendant will not get too cold since there is no shelter on the exterior of the premises for them to stand in. He described the various observation points as those having previously been described by Mr. Coppolla. He said on the 27th he was off duty but was at the premises to relax and have a good time.

He was questioned with regard to the black rock testified to by Mr. Lizik as having been thrown through the windows of his greenhouse and he said that that type of rock can be found in the parking lots of many of the premises in the area as well as along the sides of Route 35.

Under cross examination he was asked how he could recall being on the premises on January 27th, which was a Saturday, and he said that he is usually at the establishment on Saturday evenings. He was then questioned with regard to the period of time that the parking lot had been unpaved and whether or not loose stones had been brought in to cover a portion of the parking lot that had a septic system put in. He answered affirmatively.

Under cross examination by the court, he was asked if he knew how beverages were served at the Route 35 Lounge and he stated it was in draft and bottle. He admitted that he has never been to the Route 35 Lounge.

Mr. Coppolla was then recalled and when questioned with regard to whether or not Route 35 Club serves bottles of beer, he stated they do and that he was in the premises during the January period and observed them to serve their beer in bottles.

All parties then rested their case.

The witnesses who were present and testified with regard to both sides were credible, sincere and honest and appeared to strive to be fair in their testimony. After having observed all the witnesses closely and after having considered the entire record, including the testimony and exhibits submitted into evidence together with the arguments of counsel, the court makes the following Findings of Fact:

1. That on January 23, 1979 or sometime during the early morning of that date, 15 panes of glass were broken in the greenhouses on the Lizik property by rocks and bottles.
2. That on January 26, 27, 28, and 29, 1979, officers of the Sayreville Police Department made observations of the parking lot by driving through same.
3. That on some of the occasions, they made surveillances of the parking lot, attendants were not observed.
4. That Ban-Shee, t/a King's Harem is the owner of liquor license number 1219 33 005 001.
5. That an observation was made as to what appeared to be a struggle between two individuals on the night or morning hours of January 28, 1979.
6. On March 21, 1979, the Municipal Council of the Borough of Woodbridge by way of Resolution suspended Appellant's liquor license for 10 days effective April 9, 1979 concluding on April 19, 1979.

The ownership of an alcoholic beverage license is a privilege and not a right and should be protected as such. The decision of the Borough Council should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion or unwarranted findings of fact or mistake of law by the council.

It is clear that the windows on the Lizik greenhouses were broken on January 23, 1979 but due to the fact that beer bottles were involved in the breaking of some of the windows and that the establishment of the Ban-Shee does not sell beer in bottles, there is insufficient evidence to convince the Court that patrons of the Ban-Shee committed said violations.

Therefore, the Court with regard to that particular charge finds that the Borough Council clearly abused their discretion in finding that the Respondent or one of its patrons committed said offense. I therefore dismiss or find the Respondent not guilty on that particular charge.

It is also clear that on January 28, 1979, a police officer observed what he felt to be a fight on the premises but the court finds that with regard to that charge the testimony clearly established that no fight took place and was only a case of horseplaying between two patrons who were partners at work and close friends. The testimony of the officer did not establish in the Court's mind that in fact what he observed was fighting and not horseplay. Therefore, the Court finds that the Borough Council of Sayreville abused its discretion and made an unwarranted finding of fact with regard to that particular charge and the court finds the respondent not guilty on same.

Finally, it is clear that on January 26 through January 29th, officers of the Borough of Sayreville, on making several observations did not observe a parking lot attendant on those various days. The Court cannot conclude from the testimony of the officers that (1) no parking lot attendant was on duty or that if he was on duty he was not properly observing the parking lot; (2) that there was no evidence produced with regard to any specific resolution that requires a parking lot attendance to be outside the premises at all times or that he is to make his attendance known whenever a police officer is making a surveillance of the parking lot. Since the Borough of Sayreville failed to convince the court by a preponderance of the evidence that on January 26, 27, 28 and 29 no parking lot attendant was on duty on the various hours of the evening, this court finds that the respondent is not in violation of a Borough resolution requiring them to have a parking lot attendant on duty at all times.

Accordingly, it is HEREBY ORDERED that the suspension of the license of the Ban-Shee, t/a King's Harem by the Mayor and Council of the Borough of Sayreville be REVERSED and that the complaint against Ban-Shee t/a King's Harem be DISMISSED.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

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.

2. APPELLATE DECISIONS - COBOSKO ENTERPRISES, INC. v. PAULSBORO.

#4359

Cobosko Enterprises, Inc., :
Appellant, : CONCLUSIONS
vs. : AND
Borough Council of the Borough : ORDER
of Paulsboro, :
Respondent. :
-----:
Novack & Trobman, Esqs., by Malcolm H. Trobman, Esq.,
Attorneys for Appellant.
Herman, Pearson, Crass & Barry, Esqs., by Martin A. Herman, Esq.,
Attorneys for Respondent.

Initial Decision Below

Hon. J. Roger Persichilli, Administrative Law Judge

Dated: December 20, 1979 - Received: December 27, 1979

BY THE DIRECTOR:

Appellant appeals from the action of the respondent Borough Council of the Borough of Paulsboro which denied appellant's application for renewal of its plenary retail consumption license for the period expiring June 30, 1979, for premises located at 1100 Delaware Street, Paulsboro.

The license period was extended by order of the Director dated June 29, 1979 pending the determination of the said appeal.

Upon answer filed, the matter was referred to the Office of Administrative Law for a hearing therein. However, at the hearing therein, a stipulation of settlement was entered into by the parties hereto on December 20, 1979, a true copy of which is attached to the Initial Decision, which provides, among other things, that the plenary retail consumption license of the appellant be renewed nunc pro tunc effective July 1, 1979, subject to special conditions set forth therein.

Since the matter has been amicably settled by the parties hereto, and the said settlement has been recommended by the Administrative Law Judge in the Initial Decision, I shall approve the said settlement and dismiss the appeal with prejudice.

Accordingly, it is, on this 4th day of February, 1980,

ORDERED that stipulation of settlement entered herein by the parties be and the same is hereby approved; and it is further

ORDERED that the appeal herein be and the same is hereby dismissed, with prejudice; and it is further

ORDERED that the Borough Council of the Borough of Paulsboro is hereby directed to approve appellant's application to renew its plenary retail consumption liquor license for the subject premises for the 1979-80 license term nunc pro tunc as of July 1, 1979.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

	<u>INITIAL DECISION</u>
COBOSKO ENTERPRISES, INC., APPELLANT	:
V. BOROUGH COUNCIL OF THE BOROUGH OF PAULSBORO, RESPONDENT	: DKT. NO. ABC 2863-79 4359 (AGENCY DKT NO.)

APPEARANCES:

Malcolm H. Trobman, Esq., of the law firm of Novack & Trobman, on behalf of the Appellant

Martin A. Herman, Esq., of the law firm of Herman, Pearson, Crass & Barry, on behalf of the Respondent

BEFORE THE HONORABLE J. ROGER PERSICILLI, A.L.J.

The appellant, a corporation of the State of New Jersey, appeals from a resolution adopted by the respondent on June 19, 1979 denying appellant's application to renew its Plenary Retail Consumption Liquor License No. 0814-33-004-001 for the period commencing July 1, 1979 and expiring June 30, 1980. The license period was extended by order, dated June 29, 1979, of the Director of the Division of Alcoholic Beverage Control pending a de novo hearing on the appeal sub judice.

The parties appeared before the undersigned on November 9, 1979 at the Gloucester County Court House, Broad and Delaware Streets, Woodbury, New Jersey. At that time, the parties had settled all disputed matters and entered their respective Stipulations on the record. The parties reduced the terms of their settlement by Stipulation and Order entered on December 20, 1979, a true copy of which is annexed hereto and incorporated herein by reference.

It is therefore, HEREBY ORDERED that the appeal presently pending before the Division of Alcoholic Beverage Control be and the same is HEREBY DISMISSED with prejudice.

This recommended decision may be affirmed, modified or rejected by the head of agency, Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

COBOSKO ENTERPRISES, INC.)	STATE OF NEW JERSEY
		Department of Law and Public Safety
Appellant,)	DIVISION OF ALCOHOLIC BEVERAGE CONTROL
v.)	OAL DOCKET NO. ABC 2863-79
BOROUGH COUNCIL OF THE BOROUGH OF PAULSBORO,)	STIPULATION AND ORDER
)	
Respondent.		

WHEREAS, this matter having been opened before the Honorable J. Roger Persichilli, Administrative Law Judge, at the Gloucester County Courthouse on November 9, 1979 and the parties through their respective attorneys Malcolm H. Trobman, Esq., appearing for the appellant, Cobosko Enterprises, Inc. and Martin A. Herman, Esq., appearing for the respondent, Borough Council of the Borough of Paulsboro, having agreed to the entry of the following Order subject to the acceptance and confirmation of said Order by the Director of the Division of Alcoholic Beverage Control;

It is on this 20th day of December, 1979, ORDERED as follows:

1. That the plenary retail consumption license of the appellant, Cobosko Enterprises, Inc. be and is hereby renewed, nunc pro tunc, effective July 1, 1979.

2. That appellant's plenary retail consumption license is hereby suspended for a period of 15 days, said suspension to be abated and not to be imposed until such time as the Borough of Paulsboro, in the manner provided in Paragraph 3 of this Order proves noncompliance of terms and conditions hereinafter set forth in said Paragraph 3; and further if at the end of the present license year, June 30, 1980 there is no proof of any violations then the 15 day suspension imposed herein shall be expunged.

3. The terms and conditions which shall attach to the operation of the Applicant's licensed premises through June 30, 1980, which if violated and proved in the manner hereafter described shall be:

- (a) Appellant shall engage a uniform guard on the exterior of the premises on the evenings of Thursdays through Sundays of each week, commencing at 8:00 p.m., said guards to commence work at 8:00 P.M. and remain through closing time; the names of those persons authorized to act as uniformed guards shall be furnished to the Chief of Police of the Borough of Paulsboro prior to their employment, provided, however, that in the event the applicant is required because of sickness or other reasons to substitute another

employee for the uniformed guard scheduled to work on that evening, the appellant shall notify the Chief of Police prior thereto of the substitute employee who will act as the uniformed guard; and

- (b) Appellant shall be required to police the public area on the outside of the licensed premises and the area surrounding said premises each morning for the removal of debris, including bottles, glasses and cans and further, licensee through its uniformed guards, agents, servants and/or employees will cooperate in stopping any public drinking taking place outside the licensed premises and to make reasonable effort to abate any unreasonable loitering or any other violation of law outside such premises such as gambling; and further licensee will cooperate through its agents, servants and employees in reporting any said violations to the Borough Police as well as agree to sign any complaints that may be required and to testify in support of those complaints in a Court of Competent Jurisdiction; and
- (c) Appellant agrees to keep the doors to the licensed establishment closed when patrons are present so that, to the extent possible, sounds may not emanate from the licensed premises;
- (d) The appellant agrees that no bar equipment such as stools and other equipment from inside the licensed premises will be taken outside those premises, other than for the purposes of cleaning.

4. In the event that the Borough of Paulsboro alleges noncompliance with the conditions specified in Paragraph 3 of this Order, proof of noncompliance shall be initiated by Notice of Motion by the Borough to the Director of the Division of Alcoholic Beverage Control, and in the event that the Director shall determine that the Borough's proofs are established, then the 15 day suspension provided for in this Order shall be imposed.

5. This Order shall in no way be deemed a merger of any penalty or other determination that may be imposed pursuant to a prior hearing held before the Division of Alcoholic Beverage Control in which Cobosko Enterprises, Inc. and the Borough Council of the Borough of Paulsboro are parties, the results of which hearing are now pending, the parties to exercise subsequent to such determination whatever rights they might have or to be bound by whatever obligations that might be imposed pursuant to that decision.

J. Roger Persichilli, Esq.
Administrative Law Judge

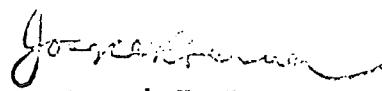
Dated: 12/20/79

We hereby consent to the entry and form of the foregoing Order.

MALCOLM H. TROBMAN, Esq.
Attorney for Cobosko Enterprises, Inc.

Martin A. Herman, Esq.
Attorney for Borough of Paulsboro

++++++



Joseph H. Lerner
Director