

Division of

**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

140 E. Front Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2470

SEPTEMBER 25, 1996

TABLE OF CONTENTS

ITEM

1. NOTICE TO INDUSTRY REGARDING COPS IN SHOPS - ATTORNEY GENERAL VERNIERO PRESS RELEASE.
2. NOTICE REGARDING DISCLOSURE POLICY.
3. NOTICE REGARDING INSTRUCTIONS FOR PETITIONING THE DIRECTOR TO REMOVE A RETAIL LICENSE FROM COD STATUS PURSUANT TO N.J.A.C. 13:2-24.4(g).
4. PARKWAY LIQUOR & DELI INC. V. P.P.P. USE, INC., AFZAL SHEIKH AND RIZWAN HAMEED, AND MAYOR AND COUNCIL OF THE TOWN OF GUTTENBERG - FINAL CONCLUSION AND ORDER ACCEPTING THE INITIAL DECISION AS MODIFIED.



New Jersey Department of Law & Public Safety

Division of

**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

140 E. Front Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2470

SEPTEMBER 25, 1996

1. NOTICE TO INDUSTRY REGARDING COPS IN SHOPS - ATTORNEY GENERAL VERNIERO PRESS RELEASE.

**ATTORNEY GENERAL PETER VERNIERO PRESS RELEASE
SUCCESSFUL RESULTS OF COPS IN SHOPS PROGRAM**

-- Effort to Deter the Sale of Alcohol to
Underage Drinkers Expanded --

Seaside Heights -- Attorney General Peter Verniero on July 31, 1996 announced that 363 individuals have been arrested statewide as a result of Cops in Shops, a program started in February to help curtail underage drinking in municipalities with large numbers of individuals under the age of 21.

Through the Cops in Shops program, launched this winter in 12 college towns that had expressed concerns about underage drinking, undercover law enforcement officers joined with local retail establishments to deter attempts to purchase alcohol by underage individuals, and to stop adults from purchasing alcohol for people under the legal age.

Because of the program's success, the effort was expanded during the past five months to a total of 86 municipalities throughout the state, General Verniero said.

Verniero added that 305 people under the age of 21 have been arrested as a result of the program, while 58 adults have been arrested for attempting to purchase alcohol for young persons.

Under the program, local law enforcement officers, as well as state Alcoholic Beverage Control officers from the Division of State Police, work undercover in participating retail locations for a minimum of two nights each week. Law enforcement officials either pose as store employees or are positioned outside the establishments to apprehend adults who attempt to procure alcohol for underage drinkers.



The program's deterrent factor has helped make it successful, Verniero said, since undercover enforcement officers can be in any store, at any time.

"The true success of the program can't be measured by the number of arrests alone," Verniero said. "It's the number of young people who decide not to enter that liquor store who stop short of attempting that purchase, that really has helped to make this program a critical part of our efforts to curtail underage drinking in New Jersey.

"By expanding the program, we are sending a strong message of zero tolerance for alcohol use by people under the age of 21," he added.

Underage drinkers face a minimum fine of \$500 and mandatory loss of their drivers' licenses for six months.

As part of the program, retail outlets throughout the state have been displaying posters and decals on doors, windows, counter tops, and cold cases warning underage drinkers that a police officer may be working undercover in the establishment.

In addition, radio and television public service announcements (PSAs) have helped to raise awareness about the program.

"Through this public/private partnership, New Jersey alcoholic beverage retailers and the law enforcement community are working together to combat illegal underage drinking," John G. Holl, Director of the Division of Alcoholic Beverage Control said.

Holl stated that this initiative focuses on the individual who knows he or she is breaking the law, rather than on the licensee who may, in good faith, believe the person is of legal age.

According to Colonel Peter O'Hagen, Director of the Division of Highway Traffic Safety, "Cops in Shops goes way beyond the number of arrests a law enforcement officer makes.

"By making our young people think twice before attempting to purchase alcohol, we are also helping to rid our roads of potential drunk drivers," O'Hagan said.

The pilot program was funded through a \$67,000 grant from the Division of Highway Traffic Safety and \$40,000 from the ABC.

The expanded effort is being funded in part by local municipalities Drunk Driving Enforcement Fund money, which is distributed by the Division of Highway Traffic Safety for use by local communities for alcohol awareness and drunk driving prevention efforts.

Cops in Shops is a program of The Century Council, a national, not for profit organization dedicated to combating alcohol abuse. The Century Council is providing materials and the television PSAs for the Cops in Shops Program.

2. NOTICE REGARDING DISCLOSURE POLICY.

DISCLOSURE POLICY

I. LICENSE APPLICANT LEVEL (The Entity that will be Licensed)

A. This level constitutes the primary interest in the applied-for license. All interest in the license must be accounted for on the license application, including all individuals holding 1% or more interest in the applicant if it is a corporation. Limited Liability Companies must disclose all members. Individuals named at this level are required to be fingerprinted, disclose and document the source of funds used to acquire their license interest and document their age. They may hold no other interest which would constitute a tied-house or two license limitation violation.

B. If interest holders are not residents of the United States, they must execute affidavits certifying their qualifications and provide a record (or document lack of record) of their criminal background from their national law enforcement agency. If criminal background information is prepared in a language other than English, a certified English translation must be submitted.

C. If the actual operation of a licensed business is delegated to an on-site manager (e.g. in the case of a national restaurant chain), the manager and any other individual who, through performance of their on-site duties act in the capacity of the licensee, must also be disclosed in the license application, fingerprinted and qualified as described in paragraph IA. These management responsibilities include the hiring and firing of employees, placing orders for alcoholic beverages and making business decisions concerning pricing or marketing.

II. LICENSE APPLICANT SHAREHOLDER LEVEL

A. This level describes removed interests; those with direct or indirect interest in the license applicant. Shareholders of the license applicant, general or limited partners and LLC members who are closely held corporations, partnerships or LLC's in their own right and must be fully identified in the license application. Individuals disclosed at this level must execute an affidavit as to their age and qualifications. Individuals disclosed at this level who exercise significant direct control or influence over the operation of the license applicant, must be fingerprinted and qualified as described in paragraph IA.

B. The officers, directors and trustees of publicly traded corporations holding an interest in a license applicant must be disclosed in the license application, unless the Director or municipal issuing authority determines that an alternate form of disclosure is acceptable. Regardless of the format, individual disclosures must include all information required by the license application. Any individual disclosed at this level who exercises control or direct influence over the operation of the license applicant must be fingerprinted.

C. Individuals holding 10% or more of the stock of a publicly traded corporation which has an interest in a license applicant must be identified in the license application. The Director or municipal issuing authority may determine to accept appropriate Securities and Exchange Commission Reports or filings in support of the qualifications of such individuals.

D. Institutional investors (i.e. pension or stock funds), and interests held in trust must qualify through the trustee responsible for administration of the fund or trust. Trustees must be disclosed and execute affidavits as to their qualifications.

III. SUBMISSION OF RECORDS IN SUPPORT OF APPLICATION

In addition to the business disclosure noted above, the Division of Alcoholic Beverage Control and municipal issuing authorities may require submission of any or all of the following records and documents in support of a license application. This information is to be submitted by the applicant as part of the qualifying investigation procedure. It will be maintained as confidential and will not be available for public review.

BUSINESS RECORDS:

Original letter of business intent-describing the proposed business and method of operation

Partnership Agreement

Limited Liability Company Notice of Formation and Operating Agreement

Corporate Certificate of Incorporation and all subsequent amendments

Proof of Fictitious or Trade Name registration

Certificate of New Jersey Business Authority (non-NJ applicants only)

Copies of all issued Stock Certificates (front and back), or most recent SEC Filing Statement containing shareholder information

Certificate of New Jersey Sales Tax Authority (if applicable)

Copy of all applicable BATF Permits issued to applicant

Copy of all other alcoholic beverage licenses issued to applicant by other States

FINANCIAL RECORDS:

Agreements of Sale for purchase of license, business and/or proposed premises

Mortgage or Loan Agreements and Promissory Notes, including any pledge or Escrow Agreement of Corporate Stock Shares

Business and personal Federal Income Tax returns for the past two years

Copies of business and personal checking and savings statements, cancelled checks and bank deposit slips to document the funding of the license

Audited Financial Statements

Corporate Annual Reports

Securities and Exchange Commission filing statements

PREMISE INFORMATION:

Detailed sketch of the proposed premises, identifying all entrances, exits, exterior areas to be covered under the license, indicating dimensions of the premises in square feet. If any adjacent grounds are to be licensed, these areas must also be included in the sketch

Copy of Lease Agreement, Title or Mortgage Agreement(s) and applicable note(s) covering the proposed premises

Certificate of Occupancy and other applicable zoning records associated with the proposed premises

If proposed premises is a boat, copy of the United States Coast Guard Certificate of Documentation issued to the vessel

If proposed premises is a limousine, copy of motor vehicle registration and photograph of the vehicle

9/96

3. NOTICE REGARDING INSTRUCTIONS FOR PETITIONING THE DIRECTOR TO REMOVE A RETAIL LICENSE FROM COD STATUS PURSUANT TO N.J.A.C. 13:2-24.4 (g).

RE: INSTRUCTIONS FOR PETITIONING THE DIRECTOR TO REMOVE A RETAIL LICENSE FROM COD STATUS PURSUANT TO N.J.A.C. 13:2-24.4 (g)

Regulation N.J.A.C. 13:2-24 governs a wholesaler's issuance of credit to a New Jersey retail liquor licensee ("retailer"). Under certain conditions, a wholesaler can issue a "Notice of

Delinquency" on a retailer placing that retailer on COD status and preventing that retailer from receiving credit terms from other alcoholic beverage wholesalers.

Division regulation N.J.A.C. 13:2-24.4(h) states that a retailer is subject to a wholesaler's Notice of Delinquency or COD status even if the license is transferred or extended to another person.

However, Division regulation N.J.A.C. 13:2-24.4(g) permits the Director to remove a retailer from COD status on a retailer's written petition to the Director, with notice given to all creditor wholesalers, if the retailer can establish that the licensee entered into a "formal debt liquidation plan". A proceeding in Chapter 7 bankruptcy, Chapter 11 bankruptcy, a state court action for the Benefit of Creditors and an Internal Revenue Service tax seizure has been recognized by the Division as "a formal debt liquidation plan". If the retailer can establish that the licensee entered into a formal debt liquidation plan, the retailer may petition the Director for relief.

In order for the Division to process a timely request, the retailer should submit a Verified Petition. At this time, no filing fee is necessary to submit a Verified Petition. A Verified Petition is, basically, an affidavit made by a person who has direct personal knowledge concerning the required facts, which is signed and sworn to before a notary public or any other person authorized to administer oaths in the State of New Jersey. The Verified Petition should identify the licensee, the license number, if the license is renewed and current, and if the license is subject to any disciplinary charges. In addition, the petition should contain the following documents as specified below.

If a license was the subject of a Chapter 7 bankruptcy proceeding, in order to consider a written petition a retailer must provide the Division with the following documents:

1. A verified list of all wholesaler licensees who received notice of the bankruptcy filing and sale. (This notice should include the wholesalers as creditors on the bankruptcy petition),
2. A copy of the Notice of Sale of the license by the Trustee,
3. A copy of the Bankruptcy Court Order approving of the sale or confirming that there was no objection to the sale,

4. A copy of the Bill of Sale of the license,

5. An affidavit of the purchaser/licensee stating that the former licensee has no interest, directly or indirectly, in the license, the licensed business or the licensed premises, and that the former licensee has no relationship with the new licensee, and

6. Confirmation that the license was transferred to the current licensee by the issuing authority (a copy of the Municipal Resolution approving of the transfer).

If a license was the subject of a Chapter 11 bankruptcy proceeding, in order to consider a written petition a retailer must provide the Division with the following documents:

1. An affidavit that the wholesaler alcoholic beverage creditors of the license were given notice of the Plan of Reorganization,

2. A copy of the Plan of Reorganization that includes trade creditors and unsecured creditors,

3. A copy of the Bankruptcy Court Order approving of the Plan of Reorganization, and

4. Confirmation that the license was transferred to the current licensee by the issuing authority (a copy of the Municipal Resolution approving of the transfer).

If a license was the subject of an Internal Revenue Service tax seizure and sale, in order to consider a written petition a retailer must provide the Division with the following documents:

1. Copy of Notice of Lien & Levy on the license,

2. A copy of Notice of Sale,

3. A copy of the Bill of Sale from IRS,

4. Affidavit of purchaser/licensee affirming that the former licensee has no interest, directly or indirectly in the license, the licensed business or the licensed premises, and that the former licensee has no relationship with the new licensee, and

5. Confirmation that the license was transferred to the current licensee by the issuing authority (a copy of the Municipal Resolution approving of the transfer).

If a license was the subject of a state court proceeding, Assignment for the Benefit of Creditors, in order to consider a written petition the retailer must provide the Division with the following documents:

1. A verified list of all wholesaler licensees who received notice of the state court proceeding and sale of the license,

2. A copy of the Notice of Sale of the license by the Assignee,

3. A copy of the State Court Order approving of the sale,

4. A copy of the Bill of Sale of the license, and

5. Confirmation that you, as Assignee, have not received any objections to the sale,

6. An affidavit of the purchaser/licensee stating that the former licensee has no interest, directly or indirectly, in the license, the licensed business or the licensed premises, and that the former licensee has no relationship with the new licensee, and

7. Confirmation that the license was transferred to the current licensee by the issuing authority (a copy of the Municipal Resolution approving of the transfer).

Upon receipt of the appropriate documents, the Division can process a petition to remove a retailer from COD status.

For any other matter, the licensee may seek relief upon written petition to the Director under N.J.A.C. 13:2-1.9(a) to waive the effect of the Division's credit regulations. The Director will only consider such relief, if the retailer/petitioner can make a showing of undue hardship, economic or otherwise and that the relief will not unduly burden any creditor wholesaler.

Please note that the Division does not "place" a retail license on COD status. For any inquiry into a retail licensee's COD status, you should contact either your local wholesaler or:

DAVID S. PILTZER, Esq., for petitioner
(Piltzer & Piltzer, attorneys)

JACQUELINE MIDDLETON, Esq., for respondent, P.P.P. USA Inc.,
Afzal Sheikh and Rizwan Hameed
(Lepis, Lepis & Curley, attorneys)

RICHARD A. BOWE, Esq., for respondent, Mayor and Council,
Town of Guttenberg

INITIAL DECISION BELOW

HONORABLE SEBASTIAN GAETA, JR., ADMINISTRATIVE LAW JUDGE

DECIDED: FEBRUARY 13, 1996

RECEIVED: FEBRUARY 21, 1996

BY THE DIRECTOR:

I. PROCEDURAL HISTORY

The Appellant, Parkway Liquor & Deli, Inc., ("Parkway") appealed the decision of the Mayor and Council of the Town of Guttenberg ("Mayor and Council") which, by resolution dated December 21, 1994, granted a transfer of the Plenary Retail Distribution license No. 0903-44-010-004 from Parkway to P.P.P. USA, Inc. ("PPP").¹ On January 13, 1996, the Appellant appealed the Mayor and Council's grant of the transfer because the issuing authority lacked a written consent to transfer the license according to N.J.S.A. 33:1-26. On February 16, 1995, this matter was transmitted to the Office of Administrative Law for a hearing as a contested case. A plenary hearing was held before Administrative Law Judge Sebastian Gaeta, Jr. ("ALJ"). After receiving proper extensions of time, on February 13, 1996, the ALJ recommended that the action of the Mayor and Council be affirmed and the Appellant's appeal be dismissed.

Written Exceptions to the Initial Decision were filed on behalf of Appellant Parkway. No replies were filed by PPP. Relevant Exceptions shall be discussed.

The time to render a final decision in this matter was extended by orders until August 22, 1996.

II. FACTUAL SUMMARY

The genesis of this matter arises from an August 14, 1994 agreement to sell the liquor license and delicatessen business of PPP to Parkway. The agreement contained a \$10,000 breach of contract liquidated damages clause. Under the terms of the contract, Parkway applied for a transfer of the license. PPP consented to the transfer of its license to Parkway. The parties were to close their deal on the date the Mayor and Council were to consider Parkway's transfer application. However, an agreement was never reached between the parties allegedly because of a breach by PPP. Nevertheless, on September 7, 1994, the issuing authority transferred the license from PPP to Parkway.

Thereafter, PPP filed an Order to Show Cause in the Superior Court seeking injunctive relief requiring Parkway to execute a written consent to transfer the license back to PPP. On December 20, 1994, the trial court granted PPP's request for temporary injunctive relief pending a plenary hearing and Ordered:

1. Defendants Parkway Liquor & Deli, Inc., Mohammad Humayun, and Mohammad Kamaran are hereby directed to execute and deliver to plaintiff, P.P.P., U.S.A., a N.J. Corp. on or before December 21, 1994 a consent to transfer a certain plenary retail distribution Class C liquor license number 0903-44-010-004 issued by the Town of Guttenberg for licensed premises located at 7000 Park Avenue, Guttenberg, New Jersey 07093 and otherwise to cooperate in the transfer of such liquor license, which transfer is to remain in force and effect pending the final disposition of this action.

2. In the event of a refusal on the part of the said defendants to execute and deliver in a timely fashion a consent to transfer as set forth in this Order, this Order itself shall be deemed effective as constituting the consent required for transfer of the liquor license or, alternatively, plaintiffs may, on short notice, apply for the appointment of a person by the Court to execute and deliver a consent to transfer on behalf of the said defendants with the same effect as if done by the defendants themselves in accordance with R. 4:59-2(a)

3. The application of the defendants Parkway Liquor & Deli, Inc., Mohammad Humayun and Mohammad Kamran for a stay of this Order pending appeal is hereby denied.

Immediately, Parkway filed a Motion for Leave to Appeal from an Interlocutory Order with the Appellate Division. On December 21, 1994, the Appellate Division denied Parkway's motion for Leave to Appeal, but gave supplemental instructions that:

1. We do not pass upon the efficacy of paragraph No. 2 of the trial court's order.

2. Neither party shall, pending further order of the trial court, sell, alienate or encumber the license or any business said license attaches to or transfer the license to any other location.

3. In the event the local licensing authority effects a transfer of the liquor license as contemplated in the trial court's order, the ownership of the license shall continue to be subject to further order of the court, which, for good cause, may require said license to be retransferred.

Parkway did not execute a written consent to transfer. That evening, the Mayor and Council passed a Resolution authorizing the transfer of the license back to PPP.

This appeal ensued. The ALJ rejected the arguments of Parkway that essentially the issuing authority could not transfer the license in the absence of the licensee's written consent. The ALJ found that the trial court Order did not compel the Mayor and Council to transfer the license. However, the ALJ reasoned that the trial court's Order could constitute a written consent to transfer the license. The ALJ observed that preventing a trial court from providing a consent to transfer by court Order "goes beyond the reasoning and holding of B & G." (citing B & G Corp. v. Municipal Council, 235 N.J. Super 90 (App. Div. 1989)). The ALJ added that paragraph two of the court Order was valid and enforceable because the Appellate Division chose not to rule on it. Accordingly, the ALJ found that the trial court's Order permitted the Mayor and Council to consider the license transfer application to PPP. The ALJ affirmed the Mayor and Council's grant of the transfer.

Parkway filed Exceptions to the ALJ's Initial Decision requesting that the Director reverse the action of the issuing authority. Generally, Parkway asserts that the issuing authority had no jurisdiction under N.J.S.A. 33:1-26 to grant the transfer of the license to PPP based on the court Order without having the licensee's written consent. The Appellant argues that case law and State statute require that the issuing authority receive a voluntary consent to transfer prior to transferring a liquor license.

III. ISSUE

The basic issue in dispute is whether the trial court's Order by its terms can constitute a written consent to transfer as contemplated under N.J.S.A. 33:1-26. This is a question of law and I am not bound by the ALJ's determination. See Mayflower Securities Co. v. Bureau of Securities, 64 N.J. 85, 93 (1973); see also Lyons Farms Tavern, Inc. v. Municipal Board of Alcoholic Beverage Control, 55 N.J. 292, 303 (1970); Fanwood v. Rocco, 33 N.J. 404, 414 (1960) (Director conducts De novo hearing on appeal and Director can reverse local action if unreasonable or improperly grounded.).

For the reasons set forth below, I find that the action of the Mayor and Council was reasonable and I accept the Initial Decision of the ALJ as modified.

IV. LEGAL ANALYSIS

Our Alcoholic Beverage Control statute requires that an:

application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to the transfer, and after publication of notice of intention by the person to whom the transfer of the license is sought, before an issuing authority can consider a transfer application. N.J.S.A. 33:1-26 (emphasis added). The issuing authority cannot entertain a transfer application without the licensee's written consent to transfer the license.²

Our own Alcoholic Beverage Control Bulletins chronicle the sacrosanct nature of a licensee's written consent to transfer a liquor license and the issuing authorities' lack of jurisdiction to consider a transfer application without one. Jenson v. Washington Township, ABC Bulletin 889, Item 2 (Nov. 15, 1950) (consent may not be executed in blank); Palka v. Passaic, ABC Bulletin 816, Item 4 (Sept. 1, 1948) (written agreement did not constitute consent to transfer); Delaware Tavern, Inc. v. Atlantic City, ABC Bulletin 758, Item 1 (April 17, 1947) (consent invalid when executed pursuant to an invalid lease agreement); Bates v. Monroe, ABC Bulletin 750, Item 10 (Feb. 24, 1947) (lease agreement does not constitute consent to transfer); Grace v. Egg Harbor, ABC Bulletin 403, Item 9 (May 11, 1940) (issuing authority lacked jurisdiction to consider transfer application without written consent to transfer); ABC Bulletin 112, Item 2 (March 13, 1936) (transfer application must contain consent to transfer of licensee or

receiver), ABC Bulletin 112, Item 3 (March 12, 1936) (application must contain consent to transfer of licensee or court appointed guardian).

The rationale behind N.J.S.A. 33:1-26 and the need for a written consent to transfer promotes the time-honored doctrine of New Jersey Alcoholic Beverage Control laws that a liquor licensee shall be protected from "any device which would subject it to the control of persons other than the licensee." The Boss, Co. v. Board of Commissioners, 40 N.J. 379, 388 (1963); Manion v. Greenbrook Hotel, Inc., 138 N.J. Eq. 518, 520 (E&A 1946); B & G Corp. v. Municipal Council, 235 N.J. Super 90, 96 (App. Div. 1989); Rawlins v. Trevethan, 139 N.J. Eq. 226, 230 (Ch. 1947); Lachow v. Alper, 130 N.J. Eq. 588, 590 (Ch. 1942); Walsh v. Bradley, 121 N.J. Eq. 359, 360 (Ch. 1937). This long standing policy of this State and Division to prohibit the licensee from any attachment by a third party extends to the liquor license or its attendant rights such as the consent to transfer. B & G Corp. v. Municipal Council, supra, 235 N.J. Super at 95-96.

New Jersey case law is clear that a consent to transfer must be freely given. B & G Corp., supra, 235 N.J. Super at 94 (Reading N.J.S.A. 33:1-26 "to mean that no transfer can be effected without the voluntary consent of the person who holds the 'personal right' to the license, the licensee himself.") No involuntary consent to transfer such as by levy or otherwise is tolerated. B & G Corp., supra, 235 N.J. Super. at 94.

Courts have consistently rejected actions in specific performance to transfer a liquor license or its attendant rights. B & G Corp., supra, 235 N.J. Super. at 95; Rte. 673 Bowling Center, Inc. v. Aristone, 192 N.J. Super. 80, 83 (App. Div. 1983); Rawlins v. Trevethan, supra, 139 N.J. Eq. at 229. Rather, the only aberration of this legal tenant has been in the interest of upholding the terms of a voluntary settlement agreement. Darrah Food Servs., Inc. v. Lambertville House, Inc., 202 N.J. Super. 447, 453 (App. Div.), cert. den., 102 N.J. 329 (1985).

Paragraph two of the trial court's Order states that the Order shall constitute a written consent to transfer the license despite the licensee's objections. A broad interpretation of this language has the potential to establish dangerous precedent allowing third parties to exercise control over a license by encroaching upon a licensee's unfettered discretion to transfer a license. I reject the ALJ's acceptance of paragraph two of the trial court's Order to the extent of his finding that this Order constituted a valid written consent to transfer. Rather, I consider the later portion

of paragraph two of the trial court's Order to be the proper procedure under Division of Alcoholic Beverage Control laws and policy and civil practice court rules which allow the plaintiff to apply for a court appointment of a person to execute a written consent to transfer the license on behalf of the licensee.

Therefore, while the issuing authority should not have accepted a court Order as a substitute for a voluntary written consent to transfer a license, to remand the matter for a court appointed receiver would elevate form over substance. The trial court's Order was issued as a temporary remedy in equity pending a full plenary hearing of the PPP and Parkway breach of contract action. The New Jersey Appellate Division has upheld a trial court's authority to provide equitable relief in disputes involving the issuance of a written consent to transfer liquor licenses. See Darrah Food Services, supra, 202 N.J. Super. at 453.

My holding in this matter is limited to the specific facts of this case, in which both parties have been qualified by the local issuing authority to hold a retail liquor license, the Superior Court offers temporary equitable relief to direct the transfer pending a full hearing and the issuing authority has transferred the license in an exercise of its discretion. The purpose of the Superior Court's Order was to maintain the status quo ante pending the resolution of the contract dispute. Therefore, I find the action of the issuing authority proper as a court monitored Darrah exception to the B & G rule of requiring a written consent to consider the transfer of a liquor license. However, in the future, I expect parties to follow the procedure addressed above under the New Jersey Civil Practice Court Rules. N.J. Court Rules, R. 4:59-2(a).

The Superior Court is the appropriate forum to resolve private disputes between a seller and buyer of a liquor license. It has been well-held from the earliest days of Alcoholic Beverage Control regulatory policy that

It is undisputed that no consent to the transfer by the then holder of the license, either endorsed on the application for transfer or by separate written stipulation, was filed with the issuing authority. The law respecting transfers of licenses is quite specific. It provides "which application * * * shall bear the consent in writing of the licensee." R.S. 33:1-26.

Unless this provision of the law is strictly followed, the local issuing authority has no jurisdiction to grant the transfer. To hold otherwise would involve the local issuing authority in private disputes between the parties to the transfer and necessitate a determination properly left to the courts.

Norton v. Union Township, ABC Bulletin 709, Item 5 (April 25, 1946) (citing In re Middletown Township, ABC Bulletin 129, Item 5 (June 11, 1936); Grace v. Egg Harbor, ABC Bulletin 403, Item 9 (May 11, 1940); Bachman v. Phillipsburg, 68 N.J.L. 552). "Where the consent is defective on its face or has been declared invalid by a court of competent jurisdiction, it should be disregarded." In re Middletown Township, ABC Bulletin 129, Item 5 (June 11, 1936) (quoted in Mancini v. West New York, ABC Bulletin 253, Item 10 (June 11, 1938); Mitchell v. Paterson, ABC Bulletin 1380, Item 3 (Jan. 31, 1961)). Accordingly, the within transfer, contemplated as the Court's temporary equitable relief bring the parties status quo ante, may be subject to a re-transfer dependent upon the trial court's resolution of the breach of contract action and the validity of PPP's original consent to transfer this license.

V. CONCLUSION AND ORDER

For the reasons noted above, I modify the decision of the ALJ and affirm the action of the Mayor and Council.

Accordingly, it is on this 22nd day of August 1996.

ORDERED that the action of the Mayor and Council of the Town of Guttenberg which transferred Plenary Retail Distribution license No. 0903-44-010-004 from Parkway Liquor and Deli, Inc. to P.P.P USA, Inc., is hereby affirmed, and it is further

ORDERED that the appeal of Parkway Liquor and Deli, Inc. is dismissed.

/S/ John G. Holl
JOHN G. HOLL
DIRECTOR

ENDNOTES

1. The resolution merely indicated that this license be "transferred." There was no reference to whether the license was transferred in a person-to-person transfer and/or place-to-place transfer. It is undisputed that Parkway did not use this license at 7000 Park Avenue, the alleged licensed premises (See discussion infra). It is presumed that this license was transferred by Parkway to PPP only in a "person-to-person" transfer.

2. I do not sit here today in judgment of the efficacy of the trial court's Order. I question the judge's Order to the extent that it undermines the statutory requirement and case law interpretation that a written consent to transfer a liquor license is necessary. Although agency interpretation of its own laws is subject to substantial deference, the courts are not bound by an agency's interpretation. MCG Assocs. v. Dept. of Environ. Protection, 278 N.J. Super. 108, 120 (App. Div. 1994); Krupp v. Board of Educ., 278 N.J. Super. 31, 37-38 (App. Div.), cert. den., 140 N.J. 277 (1994).

Publication of Bulletin 2470 is hereby directed this
25th Day of September, 1996



JOHN G. HOLL, DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGE CONTROL