

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

April 10, 1969

BULLETIN 1847

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1. COURT DECISIONS - ISHMAL v DIVISION OF ALCOHOLIC BEVERAGE CONTROL - REMAND FOR AMPLIFIED FINDINGS AND CONCLUSIONS.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-261-68

JOHNNIE MAE ISHMAL,

Licensee-Appellant,

vs.

DIVISION OF ALCOHOLIC BEVERAGE  
CONTROL AND JOSEPH KEEGAN,  
Director of the Division of  
Alcoholic Beverage Control,

Division-Respondent.

Argued February 24, 1969--Decided March 17, 1969

Before Judges Conford, Kilkenny and Leonard

On appeal from order of Director of Division of  
Alcoholic Beverage Control.

Mr. Leslie S. Kohn argued the cause for appellant  
(Messrs. Kohn, Kirsch & Needle, attorneys).

Mr. MacDonald Hunter, Deputy Attorney General,  
argued the cause for respondent (Mr. Arthur J.  
Sills, Attorney General of New Jersey, attorney;  
Mr. Stephen Skillman, Deputy Attorney General,  
of counsel).

PER CURIAM

(Appeal from decision in Ishmal v. Newark,  
Bulletin 1829, Item 3. Remanded for amplified  
findings and conclusions to be entered by the  
Director. Opinion not approved for publication  
by the Court committee on opinions.)

2. APPELLATE DECISIONS - EMPIRE LIQUOR CO. v. NEWARK

EMPIRE LIQUOR CO., t/a FRANKLIN LIQUOR, )	
	Appellant, )
v. )	
	ON APPEAL )
Municipal Board of Alcoholic )	CONCLUSIONS )
Beverage Control of the City )	AND ORDER )
of Newark, )	
	Respondent. )
----- )	

Robert C. Gruhin, Esq., and Hart, Mandis, Rathe & Woodcock, Esqs., by Joseph C. Woodcock, Jr., Esq., Attorneys for Appellant  
 Philip E. Gordon, Esq., by Charles J. Farley, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellant's license for twenty days effective June 3, 1968, after finding appellant guilty in disciplinary proceedings of a charge alleging that on November 18, 1967 it sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Appellant's premises are located at 353 Park Avenue and 162 No. 11th Street, Newark.

Upon the filing of the appeal, an order dated May 27, 1968 was entered by the Director staying the effect of respondent's order of suspension pending the determination of the appeal.

Appellant alleges in its petition of appeal that the determination of respondent was erroneous and should be reversed because said determination was illegal, against the weight of the evidence, and based upon improper and untrue testimony.

Respondent's answer denies said allegations and asserts that its decision was based upon factual testimony from which it, in its sound discretion, concluded that the penalty imposed substantiated such action.

This hearing on appeal was de novo, pursuant to Rule 6 of State Regulation No. 15. Stenographic transcripts of the hearing below were submitted in accordance with Rule 8 of State Regulation No. 15, and were supplemented at this hearing by a witness produced on behalf of appellant.

It appears from the testimony of William --- that he was born on March 25, 1951, and that on November 18, 1967,

when the violation allegedly occurred, he was sixteen years of age. On the date in question, according to William, he visited appellant's licensed premises "between 7 and 8 o'clock" in the evening and purchased two quart bottles of Schaefer beer from Karl Barker, who placed the beer in a bag and accepted payment therefor. William further testified that he was not requested by Mr. Barker, nor did he at any time sign any paper with reference to his age. He stated that after leaving appellant's premises with a bag containing the beer, he entered the car in which he had been driven to appellant's liquor store to join his two companions, and they drove off. Later, while he and his two friends were sitting in the parked car and drinking the beer, about a mile distant from appellant's establishment, they were apprehended by two police officers. As a result of being questioned as to the alleged purchase of the beer, the police officers drove them to appellant's licensed premises, at which time William and Officer Yablonski entered the establishment. "He [Officer Yablonski] asked Karl if he was the man that served me and Karl said yes, and he said 'Did I sign any papers or anything', so, Karl said, 'Yes.'" Officer Yablonski asked Mr. Barker to let him see the paper but "he came up with nothing."

William further testified that he had been in appellant's place of business "once or twice before" for the purpose of obtaining employment. He spoke to Karl Barker and told him that he "was 22, because I knew I had to be 21 to get a job in a liquor store." But he did not obtain employment nor did he ever sign a paper or document concerning his age.

Chester --- testified that he was in the company of William and Robert and, after riding around, they stopped at appellant's liquor store where William got out and entered the place by way of the 11th Street entrance and later "came out with two quarts of beer;" that they then went to Crane and Webster Streets where they "were caught by the officers;" that the officers took them to appellant's liquor store where he (Chester) remained in the police car with one officer while the other officer and William entered the store.

On cross examination, Chester testified that he sat in the front seat of the car, which was parked on 11th Street "about 20 yards from the store, right across the street" and that he saw William enter the store and return to the car with the beer. Although the attorney who represented appellant at the hearing below cross-examined Chester at length, the youth adhered substantially to the testimony given on direct examination.

Officer John Yablonski testified that he and Officer Thomas were traveling in a police car on November 18, 1967 at Crane and Webster Streets when he observed three occupants in a parked car drinking from bottles; that Officer Thomas stopped the car and he (Officer Yablonski) saw that the youths were consuming Schaefer beer; that when he ascertained that the occupants were minors, he questioned them concerning where the beer was obtained and, as a result thereof, he and his fellow officer took the youths to appellant's

licensed premises; that William identified Mr. Barker as the person who had sold him the beer and immediately Officer Yablonski asked Mr. Barker concerning the sale of beer to William. "Mr. Barker admitted the sale. He stated that he was under the impression that the boy was over 21;" that Barker said William filled out a form relating to his age and, when Officer Yablonski requested that the form be produced, Barker "went through a small pile of papers there. I gave him time to produce it and he did not."

Karl Barker testified that he is the manager of appellant's liquor store and was on duty from 9:00 a. m. to 10:00 p. m. on November 18, 1967; that he did not recall selling William two quart bottles of Schaefer beer on the aforementioned date; that two or three weeks prior to November 18, William came into appellant's premises seeking employment and at that time told him (Barker) he was 23 years of age; that Barker gave William an application form to fill out and that "several days later he came back in the store and said that he didn't need the job, he got his old job back and that he didn't need the application. Then he walked out;" that the next time Barker saw William was on November 18, 1967, when "the officer brought him in;" that when he was accused by the officer of selling beer to William, he denied doing so.

At the instant appeal hearing, Mr. Barker was examined by his attorney, and his testimony was substantially similar to that given below. In explanation as to the gist of the conversation between Mr. Barker and Officer Yablonski on November 18, Barker testified the following conversation took place:

"Q What specifically, and I would like you to state exactly what the police officer said, did Officer Yablonski say to you when he came in?

A When the officer came in the first time he went to the other clerk in the store, and he said, 'Is Barker here?' The other clerk pointed to me. I was down by my register and I heard him ask, so I walked up and I said, 'I am Barker.' He said, 'You sold a minor 2 quarts of Schaefer beer around 8 o'clock or 8:30', I forget the exact time.

Q What did you say?

A I said to him, 'I did?'

Q In other words, you used the words 'I did' in the form of a question?

A In a question, yes.

Q That was the inflection in your voice. Will you repeat what you said again, please?

A I said to him when he said, 'You sold a minor

two quarts of Schaefer beer'--I was naturally astounded--I said, 'I did?' in that tone of voice."

I have set forth somewhat in detail the occurrences which are alleged to have taken place as testified to by the various witnesses in this case.

In this matter we are dealing with a purely disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). Although the testimony in this matter is somewhat conflicting, I am satisfied with the authenticity of the testimony of William, who stated he purchased the beer, and Chester who accompanied him in the car parked outside appellant's premises when William entered. I am satisfied that William came out of the licensed premises and re-entered the car with two quarts of beer in his possession. William had no difficulty, in view of the fact that he had previously seen Karl Barker, in identifying him as the one from whom he purchased the beer at the time in question. Officer Yablonski stated how he and his fellow officer came to apprehend William and his companions after seeing them drinking in the automobile in which they were seated. Investigation by the officer disclosed that they were drinking beer at the time. Officer Yablonski related how he and William went into appellant's licensed premises and that Mr. Barker was identified by William as the man who had made the sale to him.

On the other hand, I am not impressed with the testimony of Karl Barker in this matter. At the appeal hearing, he tried to explain that, when he was accused by Officer Yablonski of making the sale, he merely said, in the form of a question, "I did?" I do not believe this to be so. Although it may be true that several weeks prior to the alleged purchase by William, he stated his age to be over twenty-one to Mr. Barker, this in itself does not show compliance with R.S. 33:1-77(a) and, hence, had not established a defense under said section. Sportsman 300 v. Board of Commissioners of Nutley, 42 N.J. Super. 488 (App. Div. 1956).

The Director's function in a matter of the kind now under consideration is not to reverse the determination of the local issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwanted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1.

After careful consideration of all the testimony presented, I find as a fact that, under the circumstances herein, there has been sufficient proof to establish appellant's guilt. I conclude that appellant has failed to meet the burden that respondent's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

I therefore recommend that an order be entered

affirming respondent's action and dismissing the appeal, and fixing the effective date for the suspension of license imposed by respondent, which suspension had been stayed pending the entry of the order herein.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, one of the attorneys for appellant advised that an exception was taken to the Hearer's report but no reason was specified therefor.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibit, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of February, 1969,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Empire Liquor Co., t/a Franklin Liquor, for premises 353 Park Avenue and 162 No. 11th Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a. m. Thursday, February 27, 1969, and terminating at 2:00 a. m. Wednesday, March 19, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

3. APPELLATE DECISIONS - EMPIRE LIQUOR CO. v. NEWARK

EMPIRE LIQUOR CO., t/a FRANKLIN LIQUOR,)

Appellant,)

v.

ON APPEAL  
AMENDED ORDER

Municipal Board of Alcoholic  
Beverage Control of the City  
of Newark,

Respondent.)

-----  
Robert C. Gruhin, Esq., and Hart, Mandis, Rathe & Woodcock,  
Esqs., by Joseph C. Woodcock, Jr., Esq., Attorneys  
for Appellant  
Philip E. Gordon, Esq., by Charles J. Farley, Esq.,  
Attorney for Respondent

BY THE DIRECTOR:

On February 20, 1969, I entered Conclusions and Order herein adopting the Hearer's report and suspending appellant's license for premises 353 Park Avenue and 162 No. 11th Street, Newark, for twenty days effective February 27, 1969, for sale to a minor. Empire Liquor Co. v. Newark, Bulletin 1847, Item 2.

Appellant's attorneys have now advised me that through inadvertence no exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15, and have requested permission to file such exceptions so that the Hearer's report may be reconsidered in the light thereof. Good cause appearing, I shall grant the request.

Accordingly, it is, on this 26th day of February, 1969,

ORDERED that the order of suspension heretofore entered be and the same is hereby vacated pending entry of supplemental Conclusions and Order.

JOSEPH M. KEEGAN  
DIRECTOR

4. APPELLATE DECISIONS - AGIRA BENEVOLENT CIVIC ASSOCIATION OF MUTUAL AID, INC. v. NEWARK.

AGIRA BENEVOLENT CIVIC ASSOCIATION )  
OF MUTUAL AID, INC., )

Appellant, )

v. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

Municipal Board of Alcoholic )  
Beverage Control of the City )  
of Newark, )

Respondent. )

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Dimitry G. Nicola, Esq., Attorney for Appellant  
Philip E. Gordon, Esq., by Ronald Owens, Esq.,  
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent whereby on November 6, 1968 it denied appellant's application for a club license for premises consisting of two rooms on the ground floor of a building located on the corner of Pine Grove Terrace and South Orange Avenue and known as 838 South Orange Avenue, Newark.

The petition of appeal alleges that the action of respondent was erroneous for the following reasons:

"A. Its decision was contrary to the rules and regulations of the Division of Alcoholic Beverage Control.

"B. That the decision was contrary to the evidence produced before it.

"C. That the City of Newark, Board of Alcoholic Beverage Control did not exercise sound judgment and discretion in denying the application of this appellant.

"D. That the decision of the Newark Board of Alcoholic Beverage Control was capricious, unjust and unfair to the appellant.

"E. That the appellant has been the holder of a Club License with the City of Newark for more than twenty years, during which time it has not been guilty of any violation and the renewal of its Club License during that period of time has always been unanimous.

"F. That the membership of the appellant consists of elderly men, all dignified, well-mannered and good citizens of the community deserving of the renewal of the Club License."

Respondent filed no answer to the petition of appeal.

At the instant hearing the transcript of the proceedings below was marked as an exhibit herein. It appears from said transcript that the application was denied for reasons as follows:

"In this matter the Board has carefully considered all the pertinent facts and information presented by the objectors as well as all the pertinent facts and information presented by the applicants as well as the reasonings advanced by the objectors, the Board members have personally visited the location and after viewing same are of the opinion that the very close proximity of other clubs not holders of licenses and in particular one adjacent to the location in question, that these are factors to be considered in the Board's decision. Further, the Board perused the membership list of the applicant club which revealed that more than 60 percent of the applicant's members reside outside the area in question. In addition this Board further considered the matter of the privilege of club membership and the Association of this club with other clubs, which association could or could not in the Board's opinion encourage interclub activities concerning alcoholic beverages and their use.

"It was further considered by the Board that the overwhelming section of that neighborhood is definitely residential with the one exception of the location where the applicant desires to be located. It is therefore the opinion of this Board that the welfare of the section, the welfare of the community and all other factors involved would be best served by the denying of this application.

"Therefore in the use of its discretion it is the unanimous opinion of this Board that this application be denied."

It appears advisable to give a brief history of the appellant Association. It has held a club liquor license for other premises for twenty-six years, during which time it has had no record of any violation of the Alcoholic Beverage Law or regulations. The present membership consists of ninety men, many of whom are now retired from business. Among other things, the appellant provides sick benefits for its members and also benefits for the widows of deceased members.

Anthony Gritti (a trustee) testified that for many years the club premises were on Fourteenth Avenue, Newark, but because of changing conditions in the neighborhood "there were stones, tin cans, trash thrown through the windows, knocking on the doors, and we were in such a condition that we were forced to sell the place and move out."

Gritti further testified that on South Orange Avenue, where the proposed premises are located, there "are a lot of stores" whereas beyond one hundred feet from the corner on

Pine Grove Terrace are one-family houses.

Ray Nemezio (vice president of appellant) testified that appellant is not strictly in the sense a club but, rather, a family organization as no one can be a member thereof unless he comes from the town of Agira in Italy, after which the appellant was named.

Frank Loria (a trustee of appellant) testified that "We are getting along in years. I would say more than half are retired and I would call them senior citizens. This is the only place they have for a little recreation during the day."

Mrs. Harvey W. Bingham and Mrs. Rosemary Knapp (both members of Vailsburg Community Council) testified generally that they opposed the issuance of the license. Mrs. Bingham stated that she is not worried that the older people who may congregate outside the club premises would constitute a nuisance, but younger people are seen on the corner and in her opinion the issuance of a license to dispense liquor would not help any. Moreover, Mrs. Bingham said there are other liquor outlets in the neighborhood and that, if the appellant obtains a club license, the problems there now would multiply.

Mrs. Knapp testified that she lives quite a distance from the proposed licensed premises and, although she does not object to the persons who constitute the membership of the appellant organization, she does object to another social club being located in the area.

I shall consider the reasons given by respondent for its action in this matter. As an initial reason, on behalf of respondent it was stated that the members had visited the location of appellant's proposed premises and, after viewing same, were of the opinion that the very close proximity of other clubs which do not hold liquor licenses and, in particular, one adjacent to the location in question, was a factor that was taken into consideration. It was mentioned that a club existed in the rear of the building where the appellant's premises are located.

The respondent also stated as a reason for its action that it ascertained more than sixty per cent. of the appellant's members reside outside of the area of the proposed premises. However, even though this be a fact (that the majority of the members of appellant do not reside in the immediate area of the proposed licensed premises), this in itself does not disqualify applicant from obtaining a club license. Bergen County Aerie #3291 of the Fraternal Order of Eagles v. Lodi, Bulletin 1773, Item 1. Moreover, respondent contended that it was afraid that, if a liquor license were granted to appellant, it could or could not encourage interclub activities concerning the use of alcoholic beverages. However, although the members are uncertain with reference thereto, it appears to be mere speculation on the part of respondent. It must be taken into consideration that the appellant organization has held a club license for a period of twenty-six years in Newark and has an unblemished record in so far as alcoholic beverage activities

are concerned. The respondent also expressed an opinion that it considered the neighborhood to be definitely residential. However, there is no dispute that the building wherein the proposed club premises are to be located is definitely a business area.

There has been some evidence presented that there are other liquor license outlets in the area of the proposed premises, but this in itself would have no bearing on the issuance of a club license. The object of a club license is not to supply the needs of the neighborhood. The holder thereof is permitted to sell alcoholic beverages only to bona fide members and their bona fide guests for consumption on the licensed premises. Thus such contention by one of the objectors carries no weight so far as a club license is concerned. Irish American Association of Kearny, N.J. v. Kearny, Bulletin 293, Item 11; Re Branch 13, American Federation of Hosiery Workers, Bulletin 523, Item 5; Re Indian Lake Community Club, Inc., Bulletin 845, Item 8.

It is apparent that the objectors are fearful of excessive noise and disturbance if the club liquor license is granted. In this regard, if the licensed premises are properly conducted it should be no more objectionable than any other type of establishment conducted in the area.

I find, after careful examination of the testimony and the facts presented herein, that the reasons relied upon by the respondent to deny the application of appellant for a club license are insufficient. Cf. Lakewood Estonian Association v. Jackson, Bulletin 1001, Item 1.

After full consideration of the circumstances in this case, it is recommended that, since appellant appears to be fully qualified and since respondent's reasons for denying the application are not meritorious, respondent's action should be reversed and respondent be directed to issue a club license to appellant.

#### Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcripts of the testimony and the recommendations in the Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of February, 1969,

ORDERED that the action of respondent be and the same is hereby reversed, and the respondent is directed and ordered to issue a club license to appellant in accordance with the application filed.

JOSEPH M. KEEGAN  
DIRECTOR

5. APPELLATE DECISIONS - JESSWELL, INC. v. NEWARK.

JESSWELL, INC., )  
 )  
 Appellant, )  
 v. )  
 )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City )  
 of Newark, )  
 )  
 Respondent. )  
 ----- )

ON APPEAL  
CONCLUSIONS  
AND ORDER

William Osterweil, Esq., Attorney for Appellant  
No appearance on behalf of Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal addresses itself to the action of respondent Newark Municipal Board of Alcoholic Beverage Control (hereinafter Board) which on October 23, 1968, denied appellant's application for place-to-place transfer of its plenary retail consumption license from 285 West Market Street to 105-107 Hartford Street, Newark.

The adopted resolution sets forth the reasons for its action as follows:

"...the Board, in this application for Place to Place transfer, having taken into consideration all the facts, those of the objectors as well as those of the applicant, feels that because of the contemplated new church construction in the immediate and adjacent sections to those signified by the Applicant, and in further consideration of the general welfare of the neighborhood and the citizens, that this application for Place to Place transfer should be denied."

The petition of appeal alleges that the denial was erroneous for reasons which may be briefly summarized as follows:

- (a) It was contrary to the weight of the evidence.
- (b) It was based on findings extraneous to the evidence.
- (c) The Board failed to take into consideration that appellant's present premises had been taken over by the Newark Housing Authority, which compelled appellant to vacate the same.
- (d) The proposed site is the only site available within the ordinance restrictions.

(e) The Board was persuaded by members of a church who stated that the church intended to build within 350 feet of the proposed site within the next few years.

(f) The Board acted without regard to the evidence and arbitrarily.

The Board did not file an answer to the petition of appeal.

This appeal was submitted solely upon the transcript of the testimony below, in accordance with Rule 8 of State Regulation No. 15. An examination of the transcript reflects the following:

Welton Miller, president and principal stockholder of the corporate appellant, testified that he has operated the tavern at the present location for approximately two and one-half years and has invested his entire life savings in the business. A tavern existed at that location for at least twenty years prior thereto. The Housing Authority of the City of Newark has taken over the premises for which the license is issued and appellant was told that the premises must be vacated within one month after the date of the hearing before the Board.

The proposed site is the only site available within the distance limited by city ordinance. Appellant plans to invest approximately \$20,000 in remodelling the proposed premises for the purpose of operating a restaurant and tavern at that address. The witness stated that during the course of his operation, he has never had occasion to call the police, nor did he ever receive any complaints of disturbances.

Several members of the Bethany Baptist Church, located about six blocks from the present premises, testified in opposition to appellant's application. Rev. James A. Scott, the pastor of the church, expressed the sentiments of that group as follows: His church will be compelled to relocate from its present location (in an area which contains three taverns and one package liquor store) and intends to build on a new site at least 350 feet from appellant's proposed transfer site. In the new area, there is only one tavern and, if the application is granted, there will be two taverns in the immediate vicinity of the church. It was his feeling that this tavern "will not contribute to the good atmosphere in the neighborhood" and will interfere with the church program. Members of the church have had to call the police on at least half a dozen occasions because women members have been "intimidated and molested." He did not find fault with appellant's operation of its premises at the present time. He admitted that the church had not received title to the proposed new building site but stated that construction should begin during 1969.

Other witnesses, supplementing Reverend Scott's testimony, felt that any tavern attracted "undesirable, irresponsible characters who have no respect for the church and who are subject to molesting our girls and women." One witness unequivocally declared that even if appellant's tavern

is run in an orderly fashion, he would still object to it because of uncontrolled "characters who hang around."

Edmund See, testifying on behalf of several tenants in the building housing the premises to be licensed and in a memorandum submitted in this appeal, stated that a tavern at the proposed location would have an adverse effect on the family life of the tenants.

In the consideration of this appeal, it is well to restate the principles which govern its determination. The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds. Such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Silver Sands Motel v. Point Pleasant Beach, Bulletin 1624, Item 1. As the court pointed out in Bivona v. Hock (1949), 5 N.J. Super. 118, 120:

"It seems to us that the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940).

"...the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

"[T]he municipality has the original power to pass on an application for an alcoholic beverage license or the transfer thereof. However, its action is subject to appeal to the Director of the Alcoholic Beverage Control Division. On such appeal the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him." Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (1965); Fanwood v. Rocco, 33 N.J. 404 (1960).

The Director must determine whether or not the Board properly and reasonably exercised its discretion in

denying appellant's application for place-to-place transfer of its license. Discretion must be based on right judgment, governed by reason, fair and suitable in the circumstances. 75 C.J.S. 634, and cases therein cited. What is reasonable must, of course, be determined according to the context and circumstances of each particular case.

This is clearly a hardship case. The present premises have been condemned by the Newark Housing Authority and appellant is required to vacate those premises almost immediately. In order to relocate under the existing Newark ordinance, it must find a suitable place within 600 feet from present premises or more than 1000 feet (600 feet in "hardship" cases) from existing taverns. Newark Revised Ordinances Sec. 3.29. Appellant's representation, which is not refuted in the record, is that this is the only site available within such circumscription.

The City of Newark has recognized hardship situations and the record shows that it has approved transfers of licenses in those situations. In Helms v. Newark and Cardinal Wines & Liquors, Inc., Bulletin 1398, Item 3, the Board, acting within the proper use of its discretionary authority, approved a transfer to another section of the city notwithstanding substantial objections made thereto. Also, where the Board has denied such applications, the Director has not hesitated to reverse where he considered such action to be unreasonable and an abuse of discretion. Gruber v. Newark, Bulletin 1071, Item 1; Geltzeiler v. Newark, Bulletin 1171, Item 1; Black v. Newark, Bulletin 1219, Item 1; Spring Manor, Inc. v. Newark, Bulletin 1319, Item 4; Club Warren, Inc. v. Newark, Bulletin 1585, Item 4.

As I conceive the basic tenor of the objections, it is general disapproval of the operation of all taverns. The objectors cite the potential of taverns to attract undesirable persons, the possible molestation of women and children, and other conditions which they associate with the operation of licensed premises. It is readily understandable that such concern exists and this Division is not unsympathetic to the expressions made by the objectors.

However, all of the witnesses agreed that appellant has operated its present premises in a proper manner and has not been the cause of disturbances or unsavory conditions. If the new premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), women and children who have occasion to pass the establishment have nothing to fear. If the business is conducted in an improper manner so as to cause annoyance, or otherwise in violation of the Alcoholic Beverage Law, the license will be subject to suspension or revocation. Tagliaferro v. Newark and B.T. McGrath, Inc., Bulletin 1710, Item 1.

Mr. Miller has testified that during his operation of the licensed business, he has not had occasion to call the police nor has any complaint by any neighbor been made to the police regarding any improper conduct on the said premises. Furthermore, the Bethany Baptist Church will presumably be erected within the next few years on a site at least 350 feet

distant from the proposed transfer site. That site will be in an area which will, with appellant's licensed premises, have only two taverns, whereas at the present location there are three taverns and one package store in the immediate area. The proposed transfer site is a short distance away from the present site, and thus there will be no increase in the number of liquor licenses in that section of the city. Tagliaferro v. Newark et al., supra; cf. Henderson v. Teaneck and Stanley's, Inc., Bulletin 1588, Item 1; L. Kubisky, Inc. v. Paterson, Bulletin 1662, Item 2. Additionally, our courts have supported the thesis that an owner of a license privilege acquires through his investment therein an interest which is entitled to some measure of protection in connection with a transfer. R.S. 33:1-26; Lakewood v. Brandt, 38 N.J. Super. 462 (1955).

It is significant to note that the Board has not filed an answer to the petition of appeal herein.

I am of the conviction that the Board's denial of the application for transfer was unreasonable, arbitrary and an abuse of its discretion. I further find that appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15. It is, therefore, recommended that the action of the Board be reversed.

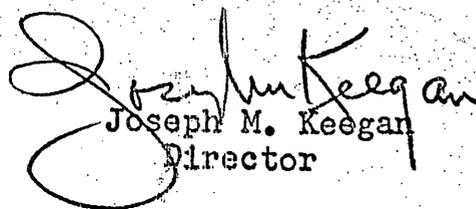
#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of testimony and Hearer's report, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 24th day of February, 1969,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby reversed and the respondent is ordered to transfer the license in accordance with the application filed by appellant.

  
Joseph M. Keegan  
Director