

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N.J.

BULLETIN 1404

September 5, 1961

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STATE OF NEW JERSEY  
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1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1404

September 5, 1961

1. APPELLATE DECISIONS - MARSILLO v. IRVINGTON

PETER MARSILLO,

Appellant

v.

BOARD OF COMMISSIONERS OF  
THE TOWN OF IRVINGTON,

Respondent.

ON APPEAL  
CONCLUSIONS  
AND ORDER

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Bendit, Weinstock, Cummis & Kroner, Esqs. by Benjamin L.  
Bendit, Esq., Attorneys for Appellant  
Matthew Krafte, Esq., Attorney for Respondent

BY THE DIRECTOR:

This is an appeal from respondent's action of May 9, 1961, whereby it revoked appellant's plenary retail consumption license, effective on the same day, after it found appellant guilty in disciplinary proceedings of a charge alleging that on January 6, 1961, January 21, 1961, and February 2, 1961, he violated the following condition in his license:

"The within license is issued upon the express condition that, Biaggio Barrasso, James Barrasso and Chester Barrasso shall not be permitted to visit, frequent or be upon the licensed premises."

Appellant's premises are located at 765-767 Springfield Avenue, Irvington.

Upon the filing of the above appeal an order was entered staying respondent's order of revocation pending determination of the appeal. R.S. 33:1-31.

At the hearing held herein a transcript of the evidence taken in the disciplinary proceedings heard by respondent was introduced into evidence herein and additional testimony was taken pursuant to Rule 8 of State Regulation No. 15.

At the hearing below Detective Louis Bernheim, of the Irvington Police Department, testified that he and Detective John P. Clark entered appellant's licensed premises on January 6, 1961, at about 11:30 p.m. and remained there about ten minutes; that he saw Biaggio Barrasso (hereafter Biaggio) at the bar and walking around; that Biaggio "had a drink which he had picked up, taken a drink, picked it up and walked around and was with that drink at the bar." Detective Bernheim further testified that Biaggio was there when they left and that he did not ask Biaggio to leave or speak to "Benny" who was tending bar. The witness identified three photographs of Biaggio which, over objection, were admitted into evidence.

Detective Bernheim testified that he and Detective Clark

again entered appellant's premises on January 21, 1961, at about 1:30 a.m. and remained there less than ten minutes; that Biaggio "was sitting at the bar with other people in conversation, drinks on the bar were in front of him and he glanced over at myself and my partner when we entered." Detective Bernheim further testified that Biaggio was there when they left and that he did not ask Biaggio to leave.

Detective Clark corroborated the testimony of Detective Bernheim and stated that he didn't ask Biaggio to leave or ask the bartender if he knew Biaggio.

Lieutenant Stephen J. Misko, of the Irvington Police Department, testified that he entered appellant's premises on February 2, 1961, at 9:15 p.m., and remained there about three minutes; that he saw Biaggio seated at the bar and that he didn't ask him to leave.

All of the aforesaid witnesses admitted that appellant was not on the premises at any time mentioned in their testimony.

Peter Marsillo testified at the hearing below that he knows Biaggio; that he told him to stay out and that Biaggio then told him to "drop dead." He further testified that he hired "Benny" as a bartender in November 1960; that, after "Benny" left in the latter part of December 1960, he hired Ira Feitel as bartender and that he told both bartenders not to serve any drinks to Biaggio and to ask him to leave.

At the hearing held herein the Hearer, in accordance with my instructions, announced that no Hearer's Report was to be prepared (Rule 14 of State Regulation No. 15), and that I would hear oral argument on June 9, 1961.

At the hearing held herein respondent introduced into evidence the transcript of the testimony below, the photographs then introduced, over objections, as part of the record below, a copy of the charges and a copy of the resolution revoking the license. I hereby overrule the objection which was renewed at the hearing herein to the introduction of the photographs into evidence.

On behalf of appellant Benjamin Adragna (hereinafter referred to as "Benny") testified that he left his employment as a bartender for appellant on December 19, 1960, and that appellant had previously instructed him to "keep the Barrasso's out of there." Ira Feitel testified that he started to work as a bartender for appellant on December 19, 1960; that he knows Biaggio who conducts a pizzeria business two doors away; that appellant had told him that this person was not allowed on the premises and that he was not to serve him. He admitted that, while he was tending bar, Biaggio had been on the premises about ten times to deliver pies and sandwiches to customers at the bar but stated that he had never served drinks to him. Biaggio Barasso testified that appellant had asked him to stay out; that, nevertheless, in response to telephone calls, he entered appellant's premises on numerous occasions in January to deliver pies and sandwiches, but stated that "I wasn't there as far as enjoying myself." He further testified that Ira Feitel, the bartender, asked him to leave the premises. Appellant testified that he never saw Biaggio on the premises; that he had instructed "Benny" that "if these men was to come in here to tell them to go and don't serve them at any time" and that he had issued the same instructions to Ira Feitel after he hired him.

At the oral argument before me, appellant's attorney contended that the condition in question was impossible to comply with

by the licensee and that he made every effort to keep the Barrasso brothers off the premises. After carefully considering the evidence, exhibits and the oral argument, I make the following findings of fact:

1. The condition in question was imposed by respondent upon renewal for the 1959-60 licensing year of a license then held for the same premises by Golden Pheasant, a corporation, and said condition was approved by me on July 10, 1959, in accordance with R.S. 33:1-32. See Barrasso v. Irvington and Golden Pheasant, Bulletin 1319, Item 2.

2. The condition in question was imposed by respondent upon renewal for the 1960-61 licensing year of the license then held by Golden Pheasant, and appellant obtained a transfer of the license from Golden Pheasant subject to said condition.

3. The condition is unambiguous and compliance therewith was not impossible.

4. Despite the fact that appellant was not on the premises when the violations occurred, appellant is liable for the acts of his agents, servants and employees, even if they acted contrary to his instructions. Rule 33 of State Regulation No. 20.

5. Little, if any, effort was made by appellant's employees to keep Biaggio Barrasso from the premises, and the attitude of appellant, from his testimony, borders upon indifference to compliance with the condition.

For the reasons aforesaid, I shall affirm the action of respondent.

Accordingly, it is, on this 26th day of June 1961,

ORDERED that the action of respondent be and the same is hereby affirmed, and the order of revocation, previously stayed by my order herein, is restored to take effect at 2 a.m. Thursday, June 29, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

## 2. APPELLATE DECISIONS - COHEN v. PATERSON

GERALD COHEN, t/a JERRY'S ROYAL  
GARDENS,

Appellant,

 $V_0$ 

BOARD OF ALCOHOLIC BEVERAGE CONTROL  
FOR THE CITY OF PATERSON,

Respondent.

ON APPEAL  
CONCLUSIONS  
AND ORDER

Herman H. Singer, Esq., Attorney for Appellant  
Theodore D. Rosenberg, Esq., by Louis Infald, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the unanimous action of the respondent whereby it ordered a suspension of appellant's plenary retail consumption license for premises 30 Bridge Street, Paterson, for a period of one hundred twenty days, effective March 1, 1961.

"Upon the filing of the appeal an order dated February 24, 1961 was entered by the Director staying the effect of respondent's order of suspension pending determination of the appeal. R.S. 33:1-31.

"It appears from the record herein that the following charges dated February 7, 1961, returnable before respondent on February 16, 1961, were served upon appellant:

- '1. That on November 10, 1960, you did serve, sell and deliver an alcoholic beverage to John ---, age 18, in violation of R.S. 33:1-77 and Rule 1 of State Regulation No. 20.
- '2. That on November 10, 1960, you did sell and deliver an alcoholic beverage at retail in its original container for consumption off the licensed premises to John - - - and others, after 10:00 P.M. on the above mentioned date, in violation of Rule 1, State Regulation No. 38.
- '3. That on November 10, 1960, you did employ a bartender in your licensed premises, one William Junior Tuck, a parolee, and one previously convicted of a crime involving moral turpitude, in violation of Rule 1, State Regulation No. 13.
- '4. That on November 10, 1960, you did employ one William Junior Tuck as bartender in your licensed premises, who at the time of employment was under the age of 21, in violation of Rule 2 of State Regulation No. 13.'

"The petition of appeal alleges that the action of the respondent, in finding appellant guilty of the charges in question, was against the weight of evidence and should be reversed.

"Paris --- testified that on the night of November 10, 1960 he and some companions drove to appellant's licensed premises and that he asked John --- (who had just come out of the licensed premises) to get beer for him and his companions; that when John said that 'they didn't sell beer there' he gave him some additional money for wine; that John went into the premises a second time and then came out with the wine.

"John, 18 years of age at the time, testified that 'about a quarter after ten' on the evening of November 10, 1960 Paris got out of a car and asked that he get him some beer from defendant's premises; that when he told Paris 'they didn't sell beer in there', Paris gave him money and asked him to get some wine; that he went into the premises which was crowded at the time and asked a man sitting near the music box to get him two pints of wine; that the man got the wine for him and then he (John) left the premises and gave the wine to the boys.

"William Junior Tuck testified that on November 10, 1960, although twenty years of age and on parole, he was employed as a bartender by appellant; that when he obtained the position he did not tell the appellant that he was on parole and furthermore produced a birth certificate of his uncle who had a similar name and whose age was shown to be twenty seven years.

"Marion Borum, a state parole officer assigned to supervise William, testified that on October 17, 1959 he visited appellant's licensed premises and advised appellant that William was on parole and that he should not employ him; that he discussed William's age and told appellant that the age disclosed on the birth certificate which William had shown to appellant was incorrect.

"Appellant denied that he had ever seen parole officer Borum prior to the time when both appeared before respondent Board in the matter in question and that he was neither aware that William was on parole nor that he was a minor when employed by him.

"I believe the testimony of John that the two bottles of wine were purchased by a patron for John for off-premises consumption after 10:00 p.m. on the night in question. I am also satisfied that appellant had been advised by parole officer Borum concerning William's correct age and that he was on parole but appellant had, nevertheless, employed William as a bartender. Thus, I recommend that respondent's action in finding appellant guilty of Charges 2, 3 and 4 be affirmed.

"However, I cannot agree with the finding of the respondent regarding the sale, service and delivery of alcoholic beverages to John (the minor) as alleged in Charge 1. It has generally been held that in order to prove an indirect sale to a minor of alcoholic beverages for off-premises consumption, it is necessary to show that the licensee or his employee had some knowledge that the purchase was made on behalf of the minor. In Re Rosenberg, Bulletin 924, Item 8, Director Hock dismissed the charge because the evidence was insufficient to show that the licensee or his employee had any knowledge that the purchase was made by the adult on behalf of the minors. The Director stated 'the situation might be different if the beer was served for consumption on the licensed premises'. Cf. Gulas v. Spring Lake Heights, Bulletin 1149, Item 2. I find that the evidence presented herein by respondent fails to show sufficient knowledge on the part of the bartender to find appellant guilty of said charge and, therefore, I recommend dismissal thereof.

"Inasmuch as respondent had imposed thirty days on each charge and the recommendation herein is to the effect that respondent's finding of guilt on only three of the four charges be sustained, I further recommend that an order be entered by the Director reducing the penalty from one hundred twenty days to ninety days."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. After careful consideration of the facts and circumstances in the instant matter, I concur in the findings and recommended conclusions of the Hearer and I adopt them as my conclusions herein.

The suspension of one hundred twenty days imposed by respondent Board was to become effective on March 1, 1961. On February 24, 1961, upon the filing of the appeal herein, I entered an order staying respondent Board's order of suspension pending determination of the appeal. I shall vacate said order and enter an order herein modifying the suspension of appellant's license from one hundred twenty days to a suspension of ninety days.

Accordingly, it is, on this 26th day of June, 1961,

ORDERED that the suspension of Plenary Retail Consumption License C-266 is modified from a suspension of one hundred twenty days to a suspension of the license for a period of ninety days; and it is further

ORDERED that my order dated February 24, 1961 be vacated, effective at 3:00 a.m., Wednesday, July 5, 1961, and that any renewal for the 1961-62 licensing year or transfer of Plenary Retail Consumption License C-266, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Gerald Cohen, t/a Jerry's Royal Gardens, for premises 30 Bridge Street, Paterson, be and the same is hereby suspended for ninety (90) days, commencing at 3:00 a.m., Wednesday, July 5, 1961, and terminating at 3:00 a.m., Tuesday, October 3, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

3. APPELLATE DECISIONS - ATLANTIC COUNTY BEVERAGE ASSOCIATION v.  
BUENA VISTA TOWNSHIP AND ROYAL GUNNING CLUB, INC.

ATLANTIC COUNTY BEVERAGE )  
ASSOCIATION, )

Appellant, )

v. )

TOWNSHIP COMMITTEE OF BUENA )  
VISTA TOWNSHIP, AND ROYAL )  
GUNNING CLUB, INC. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

Respondents. )

----- )  
Edward A. Costigan, Esq. and James J. Armstrong, Jr., Esq.,  
Associate Attorney, Attorneys for Appellant  
Frank J. Testa, Esq., Attorney for Respondent Township Committee  
Irwin Kavesh, Esq., Attorney for Respondent Royal Gunning Club, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Township Committee which on October 17, 1960, granted the application of respondent Royal Gunning Club, Inc. for a club license for premises located on Lorraine Avenue north of the West Jersey and Searcher Railroad boundary in Buena Vista.

"Appellant in its petition of appeal alleges in substance that the action of the Township Committee was erroneous in that appellant was not a corporation within the definition of State Regulation No. 7 of the Division of Alcoholic Beverage Control; that applicant was not a bona fide club which had been in exclusive possession of a clubhouse or club quarters for at least three years continuously immediately prior to filing its application; that all of the officers and members of appellant corporation could not qualify as individual applicants; that no public hearing was held; that the granting of said license was against the public interest, and that such action was arbitrary, discriminatory, unlawful and an abuse of its discretion.

"Respondents Township Committee and Royal Gunning Club, Inc. in their answers deny each and every allegation set forth in the petition of appeal as to why the action of the Township Committee was erroneous.

"At the hearing herein appellant called as its witnesses John W. Franklin, treasurer of the respondent club who lives on Lorraine Avenue, Richland, N.J.; Luster Carpenter; Nicholas Berti, Mayor of Buena Vista Township and a title examiner; Charles Bylone, Clerk of Buena Vista Township; Paul Sanguinetti, a member of the Township Committee; William Pinns, secretary of respondent club, and James J. Armstrong, Jr., an attorney of the State of New Jersey.

"Respondents called as their witnesses James A. Mobley, president of respondent club; William Pinns and Charles Bylone.

"It appears from the evidence adduced at the hearing herein that in 1934 a group of men residing in Philadelphia organized the 'Royal Gunning Club of Philadelphia;' that minutes of meetings of said organization have been kept since 1934; that in the same



year John W. Franklin, treasurer of the club, came into possession of fifteen acres of property in Richland, N. J.; that the aforesaid club was granted permission to use the property for its activities and on June 12, 1955, the club sent out a circular inviting 'all members of the Royal Sportsman to the opening of the club grounds, Lorraine Avenue, Richland, N. J.;" that Franklin's property is divided by Lorraine Avenue on the north side of which property is a tin house 12 feet by 30 feet and on the south side there is a small building, both of which it appears were on the property when Franklin acquired it; that behind the aforesaid small building the club members built a clubhouse 30 feet by 40 feet by 9 feet, which they started to erect about three and one-half years ago, and that prior to the completion of the clubhouse summer meetings of the club were held since at least 1953 in the tin house and winter meetings at members' homes in Philadelphia. It appears further that on May 31, 1960, and July 1, 1960, a certificate of incorporation, pursuant to R.S. 15:1-3, was filed by the aforesaid club with the Cumberland and Atlantic County Clerks, respectively, under the name of Royal Gunning Club, Inc., having its principal office at Lorraine Avenue, Richland, N.J., 'where its main activity shall be conducted;' that in September 1960 said corporation filed an application for a club license which was duly advertised on October 7 and October 14 and that, at a regular meeting held on the evening of October 17, 1960, the Township Committee of Buena Vista granted the application. A petition objecting to the license, and signed by tavern owners and others, was filed with the Clerk shortly before the meeting. No objector opposed the application at the meeting. It also appears from the testimony elicited from the president and secretary of respondent club that the association has nineteen regular members, fifty associate members and a ladies' auxiliary; and that only the regular members pay dues, participate in the meetings of the organization and have the right to vote.

"In its application respondent club states that it owns the premises to be licensed; that the club has been in active operation in the State of New Jersey for three years immediately prior to the application; that the 'club has been in continuous possession of club grounds for at least five years prior to this application, but building has only been erected for one year;' and appended to the application are the 'names of all members of applicant association', seventeen in number, and 'additional members' nine in number.

"An examination of the evidence herein indicates that the organization now incorporated under the name of 'Royal Gunning Club, Inc.' may be said to have been in existence since 1934. See Scherzer et al. v. Atlantic Highlands and Atlantic Highlands Yacht Club, Bulletin 1037, Item 1. The requirement of Rule 5 of State Regulation No. 7 respecting the exclusive continuous possession and use of a clubhouse or club quarters for a period of three years continuously, immediately prior to the submission of the application, is in the alternative. It need not be a clubhouse; club quarters would suffice if there was exclusive continuous possession for the requisite period of time. See Burak v. Irvington et al., Bulletin 130, Item 2; Wildwood Villas Fishing Club v. Way, Bulletin 215, Item 6. The Royal Gunning Club seems to have met the requirement of the aforesaid rule; however, it cannot be said that the Royal Gunning Club or its successor has met the requirements of Rule 1 of State Regulation No. 7 since the evidence shows that the organization has but nineteen regular members. As was said by the Director in Bulletin 1034, Item 10:

'A "club member" is defined by Rule 1 of the aforesaid State Regulations No. 7 as being a person in good standing who has been admitted to membership.

in the manner regularly prescribed by the by-laws of the club, and whose name and address are entered in the list of members, and who maintains his membership in a bona fide manner. Both the statute and the fore-going definition in our Regulations clearly contemplate that, to come within the classification of a "member", a person must be an honest-to-goodness member entitled to vote and participate in club matters and in club operation in the same way as any other actual club member.'

Persons who are only members of the ladies auxiliary are not members of respondent club. Re Pedditto, Bulletin 179, Item 7.

"In view of the Director's ruling it is deemed unnecessary to pass upon the other points raised by appellant. Suffice to say that the action of respondent Township Committee in granting the application of respondent Royal Gunning Club, Inc., was not in accordance with the Rules and Regulations of the Division because applicant did not have at least twenty-five members. Hence its action should be reversed. I so recommend."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the record herein including the transcript of the testimony, the briefs submitted by the attorneys for the respective parties herein and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 27th day of June 1961,

ORDERED that the action of respondent Township Committee of Buena Vista Township in granting the application of respondent Royal Gunning Club, Inc. for a club license be and the same is hereby reversed.

WILLIAM HOWE DAVIS  
DIRECTOR

## 4. APPELLATE DECISIONS - FILADELFIA AND EVERLY v. PARSIPPANY-TROY HILLS AND D'ALESSANDRO.

AGNES FILADELFIA and ARTHUR F. )  
 EVERLY, partners, t/a MORRIS )  
 HILLS LIQUORS, )

Appellants, )

v. )

TOWNSHIP COUNCIL OF THE TOWNSHIP )  
 OF PARSIPPANY-TROY HILLS, and )  
 VITO D'ALESSANDRO, t/a TROY HILLS )  
 PACKAGE STORE, )

Respondents. )

ON APPEAL  
 CONCLUSIONS  
 AND ORDER

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 Aloysius J. Castellano, Esq. and Robert Simandl, Esq., Attorneys  
 for Appellants.  
 Frank C. Scerbo, Esq. and Herbert S. Glickman, Esq., Attorneys  
 for Respondent Township Council.  
 John H. Grossman, Esq., Attorney for Respondent-licensee.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Township Council in approving a place-to-place transfer of plenary retail distribution license D-3, held by respondent licensee, from South Side of Route 46, about 2600' East of Beverwyck Road, to Easterly end of the Morris Hills Shopping Center at corner of Routes 46 and 202, Parsippany-Troy Hills.

"The application in question was approved by respondent Township Council at a meeting held on December 20, 1960, two councilmen and the mayor voting in favor thereof, and the other councilman voting to deny said application to transfer.

"The following resolution was adopted:

"WHEREAS, Vito D'Alessandro has applied for a transfer of plenary retail distribution license D-3 from his present premises on Route #46 east of Beverwyck Road to a store on the easterly end of the Morris Hills Shopping Center; and

"WHEREAS, objection to said transfer has been filed and pursuant to said objection, the public hearing was held at the Township Hall Annex on November 28, 1960, at 8:00 P.M. and the respective attorneys for the applicant and the objector being present and the council at said hearing having heard the evidence, exhibits and arguments as presented at said hearing;

"NOW, THEREFORE, BE IT RESOLVED that said plenary retail distribution license D-3 in the name of Vito D'Alessandro be transferred from its present premises on Route #46 to a store on the easterly end of the Morris Hills Shopping Center for the following reasons:

- '1. The convenience of the citizens of this Township would be better served by a plenary retail distribution license at the Morris Hills Shopping Center inasmuch as the said Shopping Center is the largest and most substantial shopping center in the Township and a large representation of the citizens of this community use the said shopping center for shopping purposes.
- '2. There is necessity for the location of a plenary retail distribution license in the said Morris Hills Shopping Center because of the fact that it is the largest shopping center in the Township and a great percentage of the residents of this Township use the said shopping center for shopping purposes.
- '3. Because of large and extensive proposed developments of residences and residential areas very near the Morris Hills Shopping Center, it is anticipated that the need and convenience for a plenary retail distribution liquor license at the Morris Hills Shopping Center would become more acute in the very near future.
- '4. Location of the liquor license of the said Vito D'Alessandro on Route #46 east of Beverwyck Road is immediately opposite the drive-in theatre at that location and therefore is the subject of considerable traffic congestion which in fact does affect the efficiency of said locality as a plenary retail distribution license.
- '5. The citizens of this Township, including those in the areas where the said license now exists, have indicated their desire and consent to the transfer of the said license to the Morris Hills Shopping Center by a petition signed by over 700 citizens.
- '6. Statistical data such as building permits for new residences, population, voting records, respective location of other licensees were fully considered and in the over-all consideration of all of these factors does determine that a plenary retail distribution license at the said Morris Hills Shopping Center would best serve the necessity of the people of our Township.
- '7. Satisfactory evidence was presented by the applicant that he has available by contract or lease the said premises designated as the easterly store at the Morris Hills Shopping Center.'

"This is the third similar application for transfer filed by respondent-licensee, the two prior applications having been denied by the respondent Council. In each of the two prior appeals filed by the respondent-licensee, the action of said Council was affirmed by the Director. See D'Alessandro v. Parsippany-Troy Hills, Bulletin 1331, Item 1, and 1361, Item 1.

"In the petition of appeal, appellants allege that the respondent Township Council's action was erroneous for the following reasons:

'(a) The determination of the said respondent Council was not supported by but was contrary to the facts before it.

'(b) The granting of the transfer of said license is socially undesirable.

'(c) There is no public need or necessity for the transfer of said license inasmuch as the area is amply served by the present existing outlets.

'(d) The transfer of the license was contrary to the intentions of R.S. 33:1-1 et seq. and the various supplements, Rules, Regulations and Decision thereunder.

'(e) The transfer of said license of respondent Vito D'Alessandro was arbitrary and unreasonable and constitutes an abuse of discretion on the part of the respondent Township Council, Township of Parsippany-Troy Hills, Morris County, New Jersey.

'(f) The action of the respondent Township Council of the Township of Parsippany-Troy Hills, was contrary to the policy previously established by said governing body which had denied the same applications by respondent Vito D'Alessandro, on two previous occasions, namely July 21, 1959, and on May 23, 1960, which said previous actions of respondent Township of Parsippany-Troy Hills was sustained by the Director on February 29, 1960 and again on September 29, 1960.

'(g) The action of the Township Council of respondent Parsippany-Troy Hills, was both politically inspired and motivated, and without regard to the need and convenience of the public situated in the area presently being served by the former site of the license of respondent Vito D'Alessandro at Route 46.

'(h) There exists at the present time three Plenary Retail Distribution licenses within a radius of one mile of the Morris Hills Shopping Center and that the area has sufficient liquor establishments to meet the needs and serve the convenience of the persons residing in that section of the Township of Parsippany-Troy Hills, and there is no need for a fourth license, namely that of respondent Vito D'Alessandro.

'(i) The present application of respondent Vito D'Alessandro, was substantially similar to his two previous applications and said respondent at the public hearing held on November 28, 1960 did not present any new evidence of a substantial nature which warranted granting of his application for a transfer of his license.

'(j) Respondent Vito D'Alessandro is not entitled to a transfer of his license on the representation that his business at his old location has become unprofitable.

'(k) At the public hearing on November 28, 1960, respondent Vito D'Alessandro, refused to answer certain questions proposed by Counsel for appellants and concerning said respondent's agreement or lack of agreement with the principals of the Morris Hills Shopping Center, for the leasing of the proposed new license site premises, and said action of respondent Vito D'Alessandro should have been condemned by respondent Township Council of Parsippany-

Troy Hills, and the transfer application denied."

"The appellants are holders of a plenary retail distribution license on the South Side of Route 46, about 3100' from the shopping center where respondent-licensee's premises are located.

"Councilman Downey testified that he voted on the three applications that had been filed by respondent-licensee. He voted to deny the transfer at the time when the first application was heard and voted to approve the application for transfer on the two later occasions. Councilman Downey further testified that on the two later occasions he changed his opinion and voted in favor of the transfer to the shopping center because he was of the opinion that a need existed for this license there and also it would be a convenience to the general public at that location.

"Councilman Lodge testified that in November 1960, he became a member of the respondent Township Council; that he voted in favor of the transfer in question because he was of the opinion that there was a need for and a convenience to be served by having a 'package goods license' in the shopping center.

"Mayor Sutton testified that he had opposed the transfer of the license in question to the shopping center on the two former occasions and, when asked to give his reasons for voting in favor of the present application, said: 'Well, I felt in the time between my denial vote and the granting that this shopping center has very much come to life. It has grown in my opinion as I watch it, it has grown terrifically in the past six months to a year, plus the fact that the entire area surrounding the shopping center has become alive. There are subdivisions going on, one big one in particular where there will probably be two hundred new homes in the next six months or so.' Mayor Sutton further testified that he considered the other liquor licensees in the general area, but now was of the opinion that a liquor license such as that held by the respondent-licensee was necessary and also would be a convenience to the shoppers in the area.

"Councilman Litchfield testified he voted to deny a former application for transfer filed by respondent-licensee and also to deny the transfer now under consideration. He gave as his reasons for the negative votes in the matter that he was opposed to having four or five regular 'package goods' store licenses within a mile of one another in an area very close to the shopping center; that the population was not concentrated in the area and, furthermore, he did not feel because there were other businesses located in the shopping center that it was necessary to have a liquor store there.

"The issue to be determined at the outset is whether it is mandatory or compulsory on the part of the respondent issuing authority to adhere to the former decisions and deny the transfer in question. Justice Jacobs, speaking for the Supreme Court of New Jersey in the matter of Lubliner et al. v. Board of Alcoholic Beverage Control for the City of Paterson et als., 33 N.J. 428, considered this question at length. He pointed out in the opinion that New Jersey's Alcoholic Beverage Control Act (R.S. 33:1-1 et seq) contains no provision which deals with the effect of a prior denial of a later similar application. Moreover, he stated that 'they (the members of the issuing authority) are not to be barred from conscientiously exercising their judgment and effectuating the public interest as they now reasonably see it because of the actions taken on the earlier application.' Justice Jacobs then said, 'While properly looking with disfavor on the filing of vexatious, repetitious applications which present no altered circumstances or policies, the Division has always recognized the right of municipal issuing authorities to alter, in the reasonable exercise of their discretion, their earlier policies particularly where there have

been membership changes.' See Whalan v. Township Committee of the Township of Mt. Olive, Bulletin 1103, Item 2 (1956); Tolen v. Mayor & Council of the Town of Kearny, Bulletin 880, Item 1 (1950); Hearty v. Township Committee of the Township of Liberty, Bulletin 671, Item 5 (1945); Northend Tavern, Inc. v. Mayor & Council of the Borough of Northvale, Bulletin 493, Item 5 (1942). In the Whalan case, the Director said:

'The decision in the former appeal, Thompson v. Mount Olive Township, *supra*, is not binding upon respondent Committee as presently constituted. The general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5. Each application is a separate one and must be decided in the sound discretion of the local issuing authority as constituted at the time the application is considered. Tolen V. Kearny et al., Bulletin 880, Item 1.

'The number of licenses which should be permitted in any given section of a municipality is a need to be determined in the sound discretion of the local issuing authority. My function on appeal is not to substitute my personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion, and if so, to affirm irrespective of my own personal opinion. Hudson Bergen County Retail Liquor Stores Association v. North Bergen et al., Bulletin 997, Item 2. This is particularly true where the proposed location is in an area devoted to business. The mere fact that other licensed premises also serve the same area is not the controlling factor. Guarino v. Newark, et al., Bulletin 1069, Item 2.'

Bulletin 1103, pages 5, 6.

"Although Councilman Downey and Mayor Sutton had previously voted to deny a similar application for transfer as that considered herein on one and two occasions, respectively, their testimony as to why they changed their opinions is both plausible and understandable. There is no evidence whatever to indicate that either of the two members of the respondent Township Council were improperly motivated.

"I have carefully considered all of the stated grounds of appeal set forth in appellants' petition and the evidence presented with reference thereto. There is nothing to indicate that any member of the respondent Township Council was improperly motivated or acted in an arbitrary or unreasonable manner. Furthermore, the proposed site of respondent-licensee's store is not socially undesirable and the respondent issuing authority found as a fact that a need existed for the license in the shopping center and a convenience would be served by having the licensed premises there. I find, therefore, that appellants have failed to sustain the burden of proof to establish that the action of respondent Township Council was erroneous. Rule 6 of State Regulation No. 15.

"Under the circumstances, I recommend that an order be entered affirming the action of respondent Township Council and dismissing the appeal filed herein."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the evidence, exhibits and argument of the attorneys in behalf of the respective parties in this matter, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall enter an order in accordance with the recommendation.

Accordingly, it is, on this 27th day of June 1961,

ORDERED that the action of respondent Township Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

5. APPELLATE DECISIONS - BYLANDT v. RIVERDALE

FRANKLIN BYLANDT, TRADING AS	)	
BYLANDT'S,	)	
	)	
Appellant,	)	ORDER
	)	
v.	)	
	)	
MAYOR AND COUNCIL OF THE	)	
BOROUGH OF RIVERDALE,	)	
	)	
Respondent.	)	

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Johnson & Rowinski, Esqs., by George W. Rowinski, Esq.  
Attorneys for Appellant.  
John M. Mills, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on June 12, 1961, whereby it suspended appellant's plenary retail consumption license "from 10 p.m. on June 17, 1961 through July 17 1961 at 10 p.m., a period of thirty days", after appellant pleaded non vult to a charge of selling alcoholic beverages to a minor.

Upon the filing of the appeal I entered an order on June 15, 1961, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

It appears that on June 17 the attorneys for appellant served upon respondent a "Notice of Dismissal" and mailed a similar notice to me; that respondent, pursuant to the request of said attorneys, held a special meeting on the same day and adopted a resolution changing the effective dates of the suspension to provide that the license would be suspended from June 24, 1961, at closing time to July 25 at opening time.

I do not approve the procedure followed herein. An appellant may not dismiss an appeal, although he may consent to entry of an order by the Director dismissing the appeal. Moreover, while an appeal is pending and an order staying a suspension is in effect, the most that a respondent may properly do, upon appellant's request to withdraw an appeal from a suspension, is to recommend that the Director enter an order in the appeal reducing, or changing the effective dates of, the suspension. However, under all the circumstances, I shall be guided by respondent's action on June 17, in entering my order herein.



Accordingly, it is, on this 27th day of June, 1961,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the thirty-day suspension imposed by respondent and stayed by my order dated June 15, 1961, be and the same is hereby restored to be effective from the closing hour on June 24, 1961 to the expiration of the license at midnight, June 30, 1961; and it is further

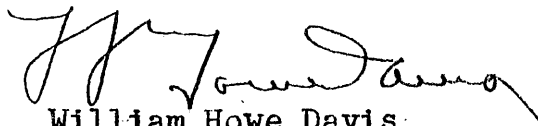
ORDERED that any renewal for the 1961-62 licensing year of appellant's license, or transfer thereof, shall be and remain under suspension until the opening hour on July 25, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

6. STATE LICENSES - NEW APPLICATIONS FILED.

Jas. Barclay & Co., Limited  
8325 Jefferson East  
Detroit, Michigan  
Application filed August 29, 1961  
for Plenary Wholesale License.

Medley Distilling Company  
120 West Franklin Avenue  
Pennington, New Jersey  
Application filed August 31, 1961 for  
person-to-person transfer of Rectifier  
and Blender License R-2 from Renfield  
Importers, Ltd.

  
William Howe Davis  
Director