



STATE OF NEW JERSEY
 OFFICE OF THE ATTORNEY GENERAL
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL

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July 16, 2007

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Re: Best Liquors of Red Bank, Inc. v. Borough of Red Bank
Appeal Nos. 7272 (Revocation) & 7273 (Non-renewal)
License No. 1340-44-020-005

Dear Counsel:

The Governing Body of the Borough of Red Bank's application for reconsideration of the Order which stayed the revocation of license pending outcome of the appeal is scheduled to be heard *promptly* at 10:00 a.m. on July 25, 2007, at these offices (*please report to the 5th floor receptionist*). In the absence of an exceptional excuse, the Director expects the parties to be on time for the hearing. Failure to make a timely appearance may result in the dismissal of the appeal or objection of the stay. The issue to be addressed is whether there is an overriding public interest to such a degree that immediate cessation of the licensed business is required. See Parrillo's, Inc. v. Belleville Excise Board (an unreported Appellate Court decision) which is attached hereto for your reference. The Governing Body has the burden of going forward.

Be advised that if you wish the Director to consider any documentary evidence at the hearing, you must submit those documents to my attention immediately. This would necessarily include any police reports you may consider relevant to your request. Together with any relevant documents, you must also provide a witness list identifying those individuals who will present oral testimony before the Director on your behalf.



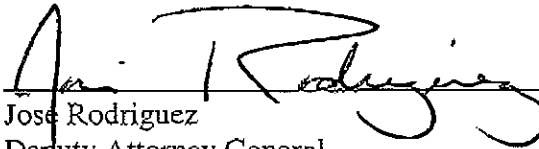
If either party intends to present testimony of witnesses, please advise your adversary and Deputy Attorney General Jose Rodriguez immediately.

If you have any questions regarding this matter, please do not hesitate to contact me at (609) 292-5901.

Very truly yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By:


Jose Rodriguez
Deputy Attorney General

JR/tld

Enclosure - Parrillo's, Inc. v. Belleville Excise Board

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 1893-78

PARILLO'S, INC.,

Appellant,

v.

BELLEVILLE EXCISE BOARD and
DIRECTOR, DIVISION OF ALCOHOLIC
BEVERAGE CONTROL, STATE OF NEW
JERSEY,

Respondents.

Submitted February 21, 1979; Decided

Before Judges Lynch, Crane and Horn.

On appeal from Order of the Division of Alcoholic
Beverage Control.

Mr. Allan C. Marra, attorney for appellant.

Mr. John R. Scott, attorney for Belleville Excise
Board.

Mr. John J. Degnan, Attorney General, attorney for
Director, Division of Alcoholic Beverage Control,
by Mr. Mart Vaarsi, Deputy Attorney General.

PER CURIAM

On February 9, 1979, we granted leave to appeal from an order of the Director of the

Division of Alcoholic Beverage Control dated February 2, 1979. The Director's order denied a stay of the suspension of the appellant's plenary retail liquor license. We also granted a stay of the order and notified counsel that pursuant to R. 2:11-2 we elected to decide the merits of the appeal on the papers submitted on the motion for leave to appeal. Counsel were advised that if they wished to file additional letter briefs they might do so on or before February 14, 1979.

We do not have before us the transcript of the hearings before the municipal authorities. From the brief record before us, it appears that on January 30, 1979 Parrillo's was found guilty by the Board of Commissioners of the Town of Belleville acting as the Belleville Excise Board of permitting fights or brawls, permitting patrons to loiter, failure to maintain adequate crowd control and maintaining a public nuisance. Parrillo's appealed to the Division of Alcoholic Beverage Control and sought a stay of the suspension of its license for 180 days pursuant to N.J.S.A. 33:1-31. On February 2, 1979 the Director of the Division of Alcoholic Beverage Control signed an order denying the stay essentially on the ground that the charges were similar to previous charges as to which the Division's hearing examiner had recommended an affirmance of a previous suspension order. The Director further stated that the alleged violations involved in the second suspension occurred subsequent to the alleged violations considered in the earlier appeal.

The authority of an administrative agency to summarily suspend a license pending revocation proceedings where the protection of the public requires immediate cessation of activities was recognized in Bechler v. Parsekian, 36 N.J. 242, 257 (1961). See also Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 489 (1971), cert. den. 405 U.S. 1065 (1972); Davis, Administrative Law (1958) §7.08, pp. 438-444, 1970 Supp. §7.08 pp. 331-333; Galihorn & Byse, Administrative Law (4th Ed. 1960), pp. 764-767. And, it has been held that an appellate court cannot supersede an administrator's exercise of licensing authority or arbitrarily overturn a bona fide discretionary determination. In re Sanders, 40 N.J. Super. 477, 482-483 (App. Div. 1956).

In the instant case, however, the suspension is not a temporary one pending revocation proceedings. The suspension is the sanction imposed by the licensing authority as punishment

for violations which have been found. If a stay is not granted, the suspension might be terminated by the mere passage of time before the administrative process can be completed. Thus, the very subject matter of the appeal may become moot. A stay of the suspension would serve the purpose of preserving the subject matter of the appeal. See White House Hotel, Inc. v. Lakewood Tp., 53 N.J. Super. 532, 535 (App. Div. 1959). We have no doubt of the authority of the Director in a proper case to deny a stay under N.J.S.A. 33:1-31. However, such a denial must be based on a determination of an overriding public interest to such a degree that immediate cessation of the activities is required. We do not find such a determination in the Director's order.

Accordingly, the Director's order of February 2, 1979 is reversed. The cause is remanded to the Division with the direction that the administrative appeal be referred to the Office of Administrative Law pursuant to N.J.S.A. 52:14F-1 et seq. for a hearing forthwith. We do not retain jurisdiction.

