

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

LICENSE NO. 0101-33-003-004

AGENCY DOCKET NOs. S-21-40129
H-2021-51115

S-22-40216
H-2022-50177

NEW JERSEY DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL,)
)
Petitioner,)
)
v.)
)
TWJJ, LLC, T/A TJS HI POINT PUB,)
)
Respondent.)
)
)

OPINION AND ORDER OF
INDEFINITE SUSPENSION
PENDENTE LITE OF
LICENSE NO. 0101-33-003-
004.

Jessica M. Saxon, Deputy Attorney General,
Attorney for Petitioner

Louis Cappelli, Jr., Esquire, Attorney for
Respondent

BY THE DIRECTOR:

This application was presented by petitioner, New Jersey Division of Alcoholic Beverage Control (the Division), to the Director on March 22, 2022, seeking an order to show cause why Plenary Retail Consumption License No. 0101-33-003-004 of respondent, TWJJ, LLC, t/a TJs High Point Pub (Hi Point), should not be indefinitely suspended pendente lite. Following review of the written submissions, the voluminous police reports and documentation, and consideration

of the positions advanced at oral argument on April 12, 2022, the Division's application is GRANTED and the license is indefinitely suspended pendente lite.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Hi Point is the bar where this license is sited (specifically at 5 North Shore Road, Absecon, New Jersey 08201); the establishment is, as permitted by ordinance for any bar in the City of Absecon, open 24 hours per day, 7 days a week.¹ The licensees are Todd Jacobs and Susan Jacobs. To use broad strokes, the Division alleges that Hi Point is operated in such a reckless and irresponsible way that the business presents a substantial and ongoing threat to the health, safety, and welfare of the people of New Jersey, and thus suspension pendente lite is required.

Specifically, the Division has supplied a detailed Certification of Anthony Bowen and extensive exhibits in support of the current application. Bowen is a civil investigator for the Division. His investigation includes close contact with officials in the City of Absecon Police Department regarding numerous incidents at Hi Point. (All incidents in the Bowen Certification are from 2021 and into 2022.) These include brawls, an unconscious patron on the licensed premises, numerous charges of driving while intoxicated with resulting accidents both in and out of Hi Point's parking lot, overserving, underage drinking, and fights involving security personnel for Hi Point who were criminally disqualified from holding those positions. Also, there were two patron fatalities: one when an individual, after drinking at Hi Point, was struck and killed as a pedestrian by an automobile while crossing the road in front of Hi Point. The other was an

¹ See City of Absecon, New Jersey, Alcoholic Beverage Control Code, Section 118-16 ("Sale or distribution of beverages under licenses issued pursuant to this Article shall be permitted 24 hours a day, weekdays and weekends, without time restriction, except as provided by the New Jersey Division of Alcoholic Beverage Control.").

individual who had been drinking at Hi Point and then, when driving, struck and killed a pedestrian and fled the scene.² There are six surveillance videos supplied by the Absecon Police Department that depict six narrated incidents in the Certification. (Copies of these surveillance videos were provided by the Division to Hi Point's counsel.)

The Notice of Charges was issued on March 11, 2022. The Division has charged that Hi Point has allowed a brawl or act of violence on the licensed premises contrary and seeks a 30-day suspension. Hi Point is also charged with creating a nuisance by having seven intoxicated customers charged with driving under the influence, for which the Division is seeking a 10-day suspension. Finally, the Division has brought a second nuisance charge for allowing incidents (brawls) requiring police intervention on a number of occasions and seeks a 10-day suspension.

The Division issued a second Notice of Charges for Hi Point on March 30, 2022. (At oral argument on the Order to Show Cause, the Division stated its intention to include these additional charges in support of its application for pendente lite relief.) With this Notice, the Division charges three separate statutory and regulatory violations for employing Joseph Gallo, Jeremy Ruga, and King Kamau Nantambu, all of whom are statutorily disqualified from this employment and none of whom has been issued a Rehabilitation Employment Permit. For each charge the Division is seeking a 30-day suspension. Also charged is a brawl on March 5, 2022, which involved several patrons and Hi Point's security personnel striking patrons, the penalty for which the Division is seeking a 60-day suspension. There are three separate charges of Hi Point serving an apparently intoxicated patron, with the Division seeking a 15-day suspension for each

² These incidents with fatalities are under investigation by the Division, and it is expected that they will be charged in due course.

charge. Finally, the Division charges Hi Point with service of alcohol to an underage patron, for which it seeks a 15-day suspension.³

Notably, with the second Notice of Charges, the Division states that “due to the aggravating circumstances in this case, [the] Division will seek revocation of the license.”

The parties advance the following arguments in their submissions:

I. The Division’s Application

The Division’s case is based on two categories of charges: brawls (requiring police intervention) and patron intoxication/overserving. A number of these incidents have been charged. (With these current charges, the Division seeks an aggregate 50-day suspension of Hi Point’s license.) These allegations, taken together, lead the Division’s conclusion that such grave and recurring violations require the immediate suspension pendente lite of Hi Point’s license in order to protect the health, safety, and welfare of the public.

A critical point for the Division is that a number of incidents have just occurred. As recently as March 4, 2022, an underage, 18-year-old girl was served alcohol at Hi Point and then charged with a DWI. The next day, on March 5, 2022, a woman coming from drinking at High Point crashed her vehicle at 3:30 a.m. into a New Jersey Transit bus sign. Her blood-alcohol content was 0.17%. On March 7, 2022, a fight between two females took place within the licensed establishment and then continued out into the parking lot, with approximately fifteen people eventually involved. Security personnel can be seen on video striking patrons; both of these men, it was later determined, were criminally disqualified from even serving in that capacity. On March 8, 2022, a woman consumed several shots of alcohol and is seen visibly

³ Even with the filing of the second Notice of Charges, there are additional incidents not charged but discussed by the Division in its submission. They are currently under investigation and are expected to be charged separately.

staggering to and from her chair. Subsequently, she was pulled over in her automobile by the Absecon Police Department. (The Division's investigation of this incident is ongoing.) And on March 14, 2022, the Division received information on a fatal motor-vehicle accident involving an intoxicated patron of Hi Point (this accident occurred on July 12, 2021). Video evidence suggests that the male patron was served eight beers over an approximately two-hour period. He left the licensed premises and attempted to walk across a six-lane highway; he was struck and killed by an automobile. (This incident is under continuing investigation by the Division.)

The Division frames its application under the controlling factors for emergent relief found in Crowe v. DeGioia, 90 N.J. 126, 132-4 (1982) – viz., likelihood of success on the merits, irreparable injury, a balancing of equities in granting relief, and the public interest. First, as to probability of success on the merits, the Division concludes that “Hi Point has established a pattern of repetitious conduct disregarding the health, safety, and welfare of their patrons and members of the public. Based on the . . . observations of Investigator Bowen, the reports, surveillance, and other exhibits, the Division has a clear probability of success on the merits of the two charges for violation of N.J.[A.C.] 13:2-23.6(b). [Prohibition on creating a nuisance.]” The Division's Moving Brief at 14.

Second, without a suspension pendente lite, irreparable harm is likely to follow, based on the documented history of Hi Point violations. The incidents chronicled, both charged and uncharged, are either recent or very recent, and that fact evinces on the part of Hi Point an ongoing disregard for its responsibilities as a licensee. Its failure to adhere to the lawful service of alcohol has resulted in brawling, DWIs, and deaths. Under these very serious circumstances, suspension pendente lite is the only appropriate remedy. With respect to the third and fourth

factors: the equities, when balanced, along with the public interest strongly favor the Division. Public safety here far outweighs the financial impact on Hi Point of a suspension pendente lite.

II. Hi Point's Opposition

In its opposition, Hi Point goes through the allegations made against it by the Division, both charged and not charged. It relies on no additional evidence to contradict any of the allegations. Instead, Hi Point points out perceived weaknesses in the evidence and draws different inferences from the evidence presented by the Division in its application. Moreover, Hi Point relies on the Certification of Todd Jacobs, a co-owner of Hi Point. Mr. Jacobs certifies in general that the business seeks to comply with the law; specifically, he describes numerous steps to demonstrate that the business is a responsible licensee. He refers to meetings with the Division's investigator (Bowen), local elected officials in Absecon, and police officers (including the chief of police) in Absecon. What is more, Mr. Jacobs emphasizes that Hi Point has distributed to its staff a guide on best practices for the service of alcohol and that, as of March 15, 2022, all Hi Point bartenders are TIPS certified. On March 30, 2022, he held two sessions with Hi Point staff on security training and procedures. A video on this subject, provided by Hi Point's insurance company, was shown. Finally, on April 1, 2022, Hi Point retained the services of a security consultant to assist in the hiring and training security staff.

Hi Point also addresses the Crowe factors and asserts that they are not satisfied by the Division in this case. It claims that suspension pendente lite of its license will cause a termination of revenue to the business, loss of reputation, and the discharge of employees. Even if Hi Point prevails after a full hearing, there is no way to recover for the economic losses incurred during a suspension. Irreparable injury will be visited on the owners inasmuch as an

operating Hi Point is their only source of income. In balancing the hardships, it is clear that suspension will fall with much greater severity on Hi Point than the Division or the public.

Hi Point requests that the Division's application for license suspension pendente lite be denied. Instead, the status quo – i.e., Hi Point open for business 24 hours per day, 7 days a week – should be maintained pending the outcome of a full hearing in the Office of Administrative Law (OAL).

III. The Division's Reply

The Division, in its reply brief, rebuts Hi Point's argument as to the sufficiency of its evidence, noting that, as a matter of established law, the Rules of Evidence do not apply in administrative-agency proceedings. For example, hearsay evidence is admissible. The evidence submitted by the Division, including police reports that are unrebutted, alleges facts that are not disputed by Hi Point. Further, the Division reviews the Crowe factors again and contends that it has satisfied all of them in this motion. In particular, as to the need for balancing of the equities in this matter, the Division concedes the hardship on Hi Point of license suspension. Nevertheless, the requirement to protect the public from the risks of continued alcohol-related death and injury outweighs this hardship. The loss of income to a closed High Point is not enough to override the need for the requested preliminary relief of suspension pendente lite of the license.

Procedurally, following the submission of the motion by the Division, the Director issued an order to show cause on March 23, 2022, with a return date scheduled for April 4, 2022. After an adjournment request by Hi Point's counsel, the Division issued an amended order to show

cause on March 29, 2022, with a new return date of April 11, 2022. Oral argument was conducted remotely on the return date.

LEGAL ANALYSIS

The relief sought by the Division's motion for suspension of the license pendente lite ("pending the lawsuit") is available under N.J.A.C. 13:2-19.4(a)(2). The standards for such injunctive relief are found in Crowe, 90 N.J. at 132-4. Emergent relief should issue when: (1) irreparable harm must be prevented; (2) a legal right underlying plaintiff's claim is settled and there is a likelihood of success on the merits; (3) all the material facts are not in dispute; and (4) the relative hardship favors granting the relief. Ibid.; see also Ispahani v. Allied Domecq Retailing, U.S., 320 N.J. Super. 494, 498 (App. Div. 1999); Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Each of these factors must be established by the applicant by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013); Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012). Moreover, a "case that 'presents an issue of significant public importance' requires the court to 'consider the public interest in addition to the traditional Crowe factors.'" New Jersey Election Law Enforcement Com'n v. DiVincenzo, 445 N.J. Super. 187, 196 (App. Div. 2016) (quoting Dow, 216 N.J. at 321). Finally, such relief must be granted with great care; it should be done only in extraordinary circumstances where the facts are undisputed and proven equities establish a patent and compelling need based on justice and morality. Hammer v. N.J. Voice, Inc., 302 N.J. Super. 169, 175 (Law Div. 1996).

Here, the Division has shown, clearly and convincingly, that suspension of Hi Point's license is necessary. First, the harm done here has been irreparable, with two fatalities, brawls, and DWIs. The charged violations are of course all very serious, but what is especially troubling

is the pattern of conduct and the gravity of the consequences. The offenses must be – can only be guaranteed to be – stopped immediately with suspension. Second, the Division has shown a likelihood of success on the merits. Certainly Hi Point raises proof challenges here and there in its submission (without acknowledging the relaxed application of evidence rules in the OAL and without objecting to their admissibility), but the undeniable fact is that the Division has presented, on its face, a compelling case, based on what are fundamentally undisputed facts, that is very likely to succeed in the OAL.

Third, the equities manifestly favor the Division. The violence, overserving/intoxication, impaired driving, and deaths that have, in one way or another, originated at Hi Point are a concrete and continuing threat to the public. It is inescapable that Hi Point is responsible for “conditions both inside and outside of the licensed premises caused by the licensee, the licensee’s employees or patrons thereof.” See A.B.C. Bulletin 2486, Item 6 (2015); Stock Enterprises, Inc. v. Governing Body of Sayreville, No. A-5940-12T4 (App. Div. Jan. 5, 2014) (slip op. at 26). To be sure, the efforts of Hi Point to remedy these problems are obviously commendable, but these practices may or may not correct the problems presented. Here, the risk of waiting for success is far too high. Finally, the violations are of significant public importance, so the consideration of the public good here is thoroughly justified.

The two fatalities are worth considering more closely. The incontestable fact is that one individual, Christopher Burt, was struck and killed (on July 12, 2021) as a pedestrian after drinking at Hi Point; another individual, Franklin Talmadge, was killed as a pedestrian (on January 8, 2022) after being struck by the vehicle of Matthew Cademartori, who had been drinking at Hi Point. To be sure, Hi Point raises what appears to be a valid if speculative point about Mr. Cademartori’s possibly drinking in his vehicle in addition to the drinking he did at Hi

Point; his egregious vehicular misconduct, nevertheless, followed his drinking at Hi Point. Concerning Mr. Burt's death, Hi Point has proffered almost nothing in mitigation. See Hi Point's Brief in Opposition at 9 ("[Mr. Burt chose to improperly cross the highway at a green light resulting in the motor vehicle accident.]). These deaths are the very definition of irreparable injury that justify indefinite suspension pendente lite of the Hi Point license.

The evidence presented by the Division, when considered in its totality, amply supports this result. There are Absecon police reports, video-surveillance footage, and the Bowen Certification (which explains the Division's investigation of Hi Point to date). To be sure, the Division's submission includes hearsay evidence, but the entire body of what has been relied upon provides the required residuum under N.J.A.C. 1:1-15.5(b) ("some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.)). See Delguidice v. New Jersey Racing Com., 100 N.J. 79, 84 (1985) ("[I]n an administrative hearing . . . all relevant evidence is admissible. N.J.A.C. 1:1-15.2(a)."). It may also be noted that, under the New Jersey Rules of Evidence, there is an exception to the admissibility of hearsay evidence for public records, such as police reports, made by public officials within the scope of the official's duty to observe an act or event and to make a written statement. See N.J.R.E. 803(c)(8).

Inferences may fairly be drawn by the factfinder, as they have been here, from this evidence so long as they have support in the record. Lustig v. Regency Co-Op, Inc., 2011 N.J. Super. Unpub. LEXIS 1430* at 21-2 (factfinder in civil action may make inferences from circumstantial evidence); see also State v. Brown, 80 N.J. 587, 592 (1979) (factfinder in a criminal case may draw an inference from a fact whenever the truth of the inference is more probable than not; the veracity of an inference need not be established beyond a reasonable doubt

to be drawn).⁴ It is certainly true that the relief of license suspension pendente lite is extraordinary, but the Division has established the case for such emergent relief clearly and convincingly. Such relief, moreover, is granted against the backdrop of this agency's practically limitless power to regulate the sale of alcoholic beverages, Fayette Fair Trade, Inc. v. Governing Body of the City of Perth Amboy, 395, N.J. Super. 453, 461 (App. Div. 2007), and the requirement that the Director's authority be liberally construed and is entitled to substantial deference. Canada Dry Ginger Ale, Inc. v. F & A Distib. Co., 28 N.J. 444, 455 (1958); Circus Liquors v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009).

For the reasons set forth above and for good cause shown:

It is on this 14th day of April, 2022,

ORDERED that Plenary Retail Consumption License No. 0101-33-003-004 is hereby INDEFINITELY SUSPENDED Pendente Lite effective this date at 5:00 p.m.; and it is further

ORDERED that Hi Point shall have the right to apply to the Director, on 14 days' notice to the Division, to rescind or modify this suspension if there is a change of circumstances warranting such relief; and it is further

ORDERED that this contested case is herewith transmitted for a full hearing in the Office of Administrative Law under N.J.A.C. 1:1-3.2 to adjudicate the issue of revocation of Plenary Retail Consumption License No. 0101-33-003-004.


JAMES B. GRAZIANO
DIRECTOR

⁴ Cf. R. 4:46-2(c)(in the summary-judgment context, all inferences from the evidence submitted must favor the non-moving party); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (“On a motion for summary judgment the court must grant all the favorable inferences to the non-movant.”). Inasmuch as the instant motion is not one for summary judgment, there is no such requirement for how inferences must be made here.