

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RECEIVED
4-8-19

IRON BAR, LLC, ET AL.,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TIMOTHY DOUGHERTY, ET AL.,
Defendant

CASE
NUMBER: **2:19-CV-09170-MCA-MAH**

TO: *(Name and address of Defendant):*

Town of Morristown
200 South Street
Morristown, NJ 07960

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas J. Cotton, Esq.
Schenck, Price, Smith & King, LLP
220 Park Avenue
Florham Park, NJ 07932
Email: tjc@spsk.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

s/ WILLIAM T. WALSH

CLERK



ISSUED ON 2019-04-02 16:15:48, Clerk
USDC NJD

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
☐ Served personally upon the defendant. Place where served: _____ _____ ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. ☐ Name of person with whom the summons and complaint were left: _____ ☐ Returned unexecuted: _____ _____ ☐ Other (specify) : _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct. Executed on _____ Date _____ <i>Signature of Server</i> _____ <i>Address of Server</i>		

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Iron Bar, LLC d/b/a Iron Bar, the Revolution Social Brew House, and Gran Cantina;
5-7 South Street Holdings, LLC; 9 South Street Holdings, LLC;
and 11 South Street Holdings, LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IRON BAR, LLC d/b/a IRON BAR, THE
REVOLUTION SOCIAL BREW HOUSE, and GRAN
CANTINA; 5-7 SOUTH STREET HOLDINGS, LLC; 9
SOUTH STREET HOLDINGS, LLC; and 11 SOUTH
STREET HOLDINGS, LLC,

Plaintiffs,

v.

TIMOTHY DOUGHERTY, in his individual and
official capacity, STEFAN ARMINGTON, in his
individual and official capacity, TOWN OF
MORRISTOWN, and JOHN DOES 1-10,

Defendants.

Civil Action

Case No. _____

Document Filed Electronically

COMPLAINT AND JURY DEMAND

Plaintiffs Iron Bar, LLC d/b/a Iron Bar, the Revolution Social Brew House (“Revolution”), and Gran Cantina (all three trade names, collectively, “IB LLC”); 5-7 South Street Holdings, LLC (“5-7 South Street Holdings”); 9 South Street Holdings, LLC (“9 South Street Holdings”); and 11 South Street Holdings, LLC (“11 South Street Holdings”) (collectively, “Plaintiffs”), by way of complaint against defendants Timothy Dougherty (“Dougherty”), Stefan Armington (“Armington”), Town of Morristown (“the Town”), and John Does 1-10 (collectively, “Defendants”), allege as follows:

IDENTIFICATION OF PARTIES

1. In accordance with Local Civil Rule 10.1, the addresses of the parties are as follows:
 - a. IB LLC: 5 South Street, Morristown, New Jersey 07960.
 - b. 5-7 South Street Holdings: 9 Ashland Terrace, Chester, New Jersey 07930.
 - c. 9 South Street Holdings: 9 Ashland Terrace, Chester, New Jersey 07930.
 - d. 11 South Street Holdings: 9 Ashland Terrace, Chester, New Jersey 07930.
 - e. Dougherty: 10 Wetmore Avenue, Morristown, New Jersey 07960.
 - f. Armington: 16 Cutler Street, Morristown, New Jersey 07960.
 - g. The Town: 200 South Street, Morristown, New Jersey 07960.

NATURE OF THE ACTION

2. This is a case about municipal officials' cruel and malicious attacks against businesses within their own municipality, fueled by personal animus and without any legitimate government purpose.

3. Defendants have made it their personal mission, contrary to the public interests which they are obligated to serve, to employ the Town's resources in furtherance of an arbitrary and capricious campaign against Plaintiffs' fundamental rights.

4. Among the many means by which Defendants have carried out this campaign, they have improperly used the Town's police department and routinely lay siege to Plaintiffs' businesses by shutting down their only access road during their prime operation hours.

5. In addition, Defendants have arbitrarily and unreasonably imposed restrictions on Revolution's liquor license. For reasons that Defendants conceded did not exist, Defendants required Revolution to cease serving alcohol several hours earlier than all other operating taverns. Revolution spent years fighting this arbitrary restriction, at significant expense.

6. Defendants struck an even more significant blow to Gran Cantina's liquor license, denying the application outright without any legitimate basis to support their decision.

7. Plaintiffs have suffered and continue to suffer harm from Defendants' unlawful actions, and this harm will find no end unless Defendants are enjoined from continuing their malicious campaign.

THE PARTIES

8. IB LLC is a limited liability company with a principal place of business at 5 South Street, Morristown, New Jersey 07960. IB LLC operates a restaurant/bar within two distinct storefronts: (a) Iron Bar, located at 5-7 South Street;¹ and (b) Revolution, located at 9 South Street. IB LLC sought to expand to a third storefront, Gran Cantina, but Defendants unlawfully prevented this expansion effort.

9. 5-7 South Street Holdings is a limited liability company with a principal place of business at 9 Ashland Terrace, Chester, New Jersey 07930. 5-7 South Street Holdings is a real-estate holding company, and holds title in fee simple to: (a) Block 6004, Lot 3 on the Tax Map of the Town of Morristown, with the street address of 5-7 South Street; and, (b) Block 6004, Lot 4 on the Tax Map of Morristown, with the street address of 9 South Street.

10. 9 South Street Holdings is a limited liability company with a principal place of business at 9 Ashland Terrace, Chester, New Jersey 07930. 9 South Street Holdings is a real-estate holding company, and previously maintained a leasehold interest in Block 6004, Lot 4 on the Tax Map of Morristown, with the street address of 9 South Street.

11. 11 South Street Holdings is a limited liability company with a principal place of business at 9 Ashland Terrace, Chester, New Jersey 07930. 11 South Street Holdings is a real-estate

¹ The above-ground elements of this lot maintain the address of 5 South Street. The basement maintains the address of 7 South Street. Iron Bar operates within both addresses.

holding company, and previously maintained a leasehold interest in Block 6004, Lot 5 on the Tax Map of Morristown, with the street address of 11 South Street.

12. James Cavanaugh (“Cavanaugh”) is a principal of each of the Plaintiffs.

13. Dougherty is the Mayor of the Town, and has a home address of 10 Wetmore Avenue, Morristown, New Jersey 07960.

14. Armington is a member of the Town council, served as President of the Town council during the relevant period, and has a home address of 16 Cutler Street, Morristown, New Jersey 07960.

15. The Town is a New Jersey municipality, and has a principal address of 200 South Street, Morristown, New Jersey 07960.

16. John Does 1-10 are Town law-enforcement officers tasked with carrying out Defendants’ campaign of harassment by, inter alia, setting roadblocks on South Street in the area fronting Plaintiffs’ businesses and supervising the officers involved in the setting of same.

JURISDICTION AND VENUE

17. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 based upon a federal question arising under 42 U.S.C. § 1983, 42 U.S.C. § 1962, and the Constitution of the United States. The Court has supplemental jurisdiction over certain claims pursuant to 28 U.S.C. § 1367.

18. The Court has personal jurisdiction over Defendants by virtue of their residence within this Court’s jurisdiction, and because their conduct giving rise to this action is occurring within this Court’s jurisdiction.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because all Defendants reside within this District, and a substantial part of the events or omissions giving rise to this action occurred within this District.

FACTUAL ALLEGATIONS

I. CAVANAUGH DEVELOPS THE CONCEPT OF IRON BAR AND DOUGHERTY ATTEMPTS TO STRONG-ARM HIS WAY INTO THE ROLE OF “INVESTOR.”

20. 5-7 South Street Holdings took ownership of 5-7 South Street via deed dated September 30, 2008.

21. After exploring various means of deriving income from the property, Cavanaugh began developing the concept of Iron Bar in or around 2010.

22. Iron Bar and 5-7 South Street Holdings expended significant time and resources in the concept’s realization.

23. Beginning in 2010, Iron Bar underwent a complete renovation.

24. In November 2009, Dougherty was elected Mayor of the Town; he was sworn into office on January 1, 2010. Dougherty had previously served as a councilman and as chairman of the Town’s zoning board.

25. Beyond his official titles, Dougherty exerts immense influence over all aspects of the Town’s governance and agencies, including the Morristown Parking Authority (“MPA”).

26. Dougherty’s wife, Mary Dougherty, previously served as chairwoman of the Town’s planning board and as a member of Morris County School of Technology’s board. She ran unsuccessfully for Morris County Freeholder in the 2018 elections after securing the highest number of votes among any candidate (from any party) in the June 5, 2018 primary.

27. Similar to her husband, Mrs. Dougherty has held and does hold positions of influence within the local Democratic Party. This influence allows her and Dougherty to select

which individuals will run for the Town council, thus leaving those handpicked councilmembers beholden to Dougherty.

28. Dougherty uses his own power, and that of his wife, to ensure that his personal wishes are carried out by government actors regardless of their illegitimacy.

29. Dougherty became aware of Cavanaugh's plans, and demanded he be included as an "investor" in the venture.

30. Dougherty further demanded that his investment be made under the name of his son, Ryan Dougherty.

31. Cavanaugh refused to include Dougherty, and Dougherty thereafter harbored immense animus toward both Cavanaugh personally and the businesses with which he was involved (e.g., Plaintiffs).

32. Dougherty made it his personal goal to limit any chances Plaintiffs might have at success.

33. Dougherty enlisted Armington in this campaign of retribution, given the authority Armington could assert over Plaintiffs as the Town council president. The Town council doubles as the Town's Alcoholic Beverage Control ("ABC") board.

34. Dougherty was able to so enlist Armington because of the longstanding animus the latter has harbored toward Cavanaugh and his businesses. As a private citizen, Armington had objected to a development proposal put forth by Cavanaugh for property unrelated to those at issue in this complaint. This disagreement gave rise to Armington's longstanding disdain for Cavanaugh and his businesses.

35. Due to the breakdown in Cavanaugh and Dougherty's relationship, Cavanaugh has ceased providing support for Dougherty's political campaigns (e.g., hosting campaign events at Iron Bar). This has only further enraged Dougherty, and further fueled his animus toward Plaintiffs.

II. CAVANAUGH DEVELOPS THE CONCEPT OF REVOLUTION AND DEFENDANTS ATTEMPT TO CRIPPLE ITS PROSPECTS FOR PROFIT.

36. In 2009, 9 South Street Holdings executed a lease for the property located at 9 South Street. 5-7 South Street Holdings later acquired ownership of the lot via deed dated May 8, 2017.

37. Somewhat parallel to the development of Iron Bar, Cavanaugh began developing the concept of Revolution.

38. Cavanaugh intended for Revolution, a sophisticated biergarten, to complement the adjoining Iron Bar, a traditional restaurant/bar.

39. Revolution, 5-7 South Street Holdings, and 9 South Street Holdings expended significant time and resources in the concept's realization.

40. Beginning in 2015, Revolution underwent a complete and total renovation.

41. However, Defendants placed unprecedented and unfounded restrictions on Revolution's liquor license.

42. Revolution filed the appropriate application for a place-to-place transfer (expansion of licensed premises) with the Town.

43. The Town imposed special conditions on Revolution's license that, while granting the application in part, forced Revolution to cease serving alcohol at 11:00 pm Sunday through Thursday and at 11:30 pm Friday through Saturday.

44. Per Town ordinance, licensed establishments are generally free to serve alcohol until 2:00 am.

45. At that time, and continuing to this day, there is no operating establishment within the Town that possesses a liquor license requiring alcohol service to be discontinued before 2:00 am.

46. The periods between 11:00 pm and 2:00 am, Sunday through Thursday, and 11:30 pm and 2:00 am, Friday through Saturday, are peak business hours for Revolution.

47. The Town's decision to restrict Revolution's liquor license was arbitrary, capricious, and unreasonable.

48. The Town reached its decision without receiving written objections to the application from any of the following departments:

- a. Police;
- b. Fire;
- c. Building;
- d. Health; or
- e. MPA.

49. Although Revolution would normally have been free to serve as many patrons as authorized by the occupancy limits of its own structure, Revolution consented to drawing from Iron Bar's occupancy limit in an effort to address the Town's concerns regarding additional bar patrons in the downtown neighborhood.

50. When a neighboring bar at 3 South Street (i.e., The Office) sought to double its capacity through expansion of its premises, the Town granted the renewal of its liquor license without any restrictions on its service hours.

51. When a neighboring steakhouse at 56 South Street (i.e., J&K Steakhouse) sought to acquire a liquor license from a defunct operation, the Town granted the transfer without any restriction on its service hours.

52. In imposing the special conditions against Revolution, the Town was clearly motivated by personal animus against that entity and its principal, Cavanaugh.

53. In so ruling, the Town failed to meet its regulatory responsibilities.

54. Revolution expended significant time and resources in combatting these restrictions.

55. Revolution sought, and succeeded in securing, stays of these restrictions by the New Jersey Division of Alcoholic Beverage Control ("the Division") each time they were instituted during the annual renewal period for Revolution's license.

56. In April 2017, the Office of Administrative Law ("OAL") conducted a two-day hearing for Revolution's appeal from the Town's early closing restrictions.

57. Via written decision dated February 23, 2018, the OAL deemed the special conditions to be unlawful, and found that the Town had acted unreasonably and inappropriately in imposing them. A true and accurate copy of the written decision is attached hereto as Exhibit 1.

58. During the OAL hearing, a Town councilwoman conceded that the Town had no evidence to substantiate the closing requirements.

59. Indeed, neither Iron Bar nor Revolution had ever been cited for a municipal or ABC violation.

60. Neither Iron Bar nor Revolution had ever been cited for a fire code violation.

61. During the OAL hearing, the Town police chief conceded there was no reason for Revolution's early closing requirement:

Q: Can you think of any reason why the Revolution section of the licensed premises should have to close at 11 and 11:30?

A: No.

62. During the OAL hearing, the Town's clerk conceded that no other bars within the Town operate with restricted hours:

Q: [Y]ou were asked to produce a list of all -- and retail consumption licenses in the town of Morristown presently operating with a special condition which limits their hours.

A: That is correct.

Q: And that is correct, did you bring that list with you?

A: I did not bring a list because I'm not aware of any other establishments that are operating without -- under a condition for their hours of operation.

63. During the OAL hearing, when asked how the Town came up with the 11:00 pm and 11:30 pm time restrictions, Armington conceded, "I don't know."

64. On June 12, 2018, the Town voted to renew Revolution's license with the same conditions previously ruled unlawful by the OAL. The Town refused to provide any reasoning for its decision, despite the express request by Revolution's counsel to explain so arbitrary a decision.

65. On June 28, 2018, the Division entered an order adopting the OAL's decision. A true and accurate copy of the Division's order is attached hereto as Exhibit 2. The Town filed an appeal from the order, and that appeal is pending.

66. Upon information and belief, Defendants will continue to impose the same conditions at each annual license renewal notwithstanding the rulings of the OAL and the Division.

67. The cloud hanging over Revolution's license diminished the value of IB LLC, and (inter alia) complicated IB LLC's financing efforts.

68. The cloud hanging over Revolution's license diminished the value of 9 South Street Holdings' leasehold interest, as well as the value of 5-7 South Street Holdings' ownership interest.

69. Defendants' ongoing campaign against Revolution has caused the Town to incur expensive and unnecessary legal fees, further illustrating the campaign's arbitrariness.

III. CAVANAUGH DEVELOPS THE CONCEPT OF GRAN CANTINA AND DEFENDANTS SUCCEED IN SHUTTING IT DOWN BEFORE IT EVEN BEGAN OPERATING.

70. In 2016, 11 South Street Holdings executed a lease for the property located at 11 South Street.

71. At around that same time, Cavanaugh began developing the concept of Gran Cantina.

72. As a complement to Iron Bar's concept of traditional restaurant/bar and Revolution's concept of sophisticated biergarten, Cavanaugh envisioned Gran Cantina as a Mexican-style restaurant/bar.

73. Gran Cantina and 11 South Street Holdings expended significant time and resources in the concept's realization.

74. Defendants, however, launched an unfounded and unprecedented attack against Gran Cantina's development.

75. Gran Cantina filed the appropriate application for a place-to-place transfer (expansion of licensed premises) with the Town, similar to the approach employed for the licensing of Revolution.

76. The Town denied Gran Cantina's application, without any effort to even impose the unlawful restrictions previously utilized for Revolution.

77. The Town's decision was arbitrary, capricious, and unreasonable.

78. The Town reached its decision without receiving written objections to the application from any of the following departments:

- a. Police;
- b. Fire;
- c. Building;
- d. Health; or
- e. MPA.

79. The Town claimed to be concerned with additional bar patrons coming to the area; however, Gran Cantina stipulated that it would split the total occupancy already assigned to Iron Bar and Revolution (i.e., 1,043 occupants for all three storefronts).

80. The Town had previously approved Revolution's application after Revolution made the same stipulation to split the 1,043-occupant limit already assigned to Iron Bar.

81. In so ruling, the Town was clearly motivated by personal animus against Gran Cantina and its principal, Cavanaugh.

82. In so ruling, the Town failed to meet its regulatory responsibilities.

83. Gran Cantina expended significant time and resources in presenting the application, and in pursuing an appeal.

84. Gran Cantina has since abandoned the appeal, given the costs that would be required to combat the Town's arbitrary denial, and has been foreclosed from the potential profits that would have been realized had Gran Cantina's application been granted.

85. The absence of an operating and profitable Gran Cantina diminished the value of 11 South Street Holdings' leasehold interest.

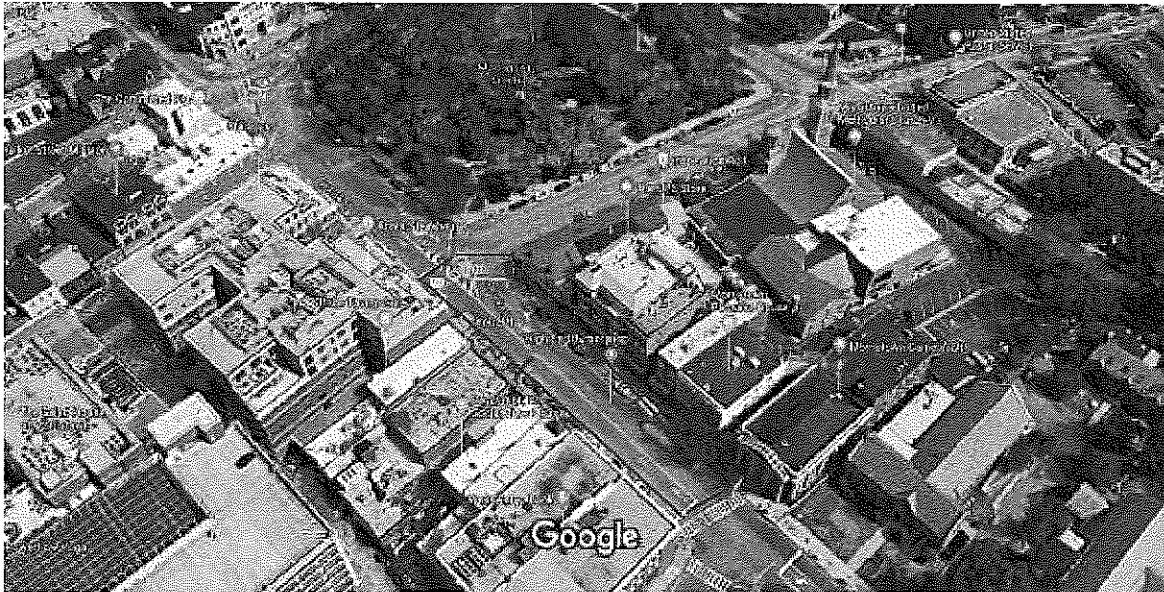
86. Before the Town had even conducted its hearing on Gran Cantina's application, Dougherty proudly boasted to 11 South Street Holdings' landlord that there was no chance the application would be granted.

IV. DEFENDANTS HOPE TO LIKEWISE DESTROY IRON BAR AND REVOLUTION BY, AMONG OTHER METHODS, ORDERING THE POLICE TO ESTABLISH UNLAWFUL ROADBLOCKS DURING PEAK BUSINESS HOURS AND RECONFIGURING THE TOWN'S ORDINANCES.

A. The Arbitrary, Capricious, and Unreasonable Roadblocks

87. Beginning in 2017 and continuing to the present, Town police officers have erected roadblocks closing the portion of South Street fronting Plaintiffs' properties during Iron Bar and Revolution's prime business hours (i.e., during the late evening of Thursday, Friday, and Saturday).

88. An approximate illustration of the blocked South Street area is below:



89. South Street is a State highway.

90. Town police officers establish these roadblocks by obstructing both travel lanes, using multiple police vehicles that have their flashing lights activated.

91. There is no legitimate basis for these roadblocks.

92. These roadblocks are not rationally related to any aspect of public health, safety, or general welfare.

93. These roadblocks are inconsistent with the manner in which traffic is regulated near the Town's other high-occupancy establishments generally (e.g., Mayo Performing Arts Center), and the Town's other restaurant/bars specifically.

94. There is no legitimate reason for the conspicuous manner in which the Town police officers carry out these roadblocks.

95. The multiple police vehicles, flashing lights, and uniformed officers give the impression that a catastrophic event has occurred within Iron Bar or Revolution.

96. This impression is Defendants' precise goal, as it discourages bargoers from patronizing Iron Bar or Revolution. Those bargoers instead visit the numerous other establishments within the Town's downtown neighborhood.

97. Moreover, the roadblocks prevent ride-hailing services (e.g., Uber) from accessing the immediate area of Iron Bar and Revolution.

98. Given the prevalence of ride-hailing services among bar patrons, Iron Bar and Revolution's prospective customers are further discouraged from visiting and are in turn encouraged to visit the Town's other bars.

99. The roadblocks also inhibit handicapped patrons from accessing Plaintiffs' establishments.

100. Beyond the interests of Plaintiffs, Defendants' roadblocks impede the general public's ability to access the nearby Morristown Medical Center.

101. Dougherty is the policymaking authority empowered by the Town's ordinances to order Town police officers to establish the South Street roadblocks.

102. Dougherty is the person actually ordering the roadblocks to be erected.

103. Defendants' closure of South Street violates several State statutes.

104. As per N.J.S.A. 39:4-197.1, "No municipality in the exercise of its power to regulate parades, processions or assemblages, shall prohibit normal traffic on any county or State highway without the consent of the Board of Chosen Freeholders in the case of a county highway or the consent of the State Highway Commissioner in the case of a State highway."

105. Defendants have not satisfied any of N.J.S.A. 39:4-197.1's requirements.

106. As per N.J.S.A. 27:3A-2, "Whenever a State, county or municipal highway or road shall be closed for any reason, either continuously or during certain hours, to vehicular traffic over a period of 48 hours or longer, necessitating the interruption of the flow of any or all traffic by detour, rerouting or diversion, the governing body or agency closing the highway or road shall cause the erection and maintenance of signs at such points at or near the affected area as it deems advisable, at least 72 hours in advance of the closing. The signs shall name the highway or road to be closed and the anticipated dates and times of closing. This information shall also be sent in writing by the governing body or agency at least 1 week prior to the closing to the municipality wherein the affected highway or road is located."

107. Defendants have not satisfied any of N.J.S.A. 27:3A-2's requirements.

108. The South Street closures have diminished potential profits for Iron Bar and Revolution.

109. The impact on profits realized by Iron Bar and Revolution have, in turn, diminished the value of the property interests held by 5-7 South Street Holdings and 9 South Street Holdings.

B. The Arbitrary, Capricious, and Unreasonable Ordinance Amendment

110. On February 28, 2017, the Town adopted an ordinance that reconfigured the definitions of liquor-licensed restaurant, nightclub, restaurant, and bar.

111. Correspondence exchanged among Defendants regarding this ordinance illustrate that it was intended to further their malicious campaign against Plaintiffs.

112. On April 25, 2016, Armington expressed an intent to construct the “restaurant” definition to the detriment of Plaintiffs by favoring Plaintiffs’ competitors.

113. On July 11, 2016, Robert Iannaccone (Town councilman) noted that the ordinance was specifically drafted to avoid impacting the existing operations of one of Plaintiffs’ competitors.

114. On July 22, 2016, Bill Braunschweiger (local businessman) advised Armington and Robert Iannaccone that Cavanaugh would certainly object to the proposed ordinance given the clear impact it would have on Plaintiffs.

V. IN ADDITION TO CAVANAUGH’S REFUSAL TO MAKE HIM AN IRON BAR “INVESTOR,” THE REASON FOR DOUGHERTY’S AND THE OTHER DEFENDANTS’ MALICE CAN BE CONNECTED TO PLAINTIFF’S LITIGATION WITH MPA.

115. In October 2016, 5-7 South Street Holdings and 9 South Street Holdings initiated litigation with MPA (among others) in New Jersey state court regarding their easement rights to certain real property owned by MPA and a real-estate holding company (“the State Litigation”).

116. The other Plaintiffs eventually joined the State Litigation, which remains ongoing. A true and accurate copy of their amended complaint is attached hereto as Exhibit 3.

117. Defendants have repeatedly expressed rage at Plaintiffs for the State Litigation.

118. Defendants have repeatedly indicated an intent to retaliate against Plaintiffs for initiating the State Litigation.

119. On one occasion, when Cavanaugh stopped to say hello to Dougherty while driving home from Morristown, Dougherty angrily responded, “You fucked with the wrong people.”

Dougherty then confirmed he was referencing the State Litigation, and that Plaintiffs would face retaliation from Defendants for initiating same.

120. On another occasion, during a hearing regarding IB LLC's liquor license, Town councilwoman Allison Deeb queried, "Why should we give you anything? You're suing the Town."

121. Finally, in 2017 Dougherty contacted Cavanaugh to remind him of an old proverb that Cavanaugh frequently relayed to Dougherty before the breakdown in their relationship: "You can't fight city hall."

122. Dougherty gloated to Cavanaugh, "Remember that saying you kept telling me all those years ago, that you can't fight city hall? Have you learned that yet?"

123. On August 15, 2018, Plaintiffs filed a tort claim notice in the form prescribed by the Town's website.

COUNT ONE

(42 U.S.C. § 1983 – Petition Clause of the First Amendment)

124. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

125. Plaintiffs were deprived of a right secured by the United States Constitution, i.e., to petition their government for a redress of grievances via the State Litigation and their numerous liquor-license appeals.

126. Defendants committed this deprivation under the color of state law.

127. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

128. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by

express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT TWO

(42 U.S.C. § 1983 – Association Clause of the First Amendment)

129. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

130. Plaintiffs were deprived of a right secured by the United States Constitution, i.e., to associate with others in the pursuit of economic ends.

131. Defendants committed this deprivation under the color of state law.

132. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

133. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT THREE

(42 U.S.C. § 1983 – Fourth Amendment)

134. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

135. Plaintiffs were deprived of a right secured by the United States Constitution, i.e., to be free from unlawful searches and seizures.

136. Defendants committed this deprivation under the color of state law.

137. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

138. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by

express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT FOUR
(42 U.S.C. § 1983 – Fifth Amendment)

139. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

140. Plaintiffs were deprived of a right secured by the United States Constitution, i.e., their protection against the taking of private property without just compensation.

141. Defendants committed this deprivation under the color of state law.

142. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

143. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT FIVE
(42 U.S.C. § 1983 – Due Process Clause of the Fourteenth Amendment)

144. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

145. Plaintiffs were deprived of a right secured by the United States Constitution, i.e., their right to substantive due process.

146. Defendants committed this deprivation under the color of state law.

147. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

148. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by

express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT SIX

(42 U.S.C. § 1983 – Equal Protection Clause of the Fourteenth Amendment)

149. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

150. Plaintiffs were deprived of a right secured by the United States Constitution, i.e., their right to equal protection under the law.

151. Defendants committed this deprivation under the color of state law.

152. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

153. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT SEVEN

(42 U.S.C. § 1983 - Contracts Clause)

154. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

155. Plaintiffs were deprived of a right secured by the United States Constitution (U.S. CONST. art. 1, § 10, cl. 1) and the Constitution of the State of New Jersey (N.J. CONST. art. IV, § 7, para. 3), i.e., their right to be free from governmental impairment of existing contractual obligations.

156. Defendants committed this deprivation under the color of state law.

157. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

158. Plaintiffs' injuries arise from: (a) express policies that, when followed, deprive Plaintiffs of their constitutional rights; (b) widespread practice that, though not authorized by express policy or written law, is so permanent and well-settled as to constitute custom or usage with force of law; and/or (c) persons with final policymaking authority.

COUNT EIGHT
(Interference with Prospective Economic Relations)

159. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

160. Plaintiffs have a reasonable expectation of economic advantage with respect to bar patrons.

161. By way of example, Iron Bar and Revolution have a reasonable expectation of economic advantage owing to direct transactions with these bar patrons.

162. By way of another example, 5-7 South Street Holdings, 9 South Street Holdings, and 11 South Street Holdings have reasonable expectations of economic advantage owing to interests in real property wherein thriving restaurant/bars are operating.

163. Defendants were aware of the aforementioned expectations.

164. Defendants wrongfully, maliciously, and knowingly interfered with Plaintiffs' prospective economic advantages.

165. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

COUNT NINE
(Interference with Contract)

166. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

167. Plaintiffs have contractual relationships among themselves, and with third parties.

168. By way of one example, Iron Bar is a tenant of 5-7 South Street Holdings.

169. By way of another example, 11 South Street Holdings was a tenant of non-party BSD Enterprises LLC.

170. Defendants were aware of the aforementioned contracts.

171. Defendants wrongfully, maliciously, and knowingly interfered with Plaintiffs' contracts.

172. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

COUNT TEN
(Civil Conspiracy)

173. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

174. Defendants have entered into an agreement with a common design to perpetuate unlawful activity.

175. Such unlawful activity includes, but is not limited to, the deprivation of Plaintiffs' constitutional rights under color of law and the interference with Plaintiffs' contracts.

176. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

COUNT ELEVEN
(18 U.S.C. § 1962(c) – Federal RICO)

177. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

178. Defendants are associated with an enterprise that is engaged in and whose activities affect interstate commerce.

179. Defendants agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity.

180. Pursuant to and in furtherance of their scheme, Defendants committed multiple related acts of, inter alia, extortion.

181. The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

182. Defendants have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering activity described above, in violation of 18 U.S.C. § 1962(c).

183. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

COUNT TWELVE
(18 U.S.C. § 1962(d) – Federal RICO Conspiracy)

184. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

185. Defendants agreed and conspired to violate 18 U.S.C. § 1962(c).

186. Defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

187. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

COUNT THIRTEEN
(N.J.S.A. 2C:41-2(c) – State RICO)

188. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

189. Defendants are associated with an enterprise that is engaged in and whose activities affect commerce.

190. Defendants agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity.

191. Pursuant to and in furtherance of their scheme, Defendants committed multiple related acts of, inter alia, extortion.

192. The acts set forth above constitute a pattern of racketeering activity pursuant to N.J.S.A. 2C:41-1(d).

193. Defendants have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering activity described above, in violation of N.J.S.A. 2C:41-2(c).

194. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

COUNT FOURTEEN
(N.J.S.A. 2C:41-2(d) – State RICO Conspiracy)

195. Plaintiffs incorporate the allegations above as though fully set forth at length herein.

196. Defendants agreed and conspired to violate N.J.S.A. 2C:41-2(c).

197. Defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate N.J.S.A. 2C:41-2(c), in violation of N.J.S.A. 2C:41-2(d).

198. Defendants' conduct has damaged, and continues to damage, Plaintiffs in an amount to be determined at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs demand judgment against Defendants as follows:

a. For injunctive relief prohibiting Defendants from continuing to erect roadblocks that prevent the flow of vehicle traffic along the portions of South Street fronting Plaintiffs' properties;

- b. For injunctive relief prohibiting Defendants from imposing special conditions restricting the time period during which alcohol may be sold at Plaintiffs' establishments;
- c. For compensatory and/or consequential damages that Plaintiffs have suffered and will continue to suffer;
- d. For punitive damages;
- e. For pre-judgment and post-judgment interest;
- f. For treble damages;
- g. For costs of suit;
- h. For attorneys' fees and costs; and
- i. For such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues herein so triable.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Plaintiffs, by and through their undersigned counsel, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding, with the exception of Revolution's pending administrative appeal from the Town's decision to impose special conditions upon its liquor license and the Town's appeal from the administrative rejection of prior special conditions.

LOCAL CIVIL RULE 201.1 CERTIFICATION

Plaintiffs, by and through their undersigned counsel, hereby certify that the amount in controversy exceeds \$150,000.

Dated: Florham Park, New Jersey
April 1, 2019

SCHENCK, PRICE, SMITH & KING, LLP

By: /s Ryder T. Ulon, Esq.

Ryder T. Ulon, Esq.

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Florham Park, NJ 07932

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Attorneys for Plaintiffs,

*Iron Bar, LLC d/b/a Iron Bar, the Revolution Social Brew House,
and Gran Cantina; 5-7 South Street Holdings, LLC;*

9 South Street Holdings, LLC; and 11 South Street Holdings, LLC

EXHIBIT 1



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 15307-16

AGENCY REF. NO. Appeal #50

LIC # 1424-33-029-014

IRON BAR, LLC,

Petitioner,

v.

TOWN OF MORRISTOWN,

Respondents.

Robert C. Williams, Esq., for Petitioner

Owen T. Weaver, Esq., for Respondent (Inglesino, Webster, Wyciskala,
attorneys)

Record Closed: January 11, 2018

Decided: February 23, 2018

BEFORE **JOHN P. SCOLLO, ALJ**

STATEMENT OF THE CASE

The Petitioner, Iron Bar, LLC (Iron Bar) challenges Morristown's imposition of a special condition on the renewal of its Plenary Retail Consumption License for the 2016-2017 Licensing Term. While bars in Morristown are permitted to stay open and serve alcoholic beverages until 2:00 a.m., the Town Council of Morristown, sitting as the

Morristown ABC Board, on June 28, 2016, imposed a special condition on Iron Bar requiring that the expanded portion of its premises, known as Revolution, cease serving alcoholic beverages at 11:00 p.m. on Sunday nights through Thursday nights and at 11:30 p.m. on Friday nights and Saturday nights.

Petitioner contends that the imposition of this special condition was improper because: it was not necessary and proper to accomplish the objectives of N.J.A.C. 33:1-1 et seq.; and because N.J.S.A. 33:1-32 requires that any resolution imposing a special condition must be approved by the Commissioner of the State ABC. The Petitioner also contends that while other bars enjoy the privilege of staying open for business until 2:00 a.m., the special condition requiring Revolution to stop serving at 11:00 p.m./11:30 p.m. is arbitrary, capricious, unreasonable and discriminatory.

PROCEDURAL HISTORY

The complete procedural history of this matter is found in the parties' Joint Stipulation of Facts (marked as J-1 and attached hereto) in numbered paragraphs four through thirty and paragraphs thirty-two to thirty-three.

On June 28, 2016, the Town Council of Morristown, sitting as the Morristown ABC Board approved the renewal of Iron Bar, LLC's Plenary Retail Consumption License for the 2016-2017 Licensing term, but imposed a special condition limiting the hours of service of alcoholic beverages in the expanded portion of the premises known as Revolution.

On June 29, 2016, the day after Morristown imposed the special condition, Iron Bar, LLC filed a Notice and Petition of Appeal with the New Jersey Division of Alcoholic Beverage Control objecting to the above-mentioned special condition. Revolution continues to operate until 2:00 a.m. pursuant to a continuing stay of the special condition in question.

The Director of the ABC (also referred to as the Commissioner) transmitted the matter to the Office of Administrative Law where the matter was filed on October 6,

2016, as a contested case pursuant to N.J.S.A. 52: 14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was held on April 11 and on April 18, 2017, before Joan Bedrin-Murray, ALJ and the record closed on June 13, 2017, when counsel submitted their summations and other post-summation correspondences. Several extensions for the writing of the Initial Decision were requested and granted.

In December 2017 Judge Joan Bedrin-Murray was appointed to the New Jersey Tax Court and this case was re-assigned to John P. Scollo, ALJ. On January 11, 2018, a telephone conference was held between counsel for each side and Judge Scollo, at which time the parties agreed that the new record closed dated would be January 11, 2018, but that no further submissions were needed. All agreed that Judge Scollo would, after reviewing the testimony and exhibits, write the Initial Decision as soon as practicable.

TESTIMONY OF THE WITNESSES

The following is not intended to be a verbatim report of the witnesses' testimony, but rather is a summary of same regarding the most relevant matters.

For Petitioner:

Cindy Zimmer, resident of Morristown

She testified that she has lived in Morristown for six and a half years, is familiar with the area and has been present around 1:00 a.m. She complimented the operation of the bars and is opposed to a restriction.

Nicholas Kaslov, resident of Morristown

He testified that he has lived in Morristown for over twelve years, is very familiar with the area around South Street late at night, and has not witnessed any problems on the streets. He is in favor of the growing businesses.

Peter Demitz, Morristown Chief of Police

He testified that he has been with the Morristown police for thirty-four years. He has personally observed pedestrian traffic created when all the bars close. He testified to the general conditions when all of the bars along South and Dehart Streets let out, but found that people conducted themselves in an orderly manner. He stated that he does not know of any reason why Revolution should stop selling liquor at 11:00 p.m./11:30 p.m.

Carolyn A. Young, architect on behalf of Licensee

She testified about the layout and plans for the intended atmosphere inside Revolution.

Kevin Harris, Municipal Clerk of Morristown

He testified that no other bars in Morristown were currently operating with restricted hours.

Jonathan E. Gallant, investigator

He provided video showing of security personnel and well-organized lines outside of Iron Bar and Revolution. He testified that incidents of improper behavior were few.

James A. Cavanaugh, General Manager of Licensee

He testified that he has had no municipal or ABC violations regarding either bar. He testified that restricted hours would severely harm the business and its employees.

For Respondent:

Robert Flanagan, Fire Chief of Morristown

He testified that there have been no fire code violations associated with Iron Bar or Revolution since their opening in 2012 and 2016 respectively.

Michelle Dupree Harris, Morristown Councilwoman

She testified that she was not in favor of restrictions placed on the expanded premises.

Stefan Paul Armington, Council President

He has been a resident for twenty years and is currently the Town Council's President. He testified that although he has not been on South Street past 12:30 a.m., he had observed large crowds and commotion. He testified regarding the purpose of restrictions and the concerns of the public. When asked how the council came up with the 11:00 p.m./11:30 p.m. time restriction, he responded, "I don't know."

Donald N. Ginsburg, resident of Morristown

He has been a resident for nine years. He testified to his general experiences in the downtown Morristown area. Although he had not been on South Street past 10:00 p.m., he testified to seeing crowds, people smoking cigarettes, intoxicated people, and trash on Dehart Street.

Eldon B. Priestly, resident of Morristown

He has been a resident for six-and-one-half years. He testified to his general experiences in the downtown Morristown area. This includes seeing crowds, people jaywalking, and hearing loud noise on South Street. He has not been on South Street after 9:00 p.m.

Vincent Zuza, resident of Morristown

He has been a resident for five years. He testified to his general experiences in the downtown Morristown area up until about 12:45 a.m. This includes seeing crowds, people jaywalking, and hearing loud noise on South Street.

Rebecca Feldman, resident of Morristown and former councilwoman

She has been a resident for nineteen years. She testified to her general experiences in the downtown Morristown area. This includes witnessing "hoards" of young people and intoxicated individuals on the streets.

STATEMENT OF FACTS

The parties agreed to a Joint Stipulation of Facts, attached hereto as J-1.

FINDINGS OF FACT

Based on the evidence (Exhibits and testimony) presented at the hearing, I make the following **FINDINGS OF FACT**:

1. Revolution and Iron Bar are located at 5-9 South Street, Morristown, New Jersey. The neighborhood is considered the downtown business district of Morristown. The area is also home to bars, restaurants, retail establishments, and several high-end residential properties.

2. There are six (6) bars, including Iron Bar and Revolution, on South Street between Market and Dehart Streets. There are approximately ten (10) additional bars within a quarter-mile radius of area in question.

3. The Iron Bar has an official occupancy limit of 1,043 people. The Revolution has an official capacity of 360. However, Iron Bar has voluntarily offered to limit the combined capacity of both properties to the original number of 1,043.

4. Morristown's ordinances permit bars to serve alcohol until 2:00 a.m. The subject area (South Street between Market Street and DeHart Street) is zoned for mixed-use.

5. On June 18, 2016, by resolution, Morristown imposed a special condition on the renewal of Iron Bar's Plenary Retail Consumption License for the 2016-2017 License Term pertaining only to the expanded portion of Iron Bar's licensed premises known as Revolution, requiring that:

No alcohol shall be served after 11:00 p.m. on Sunday through Thursday and no alcohol shall be served after 11:30 p.m. on Friday and Saturday.

6. At the hearing, Morristown Council President Paul Armington was questioned about what was Morristown's basis for imposing a special condition limiting the time to 11:00 p.m./11:30 p.m. that Revolution could serve alcoholic beverages. Over the course of several questions he answered as follows. He testified that approximately fourteen residents (1T 109:19) expressed concerns about excessive noise, vomiting on the sidewalks, public urination, public intoxication, and fights on South Street (1T 98:25-99:8). He testified that the area of concern was South Street between Market Street and DeHart Street (1T 98:13-14), but that the residents' concerns could not be specifically attributed to Iron Bar or Revolution, but rather to the general area (1T 115:13-22). He testified that "upwards of 19,000" people live in Morristown (1T 109:19-21). He testified that the time limit on Revolution was imposed because residents were concerned about the "possibility" of it becoming a late-night drinking establishment (1T 109:22-110:5). He acknowledged that Morristown's

ordinances allow bars to stay open until 2:00 a.m. (1T 102:7-8). He acknowledged that neither the Police Department nor any other municipal agency has reported any violations by Iron Bar since May of 2012 or by Revolution since it opened in October of 2016 (1T 110:25 -111:19). When questioned about how Morristown determined that 11:00 p.m./11:30 p.m. would be the appropriate time limit for Revolution to stop serving alcoholic beverages, he replied "I don't know." (1T 110:6-7.) I **FIND** that Council President Paul Armington's testimony offered no facts that could serve as a basis for Morristown's imposition of the 11:00 p.m./11:30 p.m. time limit on Revolution as a special condition for the subject license renewal for the 2016-2017 License Term. I **FIND** that Armington's testimony, especially when he was questioned on cross-examination, showed that there is no factual nexus between the perceived or anticipated problems of noise and misbehavior on South Street and the operation of Revolution.

7. During his testimony, Council President Armington admitted that Morristown did not get the approval of the Director of the ABC before including the time limit on Revolution (1T 123:10-15). I therefore **FIND** that Morristown did not get the Director's approval for imposing the time limit. In answer to a question about what facts made Morristown's imposition of the time limit "necessary and proper" under N.J.S.A. 33:1-32, Armington gave a general answer that it relied on the contents of the 2014 transfer (expansion) application. However, upon further questioning and cross-examination it became apparent, and I so **FIND**, that although Morristown relied on the comments and concerns of several residents, it had no data from the Police Department or any other municipal department or State agency which provided any factual support with which to prove that problems of noise or misbehavior were linked to the operation of Revolution. I **FIND** that there was no evidence that a time limit on Revolution alone was a "necessary and proper" means of reducing the level of noise or misbehavior in the community.

8. At the hearing, there was testimony and argument presented about fear of public drunkenness, public urination, vomiting on the sidewalks, noisy and rowdy behavior, fights and fear of an adverse impact upon South Street and a general decline in the health, safety, welfare, and morals of Morristown. I **FIND** that most of the

testimony spoken in opposition to the Iron Bar expansion expressed general concerns about people who drink alcoholic beverages to excess, about jaywalking or crowds of people using the sidewalks, and expressed concerns about an anticipated damage to Morristown's reputation. None of these comments were directed specifically about or directly against Iron Bar or Revolution. I **FIND** that the testimony offered did not constitute widespread public sentiment in opposition to the Iron Bar expansion and I **FIND** that it was too attenuated to establish that Iron Bar's expansion was a realistic danger to the public health, safety, morals, or general welfare of Morristown.

I **FIND** that the evidence (notably the testimony of Police Chief Peter Demitz) did not establish that the above-mentioned problems of noise, urination, or other misconduct exist to any significant extent or that any such problems have been caused by, attributed to, or otherwise rooted in the operation of Revolution. I **FIND** that the evidence did not indicate that there was a problem with excessive noise and indicated that the people entering and exiting both Iron Bar and Revolution were well behaved and were kept under the supervision of private security and police personnel. I specifically **FIND** that there was no evidence that the operation of Revolution was causing an adverse impact on the community's health, safety, welfare, or morals.

9. Petitioner has operated the Iron Bar since May of 2012 and Revolution since October of 2016 without any violations of N.J.A.C. 33:1-1 et seq., Municipal Regulations regulating the sale of alcohol, or any convictions of the Municipal Code regarding nuisance, public safety, or fire regulations.

10. Revolution has remained open until 2:00 a.m. for the 2016-2017 License Term as the result of a stay issued by the Division of Alcoholic Beverage Control.

11. The testimony of Municipal Clerk Kevin Harris that no bars in Morristown were currently operating with restricted hours is credible and the Tribunal accepts its content as **FACT**.

12. Based upon the testimony (direct examination and cross-examination) of Council President Armington, I **FIND** that approximately fourteen people expressed

concerns about the operation of Revolution out of a population of 19,000. The negative sentiment of relatively few individuals cannot outweigh the interests of the license holder. I **FIND** that this ratio does not demonstrate widespread public sentiment against the operation of Revolution to the usual 2:00 a.m. closing time provided to licensees in Morristown.

ISSUE

As framed by Judge Joan Bedrin-Murray, the pertinent issue is: "Was it appropriate for Revolution to be time restricted?" Judge Bedrin-Murray's framing of the issue mirrors the language used by the Supreme Court in Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292, 307 (1970) (Lyons I), where it asked:

Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented?

APPLICABLE LAW

The Sharing of Powers By the Municipal ABC Boards and the Director of the ABC

The primary responsibility for enforcing alcoholic beverage control laws rests with the local municipal issuing authority. Cf. N.J.S.A. 33:1-19; N.J.S.A. 33:1-24; Lyons I, 55 N.J. at 302-303. This includes the responsibility to administer and enforce the alcoholic beverage laws relating to the transfer of a liquor license N.J.S.A. 33:1-19 and -24. This can be transfers from place-to-place, as in Borough of Fanwood v. Rocco, 33 N.J. 404, 412-413 (1960) or transfers from person-to-person, as in Lyons Farms Tavern v. Municipal Bd. of Alc. Bev. Control, 68 N.J. 44, 49-50 (1975) (Lyons II). The Legislature granted wide discretion to local authorities in allowing transfers and they are to be guided by what is best for the public interest. Lubliner v. Board of Alc. Bev. Control, Paterson, 33 N.J. 428, 466 (1960); Township Comm. of Lakewood v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).

Actions of the municipal issuing authorities are appealable to the Director of the Division of Alcoholic Beverage Control. The Director hears such appeals de novo and makes the necessary factual and legal determinations based on the record before him. Fanwood, 33 N.J. at 414. The burden of proving that the municipal issuing authority's decision was erroneous is on the licensee. Lubliner, 33 N.J. at 431. The subject matter of appeals is extensive and can include everything from issuance of a license to transfer of a license, to renewal of a license to conditions placed on a license. Lyons II, 68 N.J. at 49-53. It is well-established that if the decision of the municipal issuing authority is supported by the record, it will not be disturbed in the absence of a clear abuse of discretion. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484, 489 (1962). On the other hand, municipal actions are reversible when they constitute an abuse of discretion, manifest mistake, or are unreasonable. Fanwood, 33 N.J. at 414; The Grand Victorian Hotel v. Borough Council of the Borough of Spring Lake, 94 N.J.A.R.2d (ABC) 43, citations omitted. The Supreme Court has long recognized the "practically limitless" police power of the State of New Jersey to regulate the field of intoxicating liquors and the ABC Director's "extensive" authority to carry out the State's powers. Blanck, 38 N.J. at 490-491. In Circus Liquors v. Middletown Tp., 199 N.J. 1, 10-12 (2008), the Supreme Court re-iterated its long-standing position that N.J.S.A. 33:1-1 to -97 (the ABC Act) vests the Director of the ABC with "extensive regulatory and investigative power over the liquor industry" and "special powers of administration and control over the entire liquor industry."

Special Conditions

Special conditions imposed by a local issuing authority are governed by N.J.S.A. 33:1-32:

Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof.

A special condition must be based on something more than mere speculation and must be specific, reasonable, and narrowly tailored to accomplish its purpose. A.H.S. v. Twp. Comm. of Wall, 1 N.J.A.R. 284, 293, 299 (ABC).

Protections Afforded to License Holders

In Lakewood, 38 N.J. Super. at 466, the Appellate Division stated “An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer.” In The Great Atlantic and Pacific Tea Company v. Mayor and Council of Point Pleasant Beach, 220 N.J. Super. 119, 129 (App. Div. 1987), the Appellate Division stated “a liquor license is a property interest of value subject to protection against unreasonable and illegally grounded discriminatory conduct by the issuing authority.” Other cases demonstrate the similar view that “[a] license is protected against arbitrary revocation, suspension or refusal to renew.” Boss Co. v. Bd. of Comm’rs, 40 N.J. 379, 384 (1963) (quoted in In re Xanadu Project at Meadowlands Complex, 415 N.J. Super. 179, 196 (App. Div.), certif. denied, 205 N.J. 96 (2010)). To this, it is only logical to add that protection against arbitrary action in regard to the issuance of a license should also be applied in cases of license.

A municipality can impose special conditions that are directly related to the concerns of the community; however, reducing the hours of operation is a drastic special condition and should only be imposed as a last resort. Happy Hour Café v. Municipal Board of Alcoholic Beverage Control of the City of Newark, EWR 9910-99, Initial Decision (November 16, 2000), rejected, Comm’r (January 5, 2001), <http://njlaw.rutgers.edu/collections/oal/>.

Public Sentiment

When considering a transfer application, the municipal ABC Board may and should consider public sentiment. This is recognized in both of the “Lyons Farms” cases. Lyons I, 55 N.J. at 305-307; Lyons II, 68 N.J. at 49-52. The Director of the ABC has the authority to recognize community sentiment by allowing or putting special conditions on the license. Id. at 51. However, the ABC Board must ensure that it

gauges and considers the public's sentiment properly. In Great Atlantic and Pacific Tea Company, 220 N.J. Super. at 128-29, the Appellate Division explained what the municipality must do. It said:

The municipal authority may respond to public sentiment as grounds for its action. Lyons Farms Tavern v. Mun. Bd. of Alc. Bev., Newark, 55 N.J. 292, 306-07 (1970); Fanwood v. Rocco, 33 N.J. 404, 414 (1960). That sentiment, however, must have some reasonable association, 'with dangers to the public health, safety, morals, and general welfare commonly recognized as incidents of the sale and consumption of alcohol. Lyons Farms Tavern, 55 N.J. at 307. Further, the public sentiment must be substantially widespread in the community, see Lyons Farms Tavern, 55 N.J. at 306-07, or must be evident by a long-established pattern of community conduct which reflects such sentiment. See Fanwood, 33 N.J. at 415-16.

The Great Atlantic and Pacific Tea Company case follows the same two-prong test first enunciated in Lyons I, 55 N.J. at 306-307. There, the Supreme Court stated that it would not find that a municipal ABC is acting arbitrarily when it responds to "the sentiments of substantial numbers of persons in the locality" *and* when it responds to sentiments that are "reasonably associated with dangers to the public health, safety, morals and general welfare commonly recognized as incidents of the sale and consumption of alcohol." Together, these cases illustrate that the municipality must ensure that with respect to ascertaining the nature and extent of public sentiment, it follows a two-pronged test: first, that public sentiment is reasonably rooted in or based on facts, which identify and confirm a reasonable danger to the public health, safety, morals and general welfare (i.e., facts which are "real and empirically sound" as noted in Lyons I, 55 N.J. at 305; and second, that the Board's measuring of public sentiment confirms that it is substantially widespread in the community.

Public sentiment should be based on factual information, rather than on ungrounded fears. General objections or expressions of concern, conjectural in nature, are insufficient grounds for denying a transfer request. Vans Restaurant v. Municipal Bd. of Alcoholic Beverage Control of Clifton, ABC Bulletin # 2242, Item # 4 (January 19, 1977).

LEGAL DISCUSSION AND CONCLUSIONS

Although public sentiment is a critical aspect to be taken into account by the municipal ABC Board, the sentiments must be rooted in a perception of danger to the community's health, safety, welfare, or morals that is reasonably associated with the sale and consumption of alcoholic beverages (i.e., something real and empirically sound) at the licensee's premises. As noted above, I found no nexus between the perceived problems of noise or misbehavior and the operation of Revolution. I also found that there was insufficient evidence of substantially widespread community opposition to the transfer (expansion) sought in this matter.

In finding that Morristown has failed to demonstrate that the operation of Revolution has caused or is linked to any real conditions that threaten the health, safety, welfare, and morals of the community, I **CONCLUDE** that an unsubstantiated threat of harm cannot meet the "necessary and proper" standard set forth in N.J.S.A. 33:1-32 and thus cannot justify the special condition imposing the 11:00 p.m./11:30 p.m. time restriction on Revolution.

In finding that Morristown failed to demonstrate widespread public sentiment in opposition to the operation of Revolution, I **CONCLUDE** that it cannot meet the "necessary and proper" standard and thus cannot justify the special condition imposing the 11:00 p.m./11:30 p.m. time restriction on Revolution.

Without linking the operation of Revolution to excessive noise or other undesirable conditions and without demonstrating widespread community sentiment based against the operation of Revolution, I **CONCLUDE** that Morristown's imposition of the special condition imposing the time restriction on Revolution lacked a sufficient rational basis, and must therefore be considered unreasonable. I note that under cross-examination, Council President Armington admitted that he did not know why the 11:00 p.m./11:30 p.m. closing times were chosen. This underscores the lack of a rational basis for the time limit.

Cognizant of the fact that of the six bars operating on the same block only Revolution has a time restriction, I also **CONCLUDE** that the imposition of the time restriction, including the inexplicable selection of the closing times, demonstrates that it is arbitrary and capricious.

The imposition of the time restriction solely on Revolution also strongly suggests that the time restriction should also be considered discriminatory.

Given that the operation of Revolution posed no demonstrable danger to public health, safety, welfare or morals, and given that the operation of Revolution did not evoke widespread public sentiment against it operating until the 2:00 a.m. closing time enjoyed by similar establishments in the area, I **CONCLUDE** that Revolution met its burden of proving that Morristown's imposition of the early closing times on Revolution was an unreasonable and inappropriate exercise of its discretion.

ORDER

It is **ORDERED** that Resolution Number R-143-2014 was an unreasonable and inappropriate exercise of Morristown's discretion in regulating ABC licenses and must therefore be rescinded or otherwise set aside. It is also **ORDERED** that the stay issued on October 29, 2014, by the Director of the State ABC, which has been continued up to the present time, must remain in effect until such time that Morristown rescinds the special condition imposed by Resolution R-143-2014.

I hereby **FILE** my Initial Decision with the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL**, who by law is authorized to make a final decision in this matter. If the Director of the Division of Alcoholic Beverage Control does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, 140 E. Front Street, 5th Floor, P.O. Box 087, Trenton, New Jersey 08625-0087**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

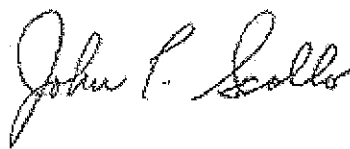
February 23, 2018

DATE

Date Received at Agency:

Date Mailed to Parties:

db



JOHN P. SCOLLO, ALJ

APPENDIX

List of Witnesses

For Petitioner:

Cindy Zimmer, resident of Morristown
Nicholas Kaslov, resident of Morristown
Peter Demitz, Morristown Chief of Police
Carolyn A. Young, architect on behalf of Licensee
Kevin Harris, Municipal Clerk of Morristown
Jonathan E. Gallant, Investigator
James A. Cavanaugh, General Manager of Licensee

For Respondent:

Robert Flanagan, Fire Chief of Morristown
Michelle Dupree Harris, Morristown Councilwoman
Stefan Paul Armington, Council President
Donald N. Ginsburg, resident of Morristown
Eldon B. Priestly, resident of Morristown
Vincent Zuza, resident of Morristown
Rebecca Feldman, resident of Morristown and former councilwoman

List of Exhibits

Joint Exhibits:

J-1 Joint Stipulation of Facts

For Petitioner:

P-1 A floor plan of existing Iron Bar and Revolution
P-2 Iron Bar Menu
P-3 Revolution Menu
P-4 Copy of N.J.S.A. 33:1-1, Definition of Restaurant

- P-5 Copy of N.J.S.A. 33:1-32 (Special Conditions)
- P-6 Resolution of Morristown Planning Board approving façade modification for Iron Bar and Iron Bistro dated January 22, 2015
- P-7 Letter from New Jersey Motor Vehicle Commission
- P-8 Copy of Resolution Granting Place-to-Place Transfer of the Office of Morristown, LLC for 3 South Street, Morristown dated July 13, 2013, with no Special Conditions
- P-9 Morristown Redevelopment Agency Resolution consenting to Application of Jockey Hollow Bar and Kitchen, LLC, for an annual Concessionaire's Permit to be issued by the New Jersey Division of Alcoholic Beverage Control without Special conditions upon Jockey Hollow's payment to the Town of Morristown of \$500,000 payable \$50,000 per year for ten years dated June 26, 2013
- P-10 Article from Morristown Patch dated June 5, 2014
- P-11 Video Presentation
- P-12 Investigative Solutions LLC Report
- P-13 Jazz Night at Revolution Flyers
- P-14 Copy of Resolution adopted by Respondent, Town of Morristown, September 11, 2014, approving transfer to 5-9 South Street, with Special Conditions
- P-15 Copy of Final Decision, Happy Hour Café v. Municipal Board of ABC of the City of Newark, OSL Docket Nos. ABC 9910 and ABC 7871-00; Agency Docket Nos. 6686 and 6793
- P-16 Alcoholic Beverage Control Handbook for Municipal Issuing Authorities pp. 12, 13, and 38

For Respondent:

- R-1 Map identifying location of liquor license establishments within the Town of Morristown as of 2007
- R-2 Map identifying current location of liquor license establishments within the Town of Morristown
- R-3 Map showing blowup of the area of South and Dehart Streets to show presence of liquor license establishments
- R-4 Chart Showing South and Dehart Street liquor establishments and occupancy limits

- R-5 Bar chart showing growth of residential properties within and around the central business district
- R-6 Resolution of the Morristown Planning Board Granting Preliminary and Final Site Plan Approval with Variances for Villa Enterprises, LLC (t/a The Office Tavern and Grill) Application NO. 12-19, Block 6004, Lot 2, Morristown, NJ
- R-7 State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control Retail Liquor License Application for the Office of Morristown, LLC t/a The Office Tavern and Grill
- R-8 State of New Jersey, Department of Law and Public Safety Division of Alcoholic Beverage Control Retail Liquor License Application for the Iron Bar, LLC t/a Iron Bar and Iron Bistro
- R-9 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Iron Bar, LLC t/a Iron Bistro and Iron Bar held on June 4, 2014
- R-10 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Iron Bar, LLC t/a Iron Bistro and Iron Bar held July 16, 2014
- R-11 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Gracie Sunshine, LLC held on June 13, 2012
- R-12 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Gracie Sunshine, LLC held on July 18, 2012
- R-13 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Dehart Associates, LLC d/b/a Tashmoo held on April 2, 2013
- R-14 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Dehart Associates, LLC d/b/a Tashmoo held on April 10, 2013
- R-15 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting from the Iron Bar, LLC t/a Iron Bar and Gran Cantina held on October 24, 2012
- R-16 Town of Morristown Resolution R-91-2013 Approving with Special Conditions the Application of Dehart Associates, LLC (d/b/a Tashmoo) For a Place-to-Place Transfer (expansion) of Liquor License Number 1424-33-022-010 to a to-be-built building at 10 Dehart Street, Morristown, NJ

- R-17 Town of Morristown Resolution R-149-2012 Approving With Special Conditions the application of Iron Bar, LLC t/a Gran Cantina For a Place-to-Place Transfer of Liquor License Number 1424-33-029-014 For the Expansion of the Licensed Premise Located at 5-9 South Street, Morristown, NJ
- R-18 Town of Morristown Resolution R-111-12 Denying the Application of Gracie Sunshine, LLC For a Place-to-Place Transfer of Liquor License Number 1424-33-030-004 to 10 Dehart Street, Morristown, NJ
- R-19 Town of Morristown Resolution R-143-14 Approving The Application of Iron Bar, LLC t/a Iron Bar and Iron Bistro for a Place-to-Place Transfer of Liquor License Number 1424-33-029-014 for the Expansion of the Licensed Premise Located at 5-9 South Street Morristown, NJ
- R-20 Town of Morristown Resolution R-130-15 Authorizing Renewal of Plenary Retail Consumption License 1424-33-029-15 Issued to The Iron Bar, LLC T/A The Iron Bar and Iron Bistro for 2015-2016 Subject to Conditions
- R-21 Town of Morristown Resolution R-115-16 Authorizing Renewal of Plenary Retail Consumption License 1424-33-029-016 Issue to the Iron Bar, LLC T/A The Iron Bar and Iron Bistro A/K/A Revolution for 2016-2017 Subject to Conditions
- R-22 Analytical Report of Residential Development and Liquor Licensed Establishments in Downtown Morristown, by Phil Abramson, PP, Town Planner, Topoligy NJ, LLC and Christopher Kok, PP, Principal Land Use Planner, Topology NJ, LLC, along with Messrs. Abramson and Kok's CVs

EXHIBIT 2



STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
P.O. BOX 087
TRENTON, NJ 08625-0087
PHONE: (609) 984-2830 FAX: (609) 633-6078
WWW.NJ.GOV/OAG/ABC

PHILIP D. MURPHY
Governor

SHIELA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

DAVID P. RIBLE
Director

June 28, 2018

Robert C. Williams, Esq.

VIA E-MAIL ONLY: rcwesqlaw@verizon.net

Elnardo J. Webster, Esq.

VIA E-MAIL ONLY: ewebster@iwt.law.com

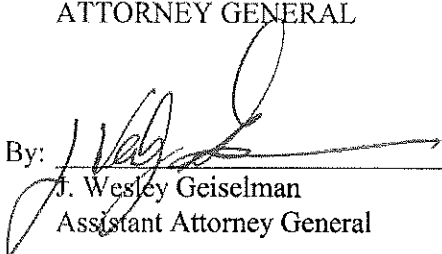
**RE: IRON BAR, LLC v. TOWNSHIP OF MORRISTOWN
LICENSE NO: 1424-33-029-014, AGENCY DKT. NO. 50
OAL DKT. NO. 15307-2016N**

Dear Counsel:

Enclosed please find a Final Conclusion and Order in the above-captioned matter. If you have any questions, please do not hesitate to contact me at (609) 292-5296.

Very truly yours,

GURBIR S. GREWEL
ATTORNEY GENERAL

By: 

J. Wesley Geiselman
Assistant Attorney General

JWG/df
Enclosure

c: Honorable John P. Scollo, OAL, VIA INTEROFFICE MAIL
Final.Decisions@oal.nj.gov
Margot G. Kaye, Municipal Town Clerk, VIA E-MAIL ONLY: townclerk@townofmorristown.org
Joann Frascella, Executive Assistant, Licensing Bureau
Lisa R. Ellison Barata, Deputy Attorney General
Denise Farfalla, Administrative Assistant
Debi Leckie, Administrative Analyst



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

LIC. NO. 1424-33-029-014

OAL DKT. NO. ABC 15307-16

AGENCY DKT. NO. 50

IRON BAR, LLC,

Petitioner,

v.

TOWNSHIP OF MORRISTOWN,

Respondent.

FINAL CONCLUSION AND ORDER

Robert C. Williams, Esq., for Petitioner

Owen T. Weaver, Esq., for Respondent (Inglesino, Webster, Wyciskala, attorneys)

Initial Decision Below by the Honorable John P. Scollo, Administrative Law Judge

Decided: February 23, 2018

Received: February 23, 2018

BY THE DIRECTOR:

This is an appeal by Petitioner, Iron Bar, LLC ("Iron Bar" or "Petitioner"), of a special condition placed upon the license on renewal for the 2016-2017 License Term. The special condition required the expanded portion of the premises, known as Revolution, to cease serving alcoholic beverages at 11:00 PM on Sunday through Thursday, and at 11:30 PM on Friday and Saturday. The Initial Decision was received by the Director on February 23, 2018. The time for

the Director's Decision was extended by Orders until June 28, 2018.

Exceptions to the Initial Decision were filed by the Respondent, Township of Morristown ("Township" or "Respondent"), on March 6, 2018 and responses by the Petitioner were filed on March 12, 2018.

I have reviewed the record and exceptions, and will accept the Initial Decision as my own.

PROCEDURAL HISTORY

The procedural history as set forth in the Initial Decision is accurate and I will accept it as my own and do hereby incorporate it by reference. I specifically note that neither party filed an objection with the Office of Administration Law ("OAL") or the Division contesting the issuance by Judge Scollo of an Initial Decision based solely on the transcript and exhibits, and did not conduct a new hearing.

FINDINGS OF FACT

The Respondent filed extensive exceptions to Judge Scollo's findings of fact and conclusions of law. I am extremely mindful that without having conducted live testimony it becomes difficult to judge issues of credibility. However, while the Respondent offers different interpretations of the testimony, I find that none centers around issues of credibility.

The Respondent in essence contends that it has presented sufficient evidence of widespread public sentiment in opposition to the operation of the licensee, which justifies the imposition of the limited hours special condition. More specifically, it claims that the testimony of its witnesses demonstrates that the condition is necessary and proper to address and correct the concerns of the issuing authority. I have reviewed the Respondent's exceptions and the Petitioner's response and find that Judge Scollo's finding of facts correctly and logically reflect the testimony presented

before the court. I am especially persuaded by the following:

- 1.) While a total of 14 person expressed concerns about the operation of the Petitioner's bar, no one could point to specific incidents or occurrences that a reduction of hours could address.
- 2.) There were no municipal agency reports, such as by the police or fire department, that presented evidence of general public welfare issues or specific issues as to the Petitioner's operation. In fact, the Chief of Police testified that he did not know the reason for the imposition of the conditions. The Fire Chief testified that there were no fire code violations at any time during the Petitioner's operation of either Iron Bar or Revolution. The Municipal Clerk testified no other licensed premises are operating with a restraint of hours as a special condition.
- 3.) The parties jointly stipulated that there have been no violations of the municipal or State ABC laws or any other municipal ordinances.
- 4.) When questioned directly, the Council President answered, "I don't know", when asked how did the Town Council come up with the 11:00 p.m./11:30 p.m. time restrictions.
- 5.) Finally, under the stay which limited the occupancy to Iron Bar's capacity prior to the opening of Revolution, the licensee operated throughout the 2016-2017 license term with a 2:00 a.m. closing, without any incidents.

CONCLUSION OF LAW

The governing body of a municipality has the primary responsibility to administer the issuance, renewal and transfer of retail alcoholic beverage licenses within its respective

municipality. See N.J.S.A. 33:1-19; N.J.A.C. 13:2-2.1 et seq.; N.J.A.C. 13:2-7.1 et seq. Pursuant to N.J.S.A. 33:1-32, a municipal issuing authority “may impose any condition or conditions to the issuance of any license deemed *necessary and proper* to accomplish the objects of [the ABC Act].” (Emphasis added.) Such conditions may be imposed at renewal, at transfer, or as part of a disciplinary settlement. See also, N.J.A.C. 13:2-2.13; A.H.S. Inc. v. Tp. Committee, Tp of Wall, 1 N.J.A.R. (ABC) 284, 294 (1979); Lyons Farms Tavern, Inc. v. Mun. Bd. of Newark ABC, 68 N.J. 44, 51-52 (1975). The purpose of a special condition is to address a unique issue involving either the operation or environment that exists at a licensed premises. Special conditions can be as simple as requiring a licensee to keep the doors closed to prevent noise or as significant as limiting hours, occupancy, or package goods sales.

A special condition must be tied to a specific, identifiable and documented problem at the premises. Pal’s Pancake House, Inc. v. Tp. Committee, Tp. of East Hanover, A.B.C. Bull. 2320, Item 3 (1979); A.H.S., 1 N.J.A.R. at 298-99. It must have a reasonable basis and nexus to the problem it is meant to correct since a violation of the condition is a basis to suspend the license. See N.J.S.A. 33:1-32. Special conditions are meant to address specific problems unique to a particular license; however, if the problem becomes endemic to an entire street or area that has multiple licenses sited within it, the better practice for a municipal issuing authority is to address the problem by ordinance.

If a licensee is aggrieved by the imposition of a special condition on a license, s/he may appeal to the Director of the Division for a *de novo* hearing, after which the Director “makes the necessary factual and legal determinations based on the record before him.” Fanwood v. Rocco, 33 N.J. 404, 414 (1960). When special conditions are appealed to the Director, the burden of

proof is on the licensee to demonstrate that the condition is arbitrary, unreasonable, or an abuse of discretion. N.J.A.C. 13:2-17.6; Dal Roth v. Division of Alcoholic Bev. Control, 28 N.J. Super. 246, 254 (App. Div. 1953). This is done, in part, by demonstrating or attacking the basis of the condition. The burden then shifts to the issuing authority to demonstrate the problem, how the problem specifically relates to or is tied to the licensee's operation, and how the condition solves the problem.

The rule is well-settled that the Director will not substitute his judgment for that of the issuing authority "if reasonable support for it can be found in the record." Margate Civic Assoc. v. Bd. of Comm'rs Margate, 132 N.J. Super. 58, 63 (App. Div. 1975), cert. den., 68 N.J. 139 (1975). In fact, the Director will not interfere with the actions of an issuing authority unless those actions constitute an abuse of discretion, manifest mistake, are clearly unreasonable, or are improperly grounded in the facts. Blanck v. Magnolia, 38 N.J. 484, 492 (1962); Common Council of the Borough of Hightstown v. Hedy's Bar, 86 N.J. Super. 561, 563 (App. Div. 1965); Grand Victorian Hotel v. Borough Council of Spring Lake, 94 N.J.A.R. 2d (ABC) 43, 47 (October 5, 1993), aff'd App. Div. Docket No. A-0924-93 (unreported decision dated July 1, 1994).

After review of the transcripts, exhibits, exceptions and Initial Decision, I can find no basis or nexus between a documented problem and the imposition of the limited hours special condition on Iron Bar.

Traditionally, issuing authorities impose special conditions on a license where there is a pattern of violations of either ABC statutes, regulations or ordinances, or of the zoning or fire code. However, based on the stipulation of facts in this matter, there were no violations of any

State or municipal ordinances by this licensee.

Another basis that may justify the imposition of a special condition on a license by an issuing authority is a pattern of similar special conditions on other licenses that address a similar problem. In this case, the clerk of the municipality expressly stated that no other licensee has a special condition that limits hours.

An issuing authority may also impose a special condition based on widespread public sentiment that the licensee is causing a problem that needs to be addressed. Lyons Farm Tavern, Inc. v. Mun. Bd. of Newark ABC, 55 N.J. 292, 305-306 (1970). The record before me shows that, at most, 14 people expressed concerns about the licensee's operations but never gave specific examples. This is in contrast to the testimony of the Chief of Police, a Council woman and the other residents who found no problem and did not know the reason for the condition. Perhaps the most telling testimony was that of the Council President who testified that he did not know how Council came up with the time restrictions.

Finally, when the Division stayed the condition, it limited the occupancy of Iron Bar. The licensee was entitled to an occupancy of 1,403, but agreed to limit it to 1,043. In its exceptions, the Respondent concedes that Iron Bar and Revolution rarely exceeds the 1,043 occupancy limit. Thus, even if the limited hours restriction were in place, the patrons of Revolution would simply move to Iron Bar after 11:30 p.m. (on Friday and Saturday nights, for example), and all would leave at 2:00 a.m., adding no additional people onto the street. Under this scenario, the special condition does not address any problem regarding the number of patrons outside the bar at closing.

Based on the foregoing, the Respondent has been unable to demonstrate what problem the

condition is addressing and how it corrects the problem. Therefore, the only conclusion is that the special condition limiting Revolution's hours is arbitrary and unreasonable.

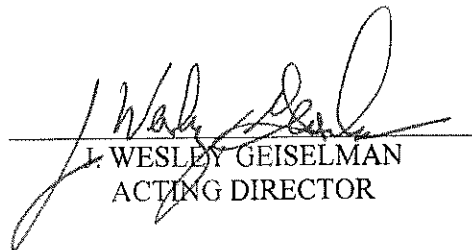
Accordingly, I accept the findings of facts and conclusion of law as set forth in Judge Scollo's Initial Decision.

In addition, I conclude that the additional exceptions raised by the Respondent were adequately addressed by Initial Decision or are without merit.

Accordingly, it is on this 28th day of June, 2018,

ORDERED that the special condition as set forth in Respondent Resolution Number R-143-2014 is unreasonable and pursuant to N.J.S.A. 33:1-32 is hereby disapproved and void and it is further;

ORDERED that the stay and special conditions limiting occupancy to 1,043, issued by the Director on October 8, 2015, is hereby VACATED.



J. WESLEY GEISELMAN
ACTING DIRECTOR

JWG/JWG

Attachment: Initial Decision



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 15307-16

AGENCY REF. NO. Appeal #50

LIC # 1424-33-029-014

IRON BAR, LLC,

Petitioner,

v.

TOWN OF MORRISTOWN,

Respondents.

Robert C. Williams, Esq., for Petitioner

Owen T. Weaver, Esq., for Respondent (Inglesino, Webster, Wyciskala,
attorneys)

Record Closed: January 11, 2018

Decided: February 23, 2018

BEFORE **JOHN P. SCOLLO, ALJ**

STATEMENT OF THE CASE

The Petitioner, Iron Bar, LLC (Iron Bar) challenges Morristown's imposition of a special condition on the renewal of its Plenary Retail Consumption License for the 2016-2017 Licensing Term. While bars in Morristown are permitted to stay open and serve alcoholic beverages until 2:00 a.m., the Town Council of Morristown, sitting as the

Morristown ABC Board, on June 28, 2016, imposed a special condition on Iron Bar requiring that the expanded portion of its premises, known as Revolution, cease serving alcoholic beverages at 11:00 p.m. on Sunday nights through Thursday nights and at 11:30 p.m. on Friday nights and Saturday nights.

Petitioner contends that the imposition of this special condition was improper because: it was not necessary and proper to accomplish the objectives of N.J.A.C. 33:1-1 et seq.; and because N.J.S.A. 33:1-32 requires that any resolution imposing a special condition must be approved by the Commissioner of the State ABC. The Petitioner also contends that while other bars enjoy the privilege of staying open for business until 2:00 a.m., the special condition requiring Revolution to stop serving at 11:00 p.m./11:30 p.m. is arbitrary, capricious, unreasonable and discriminatory.

PROCEDURAL HISTORY

The complete procedural history of this matter is found in the parties' Joint Stipulation of Facts (marked as J-1 and attached hereto) in numbered paragraphs four through thirty and paragraphs thirty-two to thirty-three.

On June 28, 2016, the Town Council of Morristown, sitting as the Morristown ABC Board approved the renewal of Iron Bar, LLC's Plenary Retail Consumption License for the 2016-2017 Licensing term, but imposed a special condition limiting the hours of service of alcoholic beverages in the expanded portion of the premises known as Revolution.

On June 29, 2016, the day after Morristown imposed the special condition, Iron Bar, LLC filed a Notice and Petition of Appeal with the New Jersey Division of Alcoholic Beverage Control objecting to the above-mentioned special condition. Revolution continues to operate until 2:00 a.m. pursuant to a continuing stay of the special condition in question.

The Director of the ABC (also referred to as the Commissioner) transmitted the matter to the Office of Administrative Law where the matter was filed on October 6,

2016, as a contested case pursuant to N.J.S.A. 52: 14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was held on April 11 and on April 18, 2017, before Joan Bedrin-Murray, ALJ and the record closed on June 13, 2017, when counsel submitted their summations and other post-summation correspondences. Several extensions for the writing of the Initial Decision were requested and granted.

In December 2017 Judge Joan Bedrin-Murray was appointed to the New Jersey Tax Court and this case was re-assigned to John P. Scollo, ALJ. On January 11, 2018, a telephone conference was held between counsel for each side and Judge Scollo, at which time the parties agreed that the new record closed dated would be January 11, 2018, but that no further submissions were needed. All agreed that Judge Scollo would, after reviewing the testimony and exhibits, write the Initial Decision as soon as practicable.

TESTIMONY OF THE WITNESSES

The following is not intended to be a verbatim report of the witnesses' testimony, but rather is a summary of same regarding the most relevant matters.

For Petitioner:

Cindy Zimmer, resident of Morristown

She testified that she has lived in Morristown for six and a half years, is familiar with the area and has been present around 1:00 a.m. She complimented the operation of the bars and is opposed to a restriction.

Nicholas Kaslov, resident of Morristown

He testified that he has lived in Morristown for over twelve years, is very familiar with the area around South Street late at night, and has not witnessed any problems on the streets. He is in favor of the growing businesses.

Peter Demitz, Morristown Chief of Police

He testified that he has been with the Morristown police for thirty-four years. He has personally observed pedestrian traffic created when all the bars close. He testified to the general conditions when all of the bars along South and Dehart Streets let out, but found that people conducted themselves in an orderly manner. He stated that he does not know of any reason why Revolution should stop selling liquor at 11:00 p.m./11:30 p.m.

Carolyn A. Young, architect on behalf of Licensee

She testified about the layout and plans for the intended atmosphere inside Revolution.

Kevin Harris, Municipal Clerk of Morristown

He testified that no other bars in Morristown were currently operating with restricted hours.

Jonathan E. Gallant, investigator

He provided video showing of security personnel and well-organized lines outside of Iron Bar and Revolution. He testified that incidents of improper behavior were few.

James A. Cavanaugh, General Manager of Licensee

He testified that he has had no municipal or ABC violations regarding either bar. He testified that restricted hours would severely harm the business and its employees.

For Respondent:

Robert Flanagan, Fire Chief of Morristown

He testified that there have been no fire code violations associated with Iron Bar or Revolution since their opening in 2012 and 2016 respectively.

Michelle Dupree Harris, Morristown Councilwoman

She testified that she was not in favor of restrictions placed on the expanded premises.

Stefan Paul Armington, Council President

He has been a resident for twenty years and is currently the Town Council's President. He testified that although he has not been on South Street past 12:30 a.m., he had observed large crowds and commotion. He testified regarding the purpose of restrictions and the concerns of the public. When asked how the council came up with the 11:00 p.m./11:30 p.m. time restriction, he responded, "I don't know."

Donald N. Ginsburg, resident of Morristown

He has been a resident for nine years. He testified to his general experiences in the downtown Morristown area. Although he had not been on South Street past 10:00 p.m., he testified to seeing crowds, people smoking cigarettes, intoxicated people, and trash on Dehart Street.

Eldon B. Priestly, resident of Morristown

He has been a resident for six-and-one-half years. He testified to his general experiences in the downtown Morristown area. This includes seeing crowds, people jaywalking, and hearing loud noise on South Street. He has not been on South Street after 9:00 p.m.

Vincent Zuza, resident of Morristown

He has been a resident for five years. He testified to his general experiences in the downtown Morristown area up until about 12:45 a.m. This includes seeing crowds, people jaywalking, and hearing loud noise on South Street.

Rebecca Feldman, resident of Morristown and former councilwoman

She has been a resident for nineteen years. She testified to her general experiences in the downtown Morristown area. This includes witnessing "hoards" of young people and intoxicated individuals on the streets.

STATEMENT OF FACTS

The parties agreed to a Joint Stipulation of Facts, attached hereto as J-1.

FINDINGS OF FACT

Based on the evidence (Exhibits and testimony) presented at the hearing, I make the following **FINDINGS OF FACT**:

1. Revolution and Iron Bar are located at 5-9 South Street, Morristown, New Jersey. The neighborhood is considered the downtown business district of Morristown. The area is also home to bars, restaurants, retail establishments, and several high-end residential properties.

2. There are six (6) bars, including Iron Bar and Revolution, on South Street between Market and Dehart Streets. There are approximately ten (10) additional bars within a quarter-mile radius of area in question.

3. The Iron Bar has an official occupancy limit of 1,043 people. The Revolution has an official capacity of 360. However, Iron Bar has voluntarily offered to limit the combined capacity of both properties to the original number of 1,043.

4. Morristown's ordinances permit bars to serve alcohol until 2:00 a.m. The subject area (South Street between Market Street and DeHart Street) is zoned for mixed-use.

5. On June 18, 2016, by resolution, Morristown imposed a special condition on the renewal of Iron Bar's Plenary Retail Consumption License for the 2016-2017 License Term pertaining only to the expanded portion of Iron Bar's licensed premises known as Revolution, requiring that:

No alcohol shall be served after 11:00 p.m. on Sunday through Thursday and no alcohol shall be served after 11:30 p.m. on Friday and Saturday.

6. At the hearing, Morristown Council President Paul Armington was questioned about what was Morristown's basis for imposing a special condition limiting the time to 11:00 p.m./11:30 p.m. that Revolution could serve alcoholic beverages. Over the course of several questions he answered as follows. He testified that approximately fourteen residents (1T 109:19) expressed concerns about excessive noise, vomiting on the sidewalks, public urination, public intoxication, and fights on South Street (1T 98:25-99:8). He testified that the area of concern was South Street between Market Street and DeHart Street (1T 98:13-14), but that the residents' concerns could not be specifically attributed to Iron Bar or Revolution, but rather to the general area (1T 115:13-22). He testified that "upwards of 19,000" people live in Morristown (1T 109:19-21). He testified that the time limit on Revolution was imposed because residents were concerned about the "possibility" of it becoming a late-night drinking establishment (1T 109:22-110:5). He acknowledged that Morristown's

ordinances allow bars to stay open until 2:00 a.m. (1T 102:7-8). He acknowledged that neither the Police Department nor any other municipal agency has reported any violations by Iron Bar since May of 2012 or by Revolution since it opened in October of 2016 (1T 110:25 -111:19). When questioned about how Morristown determined that 11:00 p.m./11:30 p.m. would be the appropriate time limit for Revolution to stop serving alcoholic beverages, he replied "I don't know." (1T 110:6-7.) I **FIND** that Council President Paul Armington's testimony offered no facts that could serve as a basis for Morristown's imposition of the 11:00 p.m./11:30 p.m. time limit on Revolution as a special condition for the subject license renewal for the 2016-2017 License Term. I **FIND** that Armington's testimony, especially when he was questioned on cross-examination, showed that there is no factual nexus between the perceived or anticipated problems of noise and misbehavior on South Street and the operation of Revolution.

7. During his testimony, Council President Armington admitted that Morristown did not get the approval of the Director of the ABC before including the time limit on Revolution (1T 123:10-15). I therefore **FIND** that Morristown did not get the Director's approval for imposing the time limit. In answer to a question about what facts made Morristown's imposition of the time limit "necessary and proper" under N.J.S.A. 33:1-32, Armington gave a general answer that it relied on the contents of the 2014 transfer (expansion) application. However, upon further questioning and cross-examination it became apparent, and I so **FIND**, that although Morristown relied on the comments and concerns of several residents, it had no data from the Police Department or any other municipal department or State agency which provided any factual support with which to prove that problems of noise or misbehavior were linked to the operation of Revolution. I **FIND** that there was no evidence that a time limit on Revolution alone was a "necessary and proper" means of reducing the level of noise or misbehavior in the community.

8. At the hearing, there was testimony and argument presented about fear of public drunkenness, public urination, vomiting on the sidewalks, noisy and rowdy behavior, fights and fear of an adverse impact upon South Street and a general decline in the health, safety, welfare, and morals of Morristown. I **FIND** that most of the

testimony spoken in opposition to the Iron Bar expansion expressed general concerns about people who drink alcoholic beverages to excess, about jaywalking or crowds of people using the sidewalks, and expressed concerns about an anticipated damage to Morristown's reputation. None of these comments were directed specifically about or directly against Iron Bar or Revolution. I **FIND** that the testimony offered did not constitute widespread public sentiment in opposition to the Iron Bar expansion and I **FIND** that it was too attenuated to establish that Iron Bar's expansion was a realistic danger to the public health, safety, morals, or general welfare of Morristown.

I **FIND** that the evidence (notably the testimony of Police Chief Peter Demitz) did not establish that the above-mentioned problems of noise, urination, or other misconduct exist to any significant extent or that any such problems have been caused by, attributed to, or otherwise rooted in the operation of Revolution. I **FIND** that the evidence did not indicate that there was a problem with excessive noise and indicated that the people entering and exiting both Iron Bar and Revolution were well behaved and were kept under the supervision of private security and police personnel. I specifically **FIND** that there was no evidence that the operation of Revolution was causing an adverse impact on the community's health, safety, welfare, or morals.

9. Petitioner has operated the Iron Bar since May of 2012 and Revolution since October of 2016 without any violations of N.J.A.C. 33:1-1 et seq., Municipal Regulations regulating the sale of alcohol, or any convictions of the Municipal Code regarding nuisance, public safety, or fire regulations.

10. Revolution has remained open until 2:00 a.m. for the 2016-2017 License Term as the result of a stay issued by the Division of Alcoholic Beverage Control.

11. The testimony of Municipal Clerk Kevin Harris that no bars in Morristown were currently operating with restricted hours is credible and the Tribunal accepts its content as **FACT**.

12. Based upon the testimony (direct examination and cross-examination) of Council President Armington, I **FIND** that approximately fourteen people expressed

concerns about the operation of Revolution out of a population of 19,000. The negative sentiment of relatively few individuals cannot outweigh the interests of the license holder. I **FIND** that this ratio does not demonstrate widespread public sentiment against the operation of Revolution to the usual 2:00 a.m. closing time provided to licensees in Morristown.

ISSUE

As framed by Judge Joan Bedrin-Murray, the pertinent issue is: "Was it appropriate for Revolution to be time restricted?" Judge Bedrin-Murray's framing of the issue mirrors the language used by the Supreme Court in Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292, 307 (1970) (Lyons I), where it asked:

Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented?

APPLICABLE LAW

The Sharing of Powers By the Municipal ABC Boards and the Director of the ABC

The primary responsibility for enforcing alcoholic beverage control laws rests with the local municipal issuing authority. Cf. N.J.S.A. 33:1-19; N.J.S.A. 33:1-24; Lyons I, 55 N.J. at 302-303. This includes the responsibility to administer and enforce the alcoholic beverage laws relating to the transfer of a liquor license N.J.S.A. 33:1-19 and -24. This can be transfers from place-to-place, as in Borough of Fanwood v. Rocco, 33 N.J. 404, 412-413 (1960) or transfers from person-to-person, as in Lyons Farms Tavern v. Municipal Bd. of Alc. Bev. Control, 68 N.J. 44, 49-50 (1975) (Lyons II). The Legislature granted wide discretion to local authorities in allowing transfers and they are to be guided by what is best for the public interest. Lubliner v. Board of Alc. Bev. Control, Paterson, 33 N.J. 428, 466 (1960); Township Comm. of Lakewood v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).

Actions of the municipal issuing authorities are appealable to the Director of the Division of Alcoholic Beverage Control. The Director hears such appeals de novo and makes the necessary factual and legal determinations based on the record before him. Fanwood, 33 N.J. at 414. The burden of proving that the municipal issuing authority's decision was erroneous is on the licensee. Lubliner, 33 N.J. at 431. The subject matter of appeals is extensive and can include everything from issuance of a license to transfer of a license, to renewal of a license to conditions placed on a license. Lyons II, 68 N.J. at 49-53. It is well-established that if the decision of the municipal issuing authority is supported by the record, it will not be disturbed in the absence of a clear abuse of discretion. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484, 489 (1962). On the other hand, municipal actions are reversible when they constitute an abuse of discretion, manifest mistake, or are unreasonable. Fanwood, 33 N.J. at 414; The Grand Victorian Hotel v. Borough Council of the Borough of Spring Lake, 94 N.J.A.R.2d (ABC) 43, citations omitted. The Supreme Court has long recognized the "practically limitless" police power of the State of New Jersey to regulate the field of intoxicating liquors and the ABC Director's "extensive" authority to carry out the State's powers. Blanck, 38 N.J. at 490-491. In Circus Liquors v. Middletown Tp., 199 N.J. 1, 10-12 (2008), the Supreme Court re-iterated its long-standing position that N.J.S.A. 33:1-1 to -97 (the ABC Act) vests the Director of the ABC with "extensive regulatory and investigative power over the liquor industry" and "special powers of administration and control over the entire liquor industry."

Special Conditions

Special conditions imposed by a local issuing authority are governed by N.J.S.A. 33:1-32:

Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof.

A special condition must be based on something more than mere speculation and must be specific, reasonable, and narrowly tailored to accomplish its purpose. A.H.S. v. Twp. Comm. of Wall, 1 N.J.A.R. 284, 293, 299 (ABC).

Protections Afforded to License Holders

In Lakewood, 38 N.J. Super. at 466, the Appellate Division stated "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." In The Great Atlantic and Pacific Tea Company v. Mayor and Council of Point Pleasant Beach, 220 N.J. Super. 119, 129 (App. Div. 1987), the Appellate Division stated "a liquor license is a property interest of value subject to protection against unreasonable and illegally grounded discriminatory conduct by the issuing authority." Other cases demonstrate the similar view that "[a] license is protected against arbitrary revocation, suspension or refusal to renew." Boss Co. v. Bd. of Comm'rs, 40 N.J. 379, 384 (1963) (quoted in In re Xanadu Project at Meadowlands Complex, 415 N.J. Super. 179, 196 (App. Div.), certif. denied, 205 N.J. 96 (2010)). To this, it is only logical to add that protection against arbitrary action in regard to the issuance of a license should also be applied in cases of license.

A municipality can impose special conditions that are directly related to the concerns of the community; however, reducing the hours of operation is a drastic special condition and should only be imposed as a last resort. Happy Hour Café v. Municipal Board of Alcoholic Beverage Control of the City of Newark, EWR 9910-99, Initial Decision (November 16, 2000), rejected, Comm'r (January 5, 2001), <http://njlaw.rutgers.edu/collections/oal/>.

Public Sentiment

When considering a transfer application, the municipal ABC Board may and should consider public sentiment. This is recognized in both of the "Lyons Farms" cases. Lyons I, 55 N.J. at 305-307; Lyons II, 68 N.J. at 49-52. The Director of the ABC has the authority to recognize community sentiment by allowing or putting special conditions on the license. Id. at 51. However, the ABC Board must ensure that it

gauges and considers the public's sentiment properly. In Great Atlantic and Pacific Tea Company, 220 N.J. Super. at 128-29, the Appellate Division explained what the municipality must do. It said:

The municipal authority may respond to public sentiment as grounds for its action. Lyons Farms Tavern v. Mun. Bd. of Alc. Bev., Newark, 55 N.J. 292, 306-07 (1970); Fanwood v. Rocco, 33 N.J. 404, 414 (1960). That sentiment, however, must have some reasonable association, 'with dangers to the public health, safety, morals, and general welfare commonly recognized as incidents of the sale and consumption of alcohol. Lyons Farms Tavern, 55 N.J. at 307. Further, the public sentiment must be substantially widespread in the community, see Lyons Farms Tavern, 55 N.J. at 306-07, or must be evident by a long-established pattern of community conduct which reflects such sentiment. See Fanwood, 33 N.J. at 415-16.

The Great Atlantic and Pacific Tea Company case follows the same two-prong test first enunciated in Lyons I, 55 N.J. at 306-307. There, the Supreme Court stated that it would not find that a municipal ABC is acting arbitrarily when it responds to "the sentiments of substantial numbers of persons in the locality" *and* when it responds to sentiments that are "reasonably associated with dangers to the public health, safety, morals and general welfare commonly recognized as incidents of the sale and consumption of alcohol." Together, these cases illustrate that the municipality must ensure that with respect to ascertaining the nature and extent of public sentiment, it follows a two-pronged test: first, that public sentiment is reasonably rooted in or based on facts, which identify and confirm a reasonable danger to the public health, safety, morals and general welfare (i.e., facts which are "real and empirically sound" as noted in Lyons I, 55 N.J. at 305; and second, that the Board's measuring of public sentiment confirms that it is substantially widespread in the community.

Public sentiment should be based on factual information, rather than on ungrounded fears. General objections or expressions of concern, conjectural in nature, are insufficient grounds for denying a transfer request. Vans Restaurant v. Municipal Bd. of Alcoholic Beverage Control of Clifton, ABC Bulletin # 2242, Item # 4 (January 19, 1977).