

**RAYMOND E. VAN HOLT,**  
Appellant,  
v.  
**MAYOR AND COUNCIL OF  
BOROUGH OF SEA BRIGHT  
and EDWARD SEGALL,**  
Respondents.

Decided January 14, 1981

**Initial Decision**

**SYNOPSIS**

Appellant, Raymond E. Van Holt, objected to the renewal of respondent Edward Segall's plenary retail consumption license by the Mayor and Council of the Borough of Sea Bright. Respondent Segall moved to dismiss the appeal upon the basis that the Division of Alcoholic Beverage Control had no jurisdiction to accept the appeal because it was not timely filed within 30 days of June 2, 1980, the date upon which the Mayor and Council of Sea Bright approved the renewal of the license.

The administrative law judge found that 31 days after the action of the local issuing authority renewing Segall's license, appellant Van Holt mailed to the Director of the Division of Alcoholic Beverage Control a notice appealing the renewal action of the local issuing authority.

The judge noted that *N.J.A.C.* 13:2-17.3 requires that an appeal from the renewal of an alcoholic beverage license by a municipal issuing authority must be taken within 30 days from the action appealed from. The judge concluded that the filing of the appeal takes place upon receipt by the Director rather than upon the mailing of the notice and thus, in this case, the Director received the notice six days after the last date for filing permitted by *N.J.A.C.* 13:2-17.3. Observing that it is well settled that the Director of the Alcoholic Beverage Control has no jurisdiction to accept an appeal not timely filed and that enlargement of statutory time for appeal to a state administrative agency lies solely with the Legislature, the administrative law judge concluded that the appeal of the objector was out of time.

Accordingly, the appeal of the objector was dismissed as being out of time.

**Joseph P. Grabler, Esq.** for Appellant

**Thomas J. Smith, Jr., Esq.** for Respondent, the Borough of Sea Bright (Smith and Shaw, Attorneys)

**David S. Piltzer, Esq.** for Respondent, Edward Segall (Piltzer and Piltzer, Attorneys)

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**FIDLER, ALJ:**

This matter concerns the appeal of Raymond E. Van Holt, an objector, from the renewal of respondent Edward Segall's plenary retail consumption license No. 1343-33018-002, for the licensing year expiring June 30, 1981, by the Mayor and Council of the Borough of Sea Bright by resolution adopted on June 2, 1980.

A Notice and Petition of Appeal dated July 3, 1980 were filed by the appellant with the Division of Alcoholic Beverage Control, Department of Law and Public Safety, on July 8, 1980. An answer of respondent Edward Segall dated July 11, 1980 was filed with the Division of Alcoholic Beverage Control on July 14, 1980 and the matter was thereafter transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

By motion made returnable on December 1, 1980, the date set for hearing in this matter, the respondent Edward Segall sought the entry of an order dismissing the instant appeal upon the basis that the Division of Alcoholic Beverage Control had no jurisdiction to accept the appeal because it was not timely filed within 30 days of June 2, 1980, the date upon which the Mayor and Council of the Borough of Sea Bright approved the renewal of respondent Segall's plenary retail consumption license. Although the appellant and the respondent Borough of Sea Bright submitted no responsive papers pursuant to the motion for dismissal, counsel for each of the parties was permitted to present his arguments on the motion orally.

In support of his motion, respondent Edward Segall relies upon the Notice and Petition of Appeal, and affidavit of mailing, filed by the appellant, which state that the appeal is taken from the action of the Sea Bright Mayor and Council on June 2, 1980, and that the Notice and Petition of Appeal were mailed to the Division of Alcoholic Beverage Control on July 3, 1980. It is undisputed that these documents were filed with the Division on July 8, 1980. Respondent Edward Segall also relies upon the certification of Mary Larson, Clerk of the Borough of Sea Bright, which certifies that the Mayor

and Council of the Borough of Sea Bright renewed the subject license on June 2, 1980. Finally, respondent Edward Segall relies upon *N.J.S.A.* 33:1-22 and *N.J.A.C.* 13:2-17.3, which require that an appeal must be taken within 30 days from the date of the action appealed from, and *N.J.A.C.* 13:2-17.2, which requires that the Notice and Petition of Appeal be filed with the Director within such time. Citing the case of *Hess Oil and Chemical Corp. v. Doremus Sport Club*, 80 *N.J. Super.* 393 (App. Div. 1963), the movant contends that the Director of the Division of Alcoholic Beverage Control has no jurisdiction to accept an appeal not timely filed, no matter what the nature of the complaint raised by the objector.

For the limited purposes of this hearing, counsel for respondent Borough of Sea Bright joined in the motion of respondent Edward Segall. Arguing in opposition to the motion for dismissal, the appellant did not dispute that the Mayor and Borough Council of the Borough of Sea Bright acted on June 2, 1980 to renew the plenary retail consumption license of respondent Edward Segall, or that the appellant's appeal was mailed 31 days later on July 3, 1980, and received by the Division of Alcoholic Beverage Control on July 8, 1980. However, the appellant argued that the action taken on June 2, 1980, if valid at all, might not be effective until the next business day, or upon adoption of the minutes at the next meeting of the local governing body, or on June 4, 1980, which was the date of the Special Ruling of the Director of the Division of Alcoholic Beverage Control authorizing the Mayor and Council of the Borough of Sea Bright to consider the application for renewal of respondent Edward Segall's plenary retail consumption license. Appellant also argued that the filing of its Notice and Petition of Appeal was effectuated upon mailing, and not upon its receipt by the Division of Alcoholic Beverage Control. Finally, the appellant argued that its appeal should be considered even if it is determined to be out of time, based upon the appellant's allegation that the respondent Edward Segall created fraud and deceit in his Verified Petition to the Director of the Division of Alcoholic Beverage Control seeking permission to apply to the Mayor and Council of the Borough of Sea Bright for renewal of his plenary retail consumption license for the 1980/1981 license term.

Having carefully considered the moving papers relied upon by respondent Edward Segall in support of his motion for dismissal, including the certificates of the Director of the Division of the Alcoholic Beverage Control and the Clerk of the Borough of Sea Bright, as well as the pleadings of the instant appeal; and having carefully

considered the arguments of counsel, I make the following **FINDINGS OF FACT**:

1. On May 30, 1980 the Mayor and Council of the Borough of Sea Bright received notification from Charles Kaess, Assistant to the Director of Alcoholic Beverage Control, that the Director had approved respondent Edward Segall's verified petition, pursuant to Chapter 246 of the Laws of 1977, to authorize the local issuing authority to consider the respondent's application for renewal of his plenary retail consumption license No. 1343-33-018-002 for the licensing year expiring June 30, 1981.

2. On June 2, 1980, the Mayor and Council of the Borough of Sea Bright approved the application of respondent Edward Segall for the renewal of his plenary retail consumption license for the licensing year expiring June 30, 1981.

3. The Special Ruling of the Director of the Division of Alcoholic Beverage Control authorizing the local issuing authority to consider the application of respondent Edward Segall for renewal of his plenary retail consumption license for the 1980-1981 license term was committed to writing on June 4, 1980.

4. On July 3, 1980, 31 days after the action of the local issuing authority renewing the retail plenary consumption license of respondent Edward Segall for the licensing year expiring June 30, 1981, appellant Raymond E. Van Holt, an objector, through his attorney, Joseph P. Grabler, mailed to the Director of the Division of Alcoholic Beverage Control a Notice and Petition of Appeal, appealing the renewal action of the local issuing authority.

5. The Notice and Petition of Appeal of appellant Raymond E. Van Holt was received and filed by the Director on July 8, 1980.

Pursuant to *N.J.A.C.* 13:2-17.3, an appeal from the renewal of an alcoholic beverage license by a municipal issuing authority must be taken within 30 days from the action appealed from. Under the provisions of *N.J.A.C.* 13:2-17.2, such an appeal is taken upon the filing with the Director of a Notice and Petition of Appeal within the 30 day time period. In this matter, even if the date of mailing of the appellant's Notice and Petition of Appeal is considered to constitute the date of filing, such mailing took place 31 days after the action appealed from, and was therefore one day past the last day for doing so. In any event, **I CONCLUDE** that the filing of an appeal takes place upon the receipt of the Notice and Petition of Appeal by the Director, rather than upon the mailing of the Notice and Petition of Appeal. In this matter, the Director received the Notice and Petition

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of Appeal six days after the last day for filing as permitted by *N.J.A.C.* 13:2-17.3.

It is well settled that the Director has no jurisdiction to accept an appeal not timely filed and such appeal must be dismissed as out of time without consideration of the merits of the appeal, and "no matter what the nature of the complaint" for appeal by an objector or appellant. *Hess Oil and Chemical Corp. v. Doremus Sport Club*, 88 *N.J. Super.* 393 (App. Div. 1963). Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature. *Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 47 (1956). Neither the Director nor the Office of Administrative Law has any authority to enlarge the period of time within which an appeal may be taken to the Director.

Therefore, on the basis of the entire record and the foregoing discussion and specific Findings of Fact, **I CONCLUDE** that this appeal of objector Raymond E. Van Holt was filed out of time and that the Division of Alcoholic Beverage Control is without jurisdiction to accept and hear it.

Accordingly, it is **ORDERED** that the motion of respondent Edward Segall for dismissal of the present appeal is hereby granted and it is further **ORDERED** that the appeal of Raymond E. Van Holt from the renewal by the Mayor and Council of the Borough of Sea Bright of the plenary retail consumption license of respondent Edward Segall is hereby dismissed with prejudice for being out of time.

**After reviewing this Initial Decision the Division of Alcoholic Beverage Control on January 28, 1981 issued the following Final Decision:**

No written Exceptions to the Initial Decision were filed by the parties hereto pursuant to *N.J.A.C.* 13:2-17.6.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, and the Initial Decision, I concur in the findings and recommendation of the administrative law judge and adopt them as my conclusions herein.

It should be noted that the merits of the Council's action was not considered or reached in the Initial Decision, in view of it finding that a fatal procedural defect resulted from the failure of appellant to timely file his appeal.

Accordingly, it is, on this 28th day of January, 1981,

**ORDERED** that the appeal herein be and the same is hereby dismissed.