
Chateau Corp. v. Div. of Alcoholic Bev. Control
Cite as 6 *N.J.A.R.* 278

THE CHATEAU CORPORATION,
Petitioner,
v.
**DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,**
Respondent.

Decided February 22, 1982

Initial Decision

SYNOPSIS

Petitioner sought authorization under *N.J.S.A.* 33:1-12.39 to renew its plenary retail consumption license. The Division of Alcoholic Beverage Control argued that while petitioner may have diligently sought activation, the likelihood of activation was so slight that an absence of "good cause" under *N.J.S.A.* 33:1-12.39 has resulted.

The administrative law judge found that the petitioner has expended considerable amounts of time and money to find a location for the license but had been unable to find a suitable location. The judge noted that while *N.J.S.A.* 33:12.39 was designed to halt the continuous renewal of a license which had no situs and was not actively used, these "pockets licenses" might be renewed if good cause was shown.

While the judge found that petitioner had not proven whether any economic or political factor precluded operation of the license, petitioner had established a substantial reason justifying renewal by proving its good faith efforts to renew and by establishing a record which permitted a conclusion that activation by someone else would be just as difficult as activation by petitioner.

Accordingly, the administrative law judge concluded that petitioner had demonstrated good cause for the renewal of its license.

Murray Laiks, Esq., for petitioner

Christine H. Steinberg, Deputy Attorney General, for respondent
(**Irwin I. Kimmelman,** Attorney General of New Jersey, attorney)

LEFELT, ALJ:

The Chateau Corporation seeks authorization under *N.J.S.A.* 33:1-12.39 to renew its plenary retail consumption liquor license No.

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C-1 for the 1980-81 and 1981-82 license terms. The Division argues that while petitioner may have diligently sought activation, the likelihood of activation is so slight that an absence of "good cause" under *N.J.S.A.* 33:1-12.39 has resulted. The petitioner, however, contends that its license should not be terminated because economic, political and cultural factors preclude operation, especially since there would be no loss to the public by authorizing renewal.

PROCEDURAL HISTORY

The Director of the Division of Alcoholic Beverage Control authorized renewal of this license for the 1978-79 and 1979-80 terms. On June 23, 1981, petitioner reapplied to the Director for permission to renew for 1980-81. On August 27, 1981 the Division of Alcoholic Beverage Control transmitted the matter to the Office of Administrative Law for determination as a contested case under *N.J.S.A.* 52:14F-1 *et seq.* and *N.J.S.A.* 52:14B-1 *et seq.* The Borough of Rochelle Park, the issuing authority, is currently awaiting authorization to consider renewal for the 1980-81 and 1981-82 license terms.

FINDINGS OF FACT

The evidence presented by petitioner was unopposed by the Division. Accordingly, upon review of the evidence, I adopt the following as my findings of fact.

Prior to June 30, 1971, the Chateau Corporation operated a high class restaurant using Plenary Retail Consumption License, C-1, the first issued by the Borough of Rochelle Park. This license was rendered inactive on July 1, 1971 when the premises were sold to American Telephone and Telegraph Co. The Chateau Restaurant had occupied 7 and one-half acres of land, with parking for 400. It was an a la carte restaurant and provided on-premises catering. The Borough of Rochelle Park is approximately one square mile, with a stabilized population of approximately 6,000. In the Borough, there are 11 liquor licenses, two club licenses and several package stores. The licensee wishes to reestablish a small luxury a la carte restaurant and has been searching for a location of approximately one-half acre with parking for 30 or 35 to 40 to 45 cars. There are five parcels in the town that the president of the corporation felt were adequate. However, each one of these five parcels were occupied by elderly persons who refused to vacate their homes. In addition, since the last

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authorization, the licensee had discovered a suitable restaurant location, but before the president and owner of Chateau Corporation could act, the property had been sold. In another instance, the corporation negotiated with Alley's Carpet on Route 17, but Alley's Carpet had another business that was destroyed by fire and thus Alley's could not afford to relinquish its Route 17 site. Furthermore, the corporation located a property on the extreme perimeter of Rochelle Park where the petitioner believed that a wine and cheese shop might be possible, but parking was inadequate.

Early in 1980, the petitioner engaged Thomas Waldren, who has been a licensed real estate broker for 25 years in the Bergen County area. Mr. Waldren has vast real estate experience and has been working diligently every week on this project. It was Mr. Waldren's suggestion which generated the possibility of opening a fine wine and cheese shop. Mr. Waldren has had experience selling restaurants and believes that the size being sought by petitioner is the bare minimum for a quality restaurant to be successful. Mr. Waldren has gone to the Borough of Rochelle Park to determine what sections of the Boro were possibly available. Mr. Waldren discovered that the Boro is zoned approximately 68 percent residential, 3 and one-half percent apartments, 23 percent business, 3 and one-half percent industrial, and only 1 and one-half percent vacant land.¹ Bergen County owns 84 acres of the vacant land. Since there is practically no vacant land, Mr. Waldren directed his attention to the business areas (23 percent of the Boro). He obtained the county tax map and checked with the owners of record for each plot that he felt would be appropriate. In addition to the three prospects mentioned above, which did not materialize, Mr. Waldren discovered a plot being used in a meat purveying business. Mr. Waldren believes that this location would be ideal because the land is no longer being used for its best and highest use. However, when Mr. Waldren approached the owner, he refused to sell the land. Another potential property discovered by Mr. Waldren houses a historic landmark and the owner indicated that this property was not for sale at any price. Many of the other commercial plots had frontages of only 25 ft. and, therefore, were unusable because it would be impossible to assemble enough of them to provide sufficient access. Another commercial plot contained a Shop-Rite shopping center which appeared to be completely leased. Mr. Waldren also checked for possible leases as well as purchases. He was still contacting

¹1/2 percent is unaccounted for by Mr. Waldren's calculations.

prospects as of the date of the Office of Administrative Law hearing. In fact, while driving to the hearing, he saw a new "for sale" sign and planned on contacting the seller. In addition Mr. Waldren is contacting other real estate firms to determine whether they have any suitable locations.

The petitioner has thus far spent over \$7,000 to maintain this license. The corporation apparently would prefer to sell the license, but since a location cannot be obtained, the license appears unsalable. In any event, petitioner is willing to continue its attempts at activating this license.

LEGAL CONCLUSIONS

N.J.S.A. 33:1-12.39 was designed to halt the continuous renewal of licenses which had no situs and were not actively used. As an example of the problem facing the regulators prior to the statute's enactment, see, *Hudson Bergen Package Stores, A.B.C. Bulletin No. 1981*, Item No. 1 (April 28, 1971) where the Director permitted renewal of a license, but precluded its issuance or effectiveness unless and until suitable premises for the license were located. Licenses, commonly referred to as "pocket licenses" had been, in some cases, continuously renewed year after year without any attempt made to dispose of them or use them. *In the Matter of the Application by West End Racquet Club, Inc., A.B.C. Bulletin No. 2332*, Item No. 4 (April 27, 1979).

On October 3, 1977, *N.J.S.A.* 33:1-12.39 became effective. While the statute's language makes it clear that circumstances may warrant the renewal of such a license although it has been inactive for longer than the prescribed two-year period, the legislative history and case law surrounding the statute do not explain the "good cause" which is necessary for such a renewal. According to its terse sponsor's statement, the "purpose of this bill is to prohibit the renewal of a Class C alcoholic beverage license in certain cases." *L.* 246 § 1.

The assembly statements also shed little light on the legislature's actual intent. In the Statement to Assembly Bill No. 1875 (*N.J.S.A.* 33:1-12.39, dated June 10, 1976) the Assembly Commerce Banking and Insurance Committee stated:

This Legislation would prohibit the renewal of a class C liquor license in the event that such license has not been actually used in connection with the operation of a licensed premises within a period of 2 years prior to the commencement date of the license

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period, for which the renewal is filed unless such renewal is authorized by the Director of the Division of Alcoholic Beverage Control.

The New Jersey State Senate Law, Public Safety and Defense Committee, in Assembly Bill No. 1875, dated November 8, 1976, provided the following similar, but equally unhelpful statement: "The purpose of this bill is to provide for the retirement of unused Class C Alcoholic Beverage Licenses by prohibiting their renewal if they are not actively used for 2 years preceeding the renewal date."

N.J.S.A. 33:1-12.39 provides that if the licensee is deprived for two years of the use of the licensed premises by eminent domain or a casualty, a "good faith effort to resume active use of the license" shall result in an initial automatic extension of two years. It is significant that the Legislature required "good cause" for renewal in all other cases involving two years of license inactivity. Thus, the Legislature in the statute distinguished "good cause" from "good faith" efforts to activate. A construction which renders any part of a statute superfluous or meaningless is to be avoided. *Fiscella v. Nulton*, 22 *N.J. Super.* 367, 372 (App. Div. 1952). Therefore, "good cause" must be different from a "good faith effort to resume active use of the license." How different, is the question to be resolved herein. For, despite petitioner's diligent efforts, it has been 11 years since the licensee last operated and there appears to be no imminent possibility of activating this license. The Division contends therefore that "good cause" cannot be based exclusively on "good faith" efforts to reactivate and that any authorization to review would violate the spirit of *N.J.S.A.* 33:1-12.39, which seeks to maintain all licenses in an active state.

Any question of "good cause" is to be determined by a court in the exercise of judicial discretion. *District Court in and for Woodbury Cty.*, 233 *Iowa* 1284, 10 *N.W.* 2d 574, 583 (Sup. Ct. of Iowa 1943). "Good cause" as stated in *State v. McTaghue*, 173 *Minn.* 153, 216 *N.W.* 787, 788 (1927) "means a substantial reason—one that affords a legal excuse."

While the clear intent of *N.J.S.A.* 33:1-12.39 is to encourage the active use of licenses, *Petition of Lax, A.B.C. Bulletin No. 2371*, Item No. 3 (Oct. 14, 1980) and *West End Racquet Club, Inc., A.B.C. Bulletin No. 2367*, Item No. 1 (Oct. 1, 1980), there has been no showing that anyone else can use this license. Petitioner has not proven whether any economic, political or cultural factors preclude operation, however, it has established a substantial reason justifying renewal (good

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cause) by proving its good faith efforts to renew and by establishing a record that permits a conclusion that activation by someone else would be just as difficult as activation by petitioner. In short, based on the record, the malady (inactivity of a potentially active license) addressed in *N.J.S.A.* 33:1-12.39 could not be cured by terminating this license. If petitioner wishes to continue expending sums in a diligent effort to activate this license, I see no reason to preclude such efforts *at this time*. I **CONCLUDE** that petitioner has demonstrated "good cause" and based upon the record developed herein, I refuse to terminate this license.

The obvious next question, however, is how long should petitioner be permitted to attempt activation without producing any reasonable prospects. I suggest that petitioner be required in its next verified petition under *N.J.S.A.* 33:1-12.39 to address the potential use of this license by others within Rochelle Park. Unless petitioner establishes by affidavit or testimony of pertinent Borough officials that activation of this license by any other person or entity would be at least as difficult as activation by petitioner, "good cause" to renew should be denied and petitioner's license terminated. While it could be argued that petitioner should have developed such a record in this proceeding, I believe that the legal question resolved herein was sufficiently novel so that fundamental fairness requires that petitioner be given this further opportunity.

DISPOSITION

Accordingly, I **CONCLUDE** that the Chateau Corporation has demonstrated good cause and I **ORDER** that the Broough of Rochelle Park be authorized to consider the application of the subject license for the 1980-81 and 1981-82 license terms and to thereafter grant or deny the application in a reasonable exercise of discretion.

I further **ORDER** that if this application is approved, it shall be made expressly subject to the special condition that this license shall become operational during the 1981-82 license term and that no further authorizations shall be granted petitioner unless it establishes "good cause" under *N.J.S.A.* 33:1-12.39 in a manner consistent with this opinion.

**After reviewing this Initial Decision, the Division
of Alcoholic Beverage Control on April 13, 1982
issued the following Final Decision:**

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Having carefully considered the entire record in this matter, including the transcript of the testimony, the exhibits and the legal memorandum of counsel, I concur in the findings and recommendation of the administrative law judge and adopt same as my conclusions herein.

I reiterate and emphasize that, if this license is not activated by June 30, 1982, any further application under the points license law will be closely scrutinized and must indicate a realistic prognosis for activation to warrant a finding of good cause.