

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2223

April 21, 1976

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2223

April 21, 1976

1. APPELLATE DECISIONS - CECELIO v. UNION CITY.

Sofia Cecelio, )  
Appellant, )  
v. ) On Appeal  
Board of Commissioners of ) CONCLUSIONS  
the City of Union City, ) AND  
Respondent. ) ORDER  
-----)  
Samuel R. DeLuca, Esq., Attorney for Appellant  
Edward J. Lynch, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Board of Commissioners of the City of Union City which, on July 22, 1975, revoked appellant's Plenary Retail Consumption License C-123 for premises 2900 Bergenline Avenue, Union City, in consequence of a finding that, on June 4 and 13, 1975, she allowed, permitted and suffered through an employee, the sale of narcotic drugs thereon, in violation of Rule 4 of State Regulation No. 15, and the statutes applicable.

Following the filing of the petition of appeal, the Director stayed the action of the Board revoking appellant's license pending the determination of this appeal.

A hearing de novo pursuant to Rule 6 of State Regulation No. 15 was scheduled in this Division with ample notice thereof provided to appellant's counsel and to respondent, its clerk and counsel. On the date and hour scheduled for hearing, counsel for respondent Board, together with witnesses assembled, presented themselves in this Division prepared to defend the appeal. After a delay of more than an hour, time being given for appellant, counsel and witnesses to appear, it was apparent that neither appellant nor counsel were present or intended to be present, whereupon counsel for respondent moved for a dismissal of the appeal for lack of prosecution.

Telephone inquiry to the office of counsel for appellant revealed that, notwithstanding due notice of the hearing in this Division, he was engaged otherwise and would not be present at the scheduled hour. It was, further, apparent that appellant

herself was not present nor had other arrangements for counsel been made. No explanation was given for her failure to appear.

Accordingly, it is recommended that the motion of counsel for respondent requesting the appeal be dismissed be granted and that an order be entered dismissing the appeal, and reimposing the Order of Revocation of the subject license.

#### Conclusions and Order

Written Exceptions to the Hearer's report were filed by the appellant pursuant to Rule 14 of State Regulation No. 15.

In its Exceptions, the appellant's attorney argued that he received short notice of his required presence in a plenary court, on the morning of the date of the hearing in this Division, so that he was unable to timely alert the attorney for the respondent, or this Division. Therefore, the appellant would be unduly penalized by the grant of a motion by respondent to dismiss the appeal, as recommended by the Hearer.

Although it was not alleged, in the Exceptions, that the appellant has a valid defense, or that the appellant would probably prevail on the appeal; and notwithstanding the fact that respondent's resolution sets forth that the manager of the licensed premises actually sold narcotics (cocaine) to a Federal Narcotics Agent, I determined to give the appellant one further opportunity to present the appeal. Accordingly, the matter was set down for a supplementary hearing on January 23, 1976.

On the morning of this hearing, the attorneys for both parties were present. The respondent's witnesses were also present and were prepared to present evidence. After a substantial delay, the appellant's attorney stated that the appellant was neither present nor did she contact him to explain the reason for her absence. It is, thus, apparent that appellant, by her failure to appear or satisfactorily explain her absence to this Division, has abandoned her appeal.

It should be further pointed out that the licensed business is presently not in operation; and the landlord of the licensed premises has informed the Division that the appellant owes a considerable sum of money for back rent.

Under these circumstances, I shall accept the recommendation of the Hearer and reimpose the revocation heretofore imposed by the respondent.

Accordingly, it is, on this 26th day of January 1976,

ORDERED that the action of the respondent Board of Commissioners of the City of Union, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated August 14, 1975, staying respondent's order of revocation, pending the determination of the appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-123, issued by the Board of Commissioners of the City of Union City to Sofia Cecelio, for premises 2900 Bergenline Avenue, Union City, be and the same is hereby revoked, effective immediately.

LEONARD D. RONCO  
DIRECTOR

2. APPELLATE DECISIONS - M.B. 3 CORPORATION v. NEWARK.

M.B. 3 Corporation, t/a )  
Max's Tavern, )  
Appellant, )  
v. )  
Municipal Board of Alcoholic )  
Beverage Control of the City )  
of Newark, )  
Respondent.

On Appeal

CONCLUSIONS  
and  
ORDER

-----  
Samuel Raffaello, Esq., Attorney for Appellant  
Milton A. Buck, Esq., by John C. Pidgeon, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On March 3, 1975, the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark (hereafter Board) suspended appellant's plenary retail consumption license C-201 for premises 506 Bloomfield Avenue, Newark, upon a finding that, on August 29, 1974 appellant permitted gambling upon its licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

A de novo hearing was held in this Division at which counsel for the parties limited their presentation to oral argument, having jointly submitted transcripts of the hearing before the Board, in accordance with Rule 8 of State Regulation No. 15.

From an examination of the transcript of the proceedings before the Board, it appears that the Board heard testimony of Police Officer Robert L. Payne who described having visited an apartment occupied by one Wadell Martin, the night bartender in appellant's establishment.

Martin lives at 510 Bloomfield Avenue in another building which is nearby appellant's premises. In that apartment lottery slips and currency relating to lottery were discovered. No gambling paraphernalia whatever was discovered in the licensed premises.

Despite the complete absence of any evidence of gambling materials or data relating to gambling found upon the licensed premises, or on any persons in the said licensed premises, the Board, nonetheless, found appellant guilty of the charge.

In consequence of the failure of the Board to substantiate its action by the production of any evidence whatever, I find the appellant has met its burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be reversed, and the charge be dismissed.

#### Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 29th day of January 1976,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

Leonard D. Ronco  
Director

3. APPELLATE DECISIONS - ZAGNIT v. NEWARK.

Albert Zagnit, Inc. )  
 t/a Al's Tavern, )  
 Appellant, )  
 v. )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City )  
 of Newark, )  
 Respondent. )

On Appeal  
 CONCLUSIONS  
 and  
 ORDER

-----)  
 Elias I. Cohen, Esq., Attorney for Appellant  
 Milton A. Buck, Esq., by John C. Pidgeon, Esq., Attorney for  
 Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which, on September 22, 1975, found appellant guilty of permitting a disturbance on its licensed premises on February 19, 1975, in violation of Rule 5 of State Regulation No. 20.

In consequence thereof, appellant's Plenary Retail Consumption License C-243, for premises 108 Sherman Avenue, Newark, was suspended for ten days. The effective dates of the suspension was stayed by an order by the Director of this Division dated October 14, 1975, pending the determination of this appeal.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15. In lieu of the introduction of evidence and the production of witnesses, counsel, by stipulation, presented their positions by oral argument only, relying upon the transcript of the proceedings before the Board which had been accepted into evidence, in accordance with Rule 8 of State Regulation No. 15.

In the record of the proceedings before the Board is set forth the testimony of Newark Police Officer Richard Mandriota and Detective John McCabe. Mandriota related that, on February 19,

1975, while on duty, he arrived at the location of appellant's premises where he was met by a citizen, later identified as Wilbur Driver, who related that he was "cut" by someone in the subject premises. The officer entered the premises, which was then closed, saw no blood and did not learn what had happened, except what Driver told him.

Detective McCabe testified that he took a statement from Wilbur Driver on February 27, 1975, in which Driver described the alleged assault on him in appellant's premises by a person identified only as "Sub". The detective also took a statement from Albert Zagnit, the appellant, who denied that any such assault occurred, on his premises.

Appellant, Albert Zagnit, testified that, on the subject evening, Wilbur Driver had come into the premises, annoyed another patron who picked him up and shook him, whereupon appellant led Driver to the door. He denied that there was any altercation in his premises, any disturbance, or any reason to summon police.

Appellant produced three patrons who were present at the time of the incident. Each of the three denied there was any cutting or fisticuffs. They admitted only that there was a loud argument which culminated in the ejection of Wilbur Driver by appellant.

Wilbur Driver was not produced as a witness.

The Administrative Procedure Act permits the introduction of hearsay evidence otherwise impermissible, in judicial proceedings. N.J.S.A. 52:14B-10. However, hearsay evidence may not be the basis upon which a determination may be made. Fernandes v. State of New Jersey, Superior Court, Appellate Division, in an unreported decision dated December 16, 1974, in which the court said:

"...for a court to sustain an administrative decision which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. Weston v. State, 60 N.J. 36, 51 (1972).

There was no direct evidence that any disturbance had taken place in appellant's premises. The hearsay declarations were controverted by competent testimony, which has greater force.

I, therefore, conclude that appellant has met its burden of establishing that the action of the Board was erroneous and

should be reversed. Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Board be reversed.

Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of January 1976,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

LEONARD D. RONCO  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against )

William M. Norton )  
t/a Norton's Cork n' Bottle )  
150 South Main Street )  
Phillipsburg, N.J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Town Council of the Town of Phillipsburg. )

-----  
William M. Norton, Pro se, Appearing for Licensee  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to a charge alleging that, on July 12, 1975, he sold alcoholic beverages to a person under the age of eighteen (18) years, viz., William J. S...Jr., age 17, in violation of Rule 1 of State Regulation No. 20.

At the Division hearing, William ..., age 17, testified that, on July 12, 1975, at approximately 9:00 p.m. he purchased two cases of beer in the subject premises. William stated that, accompanied by Sandra ..., he journeyed to Phillipsburg in a truck driven by Paul B... William entered the premises alone and ordered two cases of beer, which the clerk (later identified as Barry Rodenbough) delivered to him. William noticed, "on the machine" that the cost of the beer would be \$13.60; realizing that he had only \$13.00 on his person, William exited the store, returned to the waiting truck, and obtained the additional sixty cents from Paul.

William then reentered the premises, paid for the beer, and exited the premises with the two cases of beer. William explained that he had never visited the premises previously and that the clerk did not question him as to his age; nor did the clerk request him to sign any paper.

While driving away from the premises, the officers stopped the vehicle, questioned the occupants of the truck as to their ages, and then transported William, Paul and Sandra to the police station.

At approximately 9:30 p.m., one of the police officers took William back to the premises, for the purpose of identifying the clerk who had made the sale. In the presence of the police officer, William identified the clerk. Rodenbough, in response to a question from the police officer, stated that he had never seen William before.

Paul and Sandra corroborated the testimony of William, adding that they (William, Paul and Sandra) had been at a carnival, in Tatamy Pennsylvania, earlier in the evening, and that a group of people pooled money which they gave to William and Paul, for the purpose of purchasing beer, and specified the licensed premises herein as the place wherein to make the purchase.

Robert Fink, a Phillipsburg police officer, testified that, on July 12, 1975, at approximately 9:00 p.m., he, along with fellow officer Edward Gallagher, was on duty, in a patrol car. He then testified:

"A Patrolman Gallagher was driving ... I observed two youths standing in the street. It seemed like they were counting money.

Q Whereabouts were they?

A Almost directly across from Norton's  
Cork n' Bottle."

They parked the patrol car facing the entrance to the premises. Fink observed one of the two youths, wearing a bright blue and white shirt enter the premises. Fink's attention was diverted as he observed a group of five or six youths leave the store; however, the youth in the blue and white shirt was not a member of the group, and Fink did not see the youth in the blue and white shirt leave the store. He then testified:

"I looked up the road, saw the headlights on the pickup truck go on. The truck rode by us, and I observed the boy with the blue shirt sitting on the passenger's side."

The officers stopped the pickup truck a short distance away, observed beer cans underneath a jacket in the truck and ascertained the identity and ages of the three occupants.

William, Paul and Sandra were taken to police headquarters. Thereafter, accompanied by William, Fink proceeded to the premises for the purpose of having William identify the person whom he alleged served him. Fink explained that, while the patrol car was pulling up to the front entrance of the premises, William observed Barry Rodenbough inside the premises and said, "Well, that's the man." William made a similar identification inside the premises.

Rodenbough asserted that he did not remember William but that if he had come into the store, he [Rodenbough] would not have served him liquor. However, he maintained that he did not make the sale.

Fink further testified:

"...In the liquor store, on the counter, they have a machine that takes a picture of the person and any identification they would show, and there were papers of representation. If they felt a person was underage, they would sign it, saying that they were of age. I asked Mr. Rodenbough if he used these; I even laid my hands--the papers were on the machine itself. I laid my hand on the machine and paper and he said no, he never used them; he didn't believe in them."

Edward Gallagher, the officer who drove the patrol car, corroborated the testimony of Officer Fink. Additionally, he testified that William "...could be identified in the truck as well as the person who went in the liquor store, by the bright-colored blue and white shirt he was wearing."

Albert Lugg, Phillipsburg Police Department Juvenile Officer, testified that, on July 15, 1975, three days after the alleged sale, Lugg went to the subject premises at the request of Lloyd Wright, the manager of the subject licensed premises "...to check dating numbers on the stock of beer at the ... premises." Cases of beer with numbers corresponding to the numbers on the two cases seized, as well as cases of beer with numbers differing from the numbers on the two cases seized, were located at the licensed premises on this date.

Lloyd Wright, the store manager, testified concerning the methods employed by personnel at the premises to establish the age of patrons.

Albert Izarek, an employee at the premises, emphasized the diligence of the employees, and particularly Rodenbough's "diligence" in his duties.

Barry Rodenbough, employed as a clerk by the licensee for almost eleven years, testified that he neither would have sold, nor did he sell, alcoholic beverages to William, and that he refuses to sell alcoholic beverages to many individuals. He insisted that he had never seen William before the youth was brought into the store by the police officer.

In further defense of the charge, the licensee, William Norton, asserted that he has tried to operate his establishment in strict compliance with the Alcoholic Beverage Law. He has never sought nor desired the patronage of teenagers from across the borderline in Pennsylvania, and he has a trustworthy staff in his employ.

The sharp factual conflict presented by the evidence herein makes the issue of credibility of critical importance. Actions of this kind, which are civil in nature, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I have had the opportunity to observe the demeanor of the witnesses as they testified at this plenary hearing and have been able to evaluate and assess such testimony. I am persuaded that the testimony of the minors buttressed by that of the police officers is both credible and forthright and stands in a much more favorable light than that of the licensee's witnesses.

William has given a straightforward and forthright account of his purchase of the alcoholic beverages at the licensed premises. His testimony was fully corroborated by his companions.

On the other hand, I do not attach credence to the explanation given by the licensee's sales clerk. Positive identification of the sales clerk was made by the minor to Police Officer Fink, who accompanied the minor to the licensed premises following the alleged incident. In short, I am satisfied that the minors did not compound their misdeeds by committing perjury.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I find that the Division's evidence does establish the charge based upon a reasonable certainty as to the probabilities arising from a fair consideration of the said evidence, and I recommend that the licensee be found guilty as charged.

Licensee has no prior adjudicated record. I further recommend that the license be suspended for fifteen days.

Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of February 1976,

ORDERED that Plenary Retail Distribution License D-5, issued by the Town Council of the Town of Phillipsburg to William M. Norton, t/a Norton's Cork n' Bottle, for premises 150 South Main Street, Phillipsburg, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. on Tuesday, February 24, 1976 and terminating at 2:00 a.m. on Wednesday, March 10, 1976.

Leonard D. Ronco  
Director

5. APPELLATE DECISIONS - SPORTS CAFE, A CORP. v. PATERSON - ORDER REVERSING BOARD'S DENIAL OF RENEWAL AND DIRECTING ISSUANCE OF LICENSE SUBJECT TO SPECIAL CONDITIONS.

#3969- )  
 Sport's Cafe, A Corp. t/a )  
 Arden Cocktail Lounge, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City )  
 of Paterson, )  
 )  
 Respondent. )

O R D E R

----- )  
 In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 Sport's Cafe, A Corp. )  
 t/a Arden Cocktail Lounge )  
 58 Church Street )  
 Paterson, N.J., )  
 )  
 Holder of Plenary Retail Consumption )  
 License C-22, issued by the Board of )  
 Alcoholic Beverage Control for the )  
 City of Paterson. )  
 )  
 S-10,381 S-10,367 )  
 X-21,725-AF X-21,725-AG )  
 ----- )

Emil Weisser, Esq., Attorney for Appellant  
 Joseph A. LaCava, Esq., by Ralph L. DeLuccia, Jr. Esq., Attorney  
 for Respondent  
 Nathan Robins, Esq., Attorney for Licensee  
 Anthony F. De Marco, Esq., Attorney for Transferee

BY THE DIRECTOR:

Appellant appeals from the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson which, by resolution dated June 25, 1975, denied appellant's application for renewal of its plenary retail consumption license, for the current licensing period, for premises 58 Church Street, Paterson.

At the hearing in this Division on the said appeal, the following facts appeared: On June 2, 1975, Conclusions and Order

were entered by the Director of this Division suspending appellant's license for the balance of its term, i.e., until midnight June 30, 1975, commencing at 3:00 a.m. Monday, June 9, 1975; and, further, ordering that any renewal of the said license that may be granted for the 1975-76 licensing period was thereby suspended for the balance of its term, viz., until midnight, June 30, 1976, "with leave granted to any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the suspension upon establishing that such transfer has become effective, and Jennie E. Wood, Ronald Wood and Frances Kulesa have divested themselves of all and any interest in the license and completely divested themselves from any capacity whatsoever with the licensed business; however, such lifting of suspension shall not be granted, in any event, sooner than one hundred-twenty (120) days from the date of the commencement of the suspension herein." Re Sport's Cafe, A Corp., Bulletin , Item .

As stated hereinabove, the application for renewal for the current licensing period was denied. The parties hereto agreed at the hearing, that the said de novo hearing, on appeal, would be adjourned without date in this Division, pending an application by a bona fide transferee for a person-to-person transfer of the said license.

It now appears, by letter of the attorney for the transferee, that an application was duly made to the Board by William Peterson, t/a In Town Cafe, for the same premises. This application was approved by resolution adopted by the Board on December 31, 1975, wherein the Board granted the said transfer "subject to the conditions that the aforesaid appeal be determined favorable to the appellant, the aforesaid suspension of license be terminated and the premises shall be approved by the Board of Health and the Fire Department of the City of Paterson."

It further appears that the suspension of license for one hundred-twenty (120) days, has been served. Under these circumstances, and subject to the special conditions set forth in the said resolution, I shall enter an order terminating the said suspension, reversing the action of the Board in denying renewal of the said license, and directing the issuance of the said license for the current licensing period, subject to the said special conditions.

Accordingly, it is, on this 14th day of January 1976,

ORDERED that the suspension heretofore imposed against the appellant's license by my order dated June 2, 1975, be and the same is hereby terminated; and it is further

ORDERED that the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby reversed; and it is further

ORDERED that the said Board be and is hereby directed to renew the said license for the 1975-76 licensing period nunc pro tunc, expressly subject to the following special conditions:

- (1) that the said license be forthwith transferred to William Peterson, t/a In Town Cafe for premises 58 Church Street, Paterson; and
- (2) that the said license shall not actually be issued and delivered to the said transferee until the premises shall be approved for operation by the Board of Health and the Fire Department of the City of Paterson, in accordance with the terms of the resolution of the Board adopted on December 31, 1975.

LEONARD D. RONCO  
DIRECTOR

6. STATE LICENSES - NEW APPLICATIONS FILED.

S & S Beverage Co., Inc.  
1501-09 Reading Avenue  
Atlantic City, New Jersey

Application filed April 13, 1976 for place-to-place transfer of Additional Warehouse License AW-66, operated under State Beverage Distributor's License SBD-134, from 120 Spruce Street (rear) & 128 W. Spruce Street, North Wildwood, New Jersey, to 103-B Shun Pike Road, Lower Township, RD 2, Erma, New Jersey.

Wine World, Inc.  
2000 Main Street  
St. Helena, California

Application filed April 13, 1976 for place-to-place transfer of Wine Wholesale License WW-29, to maintain licensed premises at 1099 Wall Street West, Lyndhurst, New Jersey.

*Samuel Gold*

Samuel Gold  
Acting Director