

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

BULLETIN 2254

May 24, 1977

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - BANNER LIQUOR CO., ET ALS. v. GUILD WINERIES AND DISTILLERIES, INC. and DIVISION OF ALCOHOLIC BEVERAGE CONTROL.
2. APPELLATE DECISIONS - MIDDLE EARTH, INC. v. CLIFTON.
3. APPELLATE DECISIONS - CLUB M & S TAVERN v. PATERSON.
4. ELIGIBILITY PROCEEDINGS - CARRYING DANGEROUS WEAPON MAY NOT NECESSARILY INVOLVE MORAL TURPITUDE - NO DISQUALIFICATION RESULTED FROM THIS CONVICTION.

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

BULLETIN 2254

May 24, 1977

1. COURT DECISIONS - BANNER LIQUOR CO., ET ALS. v. GUILD WINERIES AND DISTILLERIES, INC. and DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1236-76

BANNER LIQUOR CO., DEALERS LIQUOR
COMPANY, F & A DISTRIBUTING CO.,
FLAGSTAFF LIQUOR CO., GILHAUS
BEVERAGE CO., and MERCHANTS WINE AND
LIQUOR COMPANY, Corporations of the State
of New Jersey,

Appellants,

v.

GUILD WINERIES AND DISTILLERIES, INC.
and DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
STATE OF NEW JERSEY,

Respondents.

Argued February 23, 1977 - Decided March 4, 1977.

Before Judges Lora, Crane and Michels.

On Appeal from Division of Alcoholic Beverage Control, State
of New Jersey.

Mr. Sidney Berg argued the cause for appellants.

Mr. Edward G. D'Alessandro argued the cause for respondent
Guild Wineries and Distilleries, Inc. (Messrs. Friedman and
D'Alessandro, attorneys; Mr. Paul J. Hirsh on the brief).

Ms. Blossom A. Peretz, Deputy Attorney General, argued the cause
for respondent Division of Alcoholic Beverage Control (Mr.
William F. Hyland, Attorney General of New Jersey, attorney;
Ms. Ermine Conley, Deputy Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re Banner Liquor Co.
et als. v. Guild Wineries and Distilleries, Inc., Bulletin
2247, Item 1. Director affirmed. Opinion not approved
for publication by Court Committee on Opinions).

2. APPELLATE DECISIONS - MIDDLE EARTH, INC. v. CLIFTON.

Middle Earth, Inc.,
t/a Middle Earth,

Appellant,

v.

Municipal Board of Alcoholic
Beverage Control of the City
of Clifton.

Respondent.

On Appeal

CONCLUSIONS
and
ORDER

Robert E. Hamer, Esq., Attorney for Appellant
Arthur J. Sullivan, Jr., City Counsel by Francis J. Calise, Esq., Attorneys
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 respondent Municipal Board of Alcoholic Beverage Control of the City of Clifton (hereinafter Board), which by resolution dated September 8, 1976, found appellant guilty of the following charge:

"On March 20th 1976, you allowed, permitted or suffered in or upon the licensed premises the sale of a controlled dangerous substance, to wit: cocaine; in violation of Rule 4, Regulation No. 20 of the Rules and Regulations of the State Division of Alcoholic Beverage Control."

Having found appellant guilty of this charge, it suspended its license for ninety (90) days effective, Wednesday, September 15, 1976. Upon filing the appeal, an order dated September 13, 1976 was entered by the Director staying the Board's order of suspension pending the determination of this appeal.

A de novo appeal was heard in this Division with full opportunity afforded the parties to introduce evidence and to cross examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

In behalf of the Respondent, Detective Orrie Du Bois of the Wayne Township Police Department testified that he entered the licensed premises on the evening of March 19th into March 20th 1976 while conducting an undercover narcotics investigation in conjunction with the Clifton Police Department. He sought out a waitress, Carol Miskovsky, whom he had reason to believe could supply him with illegal drugs. He was successful in purchasing a quantity of what later proved to be cocaine, for the sum of \$115.00.

In defense of the charge, appellant offered the testimony of Carol Miskovsky and of Edward C. Pacelli, a principal officer of the Corporate Appellant.

Pacelli, who was on duty that evening tending bar, testified that Miskovsky had, in the past, served as a waitress in his establishment. He was asked:

"Q: Did she terminate performing this kind of service at some point?

A: There was no actual saying today, I quit; It was more of easing out. In February we were getting replacements for Carol because she was having a lot of hassles with her financee at that point.....and she eventually eased out....somewhere in February and then we didn't see her except as a patron after that."

He admitted that she was in the premises that evening, but as a patron, not as an employee. Carol Miskovsky admitted the subject sale but denied she was employed as a waitress that evening, stating that she went there as a patron with a group of her friends. She helped out to the extent of ordering her friends' drinks and bringing them to the three tables which they occupied. They stayed until closing time and had several rounds of drinks. She performed this gratuitous service for them each time; she was not paid by the management nor tipped by her friends. She did not wait upon anyone else in the tavern at any time that evening. She corroborated Pacelli's testimony relative to her severing the employment arrangements the previous month.

At the commencement of the de novo hearing, appellant objected to the calling of any witness by the Board to testify on its behalf because of its delay in honoring a request for the names of witnesses and copies of their statements in order to permit him to be properly prepared to prosecute the subject appeal. He alleges that the failure to furnish him with the requested information until October 1, 1976, four days prior to the de novo hearing constituted a deprivation of appellant's due process rights. He cites as authority, Tibbs v. the Board of Education of Franklin Township, 114 N.J. Super 295 (App.Div.1971), 59 N.J. 506 (1971).

The Board countered that all of the witnesses who were to testify had testified below except for the Police Laboratory Technician whose testimony was in written form and stipulated to by the appellant at that prior hearing. There cannot therefore, be any surprise as he had their statements previously.

I note that in the Tibbs case, Judge Conford observed on page 289 "..... Where the hearing conducted by the local board of education on the charge is not preceded by identification to the accused of the accusing student witness whose ex parte statements the school administration has relied on in bringing the disciplinary proceedings and where such witnesses do not appear to testify at the hearing, my view, and I believe that of the court, is that this procedure denies due process to the student so expelled....." (underscore added). The facts in this matter are not analogous, as all the witnesses (save one) appeared at the hearing held by the Board, gave testimony, and were present to give testimony at this hearing and subject themselves to cross examination.

That their testimony was already known to the appellant's attorney is borne out by the fact that he stipulated to the testimony of three of the Board's witnesses who were present and prepared to testify at the hearing. Additionally he could have, but did not request an adjournment before the hearing began in order to prepare his defense, if he felt it were necessary.

It is recommended, that appellant's motion, at the hearing, be denied.

It is apparent that the critical issue presented for determination is whether or not Miskovsky was serving in the capacity of a waitress, as an employee of the corporate appellant on the subject occasion.

Preliminarily, I observe that we are dealing with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div.1951). Thus, the proof must be supported by a preponderance of the credible evidence only. Butler Oak Tavern v. Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since there was a sharp conflict in the testimony adduced, it becomes the function of the Hearer to evaluate the testimony, after observing the demeanor of the witnesses and giving weight to such testimony as it found credible. It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div.1961).

Appellant's contention that her presence on the licensed premises the very night Detective Du Bois sought her out, and the fact that although she may have appeared to be, but was not, in fact, employed as a waitress, is without merit. I find as a fact, that she was actually engaged as an employee by the appellant. Assuming that Miskovsky was in the licensed premises solely as a patron and that she served her friends without compensation as contended by appellant, the appellant is still not exculpated. In re Jacobs, Bulletin 935, Item 3, it was held that salary or compensation is not a requisite to employment. This holding was followed in the case of Re Neim Bulletin 1772, Item 2, wherein it was held that the question of compensation is irrelevant to the determination of employment.

In Kravis v. Hock, 137 N.J.L. 252, (Sup.Ct.1948), the court considered this very issue. In that case it was alleged that certain females employed on licensed premises were engaged as independent contractors. In considering the matter of employment, the court stated (p.255):

"Webster defines the word 'employ': 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose. 'The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.'"

Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts. Mr. Justice Perskie has emphasized this judicial determination in Cino v. Driscoll (Supreme Court, 1943), 130 N.J.L. 535, 540, where he said:

"Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidence by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523."

I would in the hypothetical case posed still find that Miskovsky was a person employed within the intendment of the Division rules and regulations, and that her conduct is the responsibility of the licensee. It is a well-established and fundamental principle that a licensee is responsible for their activities during their employ on licensed premises. In re Olympic Inc. 49 N.J. Super 299; In re Schneider, 12 N.J. Super 449; Rule 33 of State Regulation No. 20.

Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his specific instructions. Greenbrier, Inc., v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control. 36 N.J. 34 (1961).

I conclude, from my evaluation of the evidence, that it clearly and reasonably preponderates in favor of finding of guilt of the charge alleged; and I so find.

Thus the appellant has failed to establish that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is accordingly, recommended that the action of the Board be affirmed, the Appeal dismissed, and the Order of the Director staying the Board's action pending determination of this appeal be vacated.

CONCLUSION AND ORDER

No exceptions to the Hearer's Report were filed with the Director 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 11th day of January,

ORDERED that the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Clifton 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 September 13, 1976 staying the respondent's order of suspension pending the determination of this appeal be and the same is hereby vacated; and, it is further

ORDERED that Plenary Retail Consumption License C-43 issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Middle Earth, Inc., t/a Middle Earth for premises 205 Ackerman Avenue, Clifton be and the same is hereby suspended for ninety (90) days commencing at 3:00 a.m. on Tuesday, January 25, 1977 and terminating at 3:00 a.m. on Monday, April 25, 1977.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - CLUB M & S TAVERN v. PATERSON.

Club M & S Tavern, t/a
M & S Tavern,

Appellant,

v.

Board of Alcoholic Beverage
Control of the City of
Paterson,

Respondent.

Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq., Attorneys
for Appellant
Joseph A. La Cava, Esq., by Ralph L. De Luccia, Jr., Esq.,
Attorneys for Respondent

On Appeal

CONCLUSIONS
AND
ORDER

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent, Board of Alcoholic Beverage Control (hereinafter Board) which suspended appellant's license for twenty days upon finding appellant guilty of the following four of five charges preferred against it:

- "1. On Thursday, October 30, 1975, at approximately 9:30 p.m., its employee, one Matthew Koonce, did hinder or delay or caused the hindrance or delay of police officers in the performance of their duty; in violation of Rule 35 of State Regulation No. 20.
2. On Saturday, January 10, 1976, at approximately 2:40 a.m., it allowed, permitted and suffered its place of business to become a nuisance in that it allowed, permitted and suffered a brawl, act of violence or other disturbance, and otherwise conducted its licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

3. On Saturday, January 10, 1976, at approximately 2:40 a.m., your employee, one Matthew Koonce, did hinder or delay or caused the hindrance or delay of a police officer in the performance of his duty; in violation of Rule 35 of State Regulation No. 20.
4. On Sunday, January 25, 1976, at approximately 12:12 a.m., it allowed, permitted and suffered its place of business to become a nuisance in that it allowed, permitted and suffered a brawl, act of violence or other disturbance and otherwise conducted its licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations."

In its petition of appeal, appellant alleges that the Board's action was erroneous in that the findings of guilt were (1) contrary to the weight of evidence and based upon hearsay; (2) that in finding licensee "not guilty" on one offense, the charge of hindering the investigation [No. 1 as enumerated herein] of that offense must fall as they overlap; (3) counts two and three overlap and should have been merged into one count and (4) the penalty of five days suspension on each of the counts was excessive.

In its answer, the Board denied the substantive allegations contained in the petition of appeal, and defended that the findings of guilt and the penalty imposed were based upon the preponderance of evidence; and the decision reached was within the sound discretion of the Board.

Upon filing of the appeal, an order dated April 5, 1976 was entered by the Director staying the Board's order of suspension pending the determination of this appeal.

The stenographic transcript of the hearing below was submitted in evidence, supplemented by testimony of an additional witness produced by the Board at this de novo hearing, in accordance with Rules 6 and 8 of State Regulation No. 15.

I.

With respect to the first mentioned charge it appears that the local police were summoned to appellant's premises to investigate an occurrence which, though included in the original charges, was not sustained by the Board at its hearing held on March 24, 1976 and it was therefore dismissed. However, the police did encounter resistance and lack of cooperation on the part of corporate appellant's major stockholder, Matthew Koonce, who was tending bar that evening.

Detective Casper Morelli, of the Paterson Police Department, who testified at the hearing held by the Board described what he saw and did on the night of October 30, 1975, was asked the following:

"Q. Did Mr. Koonce answer your questions when you posed them?

A. He answered the questions but he didn't cooperate with us or volunteer any information regarding the assault we couldn't get any correct information. So he gave us the impression that he didn't know that there was an assault in the place. He doesn't know anything about it."

Patrolman Larry De Augustine of the Paterson Police Department, who was the first officer on the scene, was asked:

"Q. Did you attempt to elicit from him (Koonce) any information concerning this alleged incident?

A. Yes.

Q. What was his response?

A. It was very uncooperative.

Q. Did he respond to your questions?

A. No, he did not."

In defense of that charge, Koonce testified that he was most cooperative with the police and, in fact, there was joking and laughing on their part as they cleared the patrons from the tavern so that they could continue their investigation.

The Board relied upon the police version and found the licensee guilty of this charge.

Preliminarily, I observe that we are dealing with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

It is a firmly-settled principle that the Director's function on appeal is not to reverse the determination of the municipal issuing authority unless he finds, as a fact, that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620,

Item 1; Monteiro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion rests with appellant. Rule 6 of State Regulation No. 15. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: Could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? Cf. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super 277, 282 (App. Div. 1957); Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970).

The charge of hindering is not dependent upon another contemporaneous offense on which a finding of guilt has been rendered, as the appellant's counsel contends. There may be, for instance, a finding of hindering the police in their attempt to examine a licensee's license or employee list though, in fact, the police determine the license or employee list to be in order.

My examination of the facts and the applicable law generates no doubt that this charge was established by a preponderance of the believable evidence. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Board's action relative to this charge was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

II.

I shall now consider the second charge wherein it is alleged that the appellant allowed, permitted and suffered a brawl, act of violence or other disturbance etc., in violation of Rule 5 of State Regulation No. 20, on January 10, 1976.

The police responded to a call stating there was an injured person at the subject tavern. Upon arrival, police officer Edmund Boyle found a man, later identified as Ernest Scott, bleeding from stomach and left arm wounds. There were upwards of twenty-five patrons in the tavern. The wounded man stated that one Bob Chambers had approached him and stabbed him without warning as Scott was conversing with a female. When questioned, Koonce, who was tending bar at the time denied knowledge of anything whatsoever. None of the patrons who were questioned denied seeing or having any information about the alleged assault.

The alleged victim, Ernest Scott, was not present at the hearing held by the Board nor was any reason given for his not being there to give testimony. No eye witnesses were brought forth to give testimony. Koonce testified that he knew nothing about the alleged occurrence. The only testimony presented in substantiation of this charge was that of the police officer,

which was hearsay because none were eyewitnesses, and they merely repeated Scott's story which indicated an unprovoked attack, without warning. Assuming the account to be true, there was no proof submitted to establish that appellant's employees knew or should have known that something was about to occur, and they failed to take immediate steps to prevent it.

Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, but administrative decision must be based upon a residuum of legal and competent evidence, and cannot be based upon hearsay alone. Neston v. State, 60 N.J. 36; In re Salvatore's Tavern, Inc., Bulletin 2205, Item 2.

Consequently, I conclude that this charge has not been established, and appellant has succeeded in sustaining the 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, and I recommend that this charge be dismissed.

III.

Relative to the third charge wherein it is alleged that, on January 10, 1976, appellant's employee did hinder or delay a police officer in the performance of his duty in violation of Rule 25 of State Regulation No. 20, Officer Boyle testified, as follows:

- "Q. What was Mr. Koonce's demeanor when you spoke to him concerning this incident?
- A. I asked him if he saw anything or could he help us out. He just didn't say anything, and kept right on working behind the bar.
- Q. Did you have an opportunity to ask him any other questions about the incident?
- A. Just asked him if he saw anything, if he could help me out. Nothing, I didn't receive any answers."

Koonce testified that he didn't remember; he didn't think he remembered the stabbing, but that, in any event, he told the police anything he knew about the occurrence. Upon request, he gave the police officer permission to search the establishment. He stated "...We just got along beautiful. I never had any argument...."

The Board chose to believe the policeman's version of the events that transpired that night, and found the appellant guilty of this charge. My discussion of the relevant law and argument pertaining to Charge 1 (hindering, on October 30, 1975) is equally applicable here.

Appellant's argument that counts two and three merge is specious and without merit. Here too, my examination of the facts and applicable law generates no doubt that this charge was established by a preponderance of the believable evidence and I conclude that the appellant has failed to sustain the burden of establishing that the Board's action relative to this charge was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

IV.

With reference to the alleged occurrence of January 25, 1976, Detective Morelli testified that he was summoned to the tavern in response to a telephone call stating that an alleged shooting had taken place. Upon arrival he observed a male, later identified as Lester Fullard, standing in front of the tavern being supported by two persons; he was bleeding from a head wound. Fullard stated to Morelli that he'd been hit over the head with a gun. Morelli questioned the I.D. checker on duty, Anthony Johnson, who admitted striking Fullard with a bottle, not a gun, as claimed. Johnson alleged that Fullard had pulled out a knife and threatened him when he attempted to escort him from the premises. A friend of Fullard informed Morelli that the weapon used to inflict the wound was a gun. Doris McCoy, who was assisting behind the bar, stated it was a wine bottle.

The premises were noisy and crowded, and the mood of the patrons gave the police cause for concern. They decided it was advisable to empty the tavern before continuing the investigation. Using eight or nine policeman, it took between thirty and forty-five minutes to clear out the patrons. Several persons lingered, refusing, at first, to leave the tavern.

A search of the bar, storerooms, toilets and table area failed to produce either weapon claimed to have been exhibited or used. As a consequence, the police concluded that the weapon employed was a wine bottle.

Willie Charles Taylor, the father of a major stockholder was assisting at the tavern that evening. He testified that an argument ensued between Johnson and Fullard which continued for approximately three minutes. Fullard then pulled a knife and Johnson responded by seizing a bottle and hitting him over the head with it. It did not break. Taylor and another individual seized Fullard and ejected him from the tavern. Several persons were needed to restrain Johnson, who was still intent upon continuing the assault upon Fullard.

Taylor further testified that none of the several appellant's employees present made any attempt to call the police. Fullard returned to the bar to use the phone and summon the police. Taylor corroborated the claim of Johnson that Fullard exhibited and threatened him with a knife.

A brawl is defined as "a loud, angry, and disorderly quarrel; a rough noisy and often prolonged hand-to-hand fight" (Webster's Third New International Dictionary); A "clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace" (Black's Law Dictionary, 11 C.J.S. 767).

It is apparent that the Board concluded from the testimony of the witnesses that a brawl took place within the licensed premises. It is also apparent that the Board placed credence upon Taylor's testimony to the effect that Johnson, an employee of the corporate appellant, committed a battery upon the person of Fullard. Unquestionably, licensees are responsible for conditions within, and without their premises which are caused by their employees. Seidel v. Upper Freehold, Bulletin 1246, Item 1; D'Ambola v. North Caldwell, Bulletin 1922, Item 1. Also, it is a well-established principle that a licensee is responsible for the misconduct of its employees, and is fully responsible for their activities during their employ on licensed premises. In re Olympic, Inc. 49 N.J. Super. 299 (App. Div. 1958); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951), Rule 33 of State Regulation No. 20.

Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distributing Co. v. Division of Alcoholic Beverage Control, 36 N.J. 34 (1961).

My examination of the facts and the applicable law generates no doubt that this charge was established by the preponderance of the believable evidence. I conclude therefore, that appellant has failed to sustain the burden of establishing that the Board's action relative to this charge, was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

V.

Appellant's contention that the penalty imposed by the Board is excessive is totally devoid of merit. In similar cases, the Director has regularly imposed a penalty of greater severity than that imposed herein by the Board.

VI.

In sum, therefore, it is recommended that an order be entered affirming the Board's action with reference to the first, third and fourth charges, and reversing its action with reference to the second charge. It is further recommended that the order of suspension imposed by the Board be modified to a suspension of five days on each of the first, third and fourth charges, or a total of fifteen days, and that, as so modified, the action of the Board be affirmed.

It is, further, recommended that an order be entered fixing the effective dates of said suspension which was stayed pending entry of a further order herein.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by appellant pursuant to Rule 14 of State Regulation No. 15. No answer to the exceptions were filed by the Board.

Appellant contends that the greater reliance by both the Board and the hearer upon the testimony of the police officers rather than upon the witnesses produced by the appellant is sufficient to justify reversal.

In appraising the factual picture presented in the administrative proceedings, the credibility of witnesses must be weighed. Evidence to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1, (App. Div. 1961).

The Hearer's findings in support of the determination of the Board which found Koonce uncooperative and guilty of hindering is amply supported by the evidence and, additionally is admitted, in part, in the exceptions. Koonce continued working while being questioned which the exceptions cite was necessary in view of the economic requirements for such business.

This argument misses the point, serious injuries had occurred and the police were pursuing their duty to investigate. In that investigation they had a right to expect full cooperation from Koonce; they received less than lip-service, conduct clearly manifesting hindering of the investigation.

With respect to the finding that, on January 25, 1976, the appellant permitted a brawl. I agree with the finding that appellant did, in fact, not only permit an act of violence, but its agent participated therein without recourse to police aid. Appellant maintains that, because the victim of this incident was permitted to make a telephone call from within the premises, this was proof of appellant's innocence. Such argument also lacks merit. A reading of the testimony concerning the incident clearly reflects an improper participation in an act of violence by appellant's agent.

I have analyzed and assayed the other exceptions herein and find that they have been either fully considered and resolved in the Hearer's report, or are devoid of merit.

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

Accordingly, it is, on this 12th day of January 1977,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed as to the first, third and fourth charges, and reversed as to the second charge; and the appeal filed herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated April 5, 1976 staying the Board's Order of suspension be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-195, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Club M & S Tavern t/a M & S Tavern, for premises 35 Essex Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. on Monday, January 24, 1977 and terminating at 3:00 a.m. on Tuesday, February 8, 1977.

Joseph H. Lerner
Director

4. ELIGIBILITY PROCEEDINGS - CARRYING DANGEROUS WEAPON MAY NOT NECESSARILY INVOLVE MORAL TURPITUDE - NO DISQUALIFICATION RESULTED FROM THIS CONVICTION.

Eligibility No. 897

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State because of his conviction of a crime. N.J.S.A. 33:1-25.

Applicant pleaded guilty in Essex County Court in June 1974 to the charge of illegal possession of a dangerous weapon and was sentenced to a fine of \$500.00 and placed on probation for two years.

The crime of carrying a dangerous weapon may or may not involve the element of moral turpitude. When the crime stands alone, unattended by other crimes, or intent to commit other crimes, it does not ordinarily involve moral turpitude. Case No. 1698, Bulletin 1474, Item 4.

At the hearing held herein, an opportunity was afforded applicant to present background facts and circumstances surrounding his conviction which the Director may take into consideration in making a determination. See Div. of A.B.C. v. McNally, 91 N.J. Super 513 (App.Div.1960), cert.den.48 N.J. 605 (1966). Applicant stated at the time of the incident he was the owner of a tavern, and loaned money to his regular patrons, from time to time, if and when they needed financial assistance. He curtailed the lending practice after several patrons failed to repay him.

One evening a patron asked him for a loan of Twenty-Five Dollars and gave him a hand gun to hold as security for repayment. He put the gun under the bar. The next evening, the police came to the bar looking for the gun. He was called at home and requested to return to his tavern and produce the gun. This he did, and was taken to the police headquarters, where he was charged with possession of the weapon.

Under the circumstances, I find that the conviction of the crime of illegal possession of a weapon did not involve the element of moral turpitude.

I, therefore, conclude that the applicant has not been convicted of a crime involving the element of moral turpitude, and that no disqualification results from said conviction. Re Case No. 131, Bulletin 451, Item 7.

Dated: February 4, 1977



Joseph H. Lerner
Director