

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1740

JULY 20, 1967

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1. APPELLATE DECISIONS - CHESTNUT WINES & LIQUOR, INC. v.
WEST ORANGE.

CHESTNUT WINES & LIQUOR, INC.,)
Appellant,) ON APPEAL
v.) CONCLUSIONS
BOARD OF ALCOHOLIC BEVERAGE) AND ORDER
CONTROL OF THE TOWN OF WEST)
ORANGE,)
Respondent.)

James A. Palmieri, Esq., Attorney for Appellant
Louis Lando, 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 respondent Town of West Orange (acting through its Council sitting as the municipal Board of Alcoholic Beverage Control) wherein, by resolution dated January 3, 1967, it unanimously denied an application for person-to-person transfer from Kings Korner, Inc. to appellant of a plenary retail distribution license for premises 47 Chestnut Street, West Orange.

In its petition of appeal appellant sets forth that the assigned reason for respondent's denial was that one of appellant's incorporators had previously been a corporate member of a licensee whose license had been suspended for sixty days after being found guilty of "allowing lewd, lascivious and prostititional activities on its licensed premises, and, therefore, this made him morally unfit to be granted a transfer of this license." Appellant charges that the action of respondent was erroneous because respondent "concluded that the prior suspension of the privilege of holding a liquor license of itself constitutes a forfeiture of any right to become a holder of any future license in New Jersey", contrary to the law in such case.

The answer of respondent admits that the said application was denied but "prefers to rely on the reasons set forth in the Resolution rather than those allegations made by the appellant in Paragraph 3 of the Petition of Appeal."

The resolution will be alluded to and repeated at length hereinbelow.

This is an appeal de novo pursuant to Rule 6 of State Regulation No. 15, and was based entirely upon the transcript of the proceedings before respondent pursuant to Rule 8 of said regulation. No witnesses were produced at this plenary hearing, nor were any memoranda submitted in summation on this appeal.

The transcript reflects the following: Dominick C. Amiano is the owner of 49½ shares of stock in the corporate

appellant, his wife owns another 49½ shares, and his attorney James A. Palmieri owns the other share of the total of 100 shares issued and outstanding. Amiano acted on behalf of appellant in applying for transfer of a license covering a package goods store presently operated by Kings Korner, Inc.

He admitted on cross examination that his wife and he were the major stockholders in the O.K. Corral, a corporate plenary retail consumption licensee which operated under the said license in the City of Newark; that this licensee was found guilty by the Director of this Division on January 10, 1966 of a charge alleging that the licensee, on May 23, 1965, permitted solicitation for prostitution on the licensed premises in violation of Rule 5 of State Regulation No. 20, and that the said license was suspended for sixty days effective January 17, 1966. Re O.K. Corral, Inc., Bulletin 1660, Item 5.

It was further developed that appellant failed to set forth in the subject application for transfer, in response to the appropriate question therein, the fact of such suspension. Amiano's explanation: although he was in charge of the premises on May 23, 1965, he divested himself of his interest in O.K. Corral in November 1965. He stated that, since he separated himself from that license before the effective date of the suspension, he did not feel it necessary to set forth the fact of the suspension in his application for license in West Orange.

In further examination Amiano first stated that, although he was president of O.K. Corral, Inc., he was "inactive insofar as running the business itself." Later he admitted that he was actually in charge of the premises and was present on the night on which the said offense was committed, and that his original testimony that the bartender then employed had never been theretofore employed at those premises was untrue. The fact was that the bartender had been employed for at least a week or ten days prior to the date of the cited offense.

No other testimony was adduced at the hearing and, after considering the testimony and statements of counsel, respondent adopted the following resolution:

"WHEREAS, the Chestnut Wine and Liquor, Inc. applied to the West Orange Alcoholic Beverage Control Board for a transfer of a Plenary Retail Distribution License #D-7 from Kings Korner, Inc., t/a Kings Korner and

"WHEREAS, one of the principal stockholders to wit Dominick Amiano was also a principal stockholder in a corporation known as O. K. Corral, Inc. which corporation was the holder of a Plenary Retail Consumption License C-628 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark and

"WHEREAS, said O. K. Corral, Inc., while the said Dominick Amiano was an officer stockholder and director, was charged as follows:

'During the early morning hours of Sunday, May 23, 1965, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of

illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.' and

"WHEREAS, said charges after hearing resulted in an order suspending the license of O. K. Corral Inc. for 60 days all as set forth in the conclusions and order marked in evidence as P-1 for the West Orange Alcoholic Beverage Control Board

"NOW, THEREFORE, BE IT RESOLVED by reason of the evidence adduced before this Board on January 3, 1967, and the facts revealed in the conclusion and order that the Board is of the opinion that one of the stockholders of said applicant, namely, Dominick C. Amiano is not of sufficient moral character to be privileged to hold a Plenary Retail Distribution License as applied for."

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. Contrary to appellant's contention, no "forfeiture" of a right to hold such license is involved. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Paul v. Gloucester County, 50 N.J.L. 585. In considering the subject of licenses, the Supreme Court, in Blanck v. Magnolia, 38 N.J. 484, 490, stated:

"The right, most extensive in nature, to regulate the field of intoxicating liquors is within the police power of the State, and this power is practically limitless. Borough of Fanwood v. Rocco, 33 N.J. 404, 411 (1960); Meehan v. Board of Excise Commissioners, 73 N.J.L. 382, 386 (Sup.Ct. 1906), affirmed 75 N.J.L. 557 (E. & A. 1908). From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied. Paul v. Gloucester County, 50 N.J.L. 585, 595 (E. & A. 1888). This field is peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup.Ct. 1938). Consistent therewith is the Legislature's mandate that 'This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed.' R.S. 33:1-73.

* * * *

"The test in the establishment and issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, supra, 50 N.J.L. 585. In Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946), the court said: 'The common interest of the general public should be the guide post in the issuing and renewing of licenses.'"

It is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy to receive the privilege of a license and its determination should be given considerable weight on appeal. Eana, Inc. v. Pleasantville, Bulletin 1024, Item 2; Clark v. West Orange, Bulletin 631, Item 7.

Respondent had an opportunity to observe the demeanor of Amiano as he testified to evaluate his credibility and veracity,

to examine his application and to investigate the same. It is apparent that it did not consider this applicant, as the major stockholder of appellant, worthy of receiving its endorsement, in view of the serious nature of the offense committed by the Newark licensee of which he was a major stockholder. I am also persuaded that respondent felt he was lacking in forthrightness and credibility because of the conflicts in his testimony before it, as well as his omission of a material fact in his application for license. It was well within respondent's province to consider appellant's acts and the violations of the corporate licensee which he controlled in another municipality in reaching its ultimate determination. Deola v. Millville, Bulletin 789, Item 12.

It is relevant to the above observations to point out that appellant failed to satisfy respondent that the public interest would be best served by granting this transfer. There is nothing in the record indicating, or even suggesting, that the refusal by respondent to grant the license was based upon any improper motives. Bumball v. Burnett, 115 N.J.L. 254. As stated hereinabove, the worthiness of persons applying for a license is a matter which resides in the sound discretion of the issuing authority. Where, as here, the proof is substantial, and indeed uncontradicted, that the major stockholder of appellant recently conducted another licensed business in an unlawful and objectionable manner, respondent's concern for the public interest would require that it deny the application for transfer of a license under those circumstances. Cf. Zicherman v. Driscoll, 133 N.J.L. 586; Schwartz v. Paterson, Bulletin 1577, Item 2.

Respondent determined that the association of Amiano with a license in its community would be inimical to the best interests of the community. Such determination should not be disturbed by the Director in the absence of evidence which clearly indicates abuse or arbitrariness. In an appeal of this kind it must be shown that such refusal was the result of intentional discrimination or other arbitrary action. Such was not established here. Cf. Federici's Hideaway, Inc. v. Belleville, Bulletin 1595, Item 2. Camden County v. Pennsauken Sewerage Authority, 15 N.J. 456; Rule 6 of State Regulation No. 15.

I conclude, on the basis of the totality of the proofs, that respondent exercised its discretion reasonably and in the public interest. It is therefore recommended that respondent's action in denying appellant's application for said transfer be affirmed and the appeal herein 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 conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of May, 1967,

ORDERED that the action of respondent in denying transfer of appellant's license be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - PERMITTING EMPLOYEE TO WORK WHILE INTOXICATED - LICENSE SUSPENDED FOR 50 DAYS - HEREIN OF APPEARANCE BY CORPORATE LICENSEES PRO SE.

In the Matter of Disciplinary Proceedings against)

BRUCE ZANE, INC.)
t/a "Suburban Inn")
1020 White Horse Pike)
Oaklyn, PO Audubon, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Oaklyn.)

Frank M. Lario, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On Friday night December 23, 1966, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated, and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On Friday night December 23, 1966, you allowed, permitted and suffered a person actually or apparently intoxicated to work in and upon your licensed premises; in violation of Rule 24 of State Regulation No. 20."

Agent B testified that, accompanied by three other ABC agents, he participated in the investigation on December 23, 1966, of the licensed premises which he described as a neighborhood tavern.

Agents D and G entered the licensed premises at 10:20 p.m. and B entered therein at approximately 10:28 p.m. The patronage of approximately twenty persons occupied all of the seats at the bar and some patrons stood behind patrons who were seated at the bar. B stood behind a patron who was seated. G was a "few feet" to his left, also standing behind a patron.

The agent noted two females tending bar, namely, Elsie Zane (an officer of the corporate licensee and wife of the president thereof, Bruce Zane) and Sandra Pierce. Mrs. Zane attracted his attention because she appeared to be intoxicated.

Questioning revealed the following:

"Q Will you describe her appearance for us as you saw her?

A Well, her face was flushed, her eyes were glassy, she stumbled behind the bar, when pouring drinks she spilled some on the bar, her hair was disheveled.

Q Dis you see her walking?

A Yes. She walked and bumped into the bar, and when she was talking her words were running together, her speech was slurred. She attempted to sing.

Q When was your attention first attracted to her?

A Several minutes after entering the premises.

Q Did you see her consume any drinks?

A Yes.

* * * *

Q What was her condition when you identified yourselves?

A She appeared to be intoxicated.

Q Can you describe her for us more in detail? You say you saw her spill drinks.

A First she poured it, she overflowed the glass, one time she missed the glass and it went on the bar."

Additionally, the agent testified that five or six patrons, who were positioned at various places in the barroom, also appeared to be intoxicated. In describing their appearance he testified "their eyes were glassy, faces flushed, they were disheveled, hair was mussed up, one fellow had a zipper jacket on that was unzipped, his shirt was out, he went to go in the men's room and bumped into a table or chair on his way to the men's room."

He identified one of the patrons who appeared to be intoxicated as Frank Walls. The testimony continued, as follows:

"Q Will you describe this Frank Walls for us?

A Well, he was -- his appearance was generally the same, face flushed, eyes glassy, he was the fellow had the zipper jacket on unzipped, and his shirt was out. I believe he is the fellow stumbled into one of the chairs.

Q How many of these 4 or 5 or 5 or 6 persons did you see walking about the premises?

A 3 or 4.

Q What was their gait?

A They were stumbling, staggering.

Q Did you see any service of drinks made to any of these five or six?

A yes.

Q What kind of drinks?

A Alcoholic beverages."

Further, the agent testified he had Mrs. Zane and the patrons under his observation from the time of entry to the time he identified himself which was at approximately 11:05 p.m. He saw Mrs. Zane serving the patrons all during that period of time. As to Bruce Zane, the agent testified, "He appeared to be intoxicated, he was loud, he made a few remarks, his face was flushed, eyes were glassy."

A drink seized from Frank Walls (one of the patrons) and the report of the Division chemist which indicated that the drink was an alcoholic beverage fit for beverage purposes were admitted into evidence.

Finally, the agent testified that, when the agents identified themselves, Zane said, "What the hell do you guys want? He said, Yeah, we're drunk. We're all drunk, We're having a good time."

Agent G testified that he participated in the investigation of the instant charges and entered the licensed premises on December 23, 1966 at 10:20 p.m. The bar was crowded, there were approximately twenty or twenty-two patrons in the tavern. Sandra Pierce and Elsie Zane were tending bar. Concerning Elsie Zane he observed "her face was flushed, her eyes were glassy, her blouse was hanging out, hair disheveled, she was talking with a slur, and at times she attempted to sing with the slurred speech."

Continuing, he testified, "At times she would walk to patrons staggering, and on occasion she would pour drinks and spill the drinks."

The agent had Mrs. Zane under observation throughout the entire period of the investigation, he saw her consume mixed drinks and it was his opinion that she appeared to be intoxicated.

Approximately six patrons attracted his attention because "their eyes also were glassy, and they would walk to the men's room staggering, and clothes disheveled, at times they would -- this one particular fellow would bow his head and wake up again and start talking loud with slurred speech."

Referring to the patrons who attracted his attention, the agent testified as follows:

"Q After these observations did you see service being made to them?

A Yes.

Q What kind of drinks were served to them?

A Beer and mixed drinks.

Q Did you observe how these people sat at the bar?

A Yes. At times some of them would actually slip off the bar.

Q Did you hear them talking?

A Yes.

Q What would you say about their speech?

A Very slurred, very slurred speech.

Q Did you understand what they said?

A Really, no.

Q From all these observations what conclusions did you come to?

A They were definitely intoxicated."

When the agents identified themselves to Mrs. Pierce and Mrs. Zane, Mr. Zane approached them and said, "What the hell do you guys want?" When he was informed of the violation, Zane said, "Yes, he said, we're all drunk and having a good time."

Additionally, the agent testified that the alcoholic beverage received in evidence was seized from a male identified as Frank Walls of Runnemedede. In describing Walls' appearance the agent testified:

"Well, he was the fellow that was sitting at the bar with a jacket on, shirt tails hanging out, and he was talking with a slur, and at times he would fall off the stool, and he went to the men's room one time and staggered and bumped into a chair. To me he appeared to be definitely intoxicated."

Upon Walls' return from the men's room, Mrs. Pierce served him the drink that was seized by the agent.

Called in behalf of the licensee, Lincoln J. Walz

testified that he was in the licensed premises no more than forty minutes and was wearing a brown sports jacket. He was not wearing a zipper jacket, nor did he have his shirt tail out. He was finishing his second drink when the agent took it away. He had another drink in front of him at that time which was not taken away. He did not leave his stool, fall or slip off his stool, and there were no chairs between the bar and the men's room. He saw no one in his area whom he thought was intoxicated. Mrs. Pierce waited on him. He never saw Mrs. Elsie Zane tending bar in the three years he had been patronizing the tavern. Due to his physical condition his doctor advised him to drink no more than two or three drinks of whiskey.

On cross examination the witness declared that he was not Frank Walls of Runnemede but Lincoln Walz of Laurel Springs, and it was his drink that was taken. He was in the tavern "at most forty minutes." He conversed with a patron on either side of him. He did not observe anyone in his area who appeared to be intoxicated. When questioned as to how many people his area comprised, the witness responded, "I would say four or five. At least a quarter of the bar."

Samuel McNutt, Jr. testified that he was a patron in the tavern on the night in question and he was not intoxicated nor did he observe anyone in the tavern who was intoxicated. He did not see anyone fall over a chair in the barroom, nor did he ever see a chair in the barroom. During the past year that he had been patronizing the bar steadily he never saw Mrs. Zane tending bar. Mrs. Pierce waited on him on the night in question.

On cross examination the witness testified that, inasmuch as he saw only four or five patrons at his end of the bar, he could not express an opinion as to the appearance of anyone else at the bar. He was not acquainted with anyone known as Frank Walls and he knew the witness identified as Lincoln Walz as "Lincoln." Although he saw Mrs. Zane in the tavern that night, he did not see her behind the bar.

Henry H. Vining testified that he had been patronizing the licensed premises for many years and that on Friday evening, December 23, 1966, he was in the barroom approximately three-quarters of an hour or an hour. He was positioned to the right of Mr. Lincoln Walz who had testified previously.

Referring to Mr. Walz, the witness testified as follows:

"Q Did you observe Mr. Walz pretty closely?

A I was speaking to him.

Q Did he appear intoxicated?

A He did not to me.

Q Do you recall how long he was in the bar?

A He came in after I was in there, I would say probably a half-hour or so, when this thing occurred.

Q Did you see them take his drink?

A I did not."

Continuing, the witness testified that he never saw a chair in the barroom and he never saw Mrs. Zane tending bar.

On cross examination the witness testified that he was in the licensed premises for three-quarters of an hour prior to

the occurrence which is the subject matter of the within hearing. His concentration was confined to a group consisting of approximately three patrons to his left and one or two patrons to his right. The bar was crowded. He never saw chairs in the tavern, only bar stools, "2-1/2, 3 feet off the ground."

Sandra Pierce testified that she had been employed by the licensee for almost two years and was tending bar on the 6 p.m. to 2 a.m. shift on December 23, 1966. She never had anyone assisting her in tending bar. Elsie Zane was not tending bar. She did not observe anyone that was intoxicated, falling off a stool, going to sleep, disheveled or falling over chairs going to the rest room. If she had she "would have told them they had enough to drink and to go home." She heard many patrons sing Christmas carols "along with the juke box." Specifically she did not note Mrs. Zane singing. The loud discussion could possibly have led to an "appearance of people possibly drinking too much." Mr. Zane was not drinking that night. She did not serve Mrs. Zane anything to drink. She was at the bar at the corner entrance. When questioned as to how long a period of time Mrs. Zane was in the tavern, the witness responded, "I was pretty busy. Maybe she was down there twenty minutes, a half-hour; I don't know." Mrs. Zane did not appear disheveled. She served Lincoln Walz, "two, possibly three" drinks. When the agent seized Walz's drink he had another drink in front of him. The agents did not instruct the witness not to serve Walz any more drinks and did not indicate that they thought that either Elsie Zane or Bruce Zane was intoxicated.

On cross examination the witness testified that she alone was tending bar on the night in question, and Mrs. Zane was standing at the offset or entry to the bar. She did not see Mrs. Zane pour any drinks. Mrs. Zane had never before worked behind the bar and, if she had tended bar that night, she would have seen her. She was busy on the night of December 23 and, it being two nights before Christmas, the patrons were in good spirits. The patrons were singing and having discussions. She saw the agents pick up a patron's drink; however, she was not requested to identify him by the agents. Mr. Zane was excited but did not appear to be intoxicated. She did not hear him say to the agents that he was drunk and that they were having a good time.

Mrs. Elsie Zane testified that she never tended bar or waited on customers. Her duties consisted of taking care of the books, purchasing and cooking. On the night of December 23 she came downstairs from her apartment and into the tavern at approximately 10 p.m. Thereafter she sat "at the bar in the offset" while her husband was talking with some patrons. She did not serve the agents or anyone else at the bar. Due to her physical condition, her hearing, nerves and blood pressure have been affected and she is "not supposed to drink excessively." Her doctors advised her not to be on her feet or work excessively. Finally, she stated that she was not acquainted with a Frank Walls.

On cross examination Mrs. Zane testified that on the night in question she had nothing to drink except ginger ale. In response to the question, "Were you behind the bar working or behind the bar at all", the witness replied, "I was sitting on the offset where we have the stools for people to sit when we are crowded."

Further, the witness reiterated that she did not consume any alcoholic beverages that night and did not go behind the bar at all. When asked, "Were you singing with the rest when

they were singing with the juke box", she responded, "I imagine so. It gets near Christmas everybody tries to have a good time."

Mrs. Zane admitted that the agents conferred with her and that she gave them her name and address and then advised her husband of their presence and to talk to them.

In essence, Bruce Zane testified that, due to his physical and neurological condition, his physicians prescribed certain drugs and cautioned him against "any drinking whatsoever." On the night of December 23, 1966, he came downstairs from his apartment at approximately nine o'clock. His wife, Mrs. Elsie Zane, came down from the apartment at approximately ten o'clock. At that time he was conversing with Lincoln Walz, Vining and another patron. An older type patronage is encouraged. Continuing, he testified:

"There are quite a few discussions in our bar, and some of the bar customers talk fairly loud. Some of them -- possibly I am talking loud myself. I don't mean to but having to talk to my wife I have got in the habit of being a little loud. This could have the appearance and I could see where an outside observer could mistake this as people being intoxicated. However, because people talk loud and discuss things does not necessarily mean they are intoxicated."

He heard the agents questioning his wife as to her age and he deemed it peculiar that they should ask her as to her age and not the barmaid's (Mrs. Pierce) or his age.

Finally, he admitted being agitated, nervous and upset but denied saying, "We're all drunk."

On cross examination he declared that he hadn't consumed an alcoholic beverage since prior to September 26, 1966. Referring to the night of December 23, 1966, he stated that his wife did not go behind the bar, it was a fairly busy night, all the stools were occupied. Mrs. Pierce tended bar unassisted. Additionally, Mr. Zane testified as follows:

"Q What did they [the agents] tell you?

A They said to me that we would hear from the bureau.

Q Did you ask, 'I will hear from the bureau about what? What did I do?'

A They said there would be charges.

Q What did they say?

A They said, 'It seems some people had too much to drink here.'"

He denied making a statement to the agents to the effect that he was drunk and that they were all drunk.

Later the witness acknowledged that the agents advised him as follows: "You are serving people apparently had too much to drink We observed your bartender serve people at the bar who appeared to be intoxicated."

In rebuttal Agent B testified that the person from whom he took the drink and whom he identified as Frank Walls of Runnemedede is not the same person who identified himself on the witness stand as Lincoln Walz. Walls was seated approximately four stools from "the rear where the cut-off is." He was dressed in a zipper jacket, no hat, dark shirt and slacks and shirt out.

He did not recall seeing Lincoln Walz in the tavern that night. The agent heard Mrs. Pierce identify Frank Walls to ABC Agent G. He reiterated that he observed Mrs. Elsie Zane assisting Mrs. Pierce in tending bar. He informed Mr. Zane that he saw patrons "who appeared to be or apparently were intoxicated" and he specifically pointed out the person from whom the drink was seized.

On cross examination the agent stated that, at the time that Zane made a statement to the effect that "we're all drunk", he (the agent) had not identified himself to Zane.

Agent G's testimony on redirect examination mainly corroborated the testimony of Agent B. Additionally, he testified that he advised Zane that the two barmaids were serving patrons who were intoxicated and that one of the barmaids was intoxicated.

Called in surrebuttal Mr. Walz testified that the agent who confiscated his drink did not ask him for any identification. He didn't know which agent took the glass.

On surrebuttal Mrs. Pierce reiterated that she saw an agent (whom she believed to be Agent G) take Lincoln Walz's drink. She does not know a Frank Walls or ever heard of a Frank Walls.

Thus it is apparent that the primal point of inquiry presented herein is factual.

In adjudicating this matter I observe by way of introduction that, in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness 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); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

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 have had an opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony.

I am persuaded that the testimony of the agents, presented in a direct and detailed manner, was not a fabrication but was factual and credible. Their detailed description of the department of Mrs. Elsie Zane and of several of the patrons clearly established the observable manifestations of apparent or actual intoxication.

I am convinced that Mrs. Zane was at some period of the

night in question serving alcoholic beverages. The extent of patronage was such that all seats were occupied and some patrons were standing behind patrons who were seated at the bar. Wouldn't it be normal for a stockholder and an officer of the licensee corporation (who occupied an apartment over the licensed premises) to "pitch in" and assist the regular barmaid assuage the thirst of the patrons? Furthermore, why would the agents have questioned Mrs. Zane if they had not observed that she was acting as a barmaid? In her testimony Mrs. Zane admitted to being questioned by the agents and referring her husband to them. Zane admitted that he heard his wife being questioned by the agents.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1.

An additional basic principle is worthy of emphasis. In disciplinary proceedings a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948).

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charges.

The licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended on the first charge for thirty days (Re Triple T, Inc., Bulletin 1639, Item 2; Re Schmidt, Bulletin 1654, Item 9), and on the second charge for twenty days (Re Morrin, Bulletin 1705, Item 3), or a total of fifty days.

Conclusions and Order

Written exceptions to the Hearer's report and argument in support thereof were filed (pursuant to Rule 6 of State Regulation No. 16) by an attorney who was retained by the licensee subsequent to receipt of the Hearer's report.

The licensee argues that the Hearer erred in permitting Bruce Zane, a layman and the president of the licensee corporation Bruce Zane, Inc., to appear and act as attorney for the licensee corporation because (1) such action is violative of the Supreme Court Rules 1:12-1(e) and (f) and (2) such action is violative of N.J.S.A. 2A:170-78.

The rules promulgated by the Supreme Court govern the practice and procedure in the courts of this State. The rules do not govern the practice and procedure of administrative agencies, such as the Division of Alcoholic Beverage Control. It is pertinent to note that the rules and regulations promulgated by the Director of the Division of Alcoholic Beverage Control pursuant to statutory authority do not make it mandatory that an appearance

be entered through an attorney. The relevant part of Rule 6 of State Regulation No. 16 governing procedure in disciplinary proceedings provides that "Each defendant may be represented by an attorney admitted to practice in the courts of this State" (underscoring mine).

It is also pertinent to point out that the Hearer, preliminary to conducting the hearing, questioned Bruce Zane as to his official capacity with the licensee corporation and Zane responded that he was the president of the corporation, a major stockholder thereof, he appeared at the hearing as president and representative of the corporation, and he wished to proceed without an attorney. The record establishes that Zane participated fully in the Hearing. He not only cross-examined the Division's two witnesses, but also had six witnesses (himself included) testify in behalf of the licensee corporation. Additionally, he presented witnesses in surrebuttal. A reading of the record clearly indicates that Zane had a full, fair and impartial hearing, was fully oriented, and at all times articulate. Further, it appears that the Hearer (apparently taking cognizance of the fact that Zane was a layman) afforded him wide latitude in making statements, filing exhibits and examining witnesses.

Licensee's argument that the Division agents were not qualified or competent to testify to apparent intoxication is wholly without merit. See Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960) and cases cited therein.

The other points raised by the licensee's attorney have either been covered by the Hearer in his report or are without merit.

After duly considering the entire record, I am of the opinion that there is substantial evidence to sustain the charges herein and that the licensee's argument for a new trial bespeaks disappointment with the recommendation contained in the Hearer's report and it now seeks "two bites of the apple." Sound procedure clearly dictates against favorably considering the licensee's request for a new trial.

Having considered the entire record, including the transcript of testimony, the exhibits, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur with the Hearer's findings and conclusions and adopt his recommendations. I find the licensee guilty as charged and shall suspend its license for a period of fifty days as recommended.

Accordingly, it is, on this 17th day of May, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Oaklyn to Bruce Zane, Inc., t/a Suburban Inn, for premises 1020 White Horse Pike, Oaklyn, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, commencing at 2:00 a.m. Wednesday, May 24, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Thursday, July 13, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Len-Ton, Inc.)
t/a Center Tavern)
336 Arch Street)
Camden, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden)

Licensee, by Leonard Panetta, Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 31, 1967, it sold alcoholic beverages to intoxicated persons, in violation of Rule 1 of State Regulation No. 20.

Reports of investigation disclose that on the date alleged, drinks of alcoholic beverages were sold to four intoxicated male patrons.

Licensee has a previous record of suspension of license by the Director for three days effective August 18, 1958, for serving women at the bar in violation of local regulation. Re Len-Ton, Inc., Bulletin 1243, Item 7.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, but considering the violation to be aggravated by the number of intoxicated persons served, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Triple T., Inc., Bulletin 1639, Item 2; Re Schmidt, Bulletin 1654, Item 9.

Accordingly, it is, on this 22nd day of May, 1967,

ORDERED that Plenary Retail Consumption License C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Len-Ton, Inc., t/a Center Tavern, for premises 336 Arch Street, Camden, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. Monday, May 29, 1967, and terminating at 7:00 a.m. Friday, June 23, 1967.

JOSEPH P. LORDI
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FOUL LANGUAGE - PRIOR RECORD OF SUSPENSION FOR VIOLATION OF PREDECESSOR DISREGARDED - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM J. LYNCH & RALPH J. TURSO)
 234 Park Avenue)
 Hoboken, New Jersey)

CONCLUSIONS AND ORDER

 Holders of Plenary Retail Consumption License C-124, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

 Andrew F. Batistich, Esq., Attorney for Licensees.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) on February 17, 1967 they sold drinks of alcoholic beverages to five minors, two age 17, two age 18 and one age 20, in violation of Rule 1 of State Regulation No. 20, and (2) on February 2, 1967 they permitted foul and filthy language by patrons on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the municipal issuing authority for ten days effective October 17, 1966, for sale in violation of State Regulation No. 38 by their transferor predecessor in interest.

The prior record of suspension of license disregarded, the license will be suspended on the first charge for thirty days (cf. Re Jervic, Inc., Bulletin 1603, Item 6) and on the second charge for ten days (Re Bozzone, Bulletin 1732, Item 2), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 1st day of June 1967,

ORDERED that Plenary Retail Consumption License C-124, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to William J. Lynch & Ralph J. Turso, for premises 234 Park Avenue, Hoboken, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1967, commencing at 2 a.m. Thursday, June 8, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Thursday, July 13, 1967.

JOSEPH P. LORDI
 DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp. #303)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary) ON PETITION
 Retail Consumption License C-182) ORDER
 issued by the Board of Commissioners)
 of the City of Atlantic City to)
)
 MORRIS KROUSE)
 t/a Nugget Bar)
 114 So. South Carolina Ave.)
 Atlantic City, N. J.)

Edward I. Feinberg, Esq., Attorney for Petitioner.

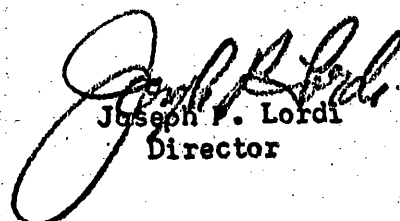
BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on March 17, 1967, licensee-petitioner was fined \$250 in the Atlantic County Court after plea of guilty to a charge of sale of alcoholic beverages to minors on June 19, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that the municipal issuing authority has suspended the license for fifteen days effective February 3, 1967, after the licensee's plea of non vult to a charge in disciplinary proceedings alleging the same sale to the minors. It appearing that the municipal suspension has been served, I shall lift the statutory automatic suspension. Re Schweitzer, Bulletin 1723, Item 6.

Accordingly, it is, on this 24th day of May, 1967,

ORDERED that the statutory automatic suspension of said license C-182 be and the same is hereby lifted, effective immediately.



Joseph P. Lordi
 Director