

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

January 26, 1971

BULLETIN 1949

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1. APPELLATE DECISIONS - POLINY ET AL. v. SAYREVILLE.

ANDREW R. POLINY, JOHN MESZAROS )  
AND JULIA MASSINEK, )  
Appellants, ) ON APPEAL  
v. ) CONCLUSIONS  
MAYOR AND COUNCIL OF THE BOROUGH ) AND ORDER  
OF SAYREVILLE, and V & B LIQUORS, )  
INC., )  
Respondents.

-----  
Frederick J. Fox., Esq., Attorney for Appellants  
Alfred D. Antonio, Esq., by William E. Flynn, III, Esq., Attorney  
for Respondent Borough  
Herbert B. Bierman, Esq., Attorney for Respondent V & B  
Liquors, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the Borough of Sayreville (hereinafter Council which by a vote of five to one granted a place-to-place transfer of a plenary retail consumption license from premises on Washington Road to a location referred to as Raritan Landscaping on the southbound lane of State Highway 35, Sayreville.

Appellants allege that the action of the Council was erroneous for the following reasons:

- "A. The proposed place to which the license has been transferred has many taverns and night spots within a one mile radius and leads to the influx of many persons during late hours and creates a condition akin to a nuisance upon the highways because of the presence of broken liquor bottles thrown by the patrons of the establishments now doing business in said area.
- "B. The grant of the transfer is against the health, the safety and morals of the residents in said area.
- "C. The grant of the transfer will aggravate traffic conditions in the area, which has a high automobile accident rate, and would create dangerous traffic problems since there are no practical methods now established to control the flow of traffic across Route 35. The present facilities of 'U-turns' in the area are not safe.

- "D. The transfer has created an undue concentration in the area.
- "E. The transfer creates an excessive number of liquor establishments in the area in proportion to the number of residents."

Respondent V & B Liquors, Inc., denies that the action of the Council was erroneous and asserts as a separate defense that two of the appellants who hold licenses for the sale and consumption of alcoholic beverages were motivated by fear of possible economic harm.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, at which time the attorneys for the respective parties had full opportunity to produce testimony and cross-examine witnesses.

Prior to taking oral testimony it was stipulated that the application for the place-to-place transfer was procedurally correct; a full hearing was conducted by the Council on the application on November 17, 1969; at a regular meeting thereof held by the Council on December 3, 1969 it adopted the resolution approving the transfer; the transfer would not be violative of the local zoning ordinances; and there was no limitation-of-distance ordinance adopted by the Borough.

Andrew R. Poliny (an appellant) testified that his home immediately adjoins the Northern line of Raritan Landscaping property on Route 35. His wife and five children reside with him.

Route 35 at this location consists of two lanes for northbound traffic and two lanes for southbound traffic and contains a grass medial strip and paved shoulders approximately six feet wide on either side of the highway. The highway is heavily traveled throughout the year with greater density in the summertime. There is an early morning and late afternoon period of higher density of traffic.

The witness was fearful that the transfer of the license would aggravate the traffic problem as well as that of persons who now park unlawfully on the Landscaping property at night and engage in brawls and otherwise disturb his peace. He has seen broken beer bottles, glasses and contraceptives in the area. He is of the opinion that patrons of other nearby facilities contribute to these conditions. The noise at night disturbed sleep of his family and himself.

People traveling north on the highway must make a turn in the divider opening and proceed south in order for them to patronize the proposed location of the licensed premises. Many accidents have occurred as the result of such maneuvers. The median strips are approximately twelve and one-half feet wide. Many fatal or serious accidents occurred in the vicinity. The last accident, in which four persons were seriously injured and one person was fatally injured, occurred on September 5, 1969. The witness added that the accident appeared to have occurred as the result of a drag race.

On cross examination, Poliny conceded that he had no interest in Fred's Bait Service although the petition of appeal filed herein recited otherwise. Fred's Bait Service was operated by his

brother and was located approximately five hundred yards to the north of the said premises. His interest in the appeal is that of a private citizen who owns property adjoining Raritan Landscaping. He helps his brother almost daily, without remuneration. Concerning his appearance at the hearing before the Council on November 17, the testimony at this trial de novo revealed the following:

"Q Mr. Poliny, in answer to a question did you say this: The question directed by Attorney Bierman was: 'Does the Sayreville police come down every time you call?' Your answer: 'I said many times. I don't sit with a pencil. This is 3 or 4 o'clock in the morning. I have to open up at 4:30. I'm half dead. I am in the bait and tackle business. Every minute means a lot to me as far as rest is concerned.' Now, is that your testimony, sir?

A I think I was more or less talking in my brother's behalf.

Q Well, now, Mr. Poliny, is there any place in this record that you indicated to the mayor and council that you were talking in your brother's behalf?

A I doubt it."

The last time he recalled a patron of Fred's Bait Service being involved in a motor vehicle accident was in November 1967. The specific incidents of brawls that he recalled during the past three years occurred across the highway from where he resides.

Concerning the location of various licensed premises located in the general area of Raritan Landscaping, he testified that on the westerly side of Highway 35, the same side where Raritan Landscaping is situated and to the north thereof in South Amboy, approximately a quarter-of-a-mile or a half-mile distant is located Thunderbird Inn. Connie's Tavern is located to the south of Raritan Landscaping at approximately the same distance from the premises as the Thunderbird Inn. Almost directly across the highway from Raritan Landscaping, and on the easterly side thereof, are located Mel's Lounge and Morgan Seafood. Morgan's Inn is located on Pine Street, south of the property and east of Highway 35.

Raymond N. Sweeney, who had been the Chief of Police of the Borough of Sayreville for the past seven years and who was familiar with the area in question for the past twenty years, testified that he submitted a report wherein he set forth his opinion that the general section of Highway 35 had the highest accident rate in the Borough and he particularly deplored the fact that the median strips had openings which afforded motorists an opportunity to cross over or reverse their direction of travel. He had no opinion as to whether or not the transfer of the licensed premises to Raritan Landscaping would aggravate the traffic problem. A closing of the divider openings would improve the safety factors. He was not requested to furnish a report relative to highway conditions at the time that a license transfer was approved for Morgan's Seafood approximately a year prior. No one objected on the ground that the transfer would create a traffic hazard. Finally he acknowledged that no analysis was made of the cause of the numerous accidents in the general area.

Thomas Kuberski (a Borough councilman) testified that he voted against the resolution granting the transfer: "the reason I voted against the transfer was I based most -- most of my conclusions by the Chief of Police's report which he had submitted to me as a matter of the record for the Borough of Sayreville question, and I was through the area myself and discussed this with the Chief, and I talked to him about almost the same thing he had put in the letter, so I based most of my conclusions on the report of the Chief of Police who is much more of an authority than I am myself." The primary reason for requesting the Chief of Police to investigate the area was because of objections expressed by area residents. At the time the transfer of the license to Morgan Seafood (diagonally across the highway from Raritan Landscaping) was authorized about ten months prior to the subject application, the Chief of Police was not requested to furnish a report because there were no objectors to the transfer.

Julia Poliny (wife of appellant Andrew R. Poliny) attributed highway accidents, littering of her property, the blocking of her driveway and fights in the early morning hours to the patrons of five licensed premises located at various distances from her home on the southbound lane of the highway. Her entire family is upset due to the noise.

On cross examination the witness testified that her husband assisted his brother at the bait shop at irregular intervals for short periods of time. He has no interest in the bait shop to her knowledge.

After testifying that the last time she heard a brawl was about three weeks ago, Mrs. Poliny testified as follows:

- "Q And where did this brawl or argument take place, Mrs. Poliny?  
 A Well, usually cars stop -- I just hear a racket. That's all. I got tired of getting up in the wee hours.  
 Q Cars just stop on the highway and have a brawl under your window; is that what happens?  
 A Majority of them.  
 Q Well, do you know where these cars come from?  
 A I couldn't say.  
 Q You just know that cars stop under your window and the people inside have a brawl? Is that what you are telling us?  
 A That is right."

The last time that she or her husband called the police concerning the brawls "could have been six, nine months, a year, I couldn't say." The brawls and the noise have continued for a period of approximately five years. She did not object to the transfer of a license to Morgan's Seafood.

John S. Meszaros, Sr. (one of the appellants herein who operates Mel's Lounge, a licensed premises, directly across the highway from Raritan Landscaping) testified that he objected to the transfer of the license because of objections expressed by the tavern owners, neighbors and the Chief of Police, and because it would bring in an additional license to a location across the street from his location. Further, he felt that the transfer would create a traffic hazard. Numerous accidents have occurred on the highway, some of which were fatal.

There are fifteen taverns located within a radius of a mile-and-a-half to the north and a mile-and-a-half to the south of Mel's Lounge.

On cross examination the witness asserted that he mainly objected to the transfer of the license across the highway because of the hazards involved when patrons of one establishment cross the highway to go to the other establishment.

Morgan Seafood, which operates a restaurant fifty feet to the north of Mel's Lounge, obtained a transfer of a license within the past year. He did not object to transfer of that license. Subsequent to the transfer, traffic conditions did not change on the northbound land of the highway. The witness could not connect any of several specific accidents to a person or persons who had patronized any of the licensed premises in the three-mile stretch.

The previous witnesses (Andrew Poliny and Julia Poliny) did not complain to him of assaults having taken place in the area. They did complain to him of noise and cars parking in the area of their property. The parking problem was solved by Mel's Lounge having provided for additional parking on its grounds.

Another appellant (Julia Massinek) who operates Morgan Seafood, diagonally across the highway from Raritan Landscaping, testified that she objected to the transfer. "Well, due to the traffic hazard of the highway and the sewerage problems we have in the area. That's about it." She asserted that the traffic conditions did not affect her place of business. No one complained concerning the conduct of her business. She closes her establishment between 10:30 p.m. and 1:00 a.m. She is not aware and never witnessed any assaults in the area. For the past year that she has had a liquor license at her establishment she has noticed no change in the traffic pattern in the front thereof.

Victor C. O'Brien (president of V & B Liquors, Inc., the respondent corporate licensee) testified that he had entered into an agreement to purchase the Raritan Landscaping property which has a frontage of 221.90 feet on the highway and is 500 feet deep (RVB-2 in evidence). An area of at least 200 feet by 400 feet is level and flat and is ample for all parking requirements and for the construction of driveways for ingress and egress. He intends to renovate the existing building which measures approximately 30 feet by 40 feet. He further intends to install a cocktail bar to provide for approximately thirty-one stools and a very small restaurant area. He characterized the traffic at that location as "heavy at times but no more than any other highway in that particular area."

Robert A. Nelson (a licensed traffic engineer) testified that at the request of the attorney for the respondent licensee, he conducted a survey of the area of Highway 35 in the general vicinity of Raritan Landscaping. In all cases the driveways met with the recommendation of the Department of Transportation for the control of access driveways and "the divider makes this a particularly safe operation because you don't have left turns coming in as compared to having an undivided highway where left turns are permitted." A motorist driving south has a sight distance in excess of 1,000 feet to the property in question. This is far in excess of the recommended minimum. The ingress and egress driveways are adequate. Assuming that the parking lot was full, it was his opinion that this would have an insignificant effect on the flow of traffic on the highway. Further, he opined that the

operation of a tavern containing thirty-one stools would not present a unique or unusual traffic problem at this location. Patrycia M. Mazzocchi (Borough Clerk of Sayreville during the year 1969) testified that the application for transfer was fully discussed at several business (or caucus) meetings of the Council. The report of the Chief of Police was not only discussed at the public hearing held on November 17, 1969, but also at the business meeting subsequent to the hearing.

The Council consists of six members plus the Mayor. The Mayor votes only in the event of a tie vote. The vote was five-to-one in favor of the transfer. One member of the Council voted in favor of the transfer because the license in question was originally located in the area to which it was sought to be transferred.

Preliminarily, I observe that the burden of establishing that the action of a local issuing authority was erroneous and should be reversed rests with appellants. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him .... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

And further, in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle (at p. 23):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

I have carefully considered the five points raised by the appellants in their petition of appeal and find them to be without merit.

It is noteworthy that two of the three appellants are liquor licensees whose facilities are located across the highway from the proposed premises and the other appellant maintains his family residence at the property adjoining the proposed location.

The evidence fell short of establishing that the alleged accidents on the highway were caused due to the operation and presence of business establishments (including the operation of liquor licensed premises) in the general area. The evidence also fell short of proving that the addition of this premises would affect the traffic density on the highway (which is admittedly high) or would increase the hazards to users of the highway.

The proof is also lacking that the transfer would create an undue concentration of licensed premises in the area. Additionally, there is not a scintilla of evidence connecting the assaults and disturbances testified to by the appellant Poliny to the patrons of liquor licensed premises in the general area. Of course, since the premises were not as yet operating, none of these alleged disturbances could have been attributed to the licensee herein. Furthermore, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), inhabitants of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject his license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown et al., Bulletin 1572, Item 1.

It is also noteworthy that no objections were raised to the grant of a transfer of a license to Morgan Seafood operated by one of the appellants (Julia Massinek) less than a year prior to the time that the instant application for transfer was filed.

In conclusion, it may be stated that in matters involving transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, 33 N.J. 428, 446 (1960). As indicated hereinabove, the Director is governed by the principle that, where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquors Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960). In the recent case of Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director



Licensee has a previous record of suspension of license by the Director for fifteen days effective June 12, 1968 for sales to minors. Re Barge Inn, Inc., Bulletin 1804, Item 5.

The license will be suspended for ninety days (Re Whitehouse Post #284, American Legion, Bulletin 1514, Item 1), to which will be added five days by reason of the record of suspension of license for dissimilar violation within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), or a total of ninety-five days, with remission of five days for the plea entered, leaving a net suspension of ninety days.

Accordingly, it is, on this 16th day of November 1970,

ORDERED that Plenary Retail Consumption License C-421, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Barge Inn, Inc., for premises 324 Third Street, 410 & 410½ Monmouth Street, Jersey City, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Tuesday, December 1, 1970, and terminating at 2 a.m. Monday, March 1, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS -  
IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED  
FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Ag-An Incorporated  
t/a Chet's Place  
218 Monticello Avenue  
Jersey City, N. J.,

Holder of Plenary Retail Consumption  
License C-351, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Jersey City.

CONCLUSIONS  
and  
ORDER

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Licensee, by Ann Smith, President, Pro se.  
Francis P. Meehan, Jr., Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Wednesday, October 7, 1970, it sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Strenger & Greenberg Tavern, Inc., Bulletin 1913, Item 5.

Accordingly, it is, on this 2nd day of November 1970,

ORDERED that Plenary Retail Consumption License C-351, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ag-An Incorporated, t/a Chet's Place, for premises 218 Monticello Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, November 17, 1970, and terminating at 2:00 a.m. Friday, November 27, 1970.

RICHARD C. McDONOUGH  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN CASTELLUCIA  
t/a DuBonnet Bar  
707 Main Street  
Asbury Park, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-43, issued by the City Council of the City of Asbury Park.

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Bernard L. Greenberg, Esq., Attorney for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On August 16, 1969, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Michael ---, age 15 and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Michael --- testified that he was born on July 9, 1954 and was fifteen years of age, on August 16, 1969. On the date charged herein, accompanied by Fred Beams, he entered the licensed premises and sat at the bar. Beams ordered and was served a Seagrams 7 and Seven-Up, and then said "The same for my friend." Upon being served the drink requested, the minor consumed it. He identified the bartender (who was seated in the hearing room) as Charles S. Emmons, Sr. With respect to the proof of age requested of him by the bartender, Michael testified, as follows:

"Well, he asked me for my proof. Fred said that I just turned twenty-one a few days ago and he said, 'You don't have no proof?' And then I said, 'No'. And then Fred said, 'He just turned twenty-one.' And he said, 'I'll let you go this time because you are a friend of

Fred's.' He said, 'Bring your proof the next time you come though.'"

He was not requested to make a written representation as to his age.

On cross examination, the witness conceded that he had been drinking Seagrams 7 and Seven-Up prior to meeting Beams that evening; that he was feeling "a little bit high"; that after driving around in a truck they entered the licensed premises; that he was served three or four Seagrams 7 and Seven-Up.

His companion Beams fell off a stool and was assisted to the truck. Michael returned to the barroom for approximately fifteen minutes and upon returning to the truck woke up Beams. Some time later, while Michael was driving the truck, he became involved in an accident and was apprehended by police officers. Approximately one month later he was interrogated by two ABC agents.

Frederick D. Beams, testified that on August 16, accompanied by Michael, he drove a pick-up truck to the subject licensed premises. They entered therein and sat at the bar. Frederick ordered a Seagrams 7 and ginger ale. He did not recall Michael ordering a drink.

The witness then testified as follows:

"Q Do you recall seeing Mike with a drink at all?

A No, I don't.

Q What happened?

A I drank about half of the drink and fell off of the bar stool. I woke up. I was back out in the pick-up truck.

Q Did you pass out?

A Yes, I did."

He admitted drinking prior to the time that he visited the licensed premises.

ABC Agent O testified that on October 8, 1969, he, Agent B and a local police officer were directed to the licensed premises by Michael. He and the police officer entered the tavern. He identified himself to the licensee, Castellucia, and explained to him that he was going to bring in the minor for the purpose of identifying the person who allegedly served him an alcoholic beverage on August 16. Agent O then signalled to Agent B to escort Michael into the tavern. Michael was brought into the rear room where the two ABC agents, the police officer, Castellucia and an unidentified male were gathered. At this time he could not identify the person who served him.

Thereafter, Emmons entered the room. Michael then identified Emmons as the person who served him alcoholic beverages on August 16.

It was the agent's opinion that the description furnished by Michael with respect to the appearance of the premises and the bartender was fairly accurate.

Agent B's testimony was corroborative of Agent O's testimony with respect to the matters relevant to the charge.

In defense of the charge, Bobby Willard testified that he was employed as a bartender at the licensed premises on the night of August 16. He saw Beams enter the tavern through a rear door and position himself at the bar near the front door. Beams was alone at the bar. He did not serve Beams. Although he saw a drink in front of Beams, he didn't recall observing him drink. He was working the other end of the bar.

Charles S. Emmons, Sr. testified that he was tending bar on the night of August 16. Although he saw Beams at the bar, he did not observe him enter the licensed premises. Beams ordered one drink and he served him one drink. Later, although he did not observe Michael enter the premises, he did see him standing next to Beams. He asserted that he had no conversation with Michael, Michael did not ask him for a drink, nor did he serve him a drink. He was busy tending bar and did not see Beams and Michael leave the barroom.

Approximately twenty or twenty-five minutes later, Michael re-entered the barroom. He stood behind a female patron and Michael was requested to leave three or four times by Emmons. He did not serve him any beverages.

Reginald Foster testified that he patronized the licensed premises on the night in question and sat in the general area where Beams was seated. He saw Michael enter about a minute later. He heard Beams order a drink for himself only. He heard Michael order a drink from Emmons. Emmons refused to serve him. He observed Beams and Michael leave the tavern together. He observed Michael re-enter the tavern approximately fifteen or twenty minutes later. He did not see him drinking at any time. He doesn't recall whether Michael again ordered a drink because he was conversing with patrons seated next to him.

Preliminarily, it should be observed that we are dealing with a purely disciplinary action, and 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 fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a basically factual situation, 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 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

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

I am impressed by the fact that the minor unequivocally identified the licensed premises and made positive identification of the person who made the sale.

I am also persuaded that the minor's version had a substantial ring of truth with respect to the alleged purchase,

service and consumption of the alcoholic beverages upon the licensed premises. Additionally, an intensive cross examination failed to reveal improper motivation on the part of the minor.

On the other hand, I was not impressed by the testimony offered by the witnesses for the licensee. The bartender Emmons, testified that he had no conversation with Michael the first time he entered the premises that night, nor did Michael ask him for a drink. However, this was contradicted by Foster who testified that he heard Michael ask Emmons for a drink and that Emmons refused to serve him.

I am of the opinion that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt, and I so recommend.

The licensee has no prior record of suspension of license. I further recommend that the license be suspended for thirty days. Re Hillcrest Inn, Inc., Bulletin 1734, Item 6.

#### 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 and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 16th day of November 1970,

ORDERED that Plenary Retail Consumption License C-43, issued by the City Council of the City of Asbury Park to John Castellucia, t/a DuBonnet Bar, for premises 707 Main Street, Asbury Park, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Tuesday, December 1, 1970, and terminating at 3:00 a.m. Thursday, December 31, 1970.

RICHARD C. McDONOUGH  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WERNER A. and MARGARET G. JANKE t/a Rock Oak Lodge 485 Glen Road Box 124H Sparta Township, N. J. )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-11, issued by the Township Council of the Township of Sparta. )

Licensees, Pro se  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on September 9, 1970 they possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Emjam, Inc., Bulletin 1935, Item 4.

Accordingly, it is, on this 17th day of November 1970,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Council of the Township of Sparta to Werner A. and Margaret G. Janke, t/a Rock Oak Lodge, for premises 485 Glen Road, Sparta, be and the same is hereby suspended for ten (10) days, \* commencing at 2 a.m. Tuesday, December 1, 1970, and terminating at 2 a.m. Friday, December 11, 1970.

RICHARD C. McDONOUGH  
DIRECTOR

\*By Amended Order dated November 24, 1970, the effective date of suspension was ordered to commence at 2:00 A.M. on Monday, January 4, 1971 and terminate at 2:00 A.M. on Thursday, January 14, 1971.

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

M. E. B., INC. )  
t/a Beef & Ale Pub )  
2401 Pacific Avenue )  
Atlantic City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-117, issued by the Board of Commissioners of the City of Atlantic City. )

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Licensee, by Edward Horn, President, Pro se.  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 12, 1970 it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Swartswood Lodge, Inc., Bulletin 1935, Item 5.

Accordingly, it is, on this 17th day of November 1970,

ORDERED that Plenary Retail Consumption License C-117, issued by the Board of Commissioners of the City of Atlantic City to M.E.B., Inc., t/a Beef & Ale Pub, for premises 2401 Pacific Avenue, Atlantic City, be and the same is hereby suspended for five (5) days, commencing at 7 a.m. Monday, November 30, 1970, and terminating at 7 a.m. Saturday, December 5, 1970.

RICHARD C. McDONOUGH  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 GEORGE N. & GEORGE R. FARLEY  
 t/a Farley's Tavern  
 Equator Avenue  
 Hillsborough Township  
 PO Flagtown, N. J.  
 Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Hillsborough.

CONCLUSIONS AND ORDER

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 Licensees, Pro se.  
 Walter H. Cleaver, Esq., Appearing for Division.

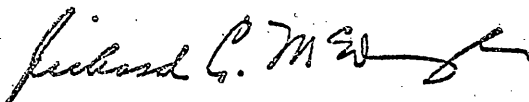
BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on Saturday, September 26, 1970, they permitted the removal of six bottles of beer from their licensed premises during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re 511 Club, Inc., Bulletin 1907, Item 5.

Accordingly, it is, on this 19th day of November 1970,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Hillsborough to George N. & George R. Farley, t/a Farley's Tavern, for premises Equator Avenue, Hillsborough Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Friday, December 4, 1970, and terminating at 2:00 a.m. Monday, December 14, 1970.



Richard C. McDonough  
Director