

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

BULLETIN 2160

October 10, 1974

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1. APPELLATE DECISIONS - SZARKO'S LIQUOR STORE, INC. and SUNSET LANES, INC. v. HILLSIDE.

Szarko's Liquor Store, Inc. )  
and Sunset Lanes, Inc., )  
Appellants, )  
v. )  
Municipal Board of Alcoholic )  
Beverage Control of the Township )  
of Hillside and Long Liquors, )  
Inc., )  
Respondents. )

On Appeal

CONCLUSIONS  
and  
ORDER

-----  
Kein, Pollatschek & Iacopino, Esqs., by Julius R. Pollatschek, Esq.,  
Attorneys for Appellants  
James C. Welsh, Esq., Attorney for respondent Board  
David B. Zurav, Esq., Attorney for respondent Long Liquors, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The Municipal Board of Alcoholic Beverage Control of the Township of Hillside (hereinafter Board) on December 10, 1973, approved by a two-to-one vote, a person-to-person and place-to-place transfer of a plenary retail distribution license held by Nathan and Helen Lava for premises 235 Hollywood Avenue to respondent Long Liquor, Inc., for premises 367-375 Route 22, Hillside Township. From this action appellants appeal.

Preliminarily, it is noted that the petition of appeal named Nathan and Helen Lava, holders of the license to be transferred as parties respondents; a transferor is neither a necessary nor a proper party to an appeal from the transfer. Barasso v. Irvington, Bulletin 1319, Item 2; Essex County Retail Liquor Stores Association v. Orange et als., Bulletin 1376, Item 6. Thus Nathan and Helen Lava should not have been joined in the action. Therefore, it is recommended that their names be deleted as parties hereto.

The petition of appeal alleges that the resolution of the Board was invalid in that:

- (a) it violated the existing ordinance (Chapter 8-Section 8-5.4, 1971);
- (b) that one of the members of the Board did not participate in the full hearing and the two members who did participate fully voted one for and one against, leaving the member who did not participate fully to cast the deciding vote;
- (c) public convenience is presently served by existing licensees in the area to which transfer was approved; and
- (d) there was no reason shown in the resolution for the necessity of such transfer.

The Board and remaining respondents denied each of the appellant's contentions.

An appeal de novo hearing was conducted in this Division, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. Rule 6 of State Regulation No. 15. In addition, pursuant to Rule 8 of State Regulation No. 15, transcripts of the proceedings before the Board were offered into evidence. Attached thereto were numerous photographs, sketches and diagrams which were accepted into evidence in conjunction therewith. At the hearing in this Division, it appeared at the outset that the basic issue to be determined was contained within the transcripts of the testimony and argument before the Board. Thus, only supplementary testimony was offered by appellants and respondents, the substance of which testimony will be hereinafter referred to.

#### I.

Addressing the contention that the action of the Board was invalid in that one of its members did not participate in the initial hearing held by the Board but, thereafter, participated in the second hearing and cast a deciding vote, no proof was elicited concerning the lack of participation by the named Board member. The testimony, and argument of counsel was stenographically transcribed and thereafter forwarded to the Board. The presumption then arises that the members of the Board, including the member who was not present at the initial hearing had full opportunity to examine the transcript and become familiar with the testimony of the witnesses and the arguments of the respective counsel.

"A public official's action is presumed to be the exercise of his sworn duty, performed in a conscientious and impartial manner. Any challenge to the contrary requires more than mere supposition or conjecture, more than off-hand allegation; it requires some positive degree of a substantive proof."

Paitakis v. New Brunswick, Bulletin 2082, Item 1.

No evidence being presented that the absent member was without opportunity to be fully acquainted with the factual and legal content of the issue to be decided, his vote must be assumed to have been predicated upon the totality of the matter. Hence I find that the action of the Board in this connection is valid.

II

The major issue in contention is the applicability of the local ordinance to the facts involved. The pertinent section of the applicable ordinance reads as follows:

"8-5.4 Location Restrictions.

(a). No license ... shall be granted or transferred to other premises within 1,500 feet of existing licensed premises, provided that an existing license may within the discretion of the issuing authority be transferred to any place within 750 feet of its present location if it has not been previously transferred from the place for which it was originally issued. Where distance is referred to herein, it shall be measured in the same manner as required by R.S. 33:1-76 for the measuring of 200 feet relative to churches and schools."

From an examination of the transcripts of the testimony taken before the Board, the maps and sketches and the testimony of two engineers whose testimony was elicited on behalf of both appellants and respondents at the hearing before this Division, it appears that the crucial issue involved the measurement of the 1,500 feet referred to in the ordinance.

The Board had before it the application of respondent Long Liquors, Inc., who proposed to put a "package" store within a Shop-Rite Supermarket located on a State Highway in Hillside. This highway, Route 22, is a multi-laned high-speed cross State highway along which, in Hillside, are located numerous commercial establishments, of which the Shop-Rite is one, and appellant Sunset Lanes, Inc., a bowling alley center, is another. They are located on the same side of the highway, in varied large parcels, separated only by the property of a trucking firm, which, too, has access only to the highway. Thus the Board had before it the perplexing and novel question: how, under the topographical and unique traffic conditions existing in the area does one measure the 1,500 feet.

The Board was assisted in resolving its dilemma by the testimony before it of two engineers and a surveyor, Messrs. Caufield, Levy and Watson. From their description of the area, the Board concluded that:

"There is no normal way or proper way for a pedestrian to walk into or out of the area of the Shop-Rite Supermarket building which houses Long Liquors, Inc. We agree with the findings and uncontradicted conclusions of Mr. Daniel Levy, Licensed Planning and Traffic Consultant."

Paragraph "C" of Resolution adopted by Board.

Testimony was received from the parties with supplementary testimony of another engineer, Daniel Kaback, who, on behalf of the appellants asserted that it would be practical for persons on foot to walk from Shop-Rite to Sunset Lanes across the respective parking areas and the property of the trucking firm.

From the diagrams furnished, it appears uncontroverted that, if a pedestrian walked from the entrance of Shop-Rite directly to Route 22 and along the said highway to the entrance of Sunset Lanes, the nearest existing premises, the distance would be 1,056 feet; and it would be within the proscribed distance of the ordinance. Thus, appellants maintain that as the distance limitation is violated, the transfer is invalid. The respondents counter that the 1,056 feet is not a viable cross-walk, and since there is no other cross-walk within 1,500 feet, the ordinance has not been invalidated.

The calculating of distance limitations has presented a thorny problem to the Director of this Division from the earliest years following the passage of the Alcoholic Beverage Law. As stated in Petrangeli v. Barrett, 33 N.J. Super. 378, 384 (App. Div. 1954):

"It has long been established that a local governing body has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Bachman v. Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902). The rule is aptly stated in Tube Bar, Inc. v. Commuters Bar, Inc., 18 N.J. Super. at p.354."

Hence, the present ordinance must be strictly construed in terms of judicially approved precedent.

It is a well established principle that the accepted and proper method of measurement in a matter of this kind is not between building entrances but between points on the public way intersecting any walk which a person would use in entering the properties in question. Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control et al., 53 N.J. Super. 271 (App. Div. 1954).

The present ordinance refers to R.S. 33:1-76 as the standard for measurement. This statute provides that "the two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

In an interpretation of this statute, the court has held:

"The determination by the Municipal Board, in applying the aforesaid method of measurement, that the measurement should be made only to an intersection where marked cross-walks or traffic signals exist has no support in law. The type of crosswalk ... has been declared by our courts to be lawful for pedestrian traffic."

Hopkins v. Municipal Board of Alcoholic, etc. Newark, 4 N.J. Super. 484, 487 (App. Div. 1949).

The court later held however that:

"The respondent's argument that under R.S. 33:1-76 the 'lawful' way is the only 'proper' way for pedestrians to walk evidently rests upon certain language in the Hopkins case, supra. But Hopkins addressed itself to the question whether a crosswalk was 'proper' although not as a through intersection; it did not hold that the legality of a crosswalk for vehicular observance purposes necessarily governed in measuring the proximity of a church or school to a liquor license applicant's site."

Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control, supra at p.279.

In Karam et al v. West Orange, et al., 102 N.J. Super. 291, 297 (App. Div. 1968) the court, in considering the various methods by which a pedestrian might walk as envisioned by the statute stated:

"Others [other pedestrian routes] involved walking along the building line of the sidewalk on Pleasant Valley Way and Eagle Rock Avenue, and traversing the intersection of those streets within their crosswalks but not stepping up on the curb corners. We incline to view that the latter method was impermissible in terms of pedestrian safety."  
(underscore added)

The foregoing principles are readily applicable to situations where the distances may be measured along a public street having a usual sidewalk. Route 22 on which the proposed transfer site is located and along which measurement would normally be taken to the nearest licensed premises of respondent Sunset Lanes, has existed as a public highway for fifty or more years. From a series of photographs placed into evidence, it would appear that no provision has ever been made for any sidewalk in the area in expectation of any pedestrian traffic.

It is conceded that Route 22, which contains a four-foot concrete median barrier, is not that type of highway to which the present statute applying to pedestrian traffic would apply:

N.J.S.A. provides:

"...On all highways where there are no sidewalks or paths provided for pedestrian use, pedestrians shall, when practicable, walk only on the extreme left side of the roadway or its shoulder facing approaching traffic."

The applicability of the above statute is not "practicable". It is further conceded that any pedestrian who walks on Route 22 courts suicide.

Although present law requires the inclusion of lands for sidewalk upon the acquisition of lands for highway purposes (N.J.S.A. 20:3-46) no like requirements existed when Route 22 (then Route 29) was created. Thus, there is no present provision for pedestrian use of this road.

Testimony elicited before the Board and at the hearing on appeal in this Division revealed that a pedestrian could walk through the parking lot of Shop-Rite, across the parking lot of the adjacent trucking company and on to the parking lot of Sunset Lanes to the entranceway of that licensed premises. While such route would embrace less distance than that required by the ordinance, such route would require the pedestrian to cross several vehicle lanes, trespass upon the lands of the trucking company, dodge huge trucks or cars entering or leaving those areas and generally search for such open spaces permitting accessibility. There is, in short, no direct path from the entrances of the two locations.

What makes this situation unique, is the fact that no roadway exists behind the respective properties that would provide an alternative route. While a short street ending in a cul-de-sac does exist in part, a pedestrian could not gain either egress or ingress from it without going through private lands presently used for a manufacturing plant. Hence by the peculiar locations of each, one to another, there is no present practical accessibility except for vehicular traffic. The Board having found such situation existing described its findings in Paragraph "C" of its resolution, supra.

As the ordinance appears to be valid and properly applied, the remaining question concerns the propriety of the Board's action with respect to reasonableness.

The legal principle applicable to that aspect has long been established in Fanwood v. Rocco, 33 N.J. 404, 414 (1960), wherein the court stated:

"...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...."

There is no allegation or evidence to indicate that the Board was improperly motivated in arriving at its determination. On the contrary, the record reveals full opportunity was afforded to all of the parties to present their views on two occasions. All matters pertinent to the issue were accepted and considered by the Board.

Additionally, the type of service to be rendered to the public by the proposed licensee is that of a "package store"; the objecting appellants while purveying goods for off-premises consumption, neither are engaged in providing service for the shopping customers. The Board properly considered this service to be in the best public interest. Hence the appellants have shown no manifest error or abuse of discretion by the Board. Cf. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

It is therefore recommended that the action of the Board be affirmed in that the appellants have failed to meet 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.

However, it is further recommended the license shall not be actually delivered to respondent Long Liquor, Inc. until the Board approves the building being constructed for use of the licensed premises in accordance with the description and plans thereof heretofore filed with the Board.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorneys for appellants and written answers thereto were filed by the attorneys for respondents, pursuant to Rule 14 of State Regulation No. 15.

In one of the exceptions, appellants contend that the Hearer misconceived the nature of the operation of each of the appellants, when he stated that the operation "of the proposed licensee is that of a package store while the objecting appellants are not engaged in providing service for the 'shopping customers'".

From my reading of the transcript of testimony I find that the Hearer was correct in noting that the appellants herein are engaged in providing service for the shopping customers. The Hearer's reference to "shopping customers" obviously defined those customers who patronized the food shopping center as distinguished from those patronizing Szarko's Liquor Store. This exception lacks merit.

I have also carefully considered the other exceptions raised by appellants and find that they have either been fully considered and, in my view, satisfactorily resolved, or are lacking in merit.

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

Accordingly, it is, on this 24th day of July 1974,

ORDERED that the action of the Municipal Board of Alcoholic beverage control of the Township of Hillside be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that respondent Board be and is hereby directed to withhold actual delivery of said license to respondent Long Liquors, Inc., until the said Board approves the building being constructed for use of the licensed premises in accordance with the plans and specifications filed with the Board.

LEONARD D. RONCO  
DIRECTOR

2. APPELLATE DECISIONS - FRIENDLY TAVERN, INC. v. SOUTH AMBOY.

Friendly Tavern, Inc., )  
Appellant, )  
v. )  
Common Council of the City )  
of South Amboy, )  
Respondent.

On Appeal  
CONCLUSIONS  
and  
ORDER

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John M. Lucitt, Esq., Attorney for Appellant  
John J. Vail, Esq., Attorney for Respondent

BY THE DIRECTOR:

This is an appeal from action of the respondent Common Council of the City of South Amboy which, on May 7, 1974 denied appellant's application for a place-to-place transfer of its plenary retail consumption license from premises 359 Bordentown Avenue to 361 Bordentown Avenue, South Amboy.

Prior to the commencement of the de novo hearing held in this Division, it was conceded by counsel for the parties herein that although the petition of appeal challenged the action of the Council occurring on May 7, 1974 the thrust of the appeal concerned a prior denial of appellant's application for such transfer which occurred in December 1973, from which action no appeal was timely taken.

Therefore, by joint stipulation of counsel, the appeal filed herein was withdrawn by counsel for appellant with consent of counsel for respondent, without prejudice to the parties, and subject to the consent of the Director.

Good cause appearing, I shall enter an Order dismissing the appeal.

Accordingly, it is, on this 15th day of July 1974,

ORDERED that appellant's appeal be and the same is hereby dismissed without prejudice.

JOSEPH H. LERNER  
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against Stutz Rendezvous, Inc. t/a The Rendezvous Route #206, Montague Township PO Port Jervis, N.Y.,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Montague.

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Albert G. Silverman, Esq., Attorney for Licensee  
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on August 24, 1973 it sold alcoholic beverages to a minor, age sixteen, in violation of Rule 1 of State Regulation No. 20.

The Division presented its case through the testimony of the minor, Frank --- and three young persons who were allegedly present when the illegal sale occurred.

The minor, Frank--- testified that he was born on December 23, 1956. He visited the licensed premises, with which he is familiar, on August 24, 1973 between 9:00 and 9:30 in the evening. He was accompanied by his cousin Kevin Ford who, upon being seated at the bar, ordered and was served two glasses of beer by the bartender, later identified as Stefan Batko. The

bartender thereafter sold and delivered to Frank and Kevin two additional glasses of beer. Shortly thereafter, both purchased two mixed drinks which were followed by additional uninterrupted purchases of beer until 11:00 o'clock.

During his stay in the establishment, Frank noted the presence of two young ladies who, for a short time, visited with him and his cousin Kevin, at the bar. He recalled seeing an acquaintance, Dick McGill, in the premises and added that they were joined by another young man identified as Ray Litchfield. Toward the close of his visit, he ordered a sandwich which he was unable to consume.

On cross examination, Frank related a bizarre series of events beginning in the afternoon, encompassing his visit to and departure from the licensed premises; and his later visits to other places, including another tavern, which resulted in his "passing out" in a roadway and being injured by a passing truck.

Kevin Ford, cousin of Frank, substantially corroborated Frank's testimony, varying from it only as to the seating location of their two female friends, Shirley and Karen. According to his version, these two girls at one time, left their positions at the bar and came along side of him and Frank, conversed but did not take seats. He further related that another bartender, later identified as Michael Car, was also on duty. He believed that he departed the premises at 11:15 p.m.

One of the two young ladies, identified by Frank and Kevin, Shirley Harriott, testified that she visited the premises of the licensee two or three times a week. On the date charged herein, she and her friend Karen Hansen entered the tavern at about 9:00 p.m. She has known both Frank and Kevin from school days. She observed both enter shortly after 9:00 o'clock, take seats at the bar and order beer.

On a few occasions she walked over to them, had a conversation with both and observed that, in addition to beer, they had mixed drinks. She was definite in her recollection that Frank was drinking continuously.

Karen N. Hansen testified that she arrived at the licensed premises with her friend, Shirley Harriott, and soon thereafter Frank and Kevin arrived. She observed Frank being served drinks and talked to both of them occasionally during that visit.

The licensee offered the testimony of several witnesses, which testimony was directed toward two specific areas. Father Thaddeus Michota, Ralph Zoccolillo, New Jersey State Trooper Robert Brown and Henry M. Fulkrod, each testified that the character and integrity of the owners of the corporate stock of the licensee corporation, Stefan Batko and Michael Car, were above reproach; they operated a quiet, clean restaurant serving a family trade, and their manner of operation was exemplary.

The testimony of further witnesses related to the evening in question. Richard C. Cole, a former Mayor of the municipality, stated that he was in the licensed premises on the date charged herein, and, although he did not then know the infant or his friends, he would have recognized them had they been there. He is certain that they were not there on that evening.

Gary Den Bleyker and Gregory Fialkowski, both painters who reside at the motel in the rear of the premises, stated that they spend each evening there and that none of the named young people were present.

Sidney Bowman, a member of several municipal organizations, stated that he spent part of the subject evening playing pool on a table adjacent to the bar and had Frank, Kevin, Shirley or Karen been seated where they said they were, he would have had his attention attracted to them. Thus, he was certain that none of them were present on that evening.

Ernest McGill, who had been identified as having been in the premises that evening by two of the Division's witnesses, denied that he was in the premises on that evening. He asserted that although he is usually in the bar at some time every evening, on the particular date charged, he was visiting his mother.

The principal owners of the corporate stock of the licensee corporation, Stefan Batko and Michael Car, both vigorously denied that Frank was ever in the premises, and that, on the evening in question, none of the remaining persons testifying for the Division were at the premises.

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 not criminal, 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). 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.

Although the testimony of the minor, Frank, and his friends was hazy and indistinct as to many details, it is abundantly clear in one respect; that the minor was served and consumed alcoholic beverages in the licensee's establishment on the night in question. That major premise was substantially corroborated.

The defense has proven, without contradiction, that the licensed premises is owned and managed by persons of integrity who enjoy a good reputation in their community.

However, an evaluation of the testimony of those witnesses for the licensee who testified as to the alleged absence of the minor and his friends in the establishment on the evening in question, revealed sharp variances therein. In this connection, it should be pointed out that, upon request of the licensee's counsel, all witnesses were sequestered and each witness testified without benefit of having heard prior testimony. Hence there are understandable variations among all witnesses to the same subject as human observations vary one to another.

From the testimony of Batko it appeared that on the day following the accident in which the minor had been involved, a State policeman visited him and "He said somebody was hit on the road about 4:00 o'clock in the morning and he supposed to be in our bar. I said that is impossible because we close the bar about 11:10, 11:15." From police reports placed into evidence, it appeared that the first reference made to identify Frank as having been in the licensed premises was on October 10, 1973. Thereafter on October 24, 1973, ABC agents confronted Batko and Car with Frank, Kevin and the two females with the allegation that they were in the subject premises on the night in question. Car offered no testimony that he had been in conversation with a State policeman on August 25, 1973, nor was there reference in either the testimony of Batko or Car that Frank had been then identified to them.

Nonetheless, Henry Fulkrod, a president of the local licensed beverage association, testified that Car had visited him on August 25, 1973, seeking advice following a visit by police to Car's establishment, at which time Car was advised that Frank had purchased alcoholic beverages there.

In developing testimony of Cole, Bowman, Den Bleyker and Fialkowski it was apparent throughout the testimony of each that they were asked to recall their presence in the licensed premises on the evening in question two months subsequent to that time. With the exception of Bowman, each recalled that on that particular evening, Car announced that he was attending a reunion the following day, and that enabled them to fix the specific date. Bowman refreshed his recollection by way of a personal diary kept by his wife in which are recorded meetings and social events as well as family visits. He recalled that his sister-in-law was visiting his home on that evening, and he left his home that evening to visit the licensed premises.

Neither Cole nor Bowman could totally deny the possibility of the minor being present and each alluded to the logical probabilities that he, Frank, and his friends were not there, otherwise they would have recollected such presence. Similarly, the memories of Den Bleyker and Failkowski were attempted to be jogged two months after the incident upon the visit by the ABC agents. Although they lived and ate dinner together daily at the licensed premises, Den Bleyker declared that he had never seen Shirley or Karen before. On the other hand, Failkowski stated that these girls, were often in the licensed premises.

The testimony of McGill was totally incredible. Although two months elapsed between inquiry made of him and the night of the incident, he specifically recalled not being in the premises, but he had no recollection if he had been there on any night surrounding that one.

The principals, Batko and Car, testified with marked dissimilarities. While both denied ever seeing Frank in the premises, Batko declared the premises closed at 10:00, 10:15 p.m. on the evening in question; Car said that they closed at 11:15 p.m. Batko determined that Shirley and Karen were last in the premises sometime in July; Car admitted the girls were "They in and out all the time" particularly that week.

The waitress, Patircia Longcor, denied that the minor or any of the young people, whom she knew well, were in the premises on the specific evening. The basis for her recollection was that Car had been informed by the State policeman that the minor and his friends had been present.

In adjudicating matters of this kind, we are guided by the long established principle that disciplinary proceedings involving sales to alleged minors require proof of a sale or delivery of alcoholic beverages to the minor. As the defense is posited upon the assumption that the minor was not in the premises, the finding that he was in the premises gives rise to the inescapable conclusion that alcoholic beverages were consumed.

Since the testimony herein presents a sharp factual conflict, 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. Bonnett, 16 N.J. 546 (1954).

The four Division witnesses, notwithstanding their testimony out of the presence of one another did not vary significantly in their versions of the incident. Wigmore ranks the sequestration of witnesses "...just below cross-examination as a device to expose untruthfulness". State of N.J. in interest of W.O., 100 N.J. Super. 358 (App. Div. 1968) at p.363.

The opportunity having been afforded at the hearing in this Division to observe the demeanor of the witnesses as they testified and in view of the testimonial conflict, the credibility of witnesses must be weighed, not as to their individual truthfulness alone but also in respect to their opportunities for full recollection. The recollections of Shirley and Karen were made sharper by their higher degree of acquaintance with Frank than the witnesses for the licensee. They frequented the licensed premises and had reason to couple the later events of the evening with the presence of Frank and his cousin Kevin in that there apparently was a mutual departure from that establishment to another licensed premises in the area.

I do not find the testimony of the minor Frank as to the quantity of alcoholic beverages consumed in the licensed premises particularly convincing. He may well have exaggerated the extent of his drinking there and similarly may have minimized his descriptions of drinks served to him at another licensed premises thereafter. Nevertheless, the testimony of Shirley and Karen supports the Division's contention that Frank did consume alcoholic beverages in the licensed premises that evening. The consumption of merely one drink of alcoholic beverages by a minor in a licensed premises is sufficient to produce a finding that the statute and rule (Rule 1 of State Regulation No. 20) was violated.

I conclude that the Division has proven its case by a preponderance of the believable evidence, and I recommend that the licensee be found guilty of the charge.

Absent prior record of the licensee, it is further recommended that the license be suspended for thirty days.

#### Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed on behalf of the licensee, and written answer to the said exceptions were filed by the attorney for and on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

I have carefully examined and analyzed the said exceptions and the answers thereto, and find that the exceptions have either been satisfactorily considered and resolved in the Hearer's report, or are lacking in merit.

In my examination of the testimony, I found inconsistencies in the testimony of both the witnesses for the Division as well as for the licensee. However, testimony of the Division witnesses were substantially similar in substance, whereas there were significant inconsistencies in the testimony of the licensee's witnesses, which seriously affected the credibility of those witnesses.

Evaluating the entire record as a whole, I find that the charge herein has been established by a fair preponderance of the credible evidence.

Consequently, having considered the entire record herein, including the transcript of the testimony, the Hearer's report, the exceptions filed thereto and the answers to the exceptions, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of July 1974,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Montague to Stutz Rendezvous, Inc., t/a The Rendezvous for premises Route 206, Montague Township, be and the same is hereby suspended for thirty (30) days, commencing 3:00 a.m. on Tuesday, August 6, 1974 and terminating 3:00 a.m. on Thursday, September 5, 1974.

*Leonard D. Ronco*

Leonard D. Ronco  
Director